

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

STANDING COMMITTEES

January 19, 2012
10:00 a.m.

90 Church Street
4th Floor, Room 4A & 4B
New York City

I. JOINT MEETING OF THE COMMITTEE ON PUBLIC HEALTH AND COMMITTEE ON HEALTH PLANNING

Jo Ivey Boufford, M.D., Chair, Committee on Public Health
John Rugge, M.D., Chair, Committee on Health Planning

II. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Jeffrey Kraut, Chair

A. Applications for Construction of Health Care Facilities

Acute Care Services - Construction

Exhibit #1

	<u>Number</u>	<u>Applicant/Facility</u>
1.	112059 C	New York Presbyterian Hospital – New York Weill Medical Center (New York County)
2.	112074 C	University Hospital (Suffolk County)
3.	112259 C	North Shore University Hospital (Nassau County)

Diagnostic and Treatment Center - Construction

Exhibit #2

	<u>Number</u>	<u>Applicant/Facility</u>
1.	101018 C	Doctors United, Inc. (New York County)
2.	112250 C	Smile New York Outreach, LLC d/b/a Smile Program Mobile Dentists (Queens County)

Diagnostic and Treatment Centers - Establish/Construct

Exhibit #8

	<u>Number</u>	<u>Applicant/Facility</u>
1.	101164 B	Mobile Health Services, LLC (New York County)
2.	112142 E	Primary Health Care Plus, Inc. (Nassau County)

Dialysis Services - Establish/Construct

Exhibit #9

	<u>Number</u>	<u>Applicant/Facility</u>
1.	111234 B	Dumont Care, LLC (Westchester County)

Residential Health Care Facilities - Establish/Construct

Exhibit #10

	<u>Number</u>	<u>Applicant/Facility</u>
1.	101068 E	Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC d/b/a Guilderland Center Rehabilitation and Extended Care Facility (Albany County)
2.	112218 E	Waterfront Health Care Center, Inc. (Erie County)

Certified Home Health Agencies – Establish/Construct

Exhibit #11

	<u>Number</u>	<u>Applicant/Facility</u>
1.	102239 E	North Shore University Hospital, Inc., d/b/a North Shore Home Care (Nassau County)

C. Certificates

Certificate of Amendment of the Certificate of Incorporation

Exhibit #12

Applicant

1. BMA, Medical Foundation, Inc.

Certificate of Dissolution

Exhibit #13

Applicant

1. Mary McClellan Hospital, Inc.

D. Home Health Agency Licensures

Home Health Agency Licensures

Exhibit #14

<u>Number</u>	<u>Applicant/Facility</u>
1640 L	Acute Care Experts, Inc. (Bronx, Queens, Kings, Richmond, Nassau, and New York Counties)
1956 L	Advantage Management Associates, Inc. d/b/a Advantage Homecare Agency (New York, Westchester, Kings, Queens, Bronx, and Richmond Counties)
1678 L	Amazing Grace Home Care Services, LLC (New York, Bronx, Kings, Richmond, and Queens Counties)
1696 L	Diana's Angels, Inc. (Putnum, Bronx, Westchester and Dutchess Counties)
1957 L	Evergreen Choice, LLC (New York, Bronx, Kings, Richmond and Queens Counties)
1668 L	Five Borough Home Care, Inc. (Bronx, Kings, New York, Richmond, and Queens Counties)

- 1733 L Heritage Homecare Services, Inc.
(New York, Kings, Queens, Bronx, Nassau,
Suffolk and Richmond Counties)
- 1994 L Independent Living for Seniors, Inc.
(Monroe and Wayne Counties)
- 1835 L Longevity Care, LLC
(Westchester County)
- 1959 L Stat Staff Professionals, Inc.
(Saratoga, Warren, Albany, Greene, Franklin,
Washington, Rensselaer, Columbia, Clinton,
Fulton, Otsego, Ulster, Essex, Montgomery,
Schoharie, Hamilton, Schenectady, and Delaware
Counties)
- 2004 L Long Island Living Center, LLC d/b/a Long Island
Living Center
(Bronx, Kings, and Queens Counties)
- 2079 L Metrostar Home Care, LLC
(Kings, Bronx, Queens, Richmond, New York and
Nassau Counties)
- 1875 L ALJUD Licensed Home Care Services, LLC
(Nassau and Suffolk Counties)

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
COMMITTEES ON CODES REGULATIONS AND LEGISLATION

February 2, 2012
9:15 a.m.

90 Church Street
4th Floor, Room 4A & 4B
New York City

COMMITTEE ON CODES, REGULATIONS AND LEGISLATION

Angel Gutiérrez, M.D., Chair

For Emergency Adoption

11-27 Amendment of Section 401.2 of Part 401 of Title 10 NYCRR
(Amendment to Limitations of Operating Certificates)

For Adoption

11-27 Amendment of Section 401.2 of Part 401 of Title 10 NYCRR
(Amendment to Limitations of Operating Certificates)

For Discussion

11-24 Amendment of Parts 763 and 766 of Title 10 NYCRR
(Certified Home Health Agency (CHHA) and Licensed Home Care
Services Agency (LHCSA) Requirements)

**New York State Department of Health
Public Health and Health Planning Council**

January/February 2012

Acute Care Services - Construction

Exhibit #1

	<u>Number</u>	<u>Applicant/Facility</u>
1.	112059 C	New York Presbyterian Hospital – New York Weill Medical Center (New York County)
2.	112074 C	University Hospital (Suffolk County)
3.	112259 C	North Shore University Hospital (Nassau County)



Public Health and Health Planning Council

Project # 112059-C New York Presbyterian Hospital – New York Weill Cornell Center

County: New York (New York)
Purpose: Construction

Program: Acute Care Services
Submitted: October 24, 2011

Executive Summary

Description

New York Presbyterian Hospital-New York Weill Cornell Center (NYP-Weill Cornell), an 850-bed not-for-profit hospital located at 525 East 68th Street, New York, requests approval to convert 32 of its 68 inpatient psychiatric beds to inpatient medical/surgical (M/S) beds. In addition, the hospital seeks approval to add 12 net new M/S beds to its overall M/S capacity, to create a 44-bed medical/surgical unit to be located on the South Wing of the 11th floor of the Greenberg Pavilion.

This application is the result of the lack of bed availability in the adult M/S units, which has impacted specialized care. Rather than admitting patients to specialized M/S units according to diagnosis, patients at times are admitted to any adult M/S unit that has available beds. This is not optimal patient care, since cohorting patients by appropriate service leads to improved patient outcomes, better communication and greater efficiency.

Total project costs are estimated at \$19,846,422.

DOH Recommendation
Contingent approval.

Need Summary

The proposed reconfiguration will enable NYP/Weill Cornell to:

- Meet growing community demand for inpatient M/S services;
- Improve access to care;
- Improve the alignment of patients with the appropriate inpatient units and level of care;

- Enhance quality of patient care with efficient, timely and effective patient centered treatment; and
- Reduce the hospital's medical/surgical occupancy rate closer to the desired planning optimum of 85.0%.

Program Summary

Based on the results of this review, a favorable recommendation can be made pursuant to Section 2802-(3)(e) of the New York State Public Health Law.

Financial Summary

Project costs will be met via equity from operations.

Incremental Budget:	<i>Revenues:</i>	\$ 27,960,195
	<i>Expenses:</i>	<u>30,561,025</u>
	<i>Gain/(Loss):</i>	\$ (2,600,830)

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project involves the conversion and renovation of a 32-bed inpatient psychiatric unit to a 44-bed adult M/S inpatient unit on the south wing of the 11th floor of the existing Greenberg Pavilion. The project will consist of 19,230 SF of renovations.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of documentation of final approval from the NYS Office of Mental Health. [RNR]
3. New York Presbyterian Hospital shall submit a certificate of need application to fully sprinkler the Greenberg Pavilion atrium in accordance with 1999 NFPA 13. The construction of the atrium sprinkler project must be complete at the time of the pre-occupancy survey of project 112059. [AER]

Approval conditional upon:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]
3. The applicant shall start construction on or before December 3, 2012 and complete construction by August 19, 2013 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not started on or before the start date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

February 2, 2012.

Need Analysis

Background

New York Presbyterian Hospital - New York Weill Cornell Center (NYP/Weill Cornell) is an 850-bed acute care hospital located at 525 East 68th Street New York, New York, New York County. The facility is seeking CON approval to renovate a unit on its campus, convert 32 inpatient psychiatric beds to medical/surgical (M/S) beds and add 12 net new medical/surgical beds. Upon project completion, the total number of certified inpatient beds at NYP/Weill Cornell will increase by 12 to 862.

New York Presbyterian Hospital-New York Weill Cornell Center has the following certified beds and services:

<u>Bed Category/Capacity</u>	<u>Current</u>	<u>Proposed</u>	<u>Upon Completion</u>
AIDS	30		30
Bone Marrow Transplant	15		15
Burns Care	40		40
Chemical Dependence - Rehabilitation	14		14
Chemical Dependence - Detoxification	3		3
Coronary Care	20		20
Intensive Care	65		65
Maternity	68		68
Medical / Surgical	402	+44	446
Neonatal Continuing Care	16		16
Neonatal Intensive Care	15		15
Neonatal Intermediate Care	19		19
Pediatric	33		33
Pediatric ICU	20		20
Physical Medicine and Rehabilitation	22		22
Psychiatric	68	- 32	36
Total Beds	850	12	862

AIDS	AIDS Center
Ambulance	Ambulatory Surgery - Multi Specialty
Audiology O/P	Burn Center
Burns Care	Cardiac Catheterization - Adult Diagnostic
Cardiac Catheterization - Electrophysiology (EP)	Cardiac Catheterization - Pediatric Diagnostic
Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)	Cardiac Surgery - Adult
Cardiac Surgery – Pediatric	Certified Mental Health Services O/P
Chemical Dependence – Detoxification	Chemical Dependence - Rehabilitation
Chemical Dependence - Rehabilitation O/P	Chemical Dependence - Withdrawal O/P
Clinic Part Time Services	Clinical Laboratory Service
Coronary Care	CT Scanner
Dental O/P	Emergency Department
Epilepsy Comprehensive Services	Family Planning O/P
Health Fairs O/P	Intensive Care
Linear Accelerator	Lithotripsy
Magnetic Resonance Imaging	Maternity
Medical Social Services	Medical/Surgical
Methadone Maintenance O/P	Neonatal Continuing Care
Neonatal Intensive Care	Neonatal Intermediate Care

**Table 2:
New York Presbyterian Hospital - New York Weill Cornell Center: Certified Service**

Nuclear Medicine – Diagnostic	Nuclear Medicine - Therapeutic
Pediatric	Pediatric Intensive Care
Pediatric O/P	Pharmaceutical Service
Physical Medical Rehabilitation	Physical Medicine and Rehabilitation O/P
Prenatal O/P	Primary Medical Care O/P
Psychiatric	Radiology - Diagnostic
Radiology-Therapeutic	Renal Dialysis - Acute
Renal Dialysis – Chronic	Respiratory Care
Therapy - Occupational O/P	Therapy - Physical O/P
Therapy - Speech Language Pathology	Transplant - Bone Marrow
Transplant – Kidney	Transplant - Liver

New York Presbyterian Hospital - New York Weill Cornell Center State Designations:

- AIDS Center;
- Burn Center;
- Regional Perinatal Center;
- Regional Trauma Center;
- SAFE Center; and
- Stroke Center.

There has been increased demand for inpatient and emergency services at NYP/Weill Cornell. However, lack of available M/S beds has impacted inpatient specialized care, forcing the hospital to admit patients to any medical/surgical unit rather than to specialized M/S units based on diagnosis.

To ameliorate the situation, NYP/Weill Cornell proposes to create a new 44-bed inpatient medical/surgical unit, by converting 32 inpatient psychiatric beds to M/S beds and adding 12 net new medical/surgical beds.

The facility is certified to operate 68 inpatient psychiatric beds consisting of two 32-bed psychiatric units and 4 scatter beds. As a result of this project, NYP/Weill Cornell will be decreasing its inpatient psychiatric beds from 68 to 36. The hospital has and will develop future programs to provide a range of behavioral health services for this patient population. These programs include:

- existing Day Treatment and outpatient services;
- a Comprehensive Psychiatric Emergency program with 6 extended observation beds;
- physical expansion of its Partial Hospitalization program to allow for full use of the 30 licensed slots; and
- length of stay initiatives to create capacity within the inpatient psychiatric unit.

NYP/Weill Cornell anticipates that these programs will facilitate length of stay reductions and create more short-term hospitalizations for patients in need of psychiatric services.

In order to create the new medical/surgical unit, NYP/Weill Cornell will undertake the process in two stages:

Stage 1:

- Temporarily close its Greenberg 11 North 32-bed psychiatric unit;
- Reconfigure the unit and create a Comprehensive Psychiatric Emergency Program (CPEP) and new support care for the existing psychiatric beds; and
- Renovate its Partial Hospitalization Program to utilize all 30 slots.

Stage 2:

- Upon completion of stage 1, close the 2nd psychiatric unit and relocate beds and services to the newly renovated area; and
- Reconfigure the vacated space to a 44-bed inpatient medical/surgical unit.

Analysis

Service Area and Population

An analysis of SPARCS inpatient discharge data shows that approximately 80.0 percent of NYP/Weill Cornell's patients live in Bronx, Kings, New York, Queens and Westchester Counties. Collectively, the census population of these counties increased by 2.0 percent going from 8,488,009 in 2000 to 8,655,516 in 2010.

Emergency Department and Inpatient

In 2008, NYP/Weill Cornell recorded 65,161 total Emergency Department visits, of these, 28.3 percent resulted in an inpatient admission. By 2010, said visits increased by 12.6 percent to 73,358 and the percentage of these visits that were admitted to the hospital increased slightly to 29.2 percent.

NYP/Weill Cornell recorded 41,728 total inpatient discharges in 2006. By 2010, these discharges increased by 11.6 percent to 46,572. The majority of the hospital's inpatient discharges are apportioned to major service category medical/surgical. During the same period said discharges increased by 9.4 percent from 27,377 to 29,961. The facility's discharges in general psychiatric increased by 10.4 during the interval, from 1,225 to 1,353.

NYP/Weill Cornell experienced marked changes in the average daily census (ADC) associated with the aforementioned discharges. The ADC for its medical/surgical patients increased by 7.0 percent from 503 patients on any given day in 2006 to 538 in 2010. The average daily census for its psychiatric patients declined by 4.9 percent going from 61 patients on any given day in 2006 to 58 in 2010. Both major service categories under review experienced declines in average length of stay (ALOS) during the interval. M/S patients average length of stay decreased by 1.5 percent, from 6.7 days in 2006 to 6.6 days in 2010. General psychiatric patients recorded a significant decline in ALOS of almost 3 days during the period. ALOS for these patients declined by 14.8 percent from 18.3 days in 2006 to 15.6 in 2010.

During the interval, the increase in M/S discharges and average daily census resulted in a 6.8 percent increase in the hospital's M/S occupancy rates, from 84.7 percent in 2006 to 90.5 percent in 2010. The hospital's 2010 M/S occupancy rate was more than 5 percentage points above the desired planning optimum rate of 85.0 percent. NYP/Weill Cornell's general psychiatric occupancy rate declined by 6.0 percent, from 90.3 percent in 2006 to 84.9 percent in 2010 (Table 3).

Service Category	2006	2007	2008	2009	2010	Current Beds
Discharges						
Medical/Surgical	27,377	28,399	27,185	29,183	29,961	
General Psychiatric	1,225	1,270	1,192	1,299	1,353	
Total	41,728	43,811	42,385	45,251	46,572	
Average Daily Census						
Medical/Surgical	503	527	477	514	538	
General Psychiatric	61	64	57	62	58	
Total	728	778	704	752	779	
Average Length of Stay						
	2006	2007	2008	2009	2010	
Medical/Surgical	6.7	6.8	6.4	6.4	6.6	
General Psychiatric	18.3	18.5	17.5	17.3	15.6	

Table 3: Inpatient Utilization by Major Service Category Medical/Surgical and General Psychiatric						
Service Category	2006	2007	2008	2009	2010	Current Beds
Total	6.4	6.5	6.1	6.1	6.1	
Occupancy Based on Current Beds						
Medical/Surgical	84.7	88.7	80.3	86.4	90.5	594
General Psychiatric	90.3	94.6	83.8	90.6	84.9	68
Total	81.5	87	78.4	84	87	850

Source: SPARCS, 2006- 2010

Need for Beds

Between 2006 and 2010, the hospital's general psychiatric average daily census and average length of stay declined by 4.9 percent and 14.8 percent, respectively. The hospital will continue to work on initiatives to reduce ALOS as well as to reduce inpatient psychiatric admissions; thereby freeing-up these beds for other uses.

NYP/Weill Cornell's 2010 medical/surgical occupancy rate was more than 5 percentage points above the desired planning optimum of 85.0 percent. Using the hospital's 2010 ADC to recalculate its occupancy rate with the additional beds, NYP/Weill Cornell's revised M/S occupancy rate would be about a percentage point less than the planning optimum of 85.0 percent. The additional beds would give the hospital some relief and allow NYP/Weill Cornell to place its M/S patients appropriately.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost And Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$19,846,422, broken down as follows:

Renovation and Demolition	\$11,200,000
Design Contingency	1,200,000
Construction Contingency	1,200,000
Planning Consultant Fees	70,000
Architect/Engineering Fees	1,344,000
Construction Manager Fees	484,161
Other Fees (Consultant)	937,600
Moveable Equipment	3,300,114
CON Fee	2,000
Additional Processing Fee	<u>108,547</u>
Total Project Cost	\$19,846,422

Project costs are based on a December 1, 2012 construction start date and a nine month construction period.

The hospital will provide equity from operations to meet the total project cost.

Operating Budget

The applicant has submitted an incremental operating budget that is relative to the additional med/surg beds and the decertifying of the psychiatric beds, in 2011 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Inpatient	\$27,960,195	\$27,960,195
Total Revenues	\$27,960,195	\$27,960,195
Expenses:		
Operating	\$29,321,894	\$29,321,894
Capital	<u>1,478,955</u>	<u>1,239,131</u>
Total Expenses	\$30,800,849	\$30,561,025
Excess of Revenues over Expenses	\$(2,840,654)	\$(2,600,830)
Cost Per Discharge	\$16,262.33	\$16,135.70
Utilization:		
Discharges	1,894	1,894

Incremental utilization by payor source for inpatient services is as follows:

	<u>Years One and Three</u>
Medicaid Fee-For-Service	8.76%
Medicaid Managed Care	7.02%
Commercial Fee-For-Service	1.69%
Commercial Managed Care	16.26%
Medicare Fee-For-Service	54.22%
Medicare Managed Care	10.66%
Private Pay	1.21%
Other	.18%

Capability and Feasibility

The hospital will provide equity of \$19,846,422 via operations to meet the total project cost. Presented as BFA Attachment A, is a financial summary for New York Presbyterian Hospital, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget projects an excess of incremental revenues over expenses of \$(2,840,654) and \$(2,600,830) during the first and third years, respectively. Revenues are based on the facility's current reimbursement rates for med/surg patients. The applicant has indicated that the reasons for the incremental losses are the result of the psychiatric beds operating in a profitable manner, and they are being decertified. The incremental loss will be offset by hospital operations. As this project becomes operational, management will review other strategic initiatives to offset the forecasted operating loss as part of the budget process. These strategic initiatives include revenue enhancement and operational throughput efficiencies such as Barrier Reduction Teams, Nurses Station Beds and the ED- Inpatient Unit Pull Program.

As shown on BFA Attachment A, the applicant had an average positive working capital position and an average positive net asset position during 2009 and 2010. The hospital achieved an average excess of operating revenues over expenses of \$82,034,000 and \$114,833,000 during 2009 and 2010.

Presented as BFA Attachment B, is the June 30, 2011 internal financial statements of New York Presbyterian Hospital. As shown on Attachment B, the hospital had a positive working capital position and a positive net asset position during the period through June 30, 2011. Also, the facility achieved an excess of operating revenues over expenses of \$67,974,000 during the period through June 30, 2011.

The applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Architectural Analysis

Review Summary

This project involves the conversion and renovation of a 32-bed inpatient psychiatric unit to a 44-bed adult medical/surgical inpatient unit on the south wing of the 11th floor of the Greenberg Pavilion.

The 11th floor will consist of 19,230 SF of renovations and will include 15 double-bedded rooms and 14 private rooms of which 2 will be isolation rooms. Also included will be 2 nursing stations, nurse touchdown alcoves, and medication, nutrition, conference, consult, and exam rooms. There will also be a family lounge area, clean and soiled utility rooms, an equipment storage room, and public and staff toilet rooms.

Environmental Review

The Department has deemed this project to be a TYPE II Action and will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, contingent approval is recommended.

Attachments

BFA Attachment A Financial Summary- New York Presbyterian Hospital

BFA Attachment B Summary- Internal Financial Statements of New York Presbyterian Hospital



Public Health and Health Planning Council

Project # 112074-C University Hospital

County: Suffolk (Stony Brook)
Purpose: Construction

Program: Acute Care Services
Submitted: August 5, 2011

Executive Summary

Description

University Hospital, a 571-bed public hospital located at East Loop Road, Stony Brook, is requesting approval to expand its bone marrow transplant (BMT) unit through the certification of an additional 6 BMT beds, which will bring the unit's certified bed count to 10.

The hospital will have 603 certified beds upon completion of this application and the following CONs, both of which were contingently approved by the State Hospital Review and Planning Council (SHRPC) on 3/27/08 and 11/18/10, respectively:

CON #072077-C

Major renovation including an additional 6 neonatal intensive care unit (NICU) beds

CON #102025-C

Certification of an additional 14 medical/surgical beds, and 6 added intensive care beds.

University Hospital is a tertiary hospital, Level 1 Trauma Center, and academic medical center. The hospital has earned other regional designations from the New York State Department of Health which includes: AIDS center, burn center, perinatal center, safe center, and stroke center.

Total project costs are estimated at \$844,955.

DOH Recommendation
Contingent approval

Need Summary

University Hospital requests approval to add 6 Bone Marrow Transplant (BMT) beds to the existing capacity of 4 BMT beds.

<i>Service</i>	<i>Existing Capacity</i>	<i>Requested Change</i>	<i>Proposed Capacity</i>
BMT	4	+6	10
Acute Care Beds	569	0	569
<i>Total</i>	<i>571</i>	<i>+6</i>	<i>579</i>

Program Summary

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Summary

Project costs will cover renovations and moveable equipment, and be met via funding from the hospital's accumulated resources.

<i>Incremental Budget</i>	<i>Revenues:</i>	<i>\$ 2,050,363</i>
	<i>Expenses</i>	<i>1,363,722</i>
	<i>Gain/ (Loss)</i>	<i>\$ 686,641</i>

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

The project will involve the relocation of 6 medical surgical (M/S) beds from the 16-bed Level 19 South unit, which currently houses BMT and LLT services consisting of 4 BMT bed and 12 M/S beds, with 5 beds being placed on 9 North and 1 bed being moved to level 17 North. This will involve renovations to accommodate the new BMT beds and the relocated M/S beds.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]

Approval conditional upon:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to start of construction [AER].
3. The applicant shall complete construction by June 1, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

February 2, 2012.

Need Analysis

Background

The hospital operates as part of a group of organized activities on the Stony Brook campus of the State University of New York, and is also known as Stony Brook University Hospital or SBUH. University Hospital is certified for the following beds and services:

<u>Certified Beds</u>	
Bone Marrow Transplant	4
Burns Care	6
Coronary Care	10
Intensive Care	44
Maternity	36
Medical/Surgical	341
Neonatal Continuing Care	8
Neonatal Intensive Care	18
Neonatal Intermediate Care	14
Pediatric	38
Pediatric ICU	12
Psychiatric	40
<i>Total</i>	<u>571</u>

<u>Licensed Services</u>	
Ambulance	Neonatal Continuing Care
Ambulatory Surgery-Multi Specialty	Neonatal Intensive Care
Audiology O/P	Neonatal Intermediate Care
Burns Care	Nuclear Medicine-Diagnostic
Cardiac Catheterization-Electrophysiology (EP)	Nuclear Medicine-Therapeutic
Cardiac Catheterization-Percutaneous Coronary Intervention (PCI)	Pediatric
Cardiac Surgery-Adult	Pediatric Intensive Care
Certified Mental Health Services O/P	Pharmaceutical Service
Clinical Laboratory Service	Primary Medical Care O/P
Comprehensive Psychiatric Emergency Program	Psychiatric
Coronary Care	Radiology-Diagnostic
Emergency Department	Renal Dialysis-Acute
Intensive Care	Therapy-Physical O/P
Linear Accelerator	Therapy-Speech Language Pathology
Lithotripsy	Transplant-Bone Marrow
Magnetic Resonance Imaging	Transplant-Kidney
Maternity	Therapy-Occupational O/P
Medical Social Services	
Medical/Surgical	Other Authorized Locations: 18

Inpatient Utilization

Table 1: Inpatient Utilization, by Major Service Category.						
<u>Service</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Discharges						
Medical/Surgical	19,058	19,751	20,445	20,995	21,619	22,638
Pediatric	2,738	2,686	2,650	2,502	2,590	2,332

Table 1: Inpatient Utilization, by Major Service Category.						
<i>Service</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Obstetric	3,518	3,688	3,808	3,826	4,335	4,199
General Psychiatric	686	743	800	810	1,031	1,011
Chemical Dependency	138	156	205	200	184	212
High Risk Neonates	655	612	754	680	683	774
Subtotal	26,793	27,636	28,662	29,013	30,442	31,166
Healthy Newborns	2,673	2,890	2,838	2,921	3,329	3,156
<i>Grand Total</i>	<i>29,466</i>	<i>30,526</i>	<i>31,500</i>	<i>31,934</i>	<i>33,771</i>	<i>34,322</i>
Average Daily Census						
Medical/Surgical	298	304	303	328	353	357
Pediatric	27	26	26	23	23	20
Obstetric	32	35	37	35	40	39
General Psychiatric	39	39	38	44	41	39
Chemical Dependency	2	2	2	2	3	3
High Risk Neonates	32	33	36	30	30	33
Subtotal	430	438	443	462	489	491
Healthy Newborns	19	21	20	21	24	22
<i>Grand Total</i>	<i>449</i>	<i>459</i>	<i>463</i>	<i>483</i>	<i>513</i>	<i>513</i>
Average Length of Stay						
Medical/Surgical	5.70	5.60	5.40	5.70	6.00	5.80
Pediatric	3.60	3.50	3.60	3.40	3.20	3.20
Obstetric	3.30	3.50	3.50	3.40	3.30	3.40
General Psychiatric	20.90	19.10	175	19.70	14.60	14.00
Chemical Dependency	4.00	4.60	4.20	4.40	5.20	4.40
High Risk Neonates	17.80	19.70	17.60	16.10	16.00	15.80
Subtotal	5.90	5.80	5.60	5.80	5.90	5.80
Healthy Newborns	2.60	2.60	2.60	2.60	2.60	2.50
<i>Grand Total</i>	<i>5.60</i>	<i>5.50</i>	<i>5.40</i>	<i>5.50</i>	<i>5.50</i>	<i>5.50</i>

Source: SPARCS 2005- 2010

Table 2: Occupancy Rates, by Major Service Category							
<i>Service</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>Current Beds</i>
Occupancy Rate							
Medical/Surgical	73.60	74.90	74.80	80.90	87.10	88.20	405
Pediatric	54.00	51.20	51.80	46.00	45.60	40.40	50
Obstetric	88.60	97.50	101.70	98.10	110.30	108.10	36
General Psychiatric	98.30	97.30	96.00	109.30	103.30	97.00	40
Chemical Dependency	0.00	0.00	0.00	0.00	0.00	0.00	0
High Risk Neonates	80.00	82.50	91.00	75.00	75.00	83.50	40
<i>Total</i>	<i>75.30</i>	<i>76.70</i>	<i>77.50</i>	<i>80.90</i>	<i>85.70</i>	<i>86.00</i>	<i>571</i>

Source: SPARCS 2005- 2010.

University Hospital at Stony Brook Cancer Services

University Hospital at Stony Brook (SBUH) provides a wide variety of cancer services. The main programs include diagnostic and treatment services for cancers or suspected cancers of the: breast; colorectal; upper GI and general oncology; gynecology oncology; head and neck; thyroid; lung; leukemia, lymphoma, and transplantation management;

melanoma; neurologic oncology; pediatric oncology; sarcoma; and urologic oncology. SBUH has made investments in robotic surgery, bone marrow transplant/leukemia/lymphoma program, and advanced imaging.

SBUH has achieved accreditation for its program in many areas. Cancer Care Program was granted a three-year accreditation by the American College of Surgeons Commission on Cancer as a Teaching Hospital level-approved cancer program, receiving commendations in all possible areas plus an Outstanding Achievement Award. The Carol M. Baldwin Breast Care Center was accredited by the National Accreditation Program for Breast Centers. The Cytogenetics Lab received certification from the Children’s Oncology Group for the analysis of chromosomal abnormalities in childhood leukemia. The Radiation Oncology Medical Physics Residency Program has received full accreditation from the American Radiology Commission on Accreditation of Medical Physical Education Programs.

Bone Marrow Transplant (BMT) Program Expansion

The Leukemia, Lymphoma and Transplant (LLT) program provides services not found at other area hospitals. The LLT treats blood-related cancers and cancers of the lymphatic system with modalities that include the most current diagnostic testing, chemotherapy, immunotherapy, radiation, new drug development in clinical trials, and stem cell transplantation. Additionally, the Blood and Marrow Stem Cell Transplant Program is the only program in Suffolk County that is specifically designed for patients receiving stem cell transplantation, both autologous and allogeneic.

SBUH reports that team members involved in the transplant process meet weekly to discuss each patient’s treatment plan, as well as the medical and psychosocial issues involved. They work closely together to ensure that each patient’s needs are met and that the complex transplant procedure is carried out seamlessly. Oncology-certified nurses coordinate the Leukemia/Lymphoma Bone Marrow Transplant Services and serve as point persons to provide support for the patient and family during the entire process.

Michael W. Schuster, M.D., the former Director of Bone Marrow and Blood Stem Cell Transplantation at New York-Presbyterian Hospital, was recruited as the new Director of Bone Marrow and Stem Cell Transplantation and Director of Hematologic Malignancies at SBUH. Dr. Schuster has been principal investigator for more than 150 clinical trials and has worked extensively in the areas of stem cell transplantation, oncology new drug development, and the treatment of cancer cachexia. With the recruitment of Dr. Schuster and his team, Stony Brook has made a major commitment to the Bone Marrow and Stem Cell Transplantation program, which includes renovating the program’s inpatient unit. The unit, when complete, will expand inpatient capacity and provide Suffolk County residents with access to life saving services without leaving Suffolk County.

Autologous Transplants						
<i>Calendar Year Comparisons of Volume</i>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011 (PROJECTED)</u>
Autologous Transplants	18	16	19	9	33	27

Allogeneic And Other Transplants						
<i>Calendar Year Comparisons of Volume</i>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011 (PROJECTED)</u>
Matched Unrelated Donor Transplants	0	0	0	0	8	8
Matched Related Donor Transplants	4	2	4	1	6	8
Cord Transplant	0	0	0	0	1	8

Combined Transplant Volume						
<i>Calendar Year Comparisons of Volume</i>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Transplants	22	18	23	10	48	51

Source: SBUH

Blood Cancers

Blood cancer is a form of cancer which attacks the blood, bone marrow, or lymphatic system. There are three kinds of blood cancer: leukemia, lymphoma, and multiple myeloma.

Leukemia

Leukemia is a type of cancer that affects the blood and bone marrow, the spongy center of bones where our blood cells are formed. The disease develops when blood cells produced in the bone marrow grow out of control. About 43,050 people are expected to develop leukemia in 2010.

The four most common types of leukemia are:

- acute myeloid leukemia (AML)
- acute lymphoblastic leukemia (ALL)
- chronic myeloid leukemia (CML)
- chronic lymphocytic leukemia (CLL)

Each main type of leukemia is named according to the type of cell that's affected (a myeloid cell or a lymphoid cell) and whether the disease begins in mature or immature cells.

Other types of leukemia and related disorders include:

- hairy cell leukemia
- chronic myelomonocytic leukemia (CMML)
- juvenile myelomonocytic leukemia (JMML)

Lymphoma is the name for a group of blood cancers that develop in the lymphatic system. The two main types are Hodgkin lymphoma and non-Hodgkin lymphoma (NHL). In 2010, about 628,415 people are living with lymphoma or are in remission (no sign of the disease). This number includes about 153,535 people with Hodgkin lymphoma and 474,880 people with NHL. Hodgkin lymphoma has characteristics that distinguish it from other diseases classified as lymphoma, including the presence of Reed-Sternberg cells. These are large, cancerous cells found in Hodgkin lymphoma tissues, named for the scientists who first identified them. Hodgkin lymphoma is one of the most curable forms of cancer. NHL represents a diverse group of diseases distinguished by the characteristics of the cancer cells associated with each disease type. Most people with NHL have a B-cell type of NHL (about 85 percent). The others have a T-cell type or an NK-cell type of lymphoma. Some patients with fast-growing NHL can be cured. For patients with slow-growing NHL, treatment may keep the disease in check for many years.

Myeloma is a type of cancer that begins in the bone marrow. It affects the plasma cells. Myeloma has several forms:

- Multiple myeloma is most common: More than 90 percent of people with myeloma have this type. Multiple myeloma affects several different areas of the body.
- Plasmacytoma - only one site of myeloma cells evident in the body, such as in the bone, skin, muscle, or lung.
- Localized myeloma - a few neighboring sites evident.
- Extramedullary myeloma - involvement of tissue other than bone marrow, such as skin, muscles or lungs.
- Doctors divide myeloma into groups that describe how rapidly or slowly the disease is progressing:
- Asymptomatic or smoldering myeloma progresses slowly and has no symptoms even though the patient has the disease.
- Symptomatic myeloma has related symptoms such as anemia, kidney damage and bone disease.
- Myeloma belongs to a spectrum of disorders referred to as "plasma cell dyscrasia."

New Cases, Incidence and Deaths

New Cases

Approximately every 4 minutes one person in the United States is diagnosed with a blood cancer.

An estimated combined total of 137,260 people in the US will be diagnosed with leukemia, lymphoma or myeloma in 2010.

New cases of leukemia, lymphoma and myeloma will account for 9.0 percent of the 1,529,560 new cancer cases diagnosed in the US this year.

Incidence

Incidence rates are the number of new cases in a given year not counting the preexisting cases. The incidence rates are usually presented as a specific number per 100,000 population. Overall incidence rates per 100,000 population reported this year for leukemia, lymphoma and myeloma are close to or the same as data reported last year:

- Leukemia 12.3, 2010 vs. 12.2, 2009;
- Non-Hodgkin lymphoma [NHL] 19.6, 2010 vs. 19.5, 2009;
- Hodgkin lymphoma 2.8, 2010, same as 2009;
- Myeloma 5.6, 2010, same as 2009.

Deaths

Every 10 minutes, someone in the US dies from a blood cancer. This statistic represents nearly 148 people each day, or more than six people every hour.

Leukemia, lymphoma and myeloma will cause the deaths of an estimated 54,020 people in the US this year. These diseases will account for nearly 9.5 percent of the deaths from cancer in 2010, based on the total of 569,490 cancer deaths.

Local Incidence and Mortality

Cancer	Incidence – New York State					
	Males			Females		
	Average Annual Cases	Rate per 100,000 Males	95% CI (+/-)	Average Annual Cases	Rate per 100,000 Females	95% CI (+/-)
Hodgkin lymphoma	351.4	3.7	0.2	299.6	2.9	0.2
Non-Hodgkin lymphomas	2300.8	25.5	0.5	2033.2	17.5	0.3
Multiple myeloma	718	8.1	0.3	663.6	5.5	0.2
Leukemias	1530.8	17.4	0.4	1202.2	10.4	0.3

Cancer	Incidence – Suffolk County					
	Males			Females		
	Average Annual Cases	Rate per 100,000 Males	95% CI (+/-)	Average Annual Cases	Rate per 100,000 Females	95% CI (+/-)
Hodgkin lymphoma	25	3.4	0.6	26.6	3.6	0.6
Non-Hodgkin lymphomas	189	27	1.8	162	18.6	1.3
Multiple myeloma	56.4	8	1	50	5.6	0.7
Leukemias	133.4	19.3	1.5	100.4	11.8	1

Suffolk County has a higher incidence rate than New York State (rate per 100,000) for non-hodgkin lymphomas and leukemias for males and higher incidence rate than New York State (rate per 100,000) for hodgkin lymphoma, non-hodgkin lymphomas, multiple myeloma and leukemias for females.

<i>Cancer</i>	Mortality – New York State					
	<u>Males</u>			<u>Females</u>		
	<i>Average Annual Deaths</i>	<i>Rate per 100,000 Males</i>	<i>95% CI (+/-)</i>	<i>Average Annual Deaths</i>	<i>Rate per 100,000 Females</i>	<i>95% CI (+/-)</i>
Hodgkin lymphoma	49.4	0.5	0.1	39.8	0.4	0
Non-Hodgkin lymphomas	669.4	7.8	0.3	620.4	5	0.2
Multiple myeloma	332.4	3.9	0.2	309.2	2.5	0.1
Leukemias	775.8	9.2	0.3	617.4	5.1	0.2

<i>Cancer</i>	Mortality – Suffolk County					
	<u>Males</u>			<u>Females</u>		
	<i>Average Annual Deaths</i>	<i>Rate per 100,000 Males</i>	<i>95% CI (+/-)</i>	<i>Average Annual Deaths</i>	<i>Rate per 100,000 Females</i>	<i>95% CI (+/-)</i>
Hodgkin lymphoma	3	0.4	0.2	2.4	0.3	0.2
Non-Hodgkin lymphomas	55.6	8.5	1	44.8	4.9	0.7
Multiple myeloma	26.2	4	0.7	23.6	2.7	0.5
Leukemias	63.6	10	1.1	45	5	0.7

Suffolk County has a higher mortality rate than New York State (rate per 100,000) for non-hodgkin lymphomas, multiple myeloma and leukemias for males and a higher mortality rate than New York State (rate per 100,000) for multiple myeloma for females.

Service Area Population

	<u>Suffolk County</u>	<u>Nassau County</u>	<u>New York State</u>
Total population, 2010	1,493,350	1,339,532	19,378,102
Total population, 2000	1,419,369	1,334,544	18,976,457
Percent change, 2000-2010	5.2%	0.4%	6.0%
Persons 65+	13.5%	15.3%	13.5%

Source: U.S. Census

Bone Marrow Transplants Volume

The three largest providers of bone marrow transplants for residents of Suffolk County are: Memorial Sloan Kettering Cancer Center (MSKCC), North Shore University Hospital (NSUH), and University Hospital and Stony Brook.

<u>BMT Utilization – MSKCC</u>	<u>2009</u>	<u>2010</u>
Suffolk County	31	37
Nassau County	28	24
Others	<u>283</u>	<u>357</u>
<i>Total</i>	342	418

<u>BMT Utilization – North Shore University Hospital</u>	<u>2009</u>	<u>2010</u>
Bronx	0	1
Kings	1	2
Nassau	31	26

Queens	14	13
Suffolk	21	23
Westchester	<u>1</u>	<u>0</u>
<i>Total</i>	68	65

<i>BMT Utilization – University Hospital at Stony Brook</i>	<u>2009</u>	<u>2010</u>
Bronx	0	1
Nassau	1	8
Suffolk	8	36
Unknown	<u>0</u>	<u>2</u>
<i>Total</i>	9	47

Source: SPARCS

In 2010 with the recruitment of a new director of the Bone Marrow Transplant (BMT) program, Stony Brook has experienced a dramatic increase in bone marrow transplant volume without having a negative impact on the North Shore University Hospital BMT program.

Bone marrow transplants are a highly specialized procedure with an average length-of-stay of approximately 27 days. Access for patients and families is an important consideration.

It appears that improved access to a quality program has resulted in significant growth in the utilization of Stony Brook's BMT program.

University Hospital at Stony Brook's Projected Utilization					
2011		1 st Year		3 rd Year	
Discharges	Patient Days	Discharges	Patient Days	Discharges	Patient Days
51	1,520	56	1,661	64	1,884

Source: University Hospital at Stony Brook

The National Marrow Donor Program (NMDP) requires that the transplant center demonstrate that allogeneic recipients achieve acceptable survival rates.

University Hospital reports that they have reviewed the data for allogeneic transplants for the past two years.

NMDP has an expected one-year rate for allogeneic transplants of 53%. NMDP has documented University Hospital's one year survival rate at 67%. University Hospital reports that they have documented an 80% (100 day) survival rate.

Conclusion

University Hospital recruited a new director of the Bone Marrow Transplant Program, Dr. Michael W. Schuster. With the recruitment of Dr. Schuster and his team, Stony Brook has made a major commitment to the Bone Marrow and Stem Cell Transplantation program.

The utilization of the BMT program grew from 9 transplants in 2009 to 47 transplants in 2010. Of these 47 transplants, 36 were for residents of Suffolk County.

The enhanced bone marrow transplant program at Stony Brook has improved access to this highly specialized program for the residents of Suffolk County. Since the average length-of-stay for these transplants is 27 days, access to patients and families is an important consideration, where possible.

The Stony Brook BMT program is certified by the National Marrow Donor Program (NMDP).

NMDP has had an expected one-year survival rate for allogeneic transplants of 53%. NMDP has documented University Hospital's one-year survival rate at 67%.

Based on the recent growth of the BMT program, Stony Brook projects the number of transplants to grow from 51 transplants to 64 transplants by the third year. This is an increase of 25.5%.

The demonstrated success of the BMT program supports the need to expand the existing unit from four beds to ten beds.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

University Hospital at Stony Brook is requesting to add four bone marrow transplant (BMT) beds, for a total of ten BMT beds, and to do requisite renovations. The expanded bone marrow transplant program will result in 14 additional health care FTEs by the third year.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

The facility was fined:

- \$10,000 in 2002 for deficiencies in the facility's pharmacy control
- \$54,000 in 2002 based on pharmaceutical overdose due to dropped decimal point
- \$77,000 in 2006 related to the pediatric cardiology program
- \$20,000 in 2009 related to ineffective ER diagnosis and treatment resulting in death

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project costs for renovation and acquisition of moveable equipment is estimated at \$844,955, itemized as follows:

Renovation & Demolition	\$294,498
Design Contingency	27,953
Construction Contingency	27,953
Architect/Engineering Fees	25,156
Other Fees	50,953
Movable Equipment	411,831

CON Application Fee	2,000
CON Processing Fee	<u>4,611</u>
Total Project Cost	\$844,955

Project costs are based on a January 1, 2012 start date with a five month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$844,955
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Operating Budget

The applicant has submitted the operating budget, in 2011 dollars as summarized below:

	<u>Current Year</u>	<u>Third Year Incremental</u>	<u>Cumulative</u>
Revenues:			
Inpatient	\$8,188,041	\$2,050,363	\$10,238,404
Expenses:			
Operating	\$4,882,233	\$1,275,958	\$6,158,191
Capital	<u>0</u>	<u>87,764</u>	<u>87,764</u>
Total Expenses	\$4,882,233	\$1,363,722	\$6,245,955
Excess Revenue over Expenses	<u>\$3,305,808</u>	<u>\$686,641</u>	<u>\$3,992,449.</u>
Utilization:			
Discharges-	51	13	64
Patient Days	1,520	364	1,884
Inpatient Occupancy *	104.11%		51.62%
Average Length of Stay	29.80 days		29.44 days
Cost per Discharge	\$95,730.06	\$104,901.69	\$97,593.05

**The applicant state's BMT unit is operating at capacity and when they generate their "revenue/volume report" it can only be done by case. Thus a BMT patient who may have spent a little time in a Medical/Surgical bed will cause the occupancy percentage to be slightly over capacity.*

Inpatient utilization by payor source for the third year:

<u>Payor</u>	<u>Outpatient</u>
Medicaid Fee -for-Service	1.79%
Medicaid Managed Care	24.51%
Medicare Fee-for-Service	17.63%
Medicare Managed Care	3.95%
Commercial Fee-for-Service	34.60%
Commercial Managed Care	17.52%

The budget is based on the hospital's current experience in operating its BMT unit, adjusted for additional volume, and the applicant expects the majority of the cases will come under to the following Diagnosis Related Groups (DRG): DRG 803 - Allogeneic Bone Marrow Transplant; DRG 804 - Autologous Bone Marrow Transplant; and DRG 9 - Bone Marrow Transplant.

Capability and Feasibility

Stony Brook University Hospital will satisfy the project costs of \$844,955 from accumulated funds. Presented as BFA Attachment A is Stony Brook University Hospital 2009 & 2010 certified financial summary, which indicates the availability of sufficient resources for this purpose.

Working capital requirements are estimated at \$227,287, which appears reasonable based on two months of third year expenses. Review of Attachment A shows the facility has adequate resources to provide the working capital.

Stony Brook University Hospital projects first and third year incremental revenues over expenses to be \$95,429 and \$686,641, respectively. As shown above, by the third year the BMT unit is expected to generate a surplus in the neighborhood \$3,992,449. Revenues are based on current and projected federal and state governmental reimbursement methodologies while commercial payers are based on experience. The budget appears to be reasonable.

Review of BFA Attachment A shows working capital increased by \$12,468,000 between 2009 and 2010, going from \$183,360,000 in 2009, to \$195,828,000 by the end of 2010.

At the end of 2010, net assets were at \$347,882,000, an increase of \$31,209,000 from the 2009's balance of \$316,673,000. And for the years of 2009 and 2010, excess revenues over expenses averaged \$32,968,000.

Recommendation

From a financial perspective, approval is recommended.

Architectural Analysis

Review Summary

The project will involve the relocation of 6 medical surgical beds from the 16 bed Level 19 South unit which currently houses BMT and LLT services consisting of 4 BMT bed and 12 medical surgical beds. The 6 medical surgical beds will be relocated with 5 beds being placed on 9 North and 1 bed being moved to level 17 North.

The project will involve renovations to accommodate the new BMT beds and the relocated medical surgical beds.

At project completion the expanded BMT program will be a fully compliant protective environment consistent with current NYS DOH, FGI Guideline design standards.

Environmental Review:

The Department has deemed this project to be a TYPE II Action and will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A

Financial Summary for 2009 and 2010, Stony Brook University Hospital,
Stony Brook University



Public Health and Health Planning Council

Project # 112259-C North Shore University Hospital

County: Nassau (Manhasset)
Purpose: Construction

Program: Acute Care Services
Submitted: November 2, 2011

Executive Summary

Description

North Shore University Hospital (NSUH), an 804-bed, not-for-profit hospital located in Manhasset, requests approval to undertake major modernization of the maternity and obstetrics units with no change to beds or services. The purpose of this project is to decompress the current postpartum and antepartum obstetrics units, to provide patients with a new and renovated physical facility comprised of 73 single-bed maternity rooms on four units.

The project will be completed with a phased approach to provide construction with no disruption to patient care. The phases are as follows:

Phase 1:

- New construction of 5th floor of the Lippert Pavillion (19 beds)
- Gut and renovation of the 4th floor of the Lippert Pavillion (16 beds)

Phase 2:

- Gut and renovation of the existing antepartum unit on 3rd floor of the Lippert Pavilion (13 antepartum beds)
- Renovation/cosmetic upgrade of the existing postpartum unit on 3rd floor of the Monti Pavillion (25 beds)

This application amends and supersedes CON #081135-C, contingently approved by the Public Health Council on October 2, 2008, and is considered an amendment pursuant to 10 NYCRR 710.5(b)(2) because total basic cost of construction has increased in excess of \$15,000,000.

Total project costs are estimated at \$53,949,769.

DOH Recommendation
Contingent approval.

Need Summary

This modernization project will provide patient and family privacy, comfort, individual climate control and amenities to encourage a sense of well-being and ameliorate stress.

Program Summary

Based on the results of this review, a favorable recommendation can be made pursuant to Section 2802-(3)(e) of the New York State Public Health Law.

Financial Summary

Project costs will be met with accumulated funds of \$5,394,977 and DASNY tax-exempt bonds of \$48,554,792 (30 yrs. @ 6.5%).

Incremental Budget:	<i>Revenues:</i>	\$ 4,478,000
	<i>Expenses:</i>	<u>8,940,400</u>
	<i>Gain/(Loss):</i>	\$ (4,462,400)

Subject to the noted condition, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This amendment expands the construction scope of work and increases the project costs required to complete a major modernization of the existing maternity and obstetrics services. While the basic project goal has not changed, the work required to achieve this goal has increased significantly.

Unanticipated site/field conditions, phasing requirements, local building code restrictions and numerous mechanical, electrical, plumbing and architectural design changes have resulted in significant increases in both the required scope of work and complexity of the project. As a reflection of this increased scope of work, the overall size of the project has increased by nearly 12,900 SF from 45,819 SF to 58,711 SF.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]

Approval conditional upon:

1. This project is approved to be initially funded with North Shore-Long Island Jewish Hospital (NS-LIJ) obligated group equity, with the prospect that the project will be 90% financed as part of a future NS-LIJ obligated group tax exempt bond financing through the Dormitory Authority. The bond issue is expected to include a 6.5% interest rate and a 30 year term. Financing is conditioned upon the Department having the opportunity to review the final financing proposal in advance to ensure that it meets approval standards. [BFA]
2. The applicant shall complete construction by March 1, 2012 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not started on or before the start date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

February 2, 2012.

Need Analysis

Background

North Shore University Hospital (NSUH) is an 812-bed acute care hospital located at 300 Community Drive, Manhasset, Nassau County. The facility seeks CON approval to undertake major modernization of its maternity and obstetrics service with no change to beds or services (Amends and Supersedes CON #081135-C).

NSUH is certified for the following beds and services:

<u>Certified Beds</u>	
AIDS	30
Bone Marrow Transplant	4
Coronary Care	15
Intensive Care	79
Maternity	73
Medical / Surgical	486
Neonatal Continuing Care	5
Neonatal Intensive Care	32
Neonatal Intermediate Care	14
Pediatric	33
Pediatric ICU	7
Psychiatric	<u>26</u>
<i>Total Beds</i>	<i>804</i>

<u>Certified Services</u>		
AIDS	AIDS Center	Ambulatory Surgery - Multi Specialty
Audiology O/P	Burns Care	Cardiac Catheterization - Adult Diagnostic
Cardiac Catheterization - Electrophysiology (EP)	Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)	Cardiac Surgery - Adult
Certified Mental Health Services O/P	Chemical Dependence - Rehabilitation O/P	Chemical Dependence - Withdrawal O/P
Clinical Laboratory Service	Coronary Care	CT Scanner
Dental O/P	Emergency Department	Family Planning O/P
Intensive Care	Linear Accelerator	Lithotripsy
Magnetic Resonance Imaging	Maternity	Medical Social Services
Medical/Surgical	Neonatal Continuing Care	Neonatal Intensive Care
Neonatal Intermediate Care	Nuclear Medicine - Diagnostic	Nuclear Medicine – Therapeutic
Pediatric	Pediatric Intensive Care	Pharmaceutical Service
Primary Medical Care O/P	Psychiatric	Radiology - Diagnostic
Radiology-Therapeutic	Renal Dialysis - Acute	Respiratory Care

<u>Certified Services</u>		
Therapy - Occupational O/P	Therapy - Physical O/P	Therapy - Speech Language Pathology
Therapy - Vocational Rehabilitation O/P	Transplant - Bone Marrow	Transplant – Kidney

NSUH has eight extension clinics and the following State designations:

- AIDS Center;
- Regional Perinatal Center;
- Regional Trauma Center;
- SAFE Center; and
- Stroke Center

Inpatient Utilization

In 2006, NSUH recorded 5,340 obstetric discharges; by 2010, these discharges increased by 7.7 percent to 5,752. During the same period under review, high-risk-neonatal discharges increased by 5.8 percent going from 603 in 2006 to 638 in 2010. The hospital's healthy newborns increased significantly by 14.5 percent from 4,705 in 2006 to 5,386 in 2010. The average daily census (ADC) of NSUH's obstetric patients remained stabled during the interval at 49-50 patients on any given day, while high-risk-neonates ADC ranged between 30 and 34 patients on any given day. On the other hand, the ADC of its healthy newborns increased each year from 35 patients on any given day in 2006 to 42 in 2009 and stood at 40 in 2010 (Table 1).

Table 1: North Shore University Hospital: Inpatient Utilization, by Major Service Category						
Service	2006	2007	2008	2009	2010*	Current Beds
<i>Discharges</i>						
Obstetric	5,340	5,333	5,580	5,976	5,752	
High Risk Neonates	603	640	616	568	638	
Healthy Newborns	4,705	4,934	5,135	5,541	5,386	
<i>Average Daily Census</i>						
Obstetric	49	49	50	50	50	
High Risk Neonates	32	31	34	31	30	
Healthy Newborns	35	37	39	42	40	
<i>Occupancy Based on Current Beds</i>						
Obstetric	67.1	66.6	67.8	69.0	69.0	73
High Risk Neonates	62.5	61.2	65.7	61.6	59.2	51

Source: SPARCS 2006- 2010* (*Reporting for 2010 is incomplete)

North Shore University Hospital projects modest increase in its obstetric discharges of 268 and 458 during the 1st and 3rd years of operation, respectively. The modernized obstetric units will provide both mothers and babies with enhanced quality care and family centered maternity services. The modernized inpatient units will provide a hospitable and friendly environment for patients, families' visitors and staff. The provision of all private rooms will provide patient and family privacy, comfort, individual climate control and amenities to encourage sense of well being and ameliorate stress.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

North Shore University Hospital requests approval to modernize their obstetrical facilities. There will be no changes to the bed complement or services concurrent with approval of this application.

Compliance with Applicable Codes, Rules and Regulations

The staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections.

While there have been numerous enforcements across the North Shore – Long Island Jewish Health System (System) over the past ten years, there have been none related to obstetrical services, as evidenced by the list below:

- Huntington Hospital was fined \$16,000 in 2002 based on the investigations of two occurrences. The first involved the performance of a tubal ligation without the consent or knowledge of the patient. The second involved the placement of a stent on the wrong side.
- North Shore University Hospital was fined \$10,000 based on a 2002 investigation a patient who was admitted with a brain tumor on the left side as identified by MRI and CT scan. A left frontal craniotomy biopsy of the dura was planned and a consent form signed. The surgeon proceeded to do the craniotomy on the right side.
- Long Island Jewish Medical Center was fined \$6,000 in 2003 based on violations of the resident working hours regulations in that residents in ICU/PICU worked over 24 consecutive hours as was noted in two surveys.
- Staten Island University Hospital was fined \$8,000 based on a 2006 investigation of a patient admitted for a left sided mediastinotomy (insertion of a tube into the chest). The procedure was begun on the right side of the chest and the error was noticed by the anesthesiologist after ten minutes.
- Forest Hills Hospital was fined \$12,000 based on a 2006 investigation regarding a patient who entered the hospital for left side hernias repair. The surgery was performed on the patient's right side.
- Southside Hospital was fined \$14,000 based on a 2006 complaint investigation where a patient was admitted with a large dermoid cyst on her left ovary. Although a consent form was signed for left-sided surgery, the physician performed a right ovarian cystectomy. It was noted that much of the accompanying documentation referred to a right sided cyst.
- North Shore University Hospital was fined \$18,000 based on a 2007 survey Based on post operative care rendered to an elderly patient. Following surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed resulting in a dislocated femur and developed renal failure. Follow-up care was delayed or inadequately administered.
- Staten Island University Hospital was fined \$12,000 based on a 2007 complaint that an overdose of a controlled substance by the hospital had caused the patient's death. Findings included that nursing administered a drug at a higher rate than was ordered and continued the administration even after it was discontinued by the surgical resident.
- Syosset Hospital was fined \$42,000 based on a 2009 investigation of the care to a child having an adenotonsillectomy. It was determined that the patient was improperly cleared for surgery and that despite multiple comorbidities was not kept for observation post-operatively. The patient expired after discharge.

Additionally, Glen Cove Hospital has a pending enforcement related to a peritonitis death. The facility and the Department are in discussions regarding the enforcement and stipulation. Other than the pending enforcement, North Shore University Hospital and the other facilities in the System are deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations.

Conclusion

Based on the results of this review, a favorable recommendation can be made pursuant to Section 2802-(3)(e) of the New York State Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

<h2 style="margin: 0;">Financial Analysis</h2>
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Background

NSUH is a member of North Shore-Long Island Jewish Health System, Inc. (NS-LIJ), a comprehensive integrated delivery system formed to ensure the delivery of a broad range of quality healthcare services to the communities it serves and to achieve economies of scale through consolidation, cooperation, and joint planning among its members. Also, the Hospital is a member of the NS-LIJ Obligated Group, formed to provide its members an enhanced credit position and expanded access to capital markets.

Total Project Cost and Financing

Total project cost for construction, renovations and movable equipment, is estimated at \$53,949,769, itemized as follows:

New Construction	\$19,298,071
Renovation & Demolition	15,849,641
Site Development	320,750
Asbestos Abatement or Removal	1,471,390
Surveys & Test Borings	316,500
Construction Contingency	1,754,363
Planning Consultant Fees	174,600
Architect/Engineering Fees	4,657,405
Construction Manager Fees	1,583,402
Consultant Fees	1,043,751
Movable Equipment	4,606,321
Financing Costs	2,576,485
Application Fees	2,000
Additional Processing Fees	295,090
Total Project Cost	\$53,949,769

The applicant’s financing plan appears as follows:

Cash	\$ 5,394,977
Tax Exempt Bonds, Dormitory Authority of the State of New York, 6.5%, 30 years	\$48,554,792

Operating Budget

The applicant has submitted an incremental operating budget, in 2012 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,151,700	\$4,634,700
Expenses:		
Operating	\$2,498,000	\$3,141,700
Capital	<u>5,986,500</u>	<u>5,899,600</u>
Total Expenses	\$8,484,500	\$9,041,300
Excess (Loss) of Revenue over Expenses	(\$5,332,800)	(\$4,406,600)
Utilization (discharges)	268	458

Utilization by payor source and projected average payment rates, itemized by inpatient services for the first and third years is as follows:

<u>Inpatient</u>	<u>Year One</u>
Commercial Managed Care	87.7%
Medicare Fee for Service	0.4%
Medicare Managed Care	0.2%
Medicaid Fee for Service	2.9%
Medicaid Managed Care	8.6%
Private Pay	0.2%

<u>Inpatient</u>	<u>Year Three</u>
Commercial Managed Care	86.4%
Medicare Fee for Service	0.4%
Medicare Managed Care	0.1%
Medicaid Fee for Service	3.0%
Medicaid Managed Care	9.7%
Private Pay	0.4%

Expenses and utilization assumptions are based on the historical operations of North Shore University Hospital, as well as market trends.

Capability and Feasibility

NSUH will finance \$48,554,792 through the Dormitory Authority at stated terms, with the remaining \$5,394,977 as equity from the hospital. A letter of interest from Citigroup has been submitted by NSUH. Presented as BFA Attachment A, is the financial summary of North Shore-Long Island Jewish Health System, Inc., which indicates the availability of sufficient resources for this project.

The hospital projects an incremental loss of revenues over expenses of \$5,332,800 and \$4,406,600 during the first and third years, respectively, which will be offset from operations. As shown on BFA Attachment A, the hospital has maintained positive working capital and net asset positions, and generated annual net revenue of \$109,447,000 in 2010. As of September 30, 2011, NSUH has generated annual net revenue of \$92,946,000, as shown on BFA Attachment B.

Recommendation

From a financial perspective, approval is recommended.

Architectural Analysis

Architectural Summary

To implement the desired decompression and modernization of maternity services, the proposed project will completely renovate two existing maternity units, and create two additional maternity units. Although there will be no change to the facility operating certificate, this project will provide the additional space required to fully implement the current licensed capacity of 73 maternity beds in maternity units having all single bed rooms.

The hospital is currently licensed for a total of 812 beds, including 73 maternity, 32 neonatal intensive care, 14 neonatal intermediate care and 5 neonatal continuing care beds. Supporting OB services including LDR's, C-section rooms and the NICU located on the third floor of the adjacent and connected Levitt Pavilion, are NOT included in this project.

Existing Conditions

The current facility configuration provides two separate maternity units providing only 62 of 73 licensed maternity beds. The two existing maternity units are located on the third level of separate buildings connected via an elevated pedestrian walkway. These existing maternity units and the supporting mechanical / HVAC systems are extremely dated and require extensive renovation or replacement. Each unit includes multi-bed patient rooms (2 and 3 beds/rm @ 50 of 62 beds), making the provision of patient and family privacy and comfort extremely difficult.

New Construction

- New General Construction

New rooftop mechanical / HVAC systems and a new building façade will provide increased comfort, energy efficiency, reliability and general modernization for the entire building, effectively increasing the useful life of the structure.

- Fifth Floor, Lippert Bldg. (14,555 SF)

A new fifth floor will be constructed on top of the existing 4 level Lippert building to create a new **19 bed** maternity (Post-Partum) unit with all single bed private patient rooms, nurseries and associated support space.

Renovation of Existing

- Fourth Floor, Lippert Bldg. – (12,455 SF)

The existing Infectious Disease Department at the fourth floor is being relocated to allow the gut renovation and new construction of a 17 bed maternity (Post-Partum) unit having all single bed private patient rooms, nurseries and associated support space.

- Third Floor, Lippert Bldg. – (12,568 SF)

The existing obsolete maternity unit with multi bed patient rooms will be completely gutted to allow construction of a new 13 bed maternity (Ante-Partum) unit having all single bed private patient rooms, nurseries and associated support space.

- Third Floor, Monti Bldg. – (15,065 SF)

The existing maternity unit at this building will receive extensive interior renovations required to create a new **24 bed** maternity (Post-Partum) unit having all single bed private patient rooms, nurseries and associated support space.

- Second Floor, Lippert Bldg. – (1,486 SF)

Additional power for the Lippert building was to be provided by a separate major renovation project which has since been cancelled. Required power upgrades were incorporated into this project and include the gut renovation of limited areas in order to create 2 separate electrical rooms – one for normal power and another for emergency power.

- First Floor, Lippert Bldg. – (793 SF)

Elevators serving the Lippert Bldg. and DSU pavilion were upgraded to energy efficient hydraulic units. A new elevator machine room, elevator pit and counterweights were provided.

Two non code compliant egress stairs (stair “A” & “B”) were upgraded to meet code.

- Ground Floor, Lippert Bldg. – (1,789 SF)

Elevators serving the Lippert Bldg. and DSU pavilion were upgraded to energy efficient hydraulic units. A new elevator machine room, elevator pit and counterweights were provided.

Two non code compliant egress stairs (stair “A” & “B”) were upgraded to meet code.

The completed project will provide 4 separate maternity units with a total of 73 single bed patient rooms, providing state of the art care and technology in a comfortable, convenient and secure environment. These maternity units are designed to create a welcoming and reassuring atmosphere by encouraging family centered maternity care by allowing newborn rooming-in 24 hours per day.

The vertical configuration of maternity services will also provide several program advantages over the current configuration including: centralized access to all maternity units, greater program and building identity, and limited travel through patient units providing increased unit security. Specific areas of focus include facility improvement to patient rooms, nurseries, patient corridors, public areas, lobbies, and infrastructure. The modernized patient floors will provide a hospitable and friendly environment for patients, families, visitors and staff. The all single bed, private rooms will provide increased patient and family privacy, comfort, individual climate controls and other amenities to encourage a sense of well being, while providing superior maternity care.

The vertical configuration of the proposed project allows phased construction, decanting and occupancy of all maternity units with minimal disruption of patient care. The proposed construction and renovation project has increased from a total of 45,819 to 58,711 gross square feet in a vertical configuration phased as follows:

Phase I:

- Lippert Pavilion 5th floor - New Construction (19 beds/14,555 gsf)
- Lippert Pavilion 4th floor - Gut Renovation (17) beds/12,455 gsf)
- Lippert Pavilion 3rd floor - Gut Renovation (13 beds/12,568 gsf)
- Lippert Pavilion 2nd floor – (1,486 gsf)
- Lippert Pavilion 1st floor – (793 gsf)
- Lippert Pavilion Gnd floor – (1,789 gsf)

Phase II:

- Monti Pavilion 3rd floor – Renovation (24 beds/15,065 gsf)

Construction for this project was previously approved under prior CON 081135 and is currently in progress. The revised targeted completion date has been extended from December 1, 2010 to March 1, 2012. The project is being completed in phases in order to minimize disruption to patient care and day to day hospital functions.

Environmental Review

The Department has deemed this project to be a TYPE I Action and the lead agency shall be the county of Nassau or the authority having jurisdiction.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary, North Shore-Long Island Jewish Health System, Inc. 2010
BFA Attachment B	Internal Financial Summary, North Shore-Long Island Jewish Health System, Inc. as of September 30, 2011
BFA Attachment C	Summary of Detailed Budgets
BFA Attachment D	Organizational Chart of North Shore-Long Island Jewish Health System, Inc.

**New York State Department of Health
Public Health and Health Planning Council**

January/February 2012

Diagnostic and Treatment Center - Construction

Exhibit #2

	<u>Number</u>	<u>Applicant/Facility</u>
1.	101018 C	Doctors United, Inc. (New York County)
2.	112250 C	Smile New York Outreach, LLC d/b/a Smile Program Mobile Dentists (Queens County)



Public Health and Health Planning Council

Project # 101018-C

Doctors United, Inc.

County: New York (New York)
Purpose: Construction

Program: Diagnostic and Treatment Center
Submitted: January 27, 2010

Executive Summary

Description

Doctors United, Inc., a proprietary diagnostic and treatment center (D&TC), requests approval to certify an extension clinic at 1970 7th Avenue, New York. The applicant is a D&TC with a main site at 1 Bridge St, Ardsley, New York (Westchester County) and extension clinics in the Bronx, White Plains and Yonkers.

All of the operator's existing sites are certified for podiatry, primary medical care, diagnostic radiology and physical therapy. Most of the services provided by Doctors United are physical therapy. According to information provided by the applicant, in 2008, physical therapy comprised 85.66% of utilization at its existing sites. In 2009 the percentage was 82.32%, and for the first quarter of 2010 the percentage was 79.33%. The applicant requests certification for health fairs, nutrition, podiatry, primary medical care, and physical therapy at the proposed extension site.

The proposed clinic would occupy space presently in use as a private practice by a physiatrist and physical therapist. The applicant contends that the new clinic is not the conversion of a private practice, because the existing practice will not be part of the new clinic, and its providers will not join the staff.

DOH Recommendation
Disapproval.

Need Summary

Because there is no specific need methodology for D&TCs, the Department is guided by the factors for determining public need for health services and medical facilities set forth in Section 709.1. As such:

- The applicant has not met the requirement of 709.1(a)(5) to demonstrate the need for its proposed mix of services, which are predominantly non-primary care and oriented toward physiatry and physical therapy;
- In proposing no plan for charity care nor a sliding fee scale nor an outreach program or other effort to promote its services, the applicant has not met the requirement of 709.1(a)(7) to demonstrate the potential contribution of the proposed facility to meet the health needs of medically underserved groups;
- In considering the evaluative criteria set forth in 709.1(b), the Department notes the existence of a considerable number of other D&TC services and physician primary care resources in the service area and concludes that there is no need for the proposed facility and its mix of non-primary care services not integrated with other providers.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Disapproval.

Council Action Date

February 2, 2012

Need Analysis

Project Description

Doctors United, Inc., a diagnostic and treatment center located in Ardsley, NY, proposes certification of an extension clinic at 1970 7th Avenue, New York (New York County). The applicant is a D&TC with a main site at 1 Bridge St, Ardsley, New York (Westchester County) and extension clinics in the Bronx, White Plains and Yonkers.

All of the operator's existing sites are certified for podiatry, primary medical care, diagnostic radiology and physical therapy. Most of the services provided by Doctors United are physical therapy. According to information provided by the applicant, in 2008, physical therapy comprised 85.66% of utilization at its existing sites. In 2009 the percentage was 82.32%, and for the first quarter of 2010 the percentage was 79.33%. The applicant requests certification for health fairs, nutrition, podiatry, primary medical care, and physical therapy at the proposed extension site.

The proposed clinic would occupy space presently in use as a private practice by a physiatrist and physical therapist. The applicant contends that the new clinic is not the conversion of a private practice, because the existing practice will not be part of the new clinic, and its providers will not join the staff.

Analysis

The applicant defines its primary service area as Zip Codes 10026, 10027, 10030, 10037, and 10039. Most of the primary service area is designated as a medically underserved or professional shortage area (MUA/P) by the Department of Health and Human Services.

In describing the health needs of the proposed service area, the applicant furnishes information that repeats the health care profiles for Central Harlem from the New York City Department of Health's community profiles and the New York State Department of Health's county profiles. The applicant's submission describes the well-known prevalence of asthma, cardiovascular disease, and diabetes in Central Harlem.

The prevalence of these chronic disease problems is evident in the Prevention Quality Indicators¹ for the Central Harlem area as shown in the following table:

Prevention Quality Indicators – Central Harlem					
<i>PQI</i>	<i>DESCRIPTION</i>	<i>Unadjusted Rate</i>	<i>Adjusted Rate</i>	<i>Statewide Rate</i>	<i>Percent Difference</i>
1	Diabetes short-term complication	75.44	79.02	37.24	112.18%
2	Diabetes long-term complication	236.25	270.52	105.85	155.57%
3	Pediatric asthma	253.45	244.11	72.59	236.28%
4	Hypertension	117.79	131.12	40.21	226.08%
5	Congestive heart failure	538.67	604.94	334.36	80.93%
6	Uncontrolled diabetes	66.18	73.66	29.95	145.95%
7	Adult asthma	343.45	363.56	126.00	188.55%

Despite the prevalence of these conditions in the proposed service area and their persistence at levels well above statewide averages, the services proposed for the applicant's extension site do not address the prevention or management of these chronic ailments. A key to such prevention and management is primary care, preferably following the Patient-Centered Medical Home Model (PCMH), designed to provide patient-centered medical care as part of a comprehensive program to track and manage care over time and across a variety of treatment settings.² Yet

¹ Prevention Quality Indicators (PQIs) are a set of measures used with hospital inpatient discharge data to identify "ambulatory care sensitive conditions" (ACSCs). ACSCs are conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe episodes.

² NCQA. Patient-Centered Medical Home (PCMH) 2011. January 21, 2011

only a minority of the visits for the proposed D&TC extension site would be for primary care that would be compatible with the PCMH model or other arrangements for effective disease prevention and management:

Doctors United - Projected First and Third Year Visits		
<i>Service</i>	<i>First Year Incremental</i>	<i>Third Year Incremental</i>
Primary Medical Care	2,194	3,375
Physiatry	1,463	2,250
Neurology	1,316	2,025
Cardiology	366	563
Physical Therapy	2,072	3,187
Podiatry	350	700
TOTAL	7,761	12,100

Based on the projected utilization by service category, primary medical care and podiatry would equal 2,544 visits in the first year and 4,075 visits in the third year of operation. Of the total volume of visits, primary medical care and podiatry would account for 32.8% of visits in the first year and 33.7% of visits in the third year. Physiatry and physical therapy, on the other hand, would account for 45.5% of total visits in the first year and 44.9% of total visits in the third year. Collectively, physiatry, physical therapy and neurology would account for over 60% of total visits in both the first and third years of the proposed clinic's operation. The applicant has not documented a need for such a mix of non-primary care services in the service area, nor does the applicant propose to collaborate with primary care providers in arrangements where these services might be appropriate as part of a comprehensive prevention and disease management program, in a PCMH or other model of integrated services anchored by primary care.

The mix of services at Doctors United's existing sites further attest to the applicant's orientation toward more specialized, non-primary care services, with a clear orientation toward those involving physical medicine and physical therapy:

<i>Type of Service</i>	<i>2008</i>	<i>2009</i>	<i>2010 1st Quarter</i>
Primary Care (includes Cardiology)	559	1,548	700
Physical Medicine and Rehab/Neurology/Physicians assistant	10,867	12,841	3,679
Podiatry	0	655	159
Physical Therapy	68,271	70,038	17,655
Total Visits	79,697	85,082	22,193

In 2009, physiatry and physical therapy accounted for 70,038 of the total of 85,082 clinic visits or 82.3% of the total visits.

The Central Harlem area is well-served by D&TCs providing primary care and other needed services. There are 11 D&TC's and associated extension sites in the service area and 27 physicians in private practice that serve the Medicaid population.³

<i>Health Services</i>	<i>Providers</i>
Diagnostic & Treatment Centers	11
Hospital Outpatient Center	1
Hospital O/P Labs	1
Physician Services	27
Nurse-Midwife	1

Data from the Office of Medicaid Management also show a high ratio of primary care visits annually by Medicaid clients in the service area:

³ Physicians filing total Medicaid claims of \$5,000 per year or more.

<i>Zip Code</i>	<i>Total Medicaid Recipients</i>	<i>HMO Enrollment</i>	<i>MA Fee for Service Recipients</i>	<i>Annual Primary Care Visits</i>	<i>Primary Care Use Per Eligible Year</i>
10026	13,418	7,616	5,802	34,490	5.94
10027	20,319	11,385	8,934	57,850	6.48
10030	11,825	6,946	4,879	28,852	5.91
10037	6,660	3,661	2,999	17,432	5.81
10039	10,894	6,658	4,236	24,560	5.80
Total	63,115	36,266	26,849	163,184	6.08
Statewide	3,878,955	2,096,705	1,782,250	10,279,812	5.77

The annual primary care visits equals 6.08 visits, compared to the statewide average of 5.77 Medicaid visits for primary care. This level of utilization demonstrates that the Medicaid population is able to access primary care providers.

The persistence of poor health indicators, as documented by the PQI's referred to above, in an area with a large number of primary care providers, may be attributable to factors such as an absence of sufficient outreach efforts to underserved populations. It may further be due to the fact that 24 percent of the Central Harlem population does not have health insurance, and therefore cannot access the primary care services available in the service area. Despite these circumstances, the applicant proposes no plan to provide charity care and makes no mention of use of a sliding-fee scale at the proposed site. The applicant also projects that only 2.91% of its patients will be self-pay clients.

The Department also notes its recent approval of The Institute for Urban Family Health, a federally qualified health center (FQHC), to open the Family Health Center as an extension clinic on the campus of the former North General Hospital to serve patients from Central Harlem and East Harlem. This FQHC is certified as a Level 3-NCQA Patient Centered Medical Home. The projected primary care visits are 65,852 in the first year and 79,051 in the third year, which should have a favorable impact on health indicators in the service area. The opening of an additional D&TC would not be well-advised before this facility is fully operational and its impact on the service area assessed. As noted, Doctors United has also made no mention of any plan to collaborate with the Institute for Urban Family Health or any other provider in implementing a PCMH or other program of coordinated care.

Conclusion

Because there is no specific need methodology for D&TCs, the Department is guided by the factors for determining public need for health services and medical facilities set forth in Section 709.1.

- The applicant has not met the requirement of 709.1(a)(5) to demonstrate the need for its proposed mix of services, which are predominantly non-primary care and oriented toward psychiatry and physical therapy;
- In proposing no plan for charity care nor a sliding fee scale nor an outreach program or other effort to promote its services, the applicant has not met the requirement of 709.1(a)(7) to demonstrate the potential contribution of the proposed facility to meet the health needs of medically underserved groups;
- In considering the evaluative criteria set forth in 709.1(b), the Department notes the existence of a considerable number of other D&TC services and physician primary care resources in the service area and concludes that there is no need for the proposed facility and its mix of non-primary care services not integrated with other providers.

Recommendation

From a need perspective, disapproval is recommended.



Public Health and Health Planning Council

Project # 112250-C

Smile New York Outreach, LLC
d/b/a Smile Program Mobile Dentists

County: Queens (Long Island City)
Purpose: Construction

Program: Diagnostic and Treatment Center
Submitted: October 26, 2011

Executive Summary

Description

Smile New York Outreach, LLC d/b/a Smile Program Mobile Dentists (Smile New York), an existing limited liability company, requests approval to expand its Article 28 mobile D&TC service area to include Westchester County schools. The services offered will be dental exams, cleaning, and sealant for students who have not received this from their own dentist.

On September 24, 2010, via CON #101116-B, Smile New York received Public Health Council contingent approval for a five-year limited life to provide dental services to children in 10 New York City elementary and middle schools. Subsequently, the New York City Board of Education determined a Request for Proposal (RFP) was necessary before Smile of New York Outreach, LLC could go forward with its school-based dental program.

As it is estimated the RFP process could take over a year to complete, the applicant in the meantime seeks permission to expand its service area to Westchester County, to enable it to serve children attending the following 10 elementary and middle schools which are located in the City of Mount Vernon:

<u>School</u>	<u>Address</u>
Hamilton Elementary	20 Oak St., Mount Vernon
Grimes Elementary	58 South 10 th Ave., Mount Vernon
Columbus Elementary	455 N. High St., Mount Vernon
Cecil H. Parker Elementary	461 South 6 th Ave., Mount Vernon
Lincoln Elementary	170 E. Lincoln Ave., Mount Vernon
Edward Williams Element.	9 Union Lane, Mount Vernon
Martin Traphagen Element.	72 Lexington Ave., Mount Vernon
Longfellow Elementary	625 S. Fourth Ave., Mount Vernon
Pennington Elementary	20 Fairway, Mount Vernon
A.B. Davis Middle School	350 Gramatan Ave., Mount Vernon

When the mobile dental van is not providing dental services at the schools it will be parked at 31-00 47th

Avenue, Long Island City (Queens), which is the operator's main office for administrative services.

The sole member of Smile New York Outreach, LLC is Matthew C. Harrison, Jr. As under CON #101116-B, the dental services will be provided through a clinical services agreement with Big Smiles Dental New York, PLLC, an existing professional limited liability company solely-owned by Elliot P. Schlang, D.D.S.

DOH Recommendation
 Contingent approval for a 5-year limited life.

Need Summary
 The 10 proposed Mount Vernon schools have high levels of poverty, with many students covered by Child Health Plus, Medicaid Managed Care, or fee-for-service Medicaid.

Program Summary
 Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Summary
 There is no project cost associated with this application.

Budget:	<i>Revenues:</i>	\$ 7,328,122
	<i>Expenses:</i>	<u>5,173,024</u>
	<i>Gain/(Loss):</i>	\$ 2,155,098

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary
 As with contingently-approved CON #101116-B, there are no architectural or engineering issues.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval for limited life of five years from the date of the issuance of an operating certificate is recommended contingent upon:

1. The applicant will provide a timeline showing the number of schools served, the number of students enrolled in those schools and the number of students they actually plan to serve (out of the enrollment total), during the first 3 years of operation, to reach the goal of 41,450 visits. [RNR]
2. The applicant will agree to submit annual reports beginning in the second year of operation, listing the schools served, the number of students served, and the number and type of additional services provided in the van. [RNR]
3. The applicant will provide annual documentation beginning in year 2 to the Department that it continues to actively provide school dental programs in New York State. This contingency has been imposed because Smile NY does not have a site where dental services are provided other than the mobile dental clinic. [RNR]

Council Action Date

February 2, 2012.

Need Analysis

Background

Smile New York Outreach, LLC d/b/a Smile Program Mobile Dentists (Smile New York) proposes to serve students attending elementary and middle schools located in the City of Mount Vernon in Westchester County. These schools have high levels of poverty. Demographic data are presented in this application, which reflect the student population of these 10 schools.

These 10 schools and their addresses are as follows:

<u>School</u>	<u>Address</u>
Hamilton Elementary	20 Oak Street, Mount Vernon, NY 10553
Grimes Elementary School	58 South 10 th Avenue, Mount Vernon, NY 10550
Columbus Elementary	455 N. High Street, Mount Vernon, NY 10550
Cecil H. Parker Elementary School	461 South 6 th Avenue, Mount Vernon, NY 10550
Lincoln Elementary School	170 E Lincoln Avenue, Mount Vernon, NY 10550
Edward Williams Elementary	9 Union Lane, Mount Vernon, NY 10552
Martin Traphagen Elementary	72 Lexington Avenue, Mount Vernon, NY 10550
Longfellow Elementary	625 S. Fourth Avenue, Mount Vernon, NY 10550
Pennington Elementary	20 Fairway, Mount Vernon, NY 10552
A.B. Davis Middle School	350 Gramatan Avenue, Mount Vernon, NY 10550

Analysis

The following two tables present enrollment data on the 10 elementary and middle schools. As shown in Table 1, there are 4,824 children enrolled in the 10 schools. In Table 2, demographic data are presented on the percentage of children eligible for free or reduced price lunches as well as data on the race/ethnicity of students enrolled in the 10 schools.

Table 1: Smile New York Outreach, LLC Initial Participating Schools	
<u>School</u>	<u>Enrollment</u>
Hamilton Elementary	386
Grimes Elementary	497
Columbus Elementary	550
Cecil H. Parker Elementary	357
Lincoln Elementary	758
Edward Williams Elementary	452
Traphagan Elementary	315
Longfellow Elementary	365
Pennington Elementary	319
A.B. Davis Middle School	825
TOTAL	4,824

The data in Table 2 portray a student population coming from mostly low-income families. The percentage of children eligible for the free lunch program ranges from a high of 81 percent (Hamilton Elementary) to a low of 24 percent (Pennington Elementary). This indicates that a high percentage of these students are likely to be enrolled in Medicaid, with some additional students enrolled in Child Health Plus. There is considerable racial/ethnic diversity among the schools, with seven having a majority of Black/African American students and three others having a combined majority of Black/African American and Hispanic/Latino students.

**Table 2:
Smile New York Outreach, LLC Initial Participating Schools Demographic Data (Percent)**

School	Free Lunch	Reduced Lunch	Black/African American	Hispanic/Latino	White	Asian	Other
Hamilton	81	9	57	36	3	1	3
Grimes	71	15	92	6	0	0	2
Columbus	69	17	46	44	7	1	2
Cecil H. Parker	79	10	94	3	0	3	0
Lincoln	46	14	49	24	21	1	5
Edward Williams	73	5	82	15	2	0	2
Traphagan	49	17	86	7	3	3	1
Longfellow	63	17	94	5	1	0	0
Pennington	24	3	44	13	40	4	0
A.B. Davis Middle School	57	12	74	17	7	1	0

The NYS Oral Health Plan states that there are clear socioeconomic disparities in the distribution of oral health problems. “Children from low-income families have a higher prevalence of dental caries, higher frequency of untreated disease and a lower utilization of preventative services.” The reasons for these disparities include lack of awareness of the importance of oral health, unfamiliarity with the dental health care delivery system, lack of providers willing to participate in the public financial program and lack of resources to pay for care. The report goes on to state that although oral diseases are easily preventable and treatable, access to dental care providers is extremely limited for many children in rural and inner city areas.

The report goes on to identify the following objectives:

- Objective 3.8: By 2008, explore options that will encourage Article 28 facilities to establish comprehensive school-based oral health programs in areas of high need.
- Objective 3.9: By 2010, increase the number of Article 28 facilities providing dental services across the state and approve new ones in areas of highest need.

Strategies identified in the Plan to meet those Objectives include the following:

- Promote services that allow patients greater access to oral health care, including:
 - mobile and portable dental programs
 - school-based prevention and treatment
 - case management and care coordination

While most low-income children are enrolled in Medicaid or Child Health Plus, this does not assure that they will access oral health services. The 2005 Oral Health Plan reported that for New York State children continuously enrolled for a year in 2003, 45% in Medicaid and 40% in Child Health Plus visited a dentist.

According to Federal Medicaid Panel Expenditure Panel Survey data, the majority of U.S. children do not access dental care in a year. In 2004, 55% of U.S. residents under age 21 had no dental visit. Disparities in dental utilization by income are evident, as 69% of poor children, 66% of low-income children, 53% of middle-income children and 48% of higher income children did not receive care. Two-thirds of Black and Hispanic children did not have a dental visit in 2004 compared to less than half of white children (47%).

Conclusion

Smile New York, LLC will provide on-site basic dental services at 10 schools in Mount Vernon, Westchester County. These schools have high levels of poverty. Many of the students are covered by Child Health Plus, Medicaid Managed Care, or fee-for-service Medicaid. The services offered will be dental exams, cleaning, and sealant for students who have not received this from their own dentist. These services will be provided in a temporary setting in the school building using portable equipment that will be transported to the school in two cargo vans.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Software License and Services Agreement

In satisfying a contingency under CON 101116 the applicant has submitted an executed software license services agreement with ReachOut Healthcare America, Ltd., which is summarized as follows:

<i>Date:</i>	November 1, 2010
<i>Provider:</i>	ReachOut Healthcare America, Ltd. (RHA)
<i>Facility:</i>	Smile New York Outreach, LLC
<i>Term:</i>	Agreement shall continue in effect unless terminated by either party for cause.
<i>Services Provided:</i>	Provide an exclusive software license restricted to the territory of the City of New York and Westchester County; full time access of RHA's computer system for receiving and transmitting dental records and instant retrieval storage system for each dental visit to a school; clerical data entry and statistical reporting. Pursuant to clinic's direction; purchase supplies and equipment and provision of fully equipped dental vans for lease. Financial services includes; accounting, bookkeeping, monitoring and payment of accounts. Assist in preparation of physical audits of equipment and supplies.
<i>Compensation:</i>	\$400 per day per school visited (paid monthly)

Lease Rental Agreement

In satisfying a contingency under CON 101116 the applicant submitted an executed lease for the proposed administrative office and parking for the mobile dental vans. The terms are summarized below:

Date: March 17, 2011
Premises: 5,500 gross square feet for office and parking of the mobile dental vans, located at 31-00 47th Avenue, Long Island City, New York (Queens County)
Landlord: CF 31-00 Faichi, LLC and Ianvil Holdings, LLC
Lessee: Smile New York Outreach, LLC
Rental: \$66,000 per year (\$12 per sq. ft.) with 3% annual increase
Term: 3 Years starting May 1, 2011
Provisions: Lessee pays utilities, maintenance and increase in taxes over base

The applicant has indicated the lease will be an arm's length arrangement.

Operating Budget

The applicant has submitted an operating budget, in 2012 dollars for the first and third years of operation, as summarized below:

	<u>First Year</u>	<u>Third Year</u>
Total Revenues	\$3,226,570	\$7,328,122
Expenses:		
Operating	\$2,280,113	\$4,891,414
Capital	<u>231,274</u>	<u>281,610</u>
Total Expenses	<u>\$2,511,387</u>	<u>\$5,173,024</u>
 Excess of Revenues over Expenses	 <u>\$715,183</u>	 <u>\$2,155,098</u>
 Utilization: (visits)	 18,144	 41,580
Cost Per Visit	\$138.41	\$124.41

Utilization by payor source for the first and third years is as follows:

Medicaid Fee-For-Service	55.0%
Medicaid Manage Care	20.0%
Commercial Manage Care	15.0%
Charity	10.0%

Expense and utilization assumptions are based on the ReachOut Healthcare America's historical experience in coordinating similar size mobile dental services. First year breakeven point is expected to be approximately 11,800 visits or 65% of projected utilization and by the third year it is estimated the breakeven point will be at 40% or 16,700 visits.

It should be noted the projected revenues and operating surpluses have increased over the original estimates under CON 101116. First year revenues increased by \$910,556 going from \$2,316,014 to \$3,226,570, boosting operating results from an original loss of \$156,647 to a operating surplus of \$715,183. Third year revenues climbed \$2,155,944, going from \$5,172,178 to \$7,328,122 thus causing the projected operating surplus to rise, almost dollar for dollar, going from the original estimate of \$20,887 to \$2,155,098. The applicant has provided the following explanations for these increases:

- Changes within the Ambulatory Patient Group (APG) rates which includes: base payments, weights, and how the reimbursements for providing multiple procedures will be reimbursed during a visit;

- The original CON application assumed the program would initiate operations in 2010 - the point in time when APG's were at a 50% phase in stage. The current application assumes 2012 will be the start of the program – the point in time when the APG's are completely phased-in.
- The mix of services has been modified following additional discussions among the dental professional team members. In the original CON application, it was anticipated an initial visit would include: a comprehensive exam, teeth cleaning, and an x-ray. The current CON application adds fluoride and two sealants to the comprehensive exam, teeth cleaning, and an x-ray.

Capability and Feasibility

There are no project costs associated with this application. The working capital of \$858,548 and its funding remain the same as under CON 101116. As described under CON 101116, Matthew C. Harrison Jr. will contribute half or \$429,274 from his personal assets, with the balance being provided from ReachOut Healthcare America, LTD through a 5-year loan at 8% interest.

Presented as Attachment A is a pro forma balance sheet showing operations will start off with \$600,540, which is the same as shown under CON 101116. Presented as Attachment B is Matthew C. Harrison Jr.'s net worth statement, which is consistent with the one presented under CON 101116.

The budget shows a \$715,183 operating surplus in the first year. By the third year operations are expected to generate a \$2,155,088 surplus. Medicaid revenues are based on 2012 APG rates, Child Health Plus/Medicaid Manage Care are based on estimates of local managed care rates, and commercial payers are based on estimates of local commercial rates. The budget appears reasonable.

On December 28, 2010, ReachOut Healthcare Holdings Inc. (RHHI) a holding company that owns all of the outstanding stock of ReachOut Healthcare America Ltd. (RHA) was acquired by ROHH Holdings Inc. through a merger transaction, with the surviving entity remaining ReachOut Healthcare Holdings, Inc (RHHI). It was stated that ROHH had no prior operations and used cash and issuance of debt to retire substantially all of RHHI outstanding shares of common and preferred stock, leaving approximately 4% of the common shares outstanding, which continues to be owned by key employees. Presented as BFA Attachment C is ReachOut Healthcare Holdings, Inc. and Subsidiary and Consolidated Affiliates (RHHI) 2010 certified financial summary that shows a \$364,406 operating loss. The loss results from a one time financial advisory fee of \$3,039,000 that was associated with the December 28, 2011 merger transaction. Presented as BFA Attachment D is ReachOut Healthcare Holdings, Inc. and Subsidiary and Consolidated Affiliates (RHHI) internal financial summary of October 31, 2011 indicating operations are profitable.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Net Worth Statements for Proposed Member of Smile New York Outreach, LLC
BFA Attachment B	Pro-forma Balance Sheet for Smile New York Outreach, LLC
BFA Attachment C	Financial Summary for 2010, Reachout Healthcare Holdings, Inc, and Subsidiary and Consolidated Affiliates.
BFA Attachment D	Internal Financial Summary as of October 31, 2011, Reachout Healthcare Holdings, Inc, and Subsidiary and Consolidated Affiliates.
BFA Attachment E	Organization Chart for Smile New York Outreach, LLC
BFA Attachment F	Establishment Checklist

**New York State Department of Health
Public Health and Health Planning Council**

January/December 2012

Long Term Home Health Care Program – Construction

Exhibit #3

Number

Applicant/Facility

- | | | |
|----|----------|---|
| 1. | 112116 C | Dominican Sisters Family Health Service, Inc.
(Westchester County) |
|----|----------|---|



Public Health and Health Planning Council

Project # 112116-C
Dominican Sisters Family Health Service, Inc.

County: Westchester (Ossining)
Purpose: Construction

Program: Long-Term Home Health Care
Submitted: August 24, 2011

Executive Summary

Description

Dominican Sisters Family Health Service, Inc. (Dominican Sisters) is an existing not-for-profit corporation located at 299 North Highland Avenue, Ossining, which operates a long term home health care program (LTHHCP) and certified home health agency (CHHA) in Bronx, Suffolk and Westchester Counties. The applicant is seeking approval to expand its LTHHCP to provide pediatric services to residents in Bronx, Kings, New York and Queens Counties. The pediatric service will result in 50 slots for Bronx County, 50 slots for Kings County, 75 slots for New York County and 50 slots for Queens County, for a total program expansion of 225 slots, bringing Dominican Sisters' program capacity to 565 slots.

The expansion of Dominican Sisters' LTHHCP will coincide with the closure of Elizabeth Seton Pediatric Center's LTHHCP, which serves Bronx, Kings, Queens and New York Counties. Dominican Sisters received approval on August 12, 2011 from the Department of Health, Bureau of Quality Assurance and Licensure for a management agreement that will allow Dominican Sisters to manage Elizabeth Seton Pediatric Center's LTHHCP during their closure phase, and will allow transition of the existing patients with ease.

DOH Recommendation
Contingent approval

Need Summary

Dominican Sisters plans to maintain all existing LTHHCP services including AIDS home care program, audiology, home health aide, homemaker, housekeeper, medical social services, medical supplies equipment and appliances, nursing, nutritional, personal care, occupational therapy,

physical therapy, respiratory therapy and speech language pathology therapy.

Program Summary

The Department of Health approved a management agreement between Dominican Sisters Family Health Care Service, Inc. and New York Foundling Hospital for Pediatric, Medical and Rehabilitative Care, Inc. d/b/a Elizabeth Seton Pediatric Center that allows Dominican Sisters Family Health Care Service, Inc. to manage Elizabeth Seton Pediatric Center's LTHHCP during the closure process

Dominican Sisters Family Health Service, Inc. LTHHCP is currently in compliance with all applicable codes, rules and regulations.

Financial Summary

There are no project costs associated with this application.

Budget:	<i>Revenues:</i>	\$ 6,944,435
	<i>Expenses:</i>	<u>5,818,054</u>
	<i>Gain/(Loss):</i>	\$ 1,126,381

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project involves a long term home health care program; therefore, no Architectural review is required.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. The closure of New York Foundling Hospital for Pediatric, Medical and Rehabilitative Care, Inc. d/b/a Elizabeth Seton Pediatric Center's Long Term Home Health Care Program. [CHA]

Approval conditional upon:

2. The additional capacity being limited to solely the pediatric population. [CHA]

Council Action Date

February 2, 2012.

Programmatic Analysis

Background

The following chart illustrates the allocation of Dominican Sisters Family Health Service, Inc. LTHHCP capacity:

<u>County</u>	<u>Currently Approved Capacity</u>	<u>Additional Capacity Requested</u>	<u>Revised Capacity</u>
Bronx	50	50	100
Kings	0	50	50
Queens	0	50	50
New York	0	75	75
Suffolk	100	0	100
Westchester	240*	0	240
Total	390	225	615

* Fifty (50) slots were conditionally approved under CON # 112154 administratively with the condition that additional capacity be limited to the pediatric population.

The New York State Department of Health approved a management agreement between Dominican Sisters Family Health Care Service, Inc. and New York Foundling Hospital for Pediatric, Medical and Rehabilitative Care, Inc. d/b/a Elizabeth Seton Pediatric Center that allows Dominican Sisters Family Health Care Service, Inc. to manage Elizabeth Seton Pediatric Center's LTHHCP during the closure process. By providing pediatric LTHHCP services, Dominican Sisters will ensure the continuity of LTHHCP services to an existing pediatric population in need of care and will avoid the need for many of these pediatric patients to be placed in an institutional setting.

Dominican Sisters Family Health Service, Inc. LTHHCP is currently in compliance with all applicable codes, rules and regulations.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Operating Budgets

The applicant has submitted an operating budget for the first and third years, in 2012 dollars, which is summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenue	\$4,995,976	\$6,944,435
Expenses	4,324,554	5,818,054
Net Income	\$671,422	\$1,126,381

Incremental expenses and utilization are further broken down as follows:

Year One

	<u>Total Cost</u>	<u>Visits/Hours</u>	<u>Cost/Visit/Hour</u>
Nursing	\$698,543	6,100	\$114.52
Physical Therapy	573,817	5,900	\$97.26
Speech Pathology	207,414	2,400	\$86.42
Occupational Therapy	477,720	4,600	\$103.85
Home Health Aide*	1,742,529	92,820	\$18.77
Homemaker*	5,374	277	\$19.40

Housekeeper*	1,775	80	\$22.18
Personal Care*	388,997	21,320	\$18.25
Medical Social Service	184,609	1,600	\$115.38
Nutrition	19,024	200	\$95.12
Respiratory Therapy	19,476	200	\$97.38
Audiology	<u>5,276</u>	50	\$105.51
Total	\$4,324,554		

Year Three

	<u>Total Cost</u>	<u>Visits/Hours</u>	<u>Cost/Visit/Hour</u>
Nursing	\$944,930	8,479	\$111.44
Physical Therapy	767,415	8,201	\$93.58
Speech Pathology	292,914	3,336	\$87.80
Occupational Therapy	644,428	6,394	\$100.79
Home Health Aide*	2,344,216	129,000	\$18.17
Homemaker*	7,296	385	\$18.95
Housekeeper*	2,388	111	\$21.32
Personal Care*	522,791	29,635	\$17.64
Medical Social Service	237,585	2,224	\$106.83
Nutrition	20,698	278	\$74.45
Respiratory Therapy	26,198	278	\$94.24
Audiology	<u>7,195</u>	70	\$102.78
Total	\$5,818,054		

* Reported in Hours

Utilization for years one and three is 100% Medicaid.

Expense and utilization assumptions are based on the historical experience of Dominican Sisters Family Health Services, Inc. and Elizabeth Seton Pediatric Center.

Capability and Feasibility

There are no project costs associated with this application.

The submitted budget indicates excess revenues of \$671,422 and \$1,126,381 during the first and third years of operation. Based on 2011 ceiling payments for Dominican Sisters and budgeted Medicaid utilization, the projected revenues will decrease by \$95,068 and \$112,109 in year one and three, respectively, resulting in a revised net income of \$576,354 and \$1,014,272. Revenue is based on current payment rates for LTHHCP services. The budget appears reasonable.

Presented as BFA Attachment A, financial summary of Dominican Sisters Family Services, Inc. indicates that the facility has maintained positive working capital, positive net assets, generated a negative net income of \$62,205 for 2009, and experienced positive net income of \$417,840 for 2010. The 2009 loss was due to losses on investments. Presented as BFA Attachment B, internal financial summary of Dominican Sisters Family Services as of October 31, 2011, the facility has maintained positive net assets and experienced negative working capital and a loss from operations of \$485,191. The applicant has stated that the operating losses were due to the 2011-2012 New York State budget, which reduced Medicaid payments for patients that exceed utilization thresholds. The operating losses are to the CHHA and not the LTHHCP, which is seeking the expansion. The CHHA has changed its admission and retention procedures in order to reduce the loss. The negative working capital is due to an increase in current liabilities, which is due to a corresponding increase in days in accounts receivable. Many third-party payers have slowed down their claims payment process, which resulted in a temporary cash flow problem, which in turn has required Dominican Sisters to increase its days in accounts payable. As cash flow improves, Dominican Sisters will pay down its accounts payable.

Recommendation

From a financial perspective, approval is recommended.

Attachments

- | | |
|------------------|--|
| BFA Attachment A | Financial Summary, Dominican Sisters Family Services, Inc. |
| BFA Attachment B | Internal Financial Summary as of October 31, 2011, Dominican Sisters Family Services, Inc. |

**New York State Department of Health
Public Health and Health Planning Council**

January/February 2012

Residential Health Care Facilities Ventilator Beds – Construction

Exhibit #4

<u>Number</u>	<u>Applicant/Facility</u>
1. 111435 C	The Wartburg Home (Westchester County)



Public Health and Health Planning Council

Project # 111435-C
The Wartburg Home

County: Westchester (Mount Vernon)
Purpose: Construction

Program: Residential Health Care Facility
Submitted: May 18, 2011

Executive Summary

Description

The Wartburg Home is a 240-bed not-for-profit residential health care facility (RHCF), with two respite beds and an 80-slot Adult Day Health Care Program (ADHCP), located at 55 Bradley Avenue, Mount Vernon. The applicant requests approval to decertify 30 RHCF beds and construct a replacement nursing facility for their Pavilion Building, which currently houses 80 RHCF beds. The new building will house 50 RHCF beds, an 80-slot ADHCP located in the antiquated Berkemeier Building and rehabilitation therapy services relocated from Wartburg's Waltemade Building. The applicant's total RHCF beds will decrease from 240 to 210.

The Wartburg Foundation, Inc. was created to support the charitable, educational, scientific, religious, and literary purposes of The Wartburg Home of the Evangelical Lutheran Church and other not-for-profit organizations.

Total project costs are estimated at \$27,635,934.

DOH Recommendation
Contingent approval.

Need Summary

The decertification of 30 RHCF beds which will assist surrounding facilities operating at a lower capacity, enabling them to increase occupancies to the 97% planning optimum.

Program Summary

The construction of the new building will significantly improve the quality of life for residents in The Wartburg Home. The nursing home will be able to offer a rehabilitation program in space which meets contemporary standards, while relocation of the ADHCP from an antiquated building may eventually result in

higher utilization for the chronically under-utilized program.

As a condition of approval, Wartburg will be required to commit to a modernization program for the Waltemade Building as soon as adequate funds are obtained.

Financial Summary

Project costs will be met with a \$23,232,000 HEAL-NY 20 Grant, \$903,934 unrestricted net assets from The Wartburg Foundation, and \$3,500,000 in unrestricted, undesignated net assets from the facility.

Budget:	<i>Revenues:</i>	\$ 32,769,465
	<i>Expenses:</i>	33,512,012
	<i>Gain/(Loss):</i>	\$ (742,547)

The Wartburg Home has stated they will fund losses from contributions.

Subject to noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

The replacement tower will consist of approximately 65,332 SF on three floors. The 1st floor will include the ADHCP, physical therapy, occupational therapy, speech therapy, kitchen, staff locker rooms and support space. Floors 2 and 3 will be organized into four small neighborhoods of residential space with a 12-bed and 13-bed neighborhood on each floor with private rooms, including a full bathroom and shower in each room. Each neighborhood will also include a large common area with its own pantry and country kitchen, a nurse work area, clean and soiled utility rooms, and private staff areas.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of and programmatic review and approval of the final floor plans. [LTC]
3. Confirmation that each resident bedroom will include a shower of minimum 4 foot by 5 foot dimensions, or submission of plans showing a shower of 4 foot by 5 foot or larger dimensions in each spa room. [LTC]
4. Submission of an executed HEAL NY - Phase 20 grant that is acceptable to the Department. [BFA]
5. Submission of documentation of the pledge from the Wartburg Foundation that is acceptable to the Department. [BFA]

Approval conditional upon:

1. A commitment to undertake a renovation and/or bed reduction project for the Waltemade Building to enhance resident rooms to a standard similar to the bedrooms in the new building, and an updating of the facility to provide a more homelike and resident centered living environment. [LTC]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
3. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]
4. The applicant shall complete construction by May 1, 2015. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

February 2, 2012.

Need Analysis

Background

The Wartburg Home seeks approval to decertify 30 residential health care facility (RHCF) beds, demolish an outdated building, and construct a modern replacement building to house a 50 -bed facility with a focus on short term nursing and rehabilitation care and program space for Medical and Social Adult Day Health Care Programs (ADHCP). The new facility will consist of two nursing home floors that will contain 12- and 13-bed neighborhoods. This project is part of a HEAL 20 grant.

Analysis

<u>County RHCF Bed Need</u>	<u>Westchester</u>
2016 Projected Need	6,716
Current Beds	6,711
Beds Under Construction	290
Total Resources	7,001
Unmet Need	-285

<u>RHCF Utilization</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
The Wartburg Home	Did Not Report	96.3%	96.8%
Westchester County	94.0%	92.3%	91.8%

The Wartburg Home reported occupancy rates of 96.3% and 96.8% in 2008 and 2009, respectively.

Conclusion

The Wartburg Home will consolidate all rehabilitation services into one building, which will help to improve quality and efficiency of care. The Wartburg Home was operating a 40 bed rehabilitation unit, which will increase to 50.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	The Wartburg Home	Same
<i>Address</i>	Bradley Avenue Mount Vernon, NY 10552	Same
<i>RHCF Capacity</i>	240 + Respite 2	210 + Respite 2
<i>ADHC Program Capacity</i>	80	Same
<i>Type of Operator</i>	Voluntary	Same
<i>Class of Operator</i>	Corporation	Same
<i>Operator</i>	The Wartburg Home of the Evangelical Lutheran Church	Same

Project Review

- PROGRAM REVIEW:

The Wartburg Home (Wartburg) is a 240 bed voluntary nursing home located on Bradley Avenue in Mount Vernon. Wartburg is also certified for a Respite 2 program and an 80 slot adult day health care program. Consistent with a recently awarded HEAL 20 grant, Wartburg proposes to replace the outdated 80 bed Pavilion Building with a modern 50 bed nursing facility which will also include space to relocate Wartburg's adult day health care and social day care programs. Upon completion the applicant will demolish the Pavilion Building, resulting in the decertification of 30 nursing facility beds. The HEAL 20 project also includes the construction of 60 units of affordable senior housing.

- PHYSICAL ENVIRONMENT

The Wartburg Home is a unique nursing facility encompassing three buildings situated on a wooded 36 acre campus, which is also home to an assisted living facility, independent living cottages, an administration building and a museum. The nursing home is comprised of two buildings: the 160 bed Waltemade Building, constructed in 1995, and the 80 bed Pavilion building, constructed in 1968, which adjoins Waltemade. Wartburg's 40 bed rehabilitation unit is located in the Pavilion building. In addition, Wartburg operates an 80 slot adult day health care program from space in the Berkemeier Building, a circa 1910 building which is connected to The Pavilion by a sky bridge. Wartburg states that the substandard space in Berkemeier, formerly an auditorium and originally intended only as temporary accommodations, has impeded the adult day health care program from attaining its fully certified capacity of 80 slots.

Due to site and zoning constraints, Wartburg is constrained from expanding Waltemade to incorporate the rehabilitation unit from the Pavilion. Alternatively Wartburg has opted to construct a new building to replace the antiquated Pavilion, to be located on a sloping site to the North and East of the Berkemeier Building. The proposed crescent shaped building will consist of three floors, with the nursing home beds on the two upper floors, and the day care programs located on the lower floor. Entry to the day care programs will be made from the terrace floor, with the residential units accessed from the opposite side on the first floor. The nursing units will consist of similar 25 bed units divided into fully functional neighborhoods of 12 and 13 beds, each with its own dining area with pantry and country kitchen. The nursing facility will be generally programmed for short term rehabilitation occupancy with 100% single-bedded rooms complete with bathroom and shower. As a contingency of approval, showers will have to be shown to be accessible to residents confined to a wheelchair, which equates to an area with minimum dimensions of four feet by five feet. The bedrooms will be comfortably sized—nearly the square footage of the double bedrooms in the Waltemade Building.

The new building will function as a full service nursing home incorporating all ancillary and support spaces, including a full kitchen. The second floor public area offers amenities including a café and large multipurpose room, which will also be made available to the adult day health care program. A training apartment to transition residents completing their rehabilitation prior to returning home is located adjacent to the occupational therapy suite. Outside activity space will be offered on terraces located on the terrace and second levels.

The adult day health care program will be located on the terrace level, adjacent to the relocated social day care program. Entrance into the day care areas will be made from a new drop-off drive. The adult day care program space will be fully compliant with the new space requirements of 10 NYCRR 714.4.

- COMPLIANCE

The Wartburg Home is in current compliance with all codes, rules and regulations.

Project Review – Analysis:

The construction of the new building will significantly improve the quality of life for residents in The Wartburg Home. The nursing home will be able to offer a rehabilitation program in space which meets contemporary standards. The relocation of the adult day health care program from an antiquated building may eventually result in higher utilization for the chronically under-utilized program. However the continued usage of the Waltemade Building poses a "have/have not" issue relative to the new nursing home building.

An analysis of the Waltemade Building shows that while the building is wholly code conforming, and in generally good condition devoid of major operational issues, it suffers in contrast to the modern design of the new building. Waltemade is a squarish conventional twentieth century building with resident bedrooms surrounding an open courtyard. The building includes only 18% single bedrooms, and is somewhat institutional in nature. In recognition of its shortcomings Wartburg has embarked upon a master plan to renovate Waltemade to create a more appealing residential environment, most notably an increase in the number of single bedrooms and additional square footage in the resident rooms and bathrooms. As a condition of approval Wartburg will be required to commit to a modernization program for the Waltemade Building as soon as adequate funds are obtained.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project costs are estimated at \$27,635,934 broken down between two subprojects, residential health care facility (RHCF) and adult day health care program (ADHCP), as follows:

RHCF

New Construction	\$14,504,652
Renovation & Demolition	229,536
Site Development	2,014,094
Asbestos Abatement or Removal	40,411
Design Contingency	736,709
Construction Contingency	736,709
Planning Consultant Fees	125,626
Architect/Engineering Fees	1,251,569
Construction Manager Fees	636,091
Other Fees	190,775
Movable Equipment	739,114
Telecommunications	93,003
Financing Costs	41,700
Interim Interest Expense	157,500
Processing Fee	2,000
Additional Processing Fee	<u>118,236</u>
Total Project Cost (Subproject 1)	\$21,617,725

ADHCP

New Construction	\$4,061,178
Renovation & Demolition	62,985
Site Development	552,666
Asbestos Abatement or Removal	11,089
Design Contingency	206,208
Construction Contingency	206,208
Planning Consultant Fees	34,373
Architect/Engineering Fees	343,430
Construction Manager Fees	174,543
Other Fees	52,200
Movable Equipment	157,913
Telecommunications	25,447
Financing Costs	18,300
Interim Interest Expense	78,750
Additional Processing Fee	<u>32,919</u>
Total Project Cost (Subproject 2)	\$6,018,209

Project costs are based on a March 1, 2012 construction start date and a fourteen month construction period.

Project cost per bed, exclusive of ADHC and CON fees, is \$429,950, compared to a geographic bed limitation of \$352,000.

Reimbursable project cost will be \$23,738,445, as shown below:

\$352,000 per bed cap x 50 beds	\$17,600,000
ADHC Costs	5,985,290
CON Application Fee	2,000
Additional Processing Fee	<u>151,155</u>
Total Reimbursable Project Cost	\$23,738,445

The applicant's financing plan appears as follows:

HEAL-NY Phase 20	\$23,232,000
Cash (unrestricted, undesignated net assets)	\$3,500,000
The Wartburg Foundation (unrestricted net assets)	\$903,934

A commitment letter from The Wartburg Foundation certifying a pledge of up to \$3,000,000 has been submitted by the applicant.

Operating Budget

The applicant has submitted an operating budget for the RHCF and ADHC in 2011 dollars, for the first and third years of operation, summarized below:

RHCF

	<u>Years One and Three</u>
Revenue	\$29,233,771
Expenses	
Operating	27,573,673
Capital	<u>3,368,542</u>
Total Expense	\$30,942,215
Net Income/Loss	\$(1,708,444)
Utilization (patient days)	75,334
Occupancy	98.28%

The following is noted with respect to the submitted RHCF operating budget:

- Medicare and private pay assume current rate of payment.
- Medicaid rate is based on the facility's 2011 Medicaid rate published by DOH.
- Utilization by payor source for years one and three are expected as follows:

Commercial Fee for Service	1.9%
Medicare Fee for Service	22.3%
Medicare Managed Care	2.9%
Medicaid Fee for Service	61.7%
Private Pay/Other	11.2%

- The operating budget and payor mix are specifically for the RHCf and does not include ADHC and LTHHCP.

ADHCP

Years One and Three

Revenue:	\$3,535,694
Expenses:	<u>2,569,797</u>
Net Income:	\$965,897
Visits:	20,444
Cost per Visit	\$125.70

Utilization by payor source is as follows for years one and three are expected as follows:

Medicaid Fee for Service	89%
Private Pay/Other	11%

Expense and utilization assumptions are based on the historical experience of current services within the facility.

The combined revenues and expenses for the first and third years of operation are as follows:

Revenues:	\$32,769,465
Expenses:	<u>33,512,012</u>
Net Income:	\$(742,547)

The Wartburg Home has stated they will fund the losses from contributions.

Capability and Feasibility

Project cost of \$27,635,934 will be met with a \$23,232,000 HEAL-NY 20 Grant, \$3,500,000 unrestricted, undesignated net assets from the facility and \$903,934 unrestricted net assets from The Wartburg Foundation. Presented as BFA Attachments A and B are the financial summaries of The Wartburg Home and The Wartburg Foundation, respectively, which indicate the availability of sufficient resources.

The submitted budget indicates a net loss of \$742,547 during the first and third years of operation. The Wartburg Home has stated that they will fund the losses from contributions. The budget appears reasonable.

As shown on BFA Attachment C, The Wartburg Home has maintained positive working capital and equity and experienced net losses of \$3,489,193 and \$4,098,540 for 2009 and 2010, respectively. The applicant has stated the losses were due to the facility planning a merger with another facility that never materialized. Several employees were hired in anticipation of the merger causing \$2,192,000 of unplanned expenses and no recognized revenues to offset these costs. In 2010, the plan for a merger was abandoned and the facility incurred legal costs of approximately \$1,100,000. The facility plans to reduce employee F.T.E.'s to the number existing pre-merger planning.

As of August 31, 2011, the facility generated a loss of \$1,344,408. The reasons for the loss are a volume reduction in early 2011, due to extreme inclement weather in the region, a greater number of nursing home discharges than was expected, and the facility received a lower Medicaid rate than what was budgeted. Management has put a hiring freeze on all open positions, cancelled planned salary increases for non-union employees, extended the agreement with SEIU-1199 through July 2010, which will eliminate wage increases, and only slightly add on to pension and health benefit funds, and started the renegotiation process with several vendor contracts.

Subject to noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

The applicant is proposing this project to achieve two objectives: 1) modernize and increase its rehabilitation therapy specialty of RHC beds; and 2) provide purpose-built space for the adult day health care program so it can reach licensed capacity. Currently, the existing therapy services (physical, occupational, and speech) occupy two relatively small rooms in the Waltemade Building that total approximately 1,300 square feet. By comparison, the new rehabilitation therapy suites will provide more than 3,000 square feet, dramatically improving the environment for both residents and therapists. With this expanded focus, ten more beds will be dedicated to sub-acute rehabilitation.

The replacement facility will be all new construction, and will consist of the following:

- Terrace Level (18,483 SF)

The Terrace Level is the ground level floor and contains a relocated medical adult day health care program as well as service areas for the entire building. These include receiving, mechanical and electrical rooms, trash and other waste disposal rooms. (This lower level will also house an existing social model ADC, relocated from existing space on campus, but excluded from this CON). There will also be a major commercial kitchen which will prepare food for both the ADHC and two skilled nursing floors above.

- First Floor (21,088 SF)

This floor has a 12 resident bed neighborhood and a 13 resident bed neighborhood each with shared common and service spaces in the center. Each neighborhood of 12 or 13 beds provides all private rooms with a full bathroom with shower in each room. A large common area for each neighborhood provides dining space with its own pantry and country kitchen to allow residents to dine in their own neighborhood. . Also within this common area is a nurse work area, including medical records/medicine prep room, clean and soiled utility rooms, and a spa/bathing area. This also includes a staff area with kitchenette and private staff toilet, as well as a treatment room for residents. At the end of each neighborhood is a conference room for staff use. This room is intended for care planning and small staff meetings but can also be used for private conversations between staff/physicians and family members.

At the first floor entry, a covered drop-off leads to a vestibule designed to reduce drafts into the lobby. On the south side of the lobby is an administrative suite which houses admissions and the SNF's director. On the north side of the lobby is a café, which opens to its own exterior terrace and will be available to residents, their families and staff from both the SNF and other areas of Wartburg.

At the end of the lobby is a reception desk, which is positioned to monitor arrivals to the building from the front drop-off as well as the elevator from the Terrace Level parking areas. A multi-purpose room, programmed for the adult day program during the weekdays, will be available to the SNF residents and the Wartburg community at large at other times. Adjacent to the multi-purpose room is the social work office, and around the corner is the hair salon dedicated to serve the skilled nursing residents.

- Second Floor (20,891 SF)

This floor has a 12 and a 13 resident neighborhood in the same configuration as the first floor.

The central portion of the second floor is shared by the physical therapy suite. In addition to the therapy areas, it houses office space for the director of physical therapy and staff, as well as a testing area. Across the hall is the occupational therapy suite. In addition to the open areas, a one-bedroom apartment has been designed to simulate a true residential environment with clearances and room configurations that most closely represent a residential environment that rehabilitation patients will be navigating upon their return home. The OT suite opens to small roof-top terraces which provide outdoor surface training. Adjacent to the therapy suite are offices for speech therapy and the OT/PT staff.

Environmental Review

The Department has deemed this project to be a TYPE I Action and the lead agency shall be the county of Westchester or the authority having jurisdiction.

Recommendation

From an architectural perspective, approval is recommended.

<h2>Attachments</h2>

BFA Attachment A	2009-2010 Financial Summary, The Wartburg Home of the Evangelical Lutheran Church
BFA Attachment B	Financial Summary, The Wartburg Foundation
BFA Attachment C	Financial Summary, The Wartburg Home of the Evangelical Lutheran Church

**New York State Department of Health
Public Health and Health Planning Council**

January/February 2012

Transitional Care Units - Construction

Exhibit #5

1. 112206 T St. Mary's Healthcare
(Montgomery County)



Public Health and Health Planning Council

Project # 112206-T

St. Mary's Healthcare

County: Montgomery (Amsterdam)
Purpose: Demonstration – Construction

Program: Transitional Care Unit
Submitted: October 5, 2011

Executive Summary

Description

St. Mary's Healthcare (St. Mary's), a not-for-profit hospital located in Amsterdam, requests approval to create an 11-bed Transitional Care Unit (TCU). St. Mary's consists of two campuses. The main campus, St. Mary's Hospital campus, consists of 120 acute care beds. The former Amsterdam Memorial Hospital (Memorial Campus, two miles away) consists of 10 beds certified for physical medicine and rehabilitation. On September 1, 2010, the Department of Health requested applications in accordance with the provisions of Section 2802-a, of the Public Health Law for a TCU Demonstration Program.

The former Amsterdam Memorial Hospital had a "swing-bed" program (closed due to hospital unification), which provided a unique continuum of rehabilitation medicine to area residents. The TCU will be located in an existing nursing unit on the third floor adjacent to the Acute Rehabilitation Unit.

The patients to be served in the TCU would include the most costly, complex convalescing elders who, while clinically stable, would otherwise remain in a medical/surgical bed; those patients for whom a regimen of coordinated multi-level rehabilitation Medicine would be quality enhancing, and the frail elders who still require extensive follow-up and would benefit from the continuity of care by the same team of therapists and physicians.

Total project costs are estimated at \$317,105.

DOH Recommendation
Contingent approval

Need Summary

Section 2802-a of the Public Health Law was amended by Chapter 58 of 2010, authorizing the Commissioner to approve an additional 13 general hospitals to operate TCUs on a demonstration basis.

Program Summary

The proposed 11-bed TCU would serve several roles – replace the highly utilized swing bed program and re-establish the continuum of care afforded by coordination/integration with the Acute Rehabilitation Unit; further the hospital's efforts to reduce the length of stay at the main campus; facilitate the hospital's efforts at reducing the number of unnecessary re-admissions, which has been on the increase with the closure of the swing bed program, and enhance the hospital's capacity to serve the under 65 population.

Financial Summary

Project costs will be met with accumulated funds from the Hospital.

Incremental Budget:	<i>Revenues:</i>	\$ 1,974,240
	<i>Expenses:</i>	<u>1,306,884</u>
	<i>Gain/(Loss):</i>	\$ 667,356

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

St Mary's Healthcare is requesting approval to renovate an existing hospital medical/surgical unit to form an 11-bed Transitional Care Unit (TCU) at the Memorial Campus, located 2 miles from St Mary's main campus. The Memorial Campus serves an elder population in need of post-acute and long term care services.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]

Approval conditional upon:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01 prior to the applicant's start of construction. [AER]
3. The applicant shall complete construction before July 1, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

February 2, 2012.

Need Analysis

Background

Section 2802-a of the Public Health Law was amended by Chapter 58 of 2010 authorizing the Commissioner to approve an additional 13 general hospitals to operate transitional care units (TCUs) on a demonstration basis. The original TCU enabling legislation of 2005 authorized five demonstration projects.

Transitional Care Unit Purpose

Section 2802-a of PHL defines "transitional care" as sub-acute care services provided to inpatients of a general hospital who no longer require acute care inpatient services, but continue to need specialized medical, nursing and other hospital ancillary services and are not yet ready for discharge. TCUs should be limited in length of stay and designed to meet and resolve patients' specific sub-acute medical care needs. Discharges from these units are to be timely and appropriate.

The improvement of quality outcomes for the TCU population through the provision of appropriate services, delivered in the most efficient manner, is the primary goal of the TCU demonstration program. Hospitals selected for this program are required to demonstrate an overall decrease in length of stay, quantify the clinical benefits of the program for TCU patients, and illustrate a synergistic relationship with long term care providers in the community. Collaboration between hospitals and nursing homes in local service areas will help bring about more efficient allocation of patients between the two settings.

In accordance with Section 2802-a of PHL, all providers in this demonstration program must meet all Conditions of Participation (CoP) for skilled nursing facilities (SNFs) as defined under Title XVIII of the Federal Social Security Act (Medicare). In order to qualify for Medicare certification, providers must comply with Part 415 of Title 10 of the New York Compilation of Codes, Rules and Regulations (10 NYCRR). In this demonstration, providers not currently licensed to operate nursing home beds will not be required to obtain Public Health and Health Planning Council establishment approval. Additionally, TCU units are not recognized as RHCf beds as defined in 10 NYCRR Section 709.3.

As part of this demonstration program, specific State SNF regulations that may impede the development of TCUs or their ability to provide appropriate services to patients may be subject to waiver, at the discretion of the Department. Such issues will be reviewed on an individual basis.

Applicants must demonstrate the need for any services proposed within the TCU and emphasize the benefits of such a program to a specific community, including, but not limited to, addressing the absence of sufficient post-discharge services in nursing homes and community-based care.

Transitional care units should be limited in length of stay and designed to meet and resolve specific sub-acute medical care needs. The average length of stay for patients served in a TCU ranges from 5 to 21 days, following a qualifying acute care stay. TCU services will be reimbursed at the applicable Medicare per diem SNF rate.

Transitional Care Unit Criteria and Requirements

Section 2802-a requires all providers applying to participate in this demonstration program to meet all applicable requirements as defined under Title XVIII of the Federal Social Security Act (Medicare). Additionally, Transitional Care Units must:

- Have a length of stay of not less than 5 days and not in excess of 21 days;
- Have a pre-opening survey, separate Medicare Number, and SNF certification;
- Be staffed by qualified staff dedicated to the TCU;
- Serve patients who will benefit from active rehabilitation. (It is expected that patients will actively participate in three hours or more of Occupational Therapy/Physical Therapy/Speech Therapy, every day, either three hours consecutively or in combination between rehabilitative sessions); and

- Collect information and submit reports to the Department on an annual basis to demonstrate an overall decrease in length of stay; quantify the clinical benefits of the program for TCU residents and illustrate a synergistic relationship with long term care providers.

Applications must address the configuration of the Transitional Care Unit. However, the applicant must adhere to the following requirements:

- Beds must be located at one geographic location; and
- Beds must be located contiguously within a distinct unit/space within the hospital.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

The principal elements of the proposed TCU program are:

- An 11-bed unit that will serve several roles, including: 1) replacing the now closed swing bed program; 2) reduce the length of stay at the Main Campus; 3) help reduce unnecessary hospital readmissions; and 4) enhance St. Mary's ability to serve the under 65 population.
- The patients served will include: 1) most costly, complex convalescing elders that are clinically stable and would otherwise remain in an M/S bed; 2) those in need of coordinated multi-level rehabilitation; and 3) frail elders still requiring extensive follow-up.
- The TCU will be located in an existing, out of service medical/surgical bed wing on the 3rd floor of the hospital, adjacent to the existing Acute Rehabilitation Unit. Renovation work is expected to be minor.
- Operation by a facility with dedicated staff with access to specialist acute care professionals.
- All patient rooms will be single bed spaces and will include an existing private toilet room. Two patient rooms will be renovated to include ADA size toilet rooms. There is an on-unit dining space, physical therapy room and activity space.

The TCU will focus on patients that if not discharged to the TCU would otherwise continue to be served in a Med/Surg bed. These patients will remain in the TCU for a short stay of no more than 20 days.

The TCU will focus on medically complex elderly patients who while clinically stable still require on-going physician oversight and the specialized services of hospital staff. Other patients expected to be routinely admitted include those who may need an additional few days of rehabilitation prior to discharge to home as well as those needing more extensive rehabilitation therapy prior to discharge to an Acute Rehabilitation Facility. In addition, the TCU is expected to fill the void created by the loss of the swing bed program.

The TCU will be under the direct responsibility of the Hospital CEO and will include a senior team consisting of a Licensed Nursing Home Administrator who will be employed part-time as the TCU Administrator, Nurse Manager with hospital experience, and a part-time Physician Medical Director. The team will also include an MDS Coordinator, Registered Nurses; Certified Nurse Aides, a Social Worker, and Activities and Therapy staff. An interdisciplinary care team will be responsible for the coordination and continuity of patient care.

The applicant will submit an annual progress report on TCU operations to the Department of Health.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Costs

Total project costs for renovations and the acquisition of movable equipment is estimated at \$317,105, broken down as follows:

Renovation & Demolition	\$118,000
Design Contingency	11,000
Construction Contingency	11,000
Arch/Engineering fees	8,000
Movable Equipment	165,381
Application Fee	2,000
Additional Processing Fee	<u>1,724</u>
Total Project Cost	<u>\$317,105</u>

Project costs are based on an April 1, 2012 start date and a three month construction period. St. Mary's Healthcare will finance total project costs through accumulated funds.

Operating Budget

The applicant has submitted an incremental operating budget in 2011 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$ 987,120	\$1,974,240
Expenses:		
Operating:	992,161	1,275,792
Depreciation & Rent:	<u>31,092</u>	<u>31,092</u>
Total expenses:	<u>\$1,023,253</u>	<u>\$1,306,884</u>
Net Income:	<u>(\$ 36,133)</u>	<u>\$667,356</u>
Utilization (patient days)	1,825	3,650

Utilization by payor source for the first and third years is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicare - FFS	100.0%	68.5%
Medicare - MC		19.2%
Commercial – MC		12.3%

Expense and utilization assumptions are based on the historical experience of St. Mary's Healthcare.

Capability and Feasibility

Project cost will be satisfied by accumulated funds from St. Mary's Healthcare. Presented as BFA Attachment A is the financial summary of the applicant showing sufficient funds.

Working capital of \$217,814 based on two months of third year expenses will come from hospital operations.

The submitted incremental budget indicates a net income of (\$36,133) for year one and \$667,356 for year three of operation. Revenues were based on the expected distribution of patient day by RUGS-IV category and by Payor. The budget appears reasonable.

Presented as attachment A, St. Mary's Healthcare has maintained positive working capital and net asset positions and generated net operating gains of \$2,031,000 and \$1,298,000 for the years 2009 and 2010, respectively. Presented as attachment B, the 2011 internal financial statements through September 30, 2011, St. Mary's Healthcare has maintained positive working capital and net assets and has generated net operating income of \$2,516,959.

Recommendation

From a financial perspective, approval is recommended.

Architectural Analysis

Review Summary

This project will consist of renovations to 8,695 SF of the third floor of the existing 5 story hospital building. The renovation will take place in a medical/surgical bed wing that is not in service, to form an 11 bed Transitional Care Unit (TCU).

The proposed TCU will include 9 single bedrooms, 2 ADA compliant single bedrooms, nursing station, medications room, nourishment area, bathing area, clean utility, soiled utility, housekeeping closet, stretcher and wheelchair storage, equipment storage and general storage. The unit will also include a visitors lounge, dining room, physical therapy, activity room, public toilet, patient toilet, nurse manager office, multipurpose room, staff lounge and staff toilet.

This TCU unit will occupy the same floor as an existing 10 bed Physical Medicine and Rehab Unit and will be able to share the activity and rehab spaces.

The renovation work will be minor to include modification to existing walls and doors. Finishes will include new paint, VCT flooring and acoustic ceiling tiles in reconfigured space. Minor upgrades to the existing mechanical systems will be required to accommodate the enlarged ADA toilet rooms.

Environmental Review

The Department has deemed this project to be a TYPE II Action and will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary - St. Mary's Hospital at Amsterdam (a.k.a. St. Mary's Healthcare) 2010 and 2009 audited.
BFA Attachment B	Financial Summary - St. Mary's Hospital at Amsterdam (a.k.a. St. Mary's Healthcare) Internal, January 1, 2011 through September 30, 2011.

**New York State Department of Health
Public Health and Health Planning Council**

January/February 2012

Acute Care Services – Establish/Construct

Exhibit #6

<u>Number</u>	<u>Applicant/Facility</u>
1. 112185 E	Inter-Lakes Health, Inc. (Essex County)



Public Health and Health Planning Council

Project # 112185-E

Inter-Lakes Health, Inc.

County: Essex (Ticonderoga)
Purpose: Establishment

Program: Acute Care Services
Submitted: October 14, 2011

Executive Summary

Description

Inter-Lakes Health, Inc. (ILH), a New York not-for-profit membership corporation, seeks approval to be established as the co-operator of Moses Ludington Hospital and Moses Ludington Nursing Home, Inc. (MLNH), d/b/a Heritage Commons Residential Health Care. Moses Ludington Hospital (MLH) is a 15-bed Critical Access Hospital located at 1019 Wicker Street Ticonderoga, and Moses Ludington Nursing Home (MLNH) is an 84-bed residential health care facility also located at the aforementioned address.

In January 2003, ILH became the sole corporate member of MLH and MLNH, and this application seeks to formalize that relationship as active parent and co-operator. Approval of the proposed establishment would grant ILH direct powers over MLH and MLNH corporations. ILH will work with MLH and MLNH in the management of the day-to-day direct operations.

There are no costs associated with this application. MLH and MLNH will be subsidiaries in ILH, Inc. ILH, MLH, and MLNH will remain separate not-for-profit Article 28 corporations and maintain separate operating certificates. There will be no change in authorized services or number or type of bed complements at MLH or MLNH as a result of the proposed establishment.

DOH Recommendation
Contingent approval.

Need Summary

The integration of MLH and MLNH into ILH will result in continued coordination of care, increased efficiencies, and elimination of duplicative administration functions. There will be no change in patient beds or services and no construction is involved in this application.

Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Summary

There are no significant issues of capability or feasibility associated with the subject application.

Architectural Summary

This project is for Establishment action only; therefore, no Architectural recommendation is required.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the applicant's executed proposed certificate of amendment of its certificate of incorporation, which is acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's executed proposed amended bylaws, which are acceptable to the Department. [CSL]
3. Submission of a photocopy an executed proposed certificate of amendment of the certificate of incorporation of Moses Ludington Nursing Home Co., Inc., which is acceptable to the Department. [CSL]
4. Submission of a photocopy of proposed amended bylaws of Moses Ludington Nursing Home Co., Inc., which is acceptable to the Department. [CSL]
5. Obtaining Department of Health approval of a CON application under the NYS Social Services Law authorizing the applicant to manage the operation of Moses Ludington Adult Care Facility. [CSL]

Council Action Date

February 2, 2012.

Need Analysis

Background

Inter-Lakes Health, Inc. (ILH) seeks approval to be established as the co-operator of Moses Ludington Hospital (MLH) and Moses Ludington Nursing Home, Inc. (MLNH), d/b/a Heritage Commons Residential Health Care. Moses Ludington Hospital is a 15-bed Critical Access Hospital located at 1019 Wicker Street, Ticonderoga, and Moses Ludington Nursing Home is an 84 bed-residential health care facility located at the same aforementioned address.

Moses Ludington Hospital and Moses Ludington Nursing Home have the following certified beds and services:

<u>Bed Category</u>	<u>Moses Ludington Hospital</u>	<u>Moses Ludington Nursing Home</u>
Special Use Beds	15	
RHCF Beds		84
Total	15	84

<u>Service Category</u>	<u>Moses Ludington Hospital</u>	<u>Moses Ludington Nursing Home</u>
Ambulatory Surgery - Multi Specialty	✓	
Audiology		✓
Baseline Services - Nursing Home		✓
Clinical Laboratory Service		✓
Dental		✓
CT Scanner	✓	
Dental O/P	✓	
Emergency Department	✓	
Medical Social Services	✓	
Nursing		✓
Nutritional		✓
Optometry		✓
Outpatient Surgery	✓	
Pharmaceutical Service		✓
Physical Medicine and Rehabilitation O/P	✓	
Physician Services		✓
Primary Medical Care O/P	✓	
Psychology		✓
Radiology - Diagnostic		✓
Swing Bed Program	✓	
Therapy - Occupational		✓
Therapy - Occupational O/P	✓	
Therapy - Physical		✓
Therapy - Physical O/P	✓	
Therapy - Speech Language Pathology	✓	✓

Analysis

Moses Ludington Hospital is a 15-bed Critical Access Hospital and sole community provider located in Southern Essex County. Between 2008 and 2010, the hospital discharged an average of 247 patients a year. In 2008, the hospital recorded an average length of stay (ALOS) of 3.7 days. By 2009, the ALOS declined to 3.4 days and continued the downward trend to 3.3 days in 2010. The associated occupancy rates generated by these patients ranged from 14.7 percent to 17.3 percent. In addition, MLH operates an 84-bed Residential Health Care Facility (RHCF). During the

same period, the occupancy rates for the RHCf were 96.7 percent, 95.5 percent and 95.2 percent, respectively (Table 3).

The facility also provides emergency services in the community. During the years under review, the hospital saw an average of 7,597 total Emergency Department visits. Of these, approximately 3.0 percent were admitted as an inpatient.

**Table 3:
Distribution of Utilization Statistics: Moses Ludington Hospital
and Moses Ludington Nursing Home**

Category	2008	2009	2010
<i>Moses Ludington Hospital</i>			
Discharges	253	235	254
Average Length of Stay	3.7	3.4	3.3
Occupancy	17.3%	14.7%	15.3%
<i>Moses Ludington Nursing Home</i>			
RHCf Occupancy	96.7 %	95.5 %	95.2 %

Source: Inpatient SPARCS 2008-2010; Nursing Home, RHCf Cost Reports 2008-2010

Conclusion

Inter-Lakes Health seeks approval to be established as the co-operator of Moses-Ludington Hospital, Inc. and Moses-Ludington Nursing Home Company, Inc. The integration of MLH and MLNH into ILH, will result in improved coordination of care, increased overall efficiencies and elimination of duplicative administrative functions. There will be no changes in services or beds under this transaction

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Character and Competence

The board members of the Inter-Lakes Health, Inc. are:

<u>Name</u>	<u>Position</u>
Sandra R. Bolton	Chair
Roland Allen	Vice-Chair
Dawn Stoddard	Secretary
Chattie Van Wert	Treasurer
Ross Kelley	
Anna Carney	
Deborah Endsley	
Bud Bresett	
Robert Dedrickl	
Glen Chapman, MD	
Charles Miceli	Interim CEO, Moses-Ludington Hospital

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant’s and relatives’ ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections.

Heritage Commons Residential Health Care was enforced four times in the last ten years based on surveys in 2007, 2008, 2009 and 2010. However, none of the deficiencies rise to the level of repeat deficiencies that would taint the operator.

The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the applicant have provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past 10 years.

Conclusion

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

The application from ILH seeks to formalize its relationship as active parent and co-operator of MLNH and MLH. ILH requests permission to accept the amended certificates of incorporation of MLNH and MLH. Approval of the proposed establishment would grant ILH direct powers over MLH and MLNH corporations. ILH will work with MLH and MLNH in the management of the day-to-day direct operations.

MLH and MLNH will enable ILH the ability exercise active parent powers as stated below. The active powers will be exercised once approval has been granted. MLH, MLNH and ILH currently have mirror boards. The terms and conditions of the agreement are summarized as follows:

- a) to elect and remove Directors;
- b) to dismiss the Chief Executive Officer;
- c) to approve operation and capital budgets and financial and strategic/business plans;
- d) to approve the purchase, acquisition, sale or mortgage or receipt of gift of real property;
- e) to approve any borrowing or indebtedness in claims; litigation; guaranteed payments of judgments;
- f) to approve contracts for the management of the corporation, reorganization, and the establishment of, investment in or purchase of, corporations,
- g) limited liability companies, partnerships, joint ventures, and other entities or affiliations;
- h) to approve any amendments to the Certificate of Incorporation or Bylaws of the Corporation;
- i) amend the articles of incorporation or take action to dissolve or liquidate any facility;
- j) to approve, fix the number of, and remove, with or without cause, the directors of the Hospital or Nursing Home;
- k) to approve any application to the NYS Dept. of Health submitted by the Hospital or Nursing Home;
- l) to approve any final settlement by the Hospital or Nursing Home related to Medicaid or any other payor audits;
- m) to approve any rate appeals to be initiated by the Hospital or Nursing Home.

There are no costs associated with the subject application. MLH and MLNH will be subsidiaries in ILH, Inc. ILH, MLH, and MLHN will remain separate not-for-profit Article 28 corporations and maintain separate operating certificates. There will be no change in authorized services or number or type of bed complements at MLH or MLNH as a result of the proposed establishment.

Capability and Feasibility

There are no significant issues of capability or feasibility associated with the subject application.

Presented as BFA Attachment A, is the financial summary for Inter-Lakes Health, Inc. and Subsidiaries. As shown on Attachment A, the facility has maintained an average positive working capital position of \$1,576,075 and an average negative net asset position of \$5,784,953 during the period shown. Also, ILH achieved an average operating excess of expenses over revenues totaling \$317,152 for the period shown. The loss was due to medical malpractice costs rising more than budgeted and employee benefits increasing more than estimated. A regular review of budgeted items and the consolidation of benefits and administration under the proposed active parent arrangement will cut costs and help offset losses.

The applicant's proposal to become active parent and co-established with MLH and MLNH is consistent with its governance restructuring effort to streamline and strengthen the MLH and MLNH System. The applicant is committed to restructuring for efficiencies and streamlining management to further enhance revenue from its Hospital and Nursing Home service.

It appears the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

<h2>Attachments</h2>

- | | |
|------------------|---|
| BFA Attachment A | Financial Summary – Inter-lakes Health, Inc. |
| BFA Attachment B | Organizational Chart – Inter-lakes Health, Inc. |

**New York State Department of Health
Public Health and Health Planning Council**

January/February 2012

Ambulatory Surgery Center - Establish/Construct

Exhibit #7

	<u>Number</u>	<u>Applicant/Facility</u>
1.	111552 B	The Surgery Center of Bayside, LLC (Queens County)
2.	112032 B	PBGS, LLC d/b/a Downtown Brooklyn Gynecology Center (Kings County)
3.	112244 E	Unity Linden Oaks Surgery Center, LLC (Monroe County)



Public Health and Health Planning Council

Project # 111552-B The Surgery Center of Bayside, LLC

County: Queens (Bayside)

Program: Ambulatory Surgery Center

Purpose: Establishment and Construction

Submitted: June 28, 2011

Executive Summary

Description

The Surgery Center of Bayside, LLC, an existing limited liability company, requests approval to establish and construct a multi-specialty freestanding ambulatory surgery center (FASC) to perform procedures relating to otolaryngology, orthopedics and ophthalmology. The FASC will be located in leased space on the second floor of a to-be-constructed building at 45-64 Frances Lewis Boulevard, Bayside. The proposed members of The Surgery Center of Bayside, LLC consist of three Classes:

Class A	50%
Class B	20%
Class C	30%

The proposed members in Class A of the LLC are 23 local board certified physicians who must meet the eligibility requirements per the Operating Agreement.

Class B proposed members include one non-physician and three board-certified physicians who are also members of other ASCs and have been previously approved by the Public Health Council.

The Class C proposed member is NYEE Holding Corp., a not-for-profit corporation formed by New York Eye and Ear Infirmary specifically to participate in this joint venture. New York Eye and Ear Infirmary, who is a member of Continuum Health Partners, has guaranteed to fund NYEE Holding Corps proportionate share of equity required for project costs and working capital.

The facility will enter into an administrative services agreement with Ambulatory Surgery Centers of America (ASCOA) to provide services including, but not limited to, budgeting, credentialing and billing.

In response to the Department's inquiry, objection was received by one of the three hospitals in the area of the proposed ASC – Flushing Hospital and Medical Center. The information submitted by the hospital provides an

insufficient basis for reversal or modification of the Department's recommendation for five-year limited life approval based on public need, financial feasibility and operator character and competence.

Total project costs are estimated at \$7,388,104.

DOH Recommendation

Contingent approval for a 5-year limited life.

Need Summary

The number of projected procedures is as follows:

Current Year:	0
First Year:	7,000
Third Year:	7,426

Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Summary

Project costs will be met with \$738,810 in equity and a \$6,649,294 bank loan.

Budget:	Revenues:	\$ 6,885,625
	Revenues:	<u>5,363,061</u>
	Gain/(Loss):	\$ 1,522,564

Subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

The proposed FASC will occupy approximately 13,460 SF on the second floor of a new, fully-sprinklered, 2-story commercial building. The program will have 4 Class 'C' operating rooms, a pre-op area with 7 bays, a recovery area with 12 bays, and the appropriate support facilities.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval for limited life of five years from the date of the issuance of an operating certificate is recommended contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation. Said reports shall include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission by the governing body of the ambulatory surgery center of an organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of the statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and if it is concluded that proceeding with the proposal is acceptable. [RNR]
5. Submission of an assumed name, if applicable, acceptable to the Department. [HSP]
6. Submission of an executed administrative services agreement that is acceptable to the Department. [BFA, CSL]
7. Submission of an executed loan commitment that is acceptable to the Department. [BFA]
8. Submission of an executed sublease and a lease, that is acceptable to the Department. [CSL]
9. Submission of an executed Amendment to the Articles of Organization, that is acceptable to the Department. [CSL]
10. Submission of an executed Operating Agreement, that is acceptable to the Department. [CSL]
11. Submission of an executed Certificate of Incorporation of NYEE Holding Corp., that is acceptable to the Department. [CSL]

Approval conditional upon:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to start of construction. [AER]
6. The applicant shall complete construction by August 31, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

February 2, 2012.

Need Analysis

Background

The Surgery Center of Bayside, LLC seeks approval to establish and construct a diagnostic and treatment center (D&TC) that will be certified as a multi-specialty freestanding ambulatory surgery center (FASC), to be located at 45-64 Francis Lewis Blvd, Bayside.

Analysis

The primary service area is Queens County. More specifically, the primary service area will include 14 zip codes in the Northeastern section of Queens County: zip code 11361 where the proposed Center would be located; zip codes 11362-364, zip codes 11354-360, zip codes 11365-367.

The proposed Center will serve the following communities:

Bayside	Douglaston	Little Neck	Oakland Gardens
Aburndale	Bay Terrace	Clearview	College Park
Flushing	Whitestone	Fresh Meadows	Hillcrest
Kew Garden Hills			

The proposed Center is not in a HPSA area (HRSA).

The table below presents data on the number of patients at the four multi-specialty ASCs in Queens County. From 2008 to 2009, this number increased nearly nine (9) percent.

<u>Multi-Specialty ASCs – Queens County</u>	<u>2008</u>	<u>2009</u>	<u>Change</u>
Choices Women's Medical Center	9,056	9,641	6.5%
Hillside D&TC	649	1,309	101.7%
Physicians' Choice Surgicenter	1,057	1,164	10.1%
Queens Surgi-Center	5,442	5,525	1.5%
Total	16,204	17,639	8.9%

Source: SPARCS 2008-09

The number of total ambulatory surgery patients in Queens County was 94,437 in 2008 and 99,460 in 2009; an increase of 5.3 percent.

The proposed Center will have a transfer and affiliation agreement for backup and emergency services with Queens Hospital center that is about 5.8 miles and 10 minutes travel from the proposed Center.

The applicant commits to providing charity care for persons without the ability to pay, and to utilize a sliding fee scale for persons who are unable to pay the full charge for services or are uninsured.

The number of D&TCs and hospital-based ASCs in Queens County is as follows:

<u>Type of Facility-Queens County</u>	<u>Single Specialty</u>	<u>Multi-Specialty</u>
D&TC	1-Gastroenterology	---
D&TC	1-Ophthalmology	---
D&TC	---	4
Hospitals	---	10

Source: HFIS

None of the four multi-specialty D&TCs and ten hospitals are located in the proposed Center's zip code 11361. Of the ten hospitals listed above, only two hospitals are located in zip code 11355, one of the 14 zip codes in the primary service area of the proposed Center. These two hospitals are Flushing Hospital Medical Center, which does not have an extension clinic, and New York Hospital Medical Center of Queens, which does have an extension clinic. The

Center for Developmental Disability and Neuroscience Center is located in zip code 11365 and the Family Health Center is located in zip code 11355. These are two of the 14 zip codes in the primary service area of the proposed Center.

The remaining two single specialty D&TCs are also not located in zip code 11361 or in any of the 14 zip codes in the primary service area of the proposed Center.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Program Proposal

Establish a diagnostic and treatment center that will also be federally certified as an ambulatory surgery center.

Proposed Operator	The Surgery Center of Bayside
Operator Type	LLC
Site Address	45-64 Francis Lewis Boulevard, Bayside
Surgical Specialties	Multispecialty, including: Otolaryngology Orthopedics Ophthalmology
Operating Rooms	4
Procedure Rooms	0
Hours of Operation	Monday through Friday from 7:00 am to 6:00 pm (Extended as necessary to accommodate patient needs).
Staffing (1 st Year / 3 rd Year)	24.74 FTEs / 26.09 FTEs
Medical Director(s)	Gary S. Hirshfield, MD
Emergency, In-Patient and Backup Support Services Agreement	Will be provided by Queens Hospital Center
Distance	5.8 miles and 10 minutes travel time
On-call service	Access to the facility's on-call physician during hours when the facility is closed.

Integration with Community Resources

The center has had discussions with Queens Hospital Center to provide medical clearances for surgery and to provide primary care follow-up for all patients referred who require such access. Additionally, the center will conduct community outreach, including working with community based agencies and groups to discuss the services available at the center and to provide information about other health services in the area.

The center intends to affiliate with all developing Accountable Care Organizations and/or Medical Homes for both its benefit and the benefit of the community. They will utilize an Electronic Medical Record system and plan to join the Queens Consortium for Healthcare Information Exchange, an operational Regional Health Information Organization. The intention is to have full participation in place at the time of opening.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services.

Character and Competence

The members of the LLC are:

A. Class A (50%)

Andrew Blank, MD	2.450%	Manager
Edwin Chan, MD	2.450%	Manager
Aspasia Draga, MD	1.225%	Manager
Irene Draga, MD	1.225%	Manager
David Edelstein, MD	1.225%	Manager
Donald Fox, MD	2.450%	Manager
Mark Friedman, MD	2.450%	Manager
Gregg Gordon, MD	2.450%	Manager
Gary Hirshfield, MD	2.450%	Manager
Cheryl Kaufmann, MD	2.450%	Manager
Yong Kim, MD	2.450%	Manager
Daniel Laroche, MD	2.450%	Manager
Eric Lichtenstein, MD	3.450%	Manager
Greg Mashkevich, MD	1.225%	Manager
Peter Menger, MD	2.450%	Manager
Gurston Nyquist, MD	2.450%	Manager
Nilesh Patel, MD	2.450%	Manager
Stephen Perrone, MD	2.450%	Manager
Deborah Silberman, MD	1.225%	Manager
Gerald Suh, MD	2.450%	Manager
Gennady Ukrainsky, MD	2.450%	Manager
Ken Wald, MD	1.225%	Manager
Zhenqing Brett Wu, MD	2.450%	Manager

Class B (20%)

Thomas J. Bombardier, MD	6.000%	Manager
Brent Lambert, MD	6.000%	
George Violin, MD	6.000%	
Luke Lambert	2.000%	

Class C (30%)

NYEEI Holding Corp.	30.000%	
Allen H. Fine		Manager
Charles Figliozzi		Manager
Ralph Lambiasi		

The Class A members are individual physicians who currently have medical practices within the proposed service area.

The Class B members are employees of, and have ownership interests in, Ambulatory Surgery Centers of America (ASCOA). ASCOA provides administrative and consulting services to ambulatory surgery centers nationwide. The center will enter into an administrative services agreement with ASCOA. Additionally, all four Class B members have ownership interests in at least one approved and operating Article 28 ambulatory surgery center in New York State.

The Class C member, NYEEI Holding Corp., is a proposed not-for-profit subsidiary of New York Eye and Ear Infirmary, a 69-bed hospital located in Manhattan. The proposed directors of NYEEI Holding Corp. are employees of the hospital. The hospital is a member of Continuum Health Partners. Neither NYEEI nor Continuum will take an active role in the operation of the center.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's and relatives' ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the applicants have provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past 10 years.

Conclusion

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants' character and competence or standing in the community.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Administrative Services Agreement

The Surgery Center of Bayside, LLC, LLC will enter into an administrative services agreement with ASCOA, whose members are Thomas Bombardier, M.D., Brent Lambert, M.D., Luke Lambert, and George Violin, M.D. The consultant will provide certain non-professional business and administrative services to the ambulatory surgery center relating to the operation of the facility.

The applicant has submitted a proposed agreement, which is summarized below:

<i>Facility:</i>	NYEEQASC, LLC
<i>Contractor:</i>	Cataract and Laser Center Partners, LLC d/b/a Ambulatory Surgical Centers of America
<i>Administrative Term:</i>	10 years with the option to renew for successive three year terms.
<i>Compensation:</i>	\$450,000 per year (\$37,500/month)
<i>Duties of the Contractor:</i>	Financial management services, strategic planning and development, policies and procedures, contracting services, personnel, billing and collection services, supply acquisition, utilities and waste management, operating licenses and banking.

Sublease Rental Agreement

The applicant will lease approximately 13,459 square feet of space on the second floor of a to-be-constructed building located at 45-64 Frances Lewis Boulevard, Bayside under the terms of the proposed sublease agreement summarized below:

<i>Sublessor:</i>	New York Eye & Ear Infirmary
<i>Sublessee:</i>	NYEEQASC, LLC
<i>Term:</i>	20 years with the option to renew for two additional five year terms.
<i>Rental:</i>	\$471,065 (\$35.00 per sq. ft.) for the first four years with an 11% increase every five years.
<i>Provisions:</i>	The sublessee will be responsible for taxes, utilities, insurance and maintenance.

The applicant has indicated that the lease will be a non-arm's length lease agreement, and letters of opinion from Licensed Commercial Real Estate Brokers have been submitted indicating rent reasonableness.

Total Project Costs and Financing

Total project costs are estimated at \$7,388,104, broken down as follows:

Renovation & Demolition	\$3,364,750
Design Contingency	336,475
Construction Contingency	336,475
Architect/Engineering fees	484,524
Consultant fees	100,000
Movable Equipment	2,524,000
Financing Costs	66,493
Interim Interest Expense	132,986
Application Fee	2,000
Additional Processing Fee	<u>40,401</u>
Total Project Cost	\$7,388,104

Project costs are based on a March 1, 2012 construction start date and a six month construction period.

The applicant's financing plan appears as follows:

Cash	\$738,810
Loan (6.52%, 7 years)	\$6,649,294

A letter of interest from TD Bank has been submitted by applicant.

Operating Budget

The applicant has submitted an operating budget in 2011 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$6,490,362	\$6,885,625
Expenses:		
Operating	\$3,715,173	\$3,882,405
Capital	<u>1,583,376</u>	<u>1,480,656</u>
Total Expenses;	\$5,298,549	\$5,363,061
Net Income:	\$1,191,813	\$1,522,564
Utilization:	7,000	7,426
(procedures)		
Cost per procedure:	\$756.94	\$722.20

Utilization by payor source for the first and third years is as follows:

	<u>Years One and Three</u>
Commercial Fee for Service	15%
Commercial Managed Care	50%
Medicare Fee for Service	25%
Medicare Managed Care	2%
Medicaid Fee for Service	2%
Medicaid Managed Care	3%
Private Pay	1%
Charity Care	2%

Expense and utilization assumptions are based on the historical experience of the participating physicians with similar centers within New York State. The applicant has submitted physician referral letters in support of utilization projections.

Capability and Feasibility

The applicant will finance the project costs through a loan from TD Bank for \$6,649,294 at stated terms, with the remaining \$738,810 from proposed member's equity.

Presented as BFA Attachment C, is the net worth statements of the proposed members, which indicates the availability of sufficient funds.

Working capital needs are estimated at \$893,843, based on two months of third year expenses and will be provided as member's equity. Presented as BFA Attachment D, is the pro-forma balance sheet of NYEEQASC, LLC as of the first day of operation, which indicates positive member's equity of \$1,632,653.

The submitted budget indicates a net income of \$1,191,813 and \$1,522,564 during the first and third years of operation, respectively. Reimbursement will be determined on an average rate by ambulatory surgery center and region enhanced by the applicable service intensity weight (SIW). The budget appears reasonable.

Presented as BFA Attachments E and F are the financial summaries of the facilities currently operated by proposed members. As shown, Specialty Surgery Center of Central New York and Melville Surgery Center, LLC, maintained positive working capital and equity and generated positive net income for 2009 and 2010.

Subject to noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Review Summary

The second floor will consist of approximately 13,460 SF of new construction and will consist of a patient waiting area, interview area, offices, exam room, pre-op area with seven bays, PACU 1 with seven bays, PACU 2 with five bays, a nurse station, four Class 'C' operating rooms, an anesthesia work room, clean and soiled work rooms, sterile storage room, other storage rooms, patient and staff toilets, staff lounge, and men's and women's staff locker rooms with showers.

Environmental Review

The Department has deemed this project to be a TYPE I Action and the lead agency shall be the county of Queens or the authority having jurisdiction.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A

Organizational Chart of NYEEQASC, LLC with percentage of membership interest of proposed members.

BFA Attachment B	Financial Summary, New York Eye & Ear Infirmary
BFA Attachment C	Net Worth of proposed members
BFA Attachment D	Pro-forma Balance Sheet
BFA Attachment E	Financial Summary, Specialty Surgery Center of Central New York
BFA Attachment F	Financial Summary, Melville Surgery Center
BFA Attachment G	Establishment Checklist
BHFP Attachment	Map

Supplemental Information

Outreach

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: Queens Hospital Center
82-68 164th Street
Jamaica, NY 11432

No response.

Facility: New York Hospital Medical Center of Queens
56-45 Main Street
Flushing, NY 11355

No response.

Facility: Flushing Hospital and Medical Center
45th Avenue and Parsons Boulevard
Flushing, NY 11355

Current OR Use	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	Inpatient		
80%	7,200	2,800	Not specified ¹	Yes ²

¹ Flushing states that five of the 23 physicians proposed to practice at the ASC have privileges at the hospital.

² Two of the five physicians have block time reserved in the OR.

Flushing Hospital opposes the application. The hospital estimates that it will lose 1,000 cases to the proposed facility, entailing a gross revenue loss of \$2 million. The hospital states that on total costs of its OR of \$22.8 million, this loss would be devastating. The hospital also states that its ophthalmology and general surgery residency training programs would be adversely affected by the loss of ophthalmology and ENT cases to the proposed ASC. The hospital does not describe any specific effect of the projected loss of revenues on its community-oriented services.

In 2009, Flushing Hospital received revenue, gains and other support of \$293.1 million over expenses of \$279.0 million, for an excess of \$14.1 million. In 2010, the hospital received revenue, gains and other support of \$282.2 million against expenses of \$274.5 million, for an excess of \$7.4 million. In 2009, the hospital had a working capital ratio of 0.97. In 2010, the ratio was 0.94. The hospital's total bad debt and charity care in 2009 was \$29.6 million, and in 2010, the total came to \$27.6 million.

Supplemental Information from Applicant

- Need and Sources of Cases

The applicant states that 20 percent of the projected procedures for the proposed facility are now performed at New York Eye and Ear Infirmary, on patients that travel from the proposed facility's service area. An additional 60 percent of the proposed cases are now performed in freestanding surgery centers or in office-based practices. The applicant also states that the proposed ASC will address the needs of patients by reducing current scheduling backlogs, improving access to the broader community and providing state-of-the-art facilities and equipment to the region's residents.

- Staff Recruitment and Retention

Some staff will be recruited from the existing private practices of the applicant physicians. Additional staff recruitment will be directed at the general marketplace. Measures to recruit and retain skilled staff and counter staff turnover will include attractive compensation and benefits packages, continuing education opportunities, recognition and appreciation programs to reward high performers, and an open work atmosphere that encourages staff involvement and continuous improvement.

- Office-Based Cases

The applicant states that 60 percent of the procedures projected for the facility are currently performed in both office-based settings and in non-hospital affiliated ambulatory surgery settings.

OHSM Comment

The Department notes that only one of three hospitals in the area of the proposed ASC chose to comment on this application.

The objecting hospital projects a loss of 1,000 cases, or 10 percent of its total surgical volume (inpatient and outpatient) to the proposed ASC. The hospital states that five physicians affiliated with the proposed ASC currently practice at its facility, two of whom have reserved OR block time. This compares to 37 other physicians who have OR block time at the hospital and an unspecified number who perform surgery at the facility without reserved block time. The hospital does not make clear how many of the cases projected to be lost would be attributable to the five ASC physicians (their current caseloads at the hospital are not specified) and how many may be based on the hospital's stated speculation that other physicians currently performing surgery at the hospital might at some point join the proposed ASC. These uncertainties, and the fact of only one hospital commenting in opposition to the application, do not provide a sufficient basis for reversal or modification of the recommendation for five-year, limited life approval of the proposed ASC based on financial feasibility, public need and operator character and competence.



Public Health and Health Planning Council

Project # 112032-B

PBGS, LLC
d/b/a Downtown Brooklyn Gynecology Center

County: Kings (Brooklyn) **Program:** Ambulatory Surgery Center
Purpose: Establishment and Construction **Submitted:** July 18, 2011

Executive Summary

Description

PBGS, LLC d/b/a Downtown Brooklyn Gynecology Center, requests approval to establish and construct an Article 28 single-specialty, freestanding ambulatory surgery (FASC) center to perform abortion and other gynecology procedures, at 81 Willoughby St., Brooklyn. The proposed membership interest in PBGS, LLC is as shown below:

<u>Proposed members</u>	<u>Percent</u>
Dmitry Bronfman, M.D.	92%
Frontier Healthcare Associates, LLC	8%
-- Oleg Gutnik, M.D. (50%)	
-- Jordan Fowler (50%)	

Dmitry Bronfman, M.D. specializes in obstetrics and gynecology, and is converting the surgical aspect of his existing private, office-based practice to an Article 28 FASC through this application. Oleg Gutnik, M.D. will not practice at the Center.

As investors or through an equal ownership in Frontier Healthcare Associates, LLC, Jordan Fowler and Dr. Gutnik have an ownership interest or an indirect ownership interest in the following FASCs:

- *Digestive Diseases and Diagnostic & Treatment Center, LLC* (Kings County)
- *QEASC, LLC* (Queens County).
- *Queens Boulevard GI, LLC* (Queens County)
- *Putnam GI, LLC* (Putnam County)
- *Yorkville Endoscopy, LLC* (New York County)

The facility will enter into an administrative services agreement with Frontier Healthcare Management, LLC. Members include Mr. Fowler (47.7%), Dr. Gutnik (47.5%), and Mr. Roy Bejarano (5.0%).

No responses were received to the Department's inquiry to local hospitals regarding the impact of the proposed ASC in the service area.

Total project costs are estimated at \$3,168,798.

DOH Recommendation

Contingent approval for a 5-year limited life.

Need Summary

The Center will have 1 operating room, 2 procedure rooms, 3 pre-operative holding stations, and 7 post-anesthesia recovery bays. The projected number of visits to be performed is as follows:

Current Year:	0
First Year:	4,560
Third Year:	4,838

All the projected procedures are presently being performed in the member physician's private practice.

Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Summary

Project costs will be met with \$296,899 in cash and a \$2,871,899 bank loan.

Budget:	<i>Revenues:</i>	\$ 3,485,835
	<i>Expenses:</i>	<u>2,591,431</u>
	<i>Gain/(Loss):</i>	\$ 894,404

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

The proposed space is located on the second floor of an existing eight-story commercial building in Brooklyn. The floor area to be renovated is approximately 8,000 SF.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval for a limited life of 5 years from the date of issuance of an operating certificate is recommended contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation. Said reports shall include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission by the governing body of the ambulatory surgery center of an organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of the statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and if it is concluded that proceeding with the proposal is acceptable. [RNR]
5. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
6. Submission of an executed building lease that is acceptable to the Department of Health. [BFA, CSL]
7. Submission of a loan commitment for project costs acceptable to the Department of Health. [BFA]
8. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
9. Submission of a Restated Article of Organization of PBGS, LLC which is acceptable to the Department. [CSL]
10. Submission of the Operating Agreement which is acceptable to the Department. [CSL]
11. Submission of a Joinder to the Operating Agreement for PBGS, LLC which is acceptable to the Department. [CSL]
12. Submission of an Amended and Restated Articles of Organization of Frontier Healthcare Associates, LLC. which is acceptable to the Department. [CSL]
13. Submission of the Operating Agreement of the LLC member which is acceptable to the Department. [CSL]

Approval conditional upon:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the start of construction. [AER]
7. The applicant shall complete construction by October 1, 2013. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

February 2, 2012.

Need Analysis

Background

PBGS, LLC seeks approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) that will be certified as a single-specialty freestanding ambulatory surgical center (FASC) specializing in gynecological services. PBGS, LLC will do business as Downtown Brooklyn Gynecology Center, and be located at 81 Willoughby Street, Brooklyn.

Analysis

The service area for this project is Kings County. The proposed Center is located in a health professional shortage area for primary care and mental health services. It is also located in a Medically Underserved Area/Population (HRSA).

Dr. Bronfman has projected that the facility will perform 4,560 surgical procedures in the first year. This is the level of procedures currently being performed in his private practice. Dr. Bronfman reported that none of the projected procedures will migrate to the Center from any hospital.

The following table provides information on the number and percent of procedures by type:

<i>Breakdown of Procedures by Type</i>				
<u>CPT Code</u>	<u>Description</u>	<u>Percent</u>	<u>Cases Year 1</u>	<u>Cases Year 3</u>
59812	Treatment of incomplete abortion	1%	46	49
58120	Dilation and Curettage	5%	228	242
58558,				
58653	Hysteroscopy	2%	92	98
56515*	Level I Female Reproductive Procedures	15%	682	724
572, 259,				
820	Level II Female Reproductive Procedures	4%	183	194
59840,				
59841	Level III Female Reproductive Procedures	73%	3,329	3,532
Total		100%	4,560	4,838

* Also includes the following CPT-4 Codes: 57454, 57511 and 59200.

Detailed breakdown of the percentage of these procedures is as follows:

<u>CPT-4 Code</u>	<u>% of Procedures under Each Code</u>
56515 (Destruction of lesion; extensive)	2%
57454 (Colposcopy with biopsy of cervix)	8%
57511 (Cryocautery of cervix, initial or repeat)	3%
57522 (Conization of cervix, loop electrode excision)	1%
58120 (Dilation and curettage, diagnostic and/or therapeutic)	5%
58558 (Hysteroscopy, surgical, with biopsy of endometrium)	1%
58563 (Hysteroscopy, surgical, with endometrial ablation)	1%
59200 (Insertion of cervical dilator)	2%
59812 (Treatment of incomplete abortion, completed surgically)	1%
59820 (Treatment of missed abortion, completed surgically)	3%
59840 (Induced abortion, by dilation or curettage)	68%
59841 (Induced abortion, by dilation and evacuation)	5%

All patients will be treated on the basis of need for the procedure, regardless of their ability to pay. The applicant commits to providing two (2) percent charity care. Brooklyn Hospital Center has entered into a transfer and affiliation agreement to provide backup and emergency services to the Center.

The proposed Center will be open Monday-Saturday, 8:00 am to 5:00 pm.

There is one D&TC Extension Clinic in Kings County that provides abortion O/P and other services as follows; this clinic is in the same zip code 11201 where the proposed Center will be located.

Abortion O/P	Family Planning O/P	Medical Social Services O/P
Outpatient Surgery	Pediatric O/P	Prenatal O/P
Primary Medical Care O/P		

Conclusion

Downtown Brooklyn Gynecology Center has the opportunity to improve access to care for the communities in Kings County. The Center's viability is not based upon patient migration from neighboring hospitals. Dr. Bronfman has entered into an affiliation agreement with Brooklyn Hospital Center for backup and emergency services.

Recommendation

From a need perspective, approval is recommended for a limited life of five years from the date of issuance of an operating certificate.

Programmatic Analysis

Program Proposal

Establish a diagnostic and treatment center that will also be federally certified as an ambulatory surgery center.

Proposed Operator	PBGS, LLC
Operator Type	LLC
Doing Business As	Downtown Brooklyn Gynecology Center
Site Address	81 Willoughby Street, Brooklyn
Surgical Specialties	Gynecology including abortion
Operating Rooms	1
Procedure Rooms	2
Hours of Operation	Monday through Saturday from 8:00 am to 5:00 pm (Extended as necessary to accommodate patient needs).
Staffing (1 st Year / 3 rd Year)	14.90 FTEs / 15.60 FTEs
Medical Director(s)	
Emergency, In-Patient and Backup Support Services Agreement	Will be provided by the Brooklyn Hospital Center
Distance	1.5 miles and 6 minutes travel time
On-call service	Access to the facility's on-call physician during hours when the facility is closed.

Integration with Community Resources

The applicant plans to work with its patients to educate them regarding availability of, and services offered by, local primary care physicians. Additionally, prior to leaving the center each patient will be provided information concerning the local availability of post-abortion counseling, family planning and contraception options.

The center intends to promote the accessibility of their services for all persons in need of such services with particular emphasis on traditionally underserved populations. Additionally, the applicant is aware that four provider-led Medicaid Health Homes in Brooklyn have been conditionally approved and at the appropriate time will consider the potential of joining or affiliating with them. The center will implement an Electronic Medical Record system and will investigate the potential of affiliating with the Brooklyn Hospital Center's Regional Health Information Organization.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services.

Character and Competence

The members of the LLC are:

<u>Name</u>	
Dmitry Bronfman, MD	92% Member / Manager
Frontier Healthcare Associates, LLC	8% Member
Oleg Gutnick, MD – 50%	
Jordan Fowler – 50%	Manager

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's and relatives' ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the applicant have provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past 10 years.

Conclusion

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Administrative Services Agreement

Frontier Healthcare Management, LLC will be providing all of the following services, however the Facility retains ultimate control in all of the final decisions associated with the services.

The applicant has submitted an executed agreement, which is summarized below:

Facility: PBGS, LLC d/b/a Downtown Brooklyn Gynecology Center
Contractor: Frontier Healthcare Management, LLC
Dated: July 1, 2011

Services

Provided: Provide executive oversight including:
 Staffing, scheduling, accounting, compliance, medical staff credentialing, accreditation, physical plant and material management.
 Provide management of revenue cycle services (billing and collections), including assessing business office policies, initiate third party payor contracts negotiations; prepare quarterly financial reports and analysis.
 Provide marketing and networking services including: marketing plan, strategic planning, and annual budgeting.
 Provide quality improvement management including: familiarize staff with clinical policies, monitor and report clinical benchmarks.
 Provide strategic planning.
 Facilitate acquisition and implementation of electronic health records.

Term: 3 years. May be renewed on annual basis upon mutual agreement.

Fee: \$150,000 per annum.

Lease Rental Agreement

The applicant has submitted a letter of interest for the site under the terms of the proposed lease agreement summarized below:

Lessor: Kecheck Realty Corp.
Lessee: PBGS, LLC
Site: 81 Willoughby Street, Brooklyn, NY 11201
Term: 15 Years
Rental: First year \$144,000 (\$18.00 per sq. ft) per annum / \$12,000 per month. Increases 2% annually.
Provisions: Included: hot and cold water, security, real estate taxes, and elevator.
 Not included: heat, sprinkler and fire alarm services.

The applicant has indicated that the lease will be an arm's-length lease arrangement, and has submitted letters from real estate brokers attesting to the reasonableness of the per square foot rental.

Total Project Cost and Financing

Total project costs for renovations and the acquisition of movable equipment is estimated at \$2,871,899 itemized as follows:

Renovation & Demolition	\$ 1,824,000
Design Contingency	182,400
Construction Contingency	182,400
Architect/Engineering Fees	145,920
Other Fees (Consulting)	60,800
Movable Equipment	403,962
Financing costs	25,750
Interim Interest Expense	28,969
Application Fee	2,000
Additional Processing Fee	<u>15,698</u>
Total Project Cost	<u>\$2,871,899</u>

Project costs are based on a June 1, 2012 construction start date and a four month construction period. The applicant's financing plan appears as follows:

Equity	\$ 296,899
Bank Loan @4.5%, five years	2,575,000

Operating Budget

The applicant has submitted an operating budget in 2011 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$3,291,934	\$3,485,835
Expenses:		
Operating	\$2,112,775	\$2,189,544
Interest	123,973	72,560
Depreciation and Rent	<u>323,510</u>	<u>329,328</u>
Total Expenses	\$2,560,258	\$2,591,431
 Net Income	 <u>\$731,676</u>	 <u>\$894,404</u>
 Utilization: (procedures)	 4,560	 4,838
Cost Per Procedure:		
Operating:	\$463.33	\$452.57
Capital:	<u>98.13</u>	<u>83.07</u>
Total:	\$561.46	\$535.64

Utilization by payor source for the first and third years is as follows:

	<u>First Year</u>	<u>Third Year</u>
Commercial Insurance-Fee-For-Service	12.1%	11.7%
Commercial Insurance-Managed Care	22.5%	22.5%
Medicare Fee-For-Service	0.3%	0.3%
Medicaid Fee-For-Service	9.6%	9.6%
Medicaid Managed Care	45.5%	45.9%
Self Pay	8.0%	8.0%
Charity Care	2.0%	2.0%

Expense and utilization assumptions are based on the experience of the proposed physician member's private practice.

Capability and Feasibility

Project cost will be satisfied by a loan of \$2,575,000 from TD Bank at stated terms, for which a letter of interest has been provided, with the remaining \$296,899 from proposed member's equity.

Working capital requirements, estimated at \$431,906, appear reasonable based on two months of third year expenses. The applicant will finance \$215,953 via a revolving line of credit at an interest rate of 3.75% for a one year term, for which a letter of interest has been provided by TD Bank. Presented as BFA Attachment B is a summary of net worth statement of the proposed members of Downtown Brooklyn Gynecology Center, which indicates the availability of sufficient funds for the stated levels of equity and project cost. Presented as BFA Attachment C, is the pro-forma balance sheet of Downtown Brooklyn Gynecology Center as of the first day of operation, which indicates positive member's equity position of \$512,853.

The submitted budget indicates a net income of \$731,676 and \$894,404 during the first and third years of operation, respectively. Reimbursement is determined on an average rate by free-standing ambulatory surgery centers and region enhanced by the applicable service intensity weight (SIW). The budget appears reasonable.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Review Summary

The second floor will consist of approximately 8,000 SF of renovation and will include a patient waiting area, reception and filing area, pre-op and recovery area with (10) recovery bays, a centrally located nurse station for visual observance of patients and traffic to the procedure rooms, (2) Class 'B' gynecological procedure rooms, (1) Class 'C' operating room, a decontamination room, anesthesia work room, scope processing room, scope storage room, clean and soiled work rooms, other storage rooms, offices, conference room, patient and staff toilets, and a staff lounge with lockers. The building is fully handicapped accessible and is provided with a 24 hour central station fire alarm system. A Type 1 Essential Electrical System (EES) will also be provided for emergency power.

Environmental Review

The Department has deemed this project to be a TYPE II Action and will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart of Downtown Brooklyn Gynecology Center LLC
BFA Attachment B	Summary Net Worth Statement of Proposed Members of Downtown Brooklyn Gynecology Center
BFA Attachment C	Pro-forma Balance Sheet
BFA Attachment D	Establishment Checklist
BHFP Attachment	Map

Supplemental Information

Outreach

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: The Brooklyn Hospital Center
Downtown Campus
121 DeKalb Avenue
Brooklyn, New York 11201

No response.

Facility: Woodhull Medical & Mental Health Center
760 Broadway
Brooklyn, New York 11206

No response.

Facility: Long Island College Hospital
339 Hicks Street Street
Brooklyn, New York 11201

No response.

Facility: New York Methodist Hospital
506 6th Street
Brooklyn, New York 11215

No response.

Supplemental Information from Applicant

- Need and Sources of Cases

The first-year caseload of 4,560 procedures for the proposed ASC will be drawn from the applicant physician's current office-based practice. The projected procedures for the ASC's third year (4,838) reflect a modest allowance for growth of three percent per year from the existing practice. The applicant also states that the ASC will serve a Brooklyn population that contains a large percentage of traditionally medically underserved individuals, including racial minorities and persons living below the Federal poverty level. The applicant also believes that performing cases in a facility that is under the control of the member physician who has a practice in the local community will result in greater convenience and efficiency for patients, which will encourage utilization of the proposed ASC.

- Staff Recruitment and Retention

The applicant states that initial recruitment will be of selected staff currently employed by the applicant physician in his private practice, particularly the nursing and technical staff. Staff will also be recruited through accredited schools, newspaper advertisements, training programs, local recruiters and, if needed, job fairs. Competitive salaries and benefits are expected to aid in the recruitment and retention of skilled employees, as are a positive work environment and flexible working hours. The applicant also expects that nurses and technicians currently employed by hospitals who choose to augment their income will be able to find supplemental employment at the proposed ASC because of the flexible work schedule, without cutting back on or abandoning their hospital employment.

- Office-Based Cases

As noted the projected utilization for the proposed ASC is based upon the applicant physician's current caseload. All of the projected procedures are currently performed in his office-based practice.

OHSM Comment

The absence of comments from hospitals in the proposed service area provides no basis for reversal or modification of the recommendation for five-year limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.



Public Health and Health Planning Council

Project # 112244-E Unity Linden Oaks Surgery Center, LLC

County: Monroe (Rochester)
Purpose: Establishment

Program: Ambulatory Surgery Center
Submitted: October 24, 2011

Executive Summary

Description

Unity Health System Inc., an existing not-for-profit passive parent corporation of a health system in Western New York, requests approval to co-establish and co-license two new affiliates: Unity Ambulatory Surgery Center, Inc. and Unity Linden Oaks Surgery Center, LLC, for the propose of acquiring Linden Oaks Surgery Center, Inc., an existing Article 28 freestanding ambulatory surgery center (FASC).

Once all the necessary approvals have been received, Unity Health System Inc. will assign all of its rights and obligations under the Asset Purchase Agreement to its affiliate, Unity Linden Oaks Surgery Center, LLC, a not-for-profit limited liability company which will be a wholly-owned subsidiary of Unity Ambulatory Surgery Center, Inc., a not-for-profit corporation.

Unity Linden Oaks Surgery Center, LLC will continue the multi-specialty certification accorded to the current operator. And through an assignment of lease, the FASC will continue to lease 17,089 square feet on the ground floor of a 60,000 square foot building located at 10 Hagen Drive, Rochester. The FASC will have four operating rooms, four procedure rooms, preoperative and post-anesthesia care areas, and various other non-clinical areas.

The following summary shows the current and proposed ownership.

Current	Proposed
Linden Oaks Surgery Center, Inc. <u>Sole Owner</u> -- Vito C. Quatela, M.D.	Unity Linden Oaks Surgery Center, LLC <u>Wholly Owned Subsidiary & Sole Member</u> -- Unity Ambulatory Surgery Center, Inc <u>Sole Member Not-for-Profit Passive Parent</u> -- Unity Health System, Inc.

DOH Recommendation
Contingent approval.

Need Summary
Linden Oaks Surgery Center performed 6,835 procedures in 2010.

Program Summary
Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Summary
The \$8,500,000 asset purchase price for Linden Oaks Surgery Center, Inc. will be provided through a \$7,500,000 loan from JPMorgan Chase Bank, N.A. with repayment terms of 7 years at 5.25%, or at closing, they may pick a variable rate option of LIBOR plus 375 basis points, whichever is the lowest rate. The additional \$1,000,000 will be provided from the facility's transfer of account receivables. There are no project costs associated with this proposal.

Budget:	<i>Revenues:</i>	\$ 13,279,000
	<i>Expenses:</i>	<u>11,657,000</u>
	<i>Gain/(Loss):</i>	\$ 1,622,000

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary
This project is for Establishment action only; therefore, no Architectural recommendation is required.

Recommendations

Health Systems Agency

The Finger Lakes HSA has recommended approval of this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department of Health, with a local acute care hospital. [HSP]
2. Submission of an executed lease agreement that is acceptable to the Department. [BFA]
3. Submission of an executed administrative services agreement that is acceptable to the Department. [BFA]
4. Submission of a photocopy of the executed Articles of Organization of Unity Linden Oaks Surgery Center, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed Operating Agreement of Unity Linden Oaks Surgery Center, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of the executed assumption agreement between Unity Health System and Linden Oaks Surgery Center, Inc., as referenced in the asset purchase agreement between those parties, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed asset purchase agreement by and among Linden Oaks Surgery Center, Inc., Unity Health System and Vito C. Quatela, M.D., acceptable to the Department. [CSL]
8. Submission of evidence of the assignment to, and assumption by, the applicant of rights and obligations of Unity Health System under the October 1, 2011 asset purchase agreement by and among Linden Oaks Surgery Center, Inc., Unity Health System and Vito C. Quatela, M.D., acceptable to the Department. [CSL]
9. Submission of an executed amendment to the administrative services agreement between Linden Oaks Surgery Center, Inc., and LOSC Management, LLC, acceptable to the Department. [CSL]

Council Action Date

February 2, 2012.

Need Analysis

Background

The Unity Health System requests approval to acquire and operate Linden Oaks Surgery Center, located at 10 Hagen Drive, Rochester, Monroe County, to be co-licensed by Linden Oaks Surgery Center, LLC and Unity Ambulatory Surgery Center, Inc.

Analysis

Unity Health System Inc., an existing not-for-profit passive parent corporation of a health system in Monroe County requests approval to co-establish and co-license two new affiliates: "Unity Ambulatory Surgery Center, Inc." and "Unity Linden Oaks Surgery Center, LLC" for the purpose of acquiring Linden Oaks Surgery Center, Inc., an existing Article 28 freestanding ambulatory surgery center (FASC). Unity Linden Oaks Surgery Center, LLC will continue the multi-specialty certification accorded the current operator. The FASC will have four operating rooms, four procedure rooms, preoperative and post-anesthesia care areas as well as various non-clinical areas.

The applicant expects that for the current year they will perform 6,800 procedures and for the third year they will perform 9,185 procedures. For the third year, Medicaid and Medicaid Managed Care will comprise 9.4% and charity care will be 2.8% of total utilization.

The acquisition of the FASC will improve timely access to care, shift outpatient cases from Unity Hospital, and ensure that surgical procedures are performed in the most appropriate setting.

Existing Freestanding Ambulatory Surgery Centers – Monroe County	
<i>Facility</i>	<i>2010 Utilization</i>
Brighton Surgery Center	6,261
Greater Rochester Digestive	406
Lattimore Community Surgicenter	2,948
Linden Oaks Surgery Center	6,835
Lindsay House Surgery Center	549
Lindsay House Surgery Center	13,766

Source: SPARCS

Conclusion

Unity Health System requests approval to acquire an existing Article 28 freestanding ambulatory surgery center. Linden Oaks Surgery Center performed 6,835 surgical procedures in 2010. The acquisition of the Linden Oaks Surgery Center will allow Unity Health System to perform procedures in the most appropriate setting and improve access to outpatient services for their patients.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Change in ownership of an existing ambulatory surgery center.

Proposed Operator	Unity Linden Oaks Surgery Center
Operator Type	LLC
Site Address	10 Hagen Drive, Rochester
Services	Multi-specialty
Emergency, In-Patient and Backup Support Services Agreement	Expected to be provided by Unity Hospital
Distance	12.8 miles and 19 minutes

Integration with Community Resources

As part of the registration process the facility will ask patients if they have a primary care physician. If the patient does not have a primary care physician the facility will provide the resources needed to assist the patient.

The facility will be affiliated with the Unity Health System (System). As such, the System, in order to reach underserved communities, will advertise throughout the community. Additionally they use brochures and frequent media announcements regarding the range of services, including this free-standing facility.

The facility will use an Electronic Medical Record system and will become a part of the Regional Health Information Organization in the Rochester area. While the facility will not be pursuing membership in an Accountable Care Organization, it will be associated with the System and as such will actively participate in various pilot and demonstration projects, within the community, in which the System is a participant.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

Character and Competence

The sole member of the proposed operator is a proposed not-for-profit corporation, Unity Ambulatory Surgery Center, Inc., whose sole member is Unity Health System, an existing not-for-profit health system which is the passive parent over numerous health care facilities including a hospital, three nursing homes, two home care agencies and an enriched housing program. The managers of the proposed operator are also the board members of the sole member and are board members of the Unity Health System.

Managers

Warren Hern
Faheem A.R. Masood
Jeffrey C. Mapstone
Michael R. Nuccitelli

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's and relatives' ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections.

- Unity Living Center was fined \$1,000 for a February 2003 Resident Rights finding.
- Park Ridge Nursing Home was fined \$1,000 for an October 2002 Quality of Care finding; \$1,000 for a May 2007 Quality of Care finding; \$1,000 for a November 2008 Quality of Care finding; and \$2,000 for a February 2010 Quality of Care finding.
- Edna Tina Wilson Living Center was fined \$2,000 for an August 2002 Quality of Care finding.

The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the applicants have provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past 10 years.

Conclusion

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Background

Unity Health System, Inc. is comprised of Unity Health Care Group, Unity Housing Group, PRH, Inc. and Subsidiaries, Park Ridge Child Care Center, Inc., and Unity Health System Foundation. Included in Unity Health Care Group is Unity Hospital of Rochester, which is accredited by The Joint Commission and has received the New York State Department of Health's designation as a Stroke Center and Level 1 Perinatal Center.

Asset Purchase Agreement

The subject transaction will be completed under the terms of the executed asset purchase agreement, as summarized below:

<i>Date:</i>	October 1, 2011
<i>Seller:</i>	Linden Oaks Surgery Center, Inc.
<i>Purchaser:</i>	Unity Health System, Inc. Once all approvals have been obtained, Unity Health System will assign all of its rights and obligations to its to-be established affiliate "Unity Linden Oaks Surgery Center, LLC."
<i>Purchased Assets :</i>	All assets including: equipment and other tangible personal property, goodwill, copies of patient lists and medical records, operating manuals, marketing materials, transferable correspondence and agreements, intangible assets, assignable equipment leases, contracts, licenses and permits, real property lease, inventory, transferable intellectual property, prepaid costs and deposits, telephone and facsimile numbers, mailing addresses, accounts receivables and refunds.
<i>Excluded Assets:</i>	Financial and tax records, insurance policies and prepaid premiums, Federal Identification, Medicaid and Medicare Agreements and Numbers, cash and equivalents, and tax refunds.
<i>Assumed Liabilities:</i>	All liabilities of the seller including note payable to Vito C. Quatela M.D., PLLC, equipment leases and a Real Estate Lease.
<i>Excluded Liabilities:</i>	Liabilities from breach of agreements, taxes, environmental, legal, insurance, over billing claims, and obligations associated with seller's employees.
<i>Purchase Price</i>	\$8,500,000 \$ 300,000 escrowed upon signing this agreement \$5,131,832 at closing \$1,577,287 estimated liabilities paid off at closing \$1,490,881 estimated other obligations paid as they become due.

**Note: Unity Linden Oaks Surgery Center, LLC will directly operate the FASC and will be a wholly owned subsidiary of Unity Ambulatory Surgery Center, Inc. whose sole member is Unity Health Systems, Inc.*

The applicant's plan for financing the acquisition appears as follows:

Using a portion of the facilities account receivables	\$ 1,000,000
Bank Loan (7 year term @ 5.25% or LIBOR plus 375 basis points)	<u>7,500,000</u>
Total	\$ 8,500,000

JPMorgan Chase Bank, N.A. has committed to the above bank loan.

The applicant has provided an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, the terms are summarized below:

<i>Facility:</i>	Unity Linden Oaks Surgery Center, LLC
<i>Contractor:</i>	LOSC Management, LLC
<i>Services Provided:</i>	General Administrative Services: Provide or cause to be provided all administrative business functions. Billing and Collection Services: Collect, deposit, administer and reconcile lock box, and enforce the rights of Surgery Center as a creditor under any contract. Human Resources Management: Assist in the recruitment, compensation, evaluation and benefit advice. Strategic Planning and Budgeting: Assist in creating and evaluating a business plan and budgets. Information Services: Provide or arrange for information systems, hardware, software necessary to operate the Surgery Center and make recommendations for upgrades. Contract Negotiation and Marketing: In accordance with Surgery Center's parameters and final approval-solicit and negotiate agreements with payors and/or providers.
<i>Term:</i>	10 year – automatically renews for three additional five (5) year terms
<i>Fee:</i>	Total Annual Fee \$1,020,000 (1/12 to be paid monthly = \$85,000) Fee will increase by Consumer Price Index-All Services-Urban

The administrative services provider, LOSC Management, LLC, is a related party to Vito C. Quatela, M.D., sole member of the selling entity, Linden Oaks Surgery Center, Inc.

Lease Rental Agreement

The applicant will occupy the existing leased property under the terms, as summarized below:

<i>Date:</i>	April 30, 2003; amended 5/1/03, 4/1/05, 2/1/06, and 11/15/06
<i>Premises:</i>	17,089 gross sq. ft. located at 10 Hagen Drive, Rochester, New York.
<i>Landlord:</i>	Linden Oaks North A, LLC
<i>Lessee/Current:</i>	Linden Oaks Surgery Center, Inc. f/k/a Lindsey House Surgery Center, Inc.
<i>Lessee/Successor:</i>	Unity Linden Oaks Surgery Center, LLC
<i>Term:</i>	From May 1, 2003 to July 31, 2019
<i>Rental</i>	\$589,119 per year (\$34.47 per sq. ft.) Yearly rate will increase by 2% per year.
<i>Provisions:</i>	Utilities and increase in taxes over base year.

The Consent to Lease Assignment was signed on October 23, 2011, and documentation for rent reasonableness has been submitted.

Operating Budget

The applicant has submitted first and third years operating budgets, in 2011 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$8,342,000	\$13,279,000
Expenses:		
Operating	\$7,490,000	\$10,523,000
Capital	<u>1,161,000</u>	<u>1,134,000</u>
Total Expenses	\$8,651,000	\$11,657,000
 Net Income or (Loss)	 (\$309,000)	 \$1,622,000
 Utilization: (procedures)	 6,800	 9.185
Cost Per Procedure	\$1,272.21	\$1,269.13

Utilization by payor source for the third year is anticipated as follows:

	<u>Third Year</u>
Medicaid Fee-For-Service	1.3%
Medicaid Managed Care	8.1%
Medicare Fee-For-Service	8.8%
Medicare Manage Care	22.6%
Commercial Fee-For-Service	24.7%
Commercial Manage Care	26.0%
All Other	5.7%
Charity	2.8%

The utilization projection for the first year is 6,800 procedures, which is slightly less than the 7,000 currently being performed. The facility expects to increase the current volume by 1%, and transfer a total of 3,475 cases from Unity's Hospital by the end of the fourth year. It is estimated 1,158 cases or a third will transfer each year starting in the 2nd year, bringing the third year total estimated procedures to 9,185. Expenses are based on projected volume, along with increases associated with yearly inflationary adjustments ranging from 2% to 3%.

It appears all third year costs will be covered at approximately 88% of projected volume, or 8,080 procedures.

Capability and Feasibility

The \$8,500,000 purchase price for Linden Oaks Surgery Center, Inc. is being met through a \$7,500,000 loan commitment from JPMorgan Chase Bank, N.B. at the above stated terms, and \$1,000,000 from the facility's re-assigned account receivables.

Working capital requirements are estimated at \$1,441,833, which is based on the first years budgeted expenses. It is expected working capital will be met through the collection of existing accounts receivables, and any potential shortfall will be cured via Unity Health System's centralized cash management system at a ratio of 50% equity and 50% inter-company loan. Presented as Attachment A and B is Unity Health System, Inc. and Subsidiaries' 2009 and 2010 certified financial summary, and their September 30, 2011 internal financial statement, which indicates sufficient resources for this purpose. Presented as Attachment C & D is Linden Oaks Surgery Center, Inc. 2009 and 2010 certified financial summary and their June 30, 2011 internal financial statement.

The FASCs first year budget show's a \$309,000 operating loss and by the third year, they are forecasting a \$1,622,000 operating surplus. Revenues reflect current and projected Federal and State government reimbursement rates, while other third-payers are expected to increase by a trend factor of 2% per year. The budget appears reasonable.

Review of Attachment A and B, Unity Health System, Inc. and Subsidiaries' 2009 and 2010 certified financial summary and their internal financial statement ending September 30, 2011, shows the organization had an average positive working capital of \$38,892,000, net assets of \$101,954,000 as of September 30, 2011, and an average excess of revenues over expenses of \$15,705,091.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary for 2009 and 2010, Unity Health System, Inc. and Subsidiaries
BFA Attachment B	Internal Financial Statement as of September 30, 2011, Unity Health System, Inc. and Subsidiaries
BFA Attachment C	Financial Summary for 2009 and 2010, Linden Oaks Surgery Center, Inc.
BFA Attachment D	Internal Financial Statement as of June 30, 2011, Linden Oaks Surgery Center, Inc.
BFA Attachment E	Organizational Chart
BFA Attachment F	Establishment Checklist for Ambulatory Care Sites

**New York State Department of Health
Public Health and Health Planning Council**

January/February 2012

Diagnostic and Treatment Centers - Establish/Construct

Exhibit #8

	<u>Number</u>	<u>Applicant/Facility</u>
1.	101164 B	Mobile Health Services, LLC (New York County)
2.	112142 E	Primary Health Care Plus, Inc. (Nassau County)



Public Health and Health Planning Council

Project # 101164-B
Mobile Health Services, LLC

County: New York (New York)
Purpose: Establishment and Construction

Program: Diagnostic and Treatment Center
Submitted: June 29, 2010

Executive Summary

Description

Mobile Health Services, LLC (MHS), a to-be-formed limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC). The D&TC will consist of a main site at 229 West 36th Street, New York, and four extension clinics – located in Brooklyn, Hempstead, Staten Island, and Queens. Despite the name Mobile Health Services, LLC, no mobile services are proposed. The D&TC will provide primary care services. The sole member and manager of MHS is Bert Brodsky.

The precursor entities to MHS are Mobile Health Management Services, Inc. and Mobile Health Medical Services, PC (both owned by Mr. Brodsky), both of which will be folded into the LLC. Mobile Health Management Services, Inc. is an existing entity that provides management services to Mobile Health Medical Services, PC. Under contract with home health agencies, the PC provides home health workers in New York State with annual health and pre-employment screenings. The applicant will continue to provide these services to home health agencies.

With this CON application, the establishment of a new Article 28 D&TC with five sites will not only continue to provide health screening and diagnostic services for employees of current home health agency clients, but will expand services to provide primary care, preventive and diagnostic services to current patients who require care. The new sites will expand the patient base beyond home health agency clients to serve the general population in the service area.

Total project costs are estimated at \$195,621.

DOH Recommendation
Contingent approval.

Need Summary

While proposing to provide services to the employees of their home care agency clients, the D&TC and its 4 extension clinics will also be open to the public. The number of projected visits for the combined five sites is as follows:

First Year:	8,999
Third Year:	10,650

Program Summary

Based on the information reviewed, staff found nothing which would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Summary

Project costs will be met via equity from the proposed member personal resources.

Incremental Budget:	<i>Revenues:</i>	\$ 827,561
	<i>Expenses:</i>	<u>792,575</u>
	<i>Gain/(Loss):</i>	\$ 34,986

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

The proposed project comprises renovations at 5 separate sites including a main primary care facility and 4 extension clinics. Currently, the facilities provide only health screenings for home health workers. The proposed project will expand the services of each facility to include primary care, preventive and diagnostic treatment services to home health workers, their clients and the general population located within the service area.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of the marketing and advertising plan acceptable to the Department detailing information on the community outreach programs. [RNR]
3. Submission of a statement from the governing body of the Article 28, acceptable to the Department, that states the Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations, such as racial and ethnic minorities, women and handicapped persons, and the commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of a written commitment that at least 5 percent of total visits to the approved extension clinics annually will be uninsured or under-insured patients by the second year of operation. [RNR]
5. Submission of a written agreement that the percentage of total visits annually by Medicaid managed care and fee-for-service beneficiaries, in the aggregate, to the approved extension clinics, will be at least 60 percent. [RNR]
6. Submission of a written commitment that at least 50 percent of total visits to the approved extension clinics will be for primary care. [RNR]
7. Written acknowledgement, executed by the governing body, that the third year of operation the approved extension clinics will achieve at least Level 1 practice certification under the NCQA Patient-Centered Medical Home standards and guidelines. [RNR]
8. Submit a comprehensive plan to achieve the "Prevention Agenda's 2013 Objectives" in the identified service area. [RNR]
9. Submission of a letter of agreement to provide annual reports to the Department beginning in the second year of operation that track the applicant's progress in achieving the "Prevention Agenda's 2013 Objectives". [RNR]
10. Submission of executed transfer and affiliation agreements, acceptable to the Department, with a local acute care hospital. [HSP]
11. Submission of an executed amended lease agreement for the Queens site with a 10 year term that is acceptable to the Department. [BFA]
12. Submission of an executed amended lease agreement for the State Island site with a 10 year term that is acceptable to the Department. [BFA]
13. Submission of an executed asset purchase agreement that is acceptable to the Department. [BFA]
14. Queens site: This clinic is provided with two exit stair enclosures that are accessible by a single corridor and are not adequately separated. Separation of the two exits in compliance with NFPA 101 will be required. [AER]
15. Brooklyn site: One of two waiting areas at this site must be reconfigured to ensure patient privacy in adjacent exam rooms. [AER]
16. All sites: Confirmation that the ventilation systems at all sites are in compliance with applicable regulation is to be provided. [AER]
17. Submission of a photocopy of the applicant's executed proposed articles of organization, which are acceptable to the Department. [CSL]
18. Submission of a photocopy of the applicant's executed proposed operating agreement, which is acceptable to the Department. [CSL]

Approval conditional upon:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]

4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
7. The applicant shall complete construction by March 1, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

February 2, 2012.

Need Analysis

Background

Mobile Health Services, LLC (MHS) proposes to establish and construct a diagnostic and treatment center (D&TC) in leased space on the 10th floor of the building located at 229 West 36th Street, New York. Four extension clinics will also be established at the following locations:

1. Brooklyn: 50 Court Street, Brooklyn, 11201
2. Hempstead: 129 Jackson Street, Hempstead, 11550
3. Queens: 97-77 Queens Blvd., Rego Park, 11374
4. Staten Island: 294 New Dorp Lane, 2nd Floor, Staten Island, 10306

The applicant proposes to provide the following services:

Site of Clinic	Proposed Certified Services				
Manhattan (Main)	Primary Care O/P	Diagnostic Radiology O/P	Pulmonary Function Testing	Electro-cardiology	Bone Densitometry
Queens	Primary Care O/P		Pulmonary Function Testing	Electro-cardiology	Bone Densitometry
Staten Island	Primary Care O/P		Pulmonary Function Testing	Electro-cardiology	Bone Densitometry
Hempstead	Primary Care O/P	Diagnostic Radiology O/P	Pulmonary Function Testing	Electro-cardiology	Bone Densitometry
Brooklyn	Primary Care O/P		Pulmonary Function Testing	Electro-cardiology	Bone Densitometry

Analysis

The primary service area for each of these five sites identified by the applicant is as follows:

- Brooklyn: Zip Codes 11201, 11251, 11205, 11217, 11231, 11215
- Hempstead: ZIP Codes 11550, 11510, 11552, 11553 and 11570.
- Manhattan-Main Site: Zip Codes 10018, 10001, 10010, 10016, 10017, 10036;
- Queens: Zip Codes 11374, 11368, 11373, 11375, 11379 and 11385;
- Staten Island: Zip Codes 10306, 10304, 10305, 10308 and 10314.

An analysis of each site follows:

1. Brooklyn Analysis

Of the 214,696 service area residents, 47,562, 22 percent, are enrolled in Medicaid. Of these Medicaid enrollees, 57 percent are enrolled in HMOs and the remaining 43 percent are enrolled in the fee-for-service Medicaid plan.

Fee-for-service Medicaid patients had 8.56 primary care visits per person per year vs. the statewide average of 5.77 visits per year, totaling 175,926 visits.

The Brooklyn Site service area has a total of eight (8) D&TCs, 20 extension clinics, three (3) hospitals, 13 school-based D&TCs, four (4) specialty D&TC, and six (6) specialty clinics.

The service area also has a total of 131 physicians in private practice that serve the Medicaid population.

Brooklyn Site: Medicaid Enrollment and Ambulatory Services by Zip Code:

<i>Mobile Health Services, LLC – Brooklyn Site</i>	<u>Medicaid Enrollment</u>			<u>Ambulatory Services</u>	
	<i>Total Medicaid Recipients</i>	<i>HMO Enrollment</i>	<i>MA Fee for Service Recipients</i>	<i>Annual Primary Care Visits</i>	<i>Primary Care Use per Eligible Year</i>
11201	8,979	4,133	4,846	43,060	8.89
11205	13,037	8,338	4,699	37,952	8.08
11215	8,782	5,284	3,498	28,420	8.12
11217	8,882	4,533	4,349	41,216	9.48
11231	7,877	4,721	3,156	25,254	8
11251	5	4	1	24	48
Total	47,562	27,013	20,549	175,926	8.56
<i>Statewide</i>					<i>5.77</i>

Source: NYSDOH Medicaid Data

<u>Count of Facilities in Service Area: Brooklyn Site</u>	<u>Count</u>
CHHA	3
D&TC	8
Extension Clinic	20
Hospital	3
LTHHCP	1
RHCF	5
RHCF adult day care	2
School D&TC	13
Specialty D&TC	4
Specialty	6

Source: NYSDOH Medicaid Data

Prevention Quality Indicators (PQIs). PQIs are expressed as annual discharges per 100,000 persons, unless otherwise specified:

<u>PQI</u>	<u>Description</u>	<u>Unadjusted Rate</u>	<u>Adjusted Rate</u>	<u>Statewide Rate</u>	<u>% Difference between Adjusted and Statewide Rates</u>
1	Diabetes short-term complication	39.6	40.5	37.2	8.67%
2	Perforated appendix (Percentage of appendix discharges)*	25.67	27.91	27	3.36%
3	Diabetes long-term complication	134.14	165.31	105.85	56.17%
4	Pediatric asthma	87.1	109.38	72.59	50.68%
5	Chronic obstructive pulmonary disease	121.1	160.86	156.96	2.48%
6	Pediatric gastroenteritis	46.58	58.52	31.25	87.27%
7	Hypertension	62.41	73.03	40.21	81.62%
8	Congestive heart failure	364.7	477.1	334.36	42.69%
9	Low birth weight (Percentage of Births)*	5.77	5.77	5.75	0.34%
10	Dehydration	129.02	170.35	131.81	29.23%
11	Bacterial pneumonia	389.39	498.03	332.18	49.93%
12	Urinary tract infection	157.9	196	139.25	40.76%
13	Angina without procedure	36.33	43.17	49.25	-12.34%

14	Uncontrolled diabetes	81.98	94.49	29.95	215.51%
15	Adult asthma	221.71	237.95	126	88.85%
16	Lower-extremity amputation among patients with diabetes	34.47	44.34	30.14	47.14%

Source: NYSDOH Medicaid Data

2. Hempstead Analysis

Of the 165,956 service area residents, 26,376, 16 percent, are enrolled in Medicaid. Of these Medicaid enrollees, 49 percent are enrolled in HMOs and the remaining 51 percent are enrolled in the fee-for-service Medicaid plan.

The fee-for-service Medicaid patients had 3.95 primary care visits per person per year vs. the statewide average of 5.77 visits per year, totaling 53,438 visits.

The Hempstead Site service area has a total of three D&TCs, six extension clinics, two hospitals, one (1) school-based D&TCs, and two (2) specialty D&TC.

The service area also has a total of 22 physicians in private practice that serve the Medicaid population.

Hempstead Site: Medicaid Enrollment and Ambulatory Services by Zip Code:

<i>Mobile Health Services, LLC – Hempstead Site</i>	<u>Medicaid Enrollment</u>			<u>Ambulatory Services</u>	
	<i>Total Medicaid Recipients</i>	<i>HMO Enrollment</i>	<i>MA Fee for Service Recipients</i>	<i>Annual Primary Care Visits</i>	<i>Primary Care Use per Eligible Year</i>
11510	2,259	876	1,383	4,206	3.04
11550	15,431	8,036	7,395	27,184	3.68
11552	1,844	895	949	2,772	2.92
11553	5,060	2,319	2,741	13,206	4.82
11570	1,777	701	1,076	6,070	5.64
Total	26,372	12,827	13,545	53,438	3.95
Statewide					5.77

Source: NYSDOH Medicaid Data

<i>Count of Facilities in Service Area: Hempstead Site</i>	<i>Count</i>
CHHA	3
D&TC	3
Extension Clinic	6
Hospital	2
LTHHCP	1
RHCF	7
School D&TC	1
Specialty D&TC	2

Source: NYSDOH Medicaid Data

Prevention Quality Indicators (PQIs). PQIs are expressed as annual discharges per 100,000 persons, unless otherwise specified:

<i>PQI</i>	<i>Description</i>	<i>Unadjusted Rate</i>	<i>Adjusted Rate</i>	<i>Statewide Rate</i>	<i>% Difference between Adjusted and Statewide Rates</i>
1	Diabetes short-term complication	39.2	40.5	37.2	8.81%
2	Perforated appendix (Percentage of appendix discharges)*	22.11	21.43	27	-20.63%
3	Diabetes long-term complication	116.3	121.67	105.85	14.95%
4	Pediatric asthma	82.55	77.68	72.59	7.01%
5	Chronic obstructive pulmonary disease	130.15	137.79	156.96	-12.21%
6	Pediatric gastroenteritis	61.46	57.9	31.25	85.28%
7	Hypertension	62.67	65.05	40.21	61.78%
8	Congestive heart failure	336.84	353.86	334.36	5.83%
9	Low birth weight (Percentage of Births)*	5.99	5.95	5.75	3.54%
10	Dehydration	146.42	148.23	131.81	12.45%
11	Bacterial pneumonia	424.21	438.89	332.18	32.12%
12	Urinary tract infection	200.66	203.67	139.25	46.27%
13	Angina without procedure	59.65	62.44	49.25	26.77%
14	Uncontrolled diabetes	53.03	55.11	29.95	84.02%
15	Adult asthma	126.54	128.83	126	2.25%
16	Lower-extremity amputation among patients with diabetes	35.55	38.42	30.14	27.49%

Source: NYSDOH Medicaid Data

3. Manhattan Analysis

Of the 134,142 service area residents, 22,927, 17 percent, are enrolled in Medicaid. Of these Medicaid enrollees, 32 percent are enrolled in HMOs and the remaining 68 percent are enrolled in the fee-for-service Medicaid plan.

The fee-for-service Medicaid patients had 7.24 primary care visits per person per year vs. the statewide average of 5.77 visits per year, totaling 112,234 visits.

The Manhattan site service area has a total of five (5) D&TCs, 11 extension clinics, two (2) hospitals, two (2) school-based D&TCs, 16 specialty D&TCs, and two (2) specialty clinics. The service area also has a total of 31 physicians in private practice that serve the Medicaid population.

Manhattan Main Site: Medicaid Enrollment and Ambulatory Services by Zip Code:

<i>Mobile Health Services, LLC – Manhattan (Main) Site</i>	<u>Medicaid Enrollment</u>			<u>Ambulatory Services</u>	
	<i>Total Medicaid Recipients</i>	<i>HMO Enrollment</i>	<i>MA Fee for Service Recipients</i>	<i>Annual Primary Care Visits</i>	<i>Primary Care Use per Eligible Year</i>
10001	8,321	2,126	6,195	37,468	6.05
10010	2,049	729	1,320	7,028	5.32
10016	3,583	1,339	2,244	10,648	4.75
10017	596	186	410	2,502	6.1
10018	2,666	1,005	1,661	35,706	21.5
10036	5,712	2,046	3,666	18,882	5.15
Total	22,927	7,431	15,496	112,234	7.24
Statewide					5.77

Source: NYSDOH Medicaid Data

<i>Count of Facilities in Service Area: Manhattan Site</i>	<i>Count</i>
CHHA	5
D&TC	5
Extension Clinic	11
Hospice	1
Hospital	2
LTHHCP	1
School D&TC	2
Specialty D&TC	16
Specialty	2

Source: NYSDOH Medicaid Data

Prevention Quality Indicators (PQIs). PQIs are expressed as annual discharges per 100,000 persons, unless otherwise specified:

<i>PQI</i>	<i>Description</i>	<i>Unadjusted Rate</i>	<i>Adjusted Rate</i>	<i>Statewide Rate</i>	<i>% Difference between Adjusted and Statewide Rates</i>
1	Diabetes short-term complication	34.29	30.56	37.24	-17.93%
2	Perforated appendix (Percentage of appendix discharges)*	20.81	26.41	27.00	-2.19%
3	Diabetes long-term complication	84.98	82.86	105.85	-21.72%
4	Pediatric asthma	31.31	102.54	72.59	41.25%
5	Chronic obstructive pulmonary disease	135.68	140.90	156.96	-10.24%
6	Pediatric gastroenteritis	7.45	24.36	31.25	-22.04%
7	Hypertension	26.09	27.16	40.21	-32.45%
8	Congestive heart failure	237.06	248.38	334.36	-25.71%
9	Low birth weight (Percentage of Births)*	4.47	4.47	5.75	-22.12%
10	Dehydration	132.70	176.76	131.81	34.09%
11	Bacterial pneumonia	315.34	344.61	332.18	3.74%
12	Urinary tract infection	105.86	119.96	139.25	-13.85%
13	Angina without procedure	30.56	30.22	49.25	-38.64%

14	Uncontrolled diabetes	35.04	33.54	29.95	11.98%
15	Adult asthma	146.11	136.29	126.00	8.17%
16	Lower-extremity amputation among patients with diabetes	17.89	17.80	30.14	-40.92%

Source: NYSDOH Medicaid Data

4. Queens Analysis

Of the 445,465 service area residents, 119,419, 27 percent, are enrolled in Medicaid. Of these Medicaid enrollees, 61 percent are enrolled in HMOs and the remaining 39 percent are enrolled in the fee-for-service Medicaid plan.

The fee-for-service Medicaid patients had 4.95 primary care visits per person per year vs. the statewide average of 5.77 visits per year, totaling 230,366 visits.

The Queens Site service area has a total of three D&TCs, five extension clinics, four hospitals, three school-based D&TCs, one specialty D&TC, and one specialty clinic. The service area also has a total of 132 physicians in private practice that serve the Medicaid population.

Queens Site: Medicaid Enrollment and Ambulatory Services by Zip Code:

<i>Mobile Health Services, LLC – Queens Site</i>	<u>Medicaid Enrollment</u>			<u>Ambulatory Services</u>	
	<i>Total Medicaid Recipients</i>	<i>HMO Enrollment</i>	<i>MA Fee for Service Recipients</i>	<i>Annual Primary Care Visits</i>	<i>Primary Care Use per Eligible Year</i>
11368	37,800	25,585	12,215	65,238	5.34
11373	32,924	20,286	12,638	45,820	3.63
11374	10,388	4,799	5,589	33,730	6.04
11375	9,761	4,332	5,429	30,284	5.58
11379	3,460	1,580	1,880	9,664	5.14
11385	25,087	16,303	8,784	45,630	5.19
Total	119,419	72,885	46,534	230,366	4.95
Statewide					5.77

Source: NYSDOH Medicaid Data

<u>Count of Facilities in Service Area: Queens Site</u>	<u>Count</u>
CHHA	1
D&TC	3
Extension Clinic	5
Hospital	4
LTHHCP	1
RHCF	6
RHCF adult day care	2
School D&TC	3
Specialty D&TC	1
Specialty	1

Source: NYSDOH Medicaid Data

Prevention Quality Indicators (PQIs). PQIs are expressed as annual discharges per 100,000 persons, unless otherwise specified:

<i>PQI</i>	<i>Description</i>	<i>Unadjusted Rate</i>	<i>Adjusted Rate</i>	<i>Statewide Rate</i>	<i>% Difference between Adjusted and Statewide Rates</i>
1	Diabetes short-term complication	22.0	21.4	37.2	-42.43%
2	Perforated appendix (Percentage of appendix discharges)*	25.46	26.38	27	-2.30%
3	Diabetes long-term complication	101.47	105.71	105.85	-0.13%
4	Pediatric asthma	72.73	82.33	72.59	13.42%
5	Chronic obstructive pulmonary disease	136.94	142.4	156.96	-9.28%
6	Pediatric gastroenteritis	71.16	80.68	31.25	158.18%
7	Hypertension	43.33	44.6	40.21	10.92%
8	Congestive heart failure	285.99	295.36	334.36	-11.66%
9	Low birth weight (Percentage of Births)*	4.95	4.95	5.75	-13.90%
10	Dehydration	131.77	137.82	131.81	4.55%
11	Bacterial pneumonia	292.28	302.87	332.18	-8.82%
12	Urinary tract infection	156.47	161.67	139.25	16.10%
13	Angina without procedure	52.08	54.17	49.25	9.99%
14	Uncontrolled diabetes	33	33.73	29.95	12.63%
15	Adult asthma	116.51	116.98	126	-7.16%
16	Lower-extremity amputation among patients with diabetes	25.37	26.58	30.14	-11.79%

Source: NYSDOH Medicaid Data

5. Staten Island Analysis

Of the 244,392 service area residents, 38,732, 16 percent, are enrolled in Medicaid. Of these Medicaid enrollees, 57 percent are enrolled in HMOs and the remaining 43 percent are enrolled in the fee-for-service Medicaid plan.

The fee-for-service Medicaid patients had 5.08 primary care visits per person per year vs. the statewide average of 5.77 visits per year, totaling 84,198 visits.

The Staten Island site service area has a total of 12 extension clinics, four (4) hospitals, one (1) school-based D&TCs, and three (3) specialty D&TC. The service area also has a total of 46 physicians in private practice that serve the Medicaid population.

Staten Island Site: Medicaid Enrollment and Ambulatory Services by Zip Code:

<i>Mobile Health Services, LLC – Staten Is. Site</i>	<u>Medicaid Enrollment</u>			<u>Ambulatory Services</u>	
	<i>Total Medicaid Recipients</i>	<i>HMO Enrollment</i>	<i>MA Fee for Service Recipients</i>	<i>Annual Primary Care Visits</i>	<i>Primary Care Use per Eligible Year</i>
10304	12,310	7,569	4,741	25,272	5.33
10305	6,888	3,886	3,002	16,016	5.34
10306	6,348	3,445	2,903	15,706	5.41
10308	2,013	1,137	876	3,384	3.86
10314	11,174	6,108	5,066	23,820	4.7
Total	38,732	22,145	16,587	84,198	5.08
Statewide					5.77

Source: NYSDOH Medicaid Data

<u>Count of Facilities in Service Area: Staten Island Site</u>	<u>Count</u>
Extension Clinic	12
Hospice	1
Hospital	4
RHCF	8
RHCF adult day care	1
School D&TC	1
Specialty D&TC	3

Source: NYSDOH Medicaid Data

Prevention Quality Indicators (PQIs). PQIs are expressed as annual discharges per 100,000 persons, unless otherwise specified:

<u>PQI</u>	<u>Description</u>	<u>Unadjusted Rate</u>	<u>Adjusted Rate</u>	<u>Statewide Rate</u>	<u>% Difference between Adjusted and Statewide Rates</u>
1	Diabetes short-term complication	34.0	34.0	37.2	-8.59%
2	Perforated appendix (Percentage of appendix discharges)*	21.43	20.66	27	-23.47%
3	Diabetes long-term complication	135.44	131.68	105.85	24.40%
4	Pediatric asthma	54.01	54.68	72.59	-24.67%
5	Chronic obstructive pulmonary disease	246.73	241.71	156.96	53.99%
6	Pediatric gastroenteritis	44.6	45.2	31.25	44.64%
7	Hypertension	57.69	55.94	40.21	39.11%
8	Congestive heart failure	371.94	369.68	334.36	10.57%
9	Low birth weight (Percentage of Births)*	5.86	5.86	5.75	1.91%
10	Dehydration	126.85	126.21	131.81	-4.25%
11	Bacterial pneumonia	464.42	462.59	332.18	39.26%
12	Urinary tract infection	173.9	174.5	139.25	25.32%
13	Angina without procedure	56.06	54.56	49.25	10.77%
14	Uncontrolled diabetes	35.19	34.59	29.95	15.48%
15	Adult asthma	110.48	108.34	126	-14.01%
16	Lower-extremity amputation among patients with diabetes	33.55	32.8	30.14	8.84%

Source: NYSDOH Medicaid Data

Conclusion

Mobile Health Services will provide primary care, preventive and diagnostic services to patients that are currently being seen for pre-employment physicals and annual health screenings but who do not have access to primary care services. Mobile will expand upon their current relationship with these patients who are home health workers to ensure that health problems are treated appropriately and within a continuum of care. In addition, Mobile Health will be open to the public, in areas where, on the whole, PQI's and current health care service levels suggest that additional primary care services would be of benefit.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

Establish a diagnostic and treatment center with four extension clinics.

Proposed Operator	Mobile Health Services	
Operator Type	LLC	
Site Addresses	(Main Site) 229 West 36 th St New York	97-77 Queens Blvd Rego Park
	294 New Dorp Ln Staten Island	129 Jackson St Hempstead
	50 Court St Brooklyn	
Services	Primary Medical Care Diagnostic Radiology	
Shifts/Hours/Schedule	Monday through Friday, 7:30am to 6:00pm	
Staffing (1 st Year / 3 rd Year)	5.77 FTEs / 6.37 FTEs	
Medical Director	Daniel Schlusberg	
Emergency, In-Patient and Backup Support Services Agreement	Being negotiated with several hospitals	

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the Center conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The Center's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services. The governing body intends on using a patient satisfaction measurement tool, and discussions with their patients, to reflect responsiveness to community need, as well as provide continuous, ongoing feedback to the organization for the total quality management improvement program.

Character and Competence

The sole managing member is Bert Brodsky. Mr. Brodsky has extensive business experience as well as experience serving on the boards of a residential health care facility and an assisted living facility.

Staff from the Division of Certification and Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's and relatives' ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the facilities have provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past 10 years.

Conclusion

The above reviews revealed nothing which would reflect adversely upon the applicant's character and competence or standing in the community.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant will occupy the main site and the five extension sites under the following executed leases, summarized below:

<u>Main Site</u>	
<i>Date:</i>	October 7, 2009
<i>Premises:</i>	10,083 square feet located at 229 West 36 th Street, Manhattan, New York
<i>Lessor:</i>	229 W. 36 th Street Partnership LP.
<i>Lessee:</i>	Mobile Health Management Services, Inc.
<i>Term:</i>	11 years
<i>Rental:</i>	Year 1- \$302,490 annually (\$30.00 per sq. ft.)
<i>Provisions:</i>	The lessee shall be responsible for real estate taxes and utilities. The lease rental payments will increase by 2.50% to 24% throughout the lease term.

<u>Queens Site</u>	
<i>Date</i>	December 3, 2009
<i>Premises:</i>	2,268 square feet located at 97-77 Queens Boulevard, Queens, New York
<i>Lessor:</i>	Boulevard Leasing Limited Partnership
<i>Lessee:</i>	Mobile Health Management Services, Inc.
<i>Term:</i>	The term is 10 years and 2 months, October 18, 2004 through December 17, 2017.
<i>Rental:</i>	Year 1- \$67,858.00 annually (\$29.91 per sq. ft.) with a 2.74% increase annually thereafter.

<u>Brooklyn Site</u>	
<i>Date:</i>	October 2010
<i>Premises:</i>	5,530 square feet located at 50 Court Street, Brooklyn, New York
<i>Lessor:</i>	Joseph P. Day Realty Corp.
<i>Lessee:</i>	Mobile Health Management Services, Inc.
<i>Term:</i>	10 years and six months
<i>Rental:</i>	Year 1 through 5- \$160,370 annually (\$29.00 per sq. ft.) Remainder of the term- \$171,430 annually (\$31.00 per sq. ft.)
<i>Provisions:</i>	The lessee shall be responsible for maintenance and repairs.

Staten Island Site	
<i>Date:</i>	December 19, 2008
<i>Premises:</i>	1,256 square feet located at 294 New Dorp Lane, 2 nd Floor, Staten Island, New York
<i>Lessor:</i>	Joseph Puccio and Vita Puccio
<i>Term:</i>	5 years and 6 months expiring on June 18, 2014.
<i>Rental:</i>	Year One- \$27,635 annually (\$22.00 per sq. ft.) with a 3% increase each year thereafter.
<i>Provisions:</i>	The lessee shall be responsible for repairs, maintenance and utilities.

Hempstead Site	
<i>Date:</i>	August 1, 2008
<i>Premises:</i>	8,600 square feet located at 129 Jackson Street, Town of Hempstead, Nassau County, New York
<i>Lessor:</i>	BSI Jackson Street, LLC
<i>Lessee:</i>	Mobile Health Management Services, Inc.
<i>Term:</i>	12 years
<i>Rental:</i>	Year 1- \$172,000 annually (\$20.00 per sq. ft.) with a 3% annual increase thereafter.
<i>Provisions:</i>	The lessee shall be responsible for payment of real estate taxes.

The applicant has submitted an affidavit indicating that each of the lease arrangements will be an arms-length lease arrangement. The applicant has indicated that they are in negotiations with the landlords for the Queens and Staten Island site in order to attempt to meet the Department's 10-year lease term policy. As a contingency of approval, the applicant must submit amended leases for the Queens and the Staten Island sites.

Asset Purchase Agreement

The applicant has submitted a draft asset purchase agreement, which is summarized below:

<i>Seller:</i>	Mobile Health Medical Services, P.C.
<i>Purchaser:</i>	Mobile Health Services, LLC
<i>Assets Transferred:</i>	Business as a going concern; all furniture, fixtures, equipment, machinery and other tangible personal property used or held for use by Seller at the location at which the Business is conducted or otherwise owned or held by the Seller at the Closing; all inventories; all receivables; all books of account, general, financial, tax and personnel records, invoices, shipping records, supplies lists and records and files and any other rights thereto owned, associated with or employed by the Seller other than the organizational documents; the goodwill of the Seller; all of the Seller's right, title and interest in, to and under the Owned Intellectual Property; all claims, causes of action, chosen in action pertaining to, arising out of and inuring to the benefit of the Seller; all sales and promotional literature, customer lists and other sales-related materials owned, used, associated with or employed by the Seller as of the Closing; all rights of the Seller under all contracts, licenses, sublicenses, agreements, leases, commitments, and sales and purchase orders, and under all bids and offers; all municipal, state and federal franchises, permits, licenses, agreements held or used by the Seller; all cash of the Seller and all of the Seller's right, title and interest at the Closing.
<i>Excluded Assets:</i>	All rights of the Seller under this agreement and the Ancillary Agreements and the Company's seal, minute books, charter documents, stock or equity record books and such other books and records as pertain to the organization, existence or capitalization of the Seller.
<i>Assumed Liabilities:</i>	Upon the terms and subject to the conditions of this Agreement, at the Closing, the Purchaser shall assume all Liabilities of the Seller other than the Excluded Liabilities.
<i>Excluded Liabilities:</i>	All taxes of the Seller including Taxes arising out of the operation of the Business

of the ownership of the Purchased Assets prior to the date of the Closing; all liabilities arising out of or relating to the Excluded Assets; all liabilities arising out of any violation of Law; and all liabilities to the Seller's present or former stockholders.

Purchase Price: \$1

Total Project Cost and Financing

Total project cost for renovations and consulting fees, which is for all the sites, is estimated at \$195,621, broken down as follows:

Renovation and Demolition	\$117,154
Design Contingency	11,715
Construction Contingency	11,715
Architect/Engineering Fees	14,059
Other Fees (Consultant)	37,919
CON Fees	2,000
Additional Processing Fee	1,059
Total Project Cost	\$195,621

Project costs are based on a March 1, 2012 construction start date and a four month construction period. The applicant will provide equity to meet the total project cost from personal resources.

Operating Budget

The applicant has submitted an operating budget for the Article 28 component consisting of primary care services, in 2011 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$720,238	\$827,561
Expenses:		
Operating	\$692,126	\$779,738
Capital	12,837	12,837
Total Expenses	\$704,963	\$792,575
Net Income	\$15,275	\$34,986
Utilization: (Visits)	8,998	10,649
Cost Per Visit	\$78.34	\$74.42

BFA Attachment E indicates the cost analysis of this project.

Utilization by payor source for the first and third years is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid-Fee-For-Service	5.74%	5.55%
Medicaid Managed Care	24.60%	23.74%
Medicare Fee-For-Service	2.45%	2.20%
Medicare Managed Care	1.44%	1.27%
Commercial Fee-For-Service	13.06%	12.48%
Commercial Managed Care	30.25%	29.08%
Private Pay	14.19%	16.47%
Charity Care	5.19%	5.89%
Other	3.08%	3.32%

Expense assumptions are based on the experience of the existing P.C., as well as the experience of other diagnostic and treatment centers in New York State, adjusted for facility specific volume estimates.

The applicant has indicated that currently they have 1,800 to 2,000 managed care enrollees via capitated plans who are served by the existing sites. The number alone would indicate annual volume of 6,300 to 7,000 visits, using the long time standard of 3.5 visits per year used by the federal government and the Department of Health.

The applicant is confident that the current physicians working at the sites will remain in place upon CON approval. The transformation to a diagnostic and treatment center will be relatively transparent in that they will continue to see patients within the scope of their practice expertise. To the extent that volume increases due to the development at the primary medical care service, Mobile Health Services will recruit additional physicians in relation to the growth, and as its extended history and success indicate, recruitment of high quality providers has not been an issue for this program.

Capability and Feasibility

Project costs of \$195,621 will be met via equity from the proposed member's personal resources.

Working capital requirements are estimated at \$132,095 which appears reasonable based on two months of third year expenses. The proposed member of Mobile Health Services, LLC, Bert Brodsky, will provide equity from his personal resources to meet the working capital requirements. Presented as BFA Attachment A is the personal net worth statement of the proposed member of Mobile Health Services, LLC, which indicates the availability of sufficient funds for the project cost and working capital equity requirements. Presented as BFA Attachment B, is the pro-forma balance sheet of Mobile Health Services, LLC, which includes combining Mobile Health Management Services, Inc. and Mobile Health Medical Services, P.C. As shown on Attachment B, the facility will initiate operations with \$3,020,149 in members' equity.

The submitted budget indicates a net income of \$1,5275 and \$34,986 during the first and third years, respectively. Revenues are based on the Ambulatory Patient Group reimbursement methodology. The budget appears reasonable.

Presented as BFA Attachment C are the 2008 and 2009 financial statements of Mobile Health Management Services, Inc. and the 2009 financial statements of Mobile Health Medical Services, P.C. As shown on Attachment C, Mobile Health Management Services, Inc. had an average positive working capital position and an average positive net asset position during the period shown. Mobile Health Medical Services, P.C. had a negative working capital position and a negative net asset position. Also, the facility achieved a combined net income of \$655,793 and \$32,729 during 2008 and 2009, respectively.

Presented as BFA Attachment D are the December 31, 2010 internal financial statements of Mobile Health Management Services, Inc. and Mobile Health Medical Services, P.C. As shown, Mobile Health Management Services, Inc. has a negative working capital position and a positive net asset position through 2010, while Mobile Health Medical Services, P.C. has a negative working capital position and a negative net asset position through 2010. As shown on Attachment D, Mobile Health Medical Services, P.C. achieved a net income of \$5,879 through 2010, and Mobile Health Management Services, Inc. incurred a net loss of \$1,194,288 during 2010.

The applicant has indicated that the reason for the losses were the result of the following: the 2010 period covers the "ramp up" of operations at the Hempstead site, a new service site for Mobile Health and involved start-up expenses; added staff at all of its sites in anticipation of additional volumes associated with the current line of business. The Manhattan site was relocated in early 2010, and one-time relocation expenses appear in the income statement. Mr. Brodsky acquired the property that is the location of the new Hempstead site in late 2008, which resulted in unexpected property and school tax bills, mistakenly thought to be the responsibility of the prior owner, were expenses in the period.

The applicant implemented the following improvements: a new software application is expected to be in place in 2011, which will provide the opportunity to require staffing efficiencies and volume increases, unrelated to this application, will contribute to the bottom line.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Review Summary

(24,411 SF of total renovation – 5 sites included)

The proposed project entails renovations at 5 separate sites to provide primary care, preventive and diagnostic treatment services. The main site is located in Manhattan and the 4 extension clinics are located in Brooklyn, Hempstead, Staten Island, and Queens.

- Manhattan (7,500 SF renovation)

The main primary care clinic is located in a 10,083 sf facility on the Tenth Floor of a 12 story, Type I construction office building. Two waiting areas are provided. One located at the facility entrance includes reception and provides 42 seats. The other provides seating for 47 and is located adjacent to the exam and phlebotomy areas and includes a reception/lab station. Eight (8) phlebotomy stations (one handicap accessible) with hand washing stations, eight (8) examination rooms (one handicap accessible), six (6) patient toilets, an X-ray room with control area, and soiled and clean storage. Also provided are four (4) offices, a conference room, employee's locker room, multi-fixture staff toilets for men and women, and a staff break room with kitchenette.

- Staten Island (925 SF renovation)

The proposed primary care clinic will occupy the 1205 gsf second floor of a 3-story office building. Facilities include a reception/work space and two waiting areas, one exam room, two phlebotomy stations, three toilets including one that is accessible, clean and soils storage closets, and a staff break room,

- Queens (1650 SF renovation)

This primary care clinic will occupy the ninth floor of a 13 story high-rise. Two waiting areas are provided, one adjacent to reception, the other near the two exam rooms, one of which is accessible. Three phlebotomy stations provided with one of those being accessible. Support spaces include three patient toilets with one being accessible, patient lockers, staff kitchenette, clean and soils storage closets, general storage, and a janitor's closet.

- Brooklyn (3615 SF renovation)

A 3615 sf portion of the tenth floor in a twelve story office building will be renovated to house this primary care clinic. 5 exam rooms and 4 phlebotomy stations are included with one of each to be handicap accessible. Two separate waiting and reception areas are provided at the facility entrance and within the clinical area. A total of six toilets are provided including one accessible room for patients and another for staff. Also proved are two offices, a triage room, medications room, storage room, a staff lounge with lockers, clean and soils closets, and a janitor's closet.

Environmental Review

The Department has deemed this project to be a TYPE II Action and will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement- Proposed Member Of Mobile Health Services, LLC
BFA Attachment B	Pro-forma Balance Sheet of Mobile Health Services, LLC
BFA Attachment C	2009 internal financial statements of Mobile Health Management Services, Inc. and Mobile Health Medical Services, P.C.
BFA Attachment D	December 31, 2010 Internal Financial Statements of Mobile Health Management Services, Inc., and Mobile Health Medical Services, P.C.
BFA Attachment E	Summary of Detailed Budget
BFA Attachment F	Ambulatory Care Checklist
BHFP Attachment	Map



Public Health and Health Planning Council

Project # 112142-E
Primary Health Care Plus, Inc.

County: Nassau (Franklin Square)
Purpose: Establishment

Program: Diagnostic and Treatment Center
Submitted: September 7, 2011

Executive Summary

Description

Primary Health Care Plus, Inc. (PHCP), an existing Article 28 diagnostic and treatment center (D&TC) located at 1209 Hemstead Turnpike, Franklin Square, is submitting this application requesting permanent life. Via CON #051049-E, PHCP received five-year limited life approval on March 2, 2006.

Currently, the PHCP provides primary care for conditions such as asthma, diabetes, and hypertension, as well as immunizations. Also, the primary care practice has established relationships with other specialty practices for referrals, and with Franklin Hospital and Mercy Medical Center, which routinely refers its discharge patients to the Center.

In 2009, PHCP received a Certificate of Recognition from the Nassau County Department of Health for its participation in Provider Based Immunization initiatives. The applicant proposes to add podiatry and radiology diagnostic services to its current complement of services, which include comprehensive primary care, certified physical and occupational therapy. No change in the physical plant is planned.

DOH Recommendation Approval.

Need Summary

PHCP has implemented programs to target diseases with high Prevention Quality Indicator (PQI) rates in its primary service area and the surrounding communities. PHCP has instituted programs to diagnose, screen, and treat its patients for asthma, diabetes, and hypertension. PHCP also instituted programs to diagnose, screen, and treat its patients for breast, cervical, and colorectal cancer and lead poisoning.

PHCP received Level 3 Certificate of Recognition as a Patient-Centered Medical Home from the National Committee for Quality Assurance (NCQA) in 2010 for its systematic use of patient-centered, coordinated care management processes.

Payor data show that PHCP is serving the Medicaid population. Over the last 5 years, the facility has experienced significant growth in its primary care visits and in serving the residents in its service area.

Program Summary

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Summary

There is no project cost associated with this application.

Budget:	<i>Revenues:</i>	\$ 1,282,960
	<i>Expenses:</i>	<u>1,244,073</u>
	<i>Gain/(Loss):</i>	\$ 38,870

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project is for Establishment action only; therefore, no Architectural recommendation is required.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval conditional upon:

1. Submission of an explanation as to why few patients were seen from zip code 11565 (Malverne) and identify strategies to improve outreach within 90 days after receiving permanent status. [RNR]
2. Submission of Physician Practice Connections-Patient Centered Medical Home (PPC-PCMH) Recognition by NCQA as appropriate as appropriate at the end of the second year. [RNR]
3. Submission of a comprehensive plan to achieve the "Prevention Agenda's 2013 Objectives" in the identified service area after the first year of operation obtaining permanent status. [RNR]

Council Action Date

February 2, 2012.

Need Analysis

Background

Primary Health Care Plus, Inc. (PHCP) is an Article 28 diagnostic and treatment center located at 1209 Hempstead Turnpike, Franklin Square. PHCP is requesting that its limited life operating certificate, which was approved under CON #051049-E, be made permanent.

Analysis

PHCP has met the conditions of the 5-year limited life. It was established to provide services primarily to residents of Nassau County in the following zip codes:

Elmont	11003
Franklin Square	11010
West Hempstead	11552
Malverne	11565
Valley Stream	11580

PHCP also treats patients from surrounding areas of Nassau, Queens, Suffolk, and Kings Counties. The number of projected visits is as follows:

Current Year:	13,587
First Year:	13,971
Third Year:	13,971

PHCP has focused on primary medical care and physical therapy services during its limited life. It has not provided occupational therapy, although it intends to do so in the future. The applicant plans to add Podiatry O/P and Radiology-Diagnostic services.

The tables below provides information on the number and percentage of patient visits in PHCP's service area for 2007 to 2010. It shows that during these years, well over 90 percent of the visits were for primary care services.

<u>Type of Visits</u>	<u>Number of Patient Visits in 2007-2010</u>			
	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Medical	11,558	12,645	12,736	12,861
Physical Therapy	201	823	514	726
<i>Grand Total</i>	<i>11,759</i>	<i>13,468</i>	<i>13,250</i>	<i>13,587</i>

<u>Type of Visits</u>	<u>% of Patient Visits in 2007-2010</u>			
	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Medical	98.3%	93.9%	96.1%	94.7%
Physical Therapy	1.7%	6.1%	3.9%	5.3%
<i>Grand Total</i>	<i>100.0%</i>	<i>100.0%</i>	<i>100.0%</i>	<i>100.0%</i>

The table below provides information on the number and percentage of patient visits by the service area zip code for 2007 to 2010. These findings reveal the following:

- There was an increase of 15.5 percent in the number of visits from 11,759 in 2007 to 13,587 in 2010.
- During these years, approximately 71 percent of the patients came primarily from PHCP's service area as follows:

- Elmont: An average of approximately 42 percent,
- Franklin Square: Approximately 13 percent,
- Valley Stream: Approximately 10 to 11 percent, and
- West Hempstead: Approximately 4 to 6 percent of the total visits.

- The remaining 29 percent of the visits came from about 15 different towns.
- There were no patients from Malverne, which was identified as being in the primary service area.

<u>Towns</u>	<u>Zip Codes</u>	<u>Patient Visits in 2007-2010</u>			
		<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Elmont	11003	4,846	5,376	5,642	5,781
Valley Stream	11580 to 11583	1,696	1,705	1,366	1,450
Franklin Square	11010	1,380	1,764	1,805	1,807
West Hempstead	11552	506	682	763	647
Malverne	11565	-	-	-	-
Total Above		8,428	9,527	9,576	9,685
All Other*		3,331	3,941	3,674	3,902
Grand Total		11,759	13,468	13,250	13,587

<u>Towns</u>	<u>Zip Codes</u>	<u>% of Patient Visits in 2007-2010</u>			
		<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Elmont	11003	41.2%	39.9%	42.6%	42.5%
Valley Stream	11580 to 11583	14.4%	12.7%	10.3%	10.7%
Franklin Square	11010	11.7%	13.1%	13.6%	13.3%
West Hempstead	11552	4.3%	5.1%	5.8%	4.8%
Malverne	11565	0.0%	0.0%	0.0%	0.0%
Total Above		71.7%	70.7%	72.3%	71.3%
All Other		28.3%	29.3%	27.7%	28.7%
Grand Total		100.0%	100.0%	100.0%	100.0%

In year 1 and year 3, the patient payer mix was nearly the same as follows:

<u>PHP-Patient Payor Mix</u>	<u>% of Patients in Year 1 (2007)</u>	<u>% of Patients in Year 3 (2009)</u>
Medicaid-FFS	4%	5%
Medicaid-M/C	54%	53%
Medicare-FFS	6%	7%
Commercial/Other	29%	29%
Private Pay	7%	6%

Source: CON #051049-E Report 4/2011

The table below provides information on the number of Medicaid recipients as well as the extent of HMO enrollment in the proposed service area. These data indicate the following:

- The Medicaid population in the service area is less than 10 percent.
- Eight (8) percent of the service area population is Medicaid population.
- The primary care utilization is significantly lower at 3.33 annual primary care visits per Medicaid client than that of the State at 5.77 annual primary care visits per Medicaid client. (The normative rate is 3.5 to 4 visits per year used as a standard for managed care planning and federally qualified health centers.)

<u>Zip Code</u>	<u>Total Medicaid Recipients</u>	<u>HMO Enrollment</u>	<u>Ma Fee For Service Recipients</u>	<u>Annual Primary Care Visits</u>	<u>Primary Care Use Per Eligible Year</u>
11003	4,641	2,078	2,563	7,488	2.92
11010	1,093	370	723	3,664	5.07
11552	1,844	895	949	2,772	2.92
11565	210	70	140	434	3.11
11580	3,017	1,236	1,781	6,146	3.45
<i>Total</i>	<i>10,805</i>	<i>4,649</i>	<i>6,156</i>	<i>20,504</i>	<i>3.33</i>
<i>Statewide</i>					<i>5.77</i>
Population of the Service Area				135,493	
Medicaid (MA) Population as % of the Service Area Population				8.0%	
HMO Enrollment as % of the Medicaid Recipients				43.0%	
MA Fee-for-Service Recipients as % of the MA Recipients				57.0%	

Source: Medicaid Data 2008

NYSDOH PQI data reveal that there are significant disparities in the PQI rates for many of the PQI conditions, including asthma, diabetes, and hypertension in PHP's service area. For example, hospital admissions as a percent expected by race and ethnicity for these three conditions are as follows:

Asthma:	Hispanic - 102%	African American - 100%	White 57%
All Diabetes:	Hispanic - 68%	African American - 146%	White 84%
Hypertension:	Hispanic - 111%	African American - 327%	White 77%

Source: NYSDOH-PQI Average 2008-09

In order to improve the health status of the residents of PHP's service area, the applicant needs to continue to address health disparities by developing and implementing a comprehensive plan for the general population, and with special reference to the special populations, with measurable goals and objectives that are consistent with the Prevention Agenda Toward the Healthiest State.

Conclusion

PHP seeks approval to extend its 5-year limited life. Payor data show that the Center is serving the Medicaid population. Over the last 5 years, the facility has experienced significant growth in its primary care visits and in serving the residents of its service area.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Primary Health Care Plus, Inc. seeks permanent life approval and requests approval to add outpatient podiatric and diagnostic radiology services. There will be no changes to staffing with the approval of this application.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The

facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2011 dollars, for the first and third years of operation. The budget, as compared to CON 051049 projected and actual performance, is summarized below:

	<u>Projected Year Three*</u>	<u>Current Year (2010)</u>	<u>Years One and Three</u>
Revenue	\$1,192,396	\$1,261,840	\$1,282,960
Expenses:			
Operating	\$1,020,850	\$1,071,471	\$1,088,641
Capital	89,969	155,432	155,432
Total Expenses	\$1,110,819	\$1,226,903	\$1,244,073
 Net Income (Loss)	 \$81,577	 \$34,937	 \$38,870
 Utilization: (visits)	 9,200	 13,587	 13,971
Cost Per Visit	\$120.74	\$90.30	\$89.05

**From the applicant's projected Year Three Budget for CON #051049-E.*

Utilization by payor source during the first and third years is broken down as follows:

	<u>Current Year (2010)</u>	<u>Years One and Three</u>
Medicaid Fee-for-Service	5%	5%
Medicaid Managed Care	53%	53%
Medicare Fee-for-Service	7%	7%
Commercial Fee-for-Service	29%	29%
Private Pay	6%	6%

Expense and utilization assumptions are based on the experience of the center the geographic area and the impact of Medicaid Managed Care.

Capability and Feasibility

There is no project cost associated with this application.

The issue of feasibility is centered on the applicant's ability to offset ongoing expenses with revenues and maintain a viable operating entity. The submitted budget of the new operator indicates a net income in year one and three in the amount of \$38,870. The budget appears reasonable.

Presented as BFA Attachment A is the financial summary of Primary Health Care Plus, Inc. 2009 and 2010 certified financial statements. The Center had an average positive working capital position of \$124,003 and an average positive net asset position of \$251,568 during the period shown. The surgery center achieved an operating excess of revenues over expenses of \$34,937 during 2010 and incurred an excess of expenses over revenues of \$152,296 during 2009. The reasons for the loss in 2009 were high salary and benefit costs and increased general administrative costs. The Center has cut salary expense, physician fees and benefits costs, which positively impacted the center in 2010.

Presented as BFA Attachment B are November 11, 2011 un-audited financial statements, which indicate a negative working capital position and positive net asset position. Also, the Center has an excess of revenues over expenses of \$169,709 for the period shown.

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary (Certified) – Primary Health Care Plus, Inc. 2010/2009
BFA Attachment B	Financial Summary (un-audited) – Primary Health Care Plus, Inc. 11/30/2011

**New York State Department of Health
Public Health and Health Planning Council**

January/February 2012

Dialysis Services - Establish/Construct

Exhibit #9

	<u>Number</u>	<u>Applicant/Facility</u>
1.	111234 B	Dumont Care, LLC (Westchester County)



Public Health and Health Planning Council

Project # 111234-B

Dumont Care, LLC

County: Westchester (New Rochelle)

Program: Dialysis Services

Purpose: Establishment and Construction

Submitted: February 14, 2011

Executive Summary

Description

Dumont Care, LLC is seeking approval to establish and construct a 12-station chronic renal dialysis center at the Dumont Center for Rehabilitation and Nursing Care, a 196-bed proprietary residential health care facility (RHCF) located at 676 Pelham Rd, New Rochelle, Westchester County.

DOH Recommendation

Disapproval.

Need Summary

There is no need for dialysis services in Westchester County. Currently there are 292 stations creating an excess capacity of 66 stations to treat patients.

Additionally, many facilities have very low utilization rates. Existing facilities in Westchester County could potentially face financial feasibility issues with the approval of this application.

Westchester County will have excess capacity through 2015, with no need for additional stations unless under extremely special circumstances.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Disapproval.

Council Action Date

February 2, 2011.

Need Analysis

Background

Dumont Care, LLC is seeking approval to establish and construct a 12-station chronic renal dialysis center to the Dumont Center for Rehabilitation and Nursing Care, a 196-bed proprietary residential health care facility (RHCF) located at 676 Pelham Rd, New Rochelle, Westchester County.

Population

The service area for this application is Westchester County. The population statistics are as follows:

2010:	949,113		
Ages 65 and Over:	14.7%	State Average:	13.5%
Nonwhite:	31.9%	State Average:	34.3%

Source: U.S. Census 2010

The Department tracks statistics on populations with a higher probability of contracting End Stage Renal Disease (ESRD), which requires dialysis.

The cohort representing those over the age of 65 is the fastest growing demographically in Westchester County and represents the largest users of dialysis services. In Westchester County, the 65+ age group represents 14.7% of the population, slightly higher than the statewide average of 13.5%.

Minority groups are also at a greater risk of developing Type II Diabetes, which is the leading cause of ESRD. In Westchester County, the non-white population is 31.9%, which is lower than the statewide average of 34.3%.

Capacity

The Department's methodology to estimate capacity for chronic dialysis stations is based on factors identified in Sections 670.6 and 709.4 of Title 10 and is as follows:

- One free standing station represents 702 treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which can accommodate 15 patients per week. This is a potential $780 \times 52 \text{ weeks} \times 90\% = 702$.
- One hospital based station is calculated at 499 treatments per year per station. This is the result of $2.0 \text{ shifts/day} \times 6 \text{ days/week} \times 52 \text{ weeks} \times 80\%$. One hospital based station can treat 3 patients per year.
- Per Department policy, hospital-based stations can treat fewer patients per year. Statewide, the majority of stations are free standing, as are the majority of applications for new stations. As such, when calculation the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 263 dialysis stations operating in Westchester County and 29 in pipeline. This project proposes to add 12 Free Standing Stations to the pipeline for a total of 41 total pipeline stations.
- Based upon DOH methodology, existing stations could treat a total of 1183 patients annually. Upon all projects being completed in Westchester County 1314 residents will be able to receive treatment.
- Based upon an estimate of three percent annual increase in patients treated, the current number of 263 stations in Westchester County is more than sufficient to meet the current need of patients and residents. Considering the current and projected increase in patients, there is no need for additional stations by 2015. Three percent is used as a basis to determine growth because total population growth is 2.8%.

	2009		2015	
	<i>Patients Treated</i>	<i>Residents Treated</i>	<i>Projected Patients Treated</i>	<i>Projected Residents Treated</i>
	1072	1016	1281	1214
Free Standing Stations Needed	238	226	285	270
Existing Stations	263	263	263	263
Existing Stations including pipeline (29)	292	292	292	292
w/Approval of This CON	304	304	304	304
Unmet Need Without Approval (incl. pipeline)	- 54	- 66	- 7	- 34
Unmet Need With Approval (incl. pipeline)	- 66	- 78	- 19	- 34

The data in the first row, "Free Standing Stations Needed," comes from the DOH methodology of each station being able to treat 4.5 patients. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information System (HFIS). "Unmet Need" comes from subtracting needed stations from existing stations. "Total Patients Treated" is from IPRO data from 2009.

As indicated in the table, there is no need for additional dialysis stations in Westchester County.

Utilization

Section 5 of Part 709.5 states that the approval of new stations should not jeopardize the quality of services provided at or the financial viability of other existing dialysis facilities within the applicant's planning area.

As seen in the table below using 2009 data, many Westchester Dialysis Clinics are operating at low utilization levels. An addition of stations would likely further decrease utilization of surrounding facilities.

Facility utilization is calculated by dividing Total Patients Treated by Patient Capacity.

Facility	2009 Patients	Stations	Station Type	Treatment Capacity	Patient Capacity	2008 Occupancy	2009 Occupancy
Sound Shore Dialysis	117	24	FS	16848	108	106.48%	108.33%
Westchester AKC-DCI	80	20	FS	14040	90	90.00%	88.89%
Hudson Valley DC	92	20	FS	14040	90	110.00%	102.22%
Peekskill DC	62	19	FS	13338	86	73.68%	72.51%
Port Chester Dialysis & Renal Center	51	15	FS	10530	68	74.07%	75.56%
White Plains DC	83	25	FS	17550	113	74.67%	73.78%
Yonkers DC	123	21	FS	14742	95	139.68%	130.16%
Mt. Vernon Dialysis	73	24	FS	16848	108	40.74%	67.59%
Yorktown AKC	59	16	FS	11232	72	77.78%	81.94%
So Westchester DC	181	30	FS	21060	135	131.18%	134.07%
Westchester MC-Valhalla	7	6	HB	2994	19	44.44%	36.47%
Yonkers East DC	31	21	FS	14742	95	na	32.80%
DCI-Westchester	98	24	FS	16848	108	91.67%	90.74%

Conclusion

There is no need for additional dialysis stations in Westchester County.

The applicant has not met the requirements of sections 670.6 and 709.4, which serve as the basis for the methodology to determine need for end stage renal dialysis services.

The applicant has not met the requirements of 709.1(a)(5) to demonstrate the need for the services to be provided.

The applicant has not met the requirement of 709.1(a)(7) to demonstrate the potential contribution of the proposed facility to meet the health needs of medically underserved groups.

The Department recognizes the benefit of having stations within a residential health care facility when there is insufficient capacity in the planning area. In such instances, the number of stations should not be in excess of that needed to treat its dialysis-dependent residents. The applicant has not specified what that number would be based on the facility's current and projected mix of residents in need of dialysis and those not in need of the service. In addition, the twelve stations requested are well above the number that would be needed to serve any plausible proportion of dialysis-dependent residents that would be found in a facility the size of Dumont's 196-bed capacity. Section 709.4(a)(5) states that the approval of additional stations will not jeopardize the quality of services provided at or the financial feasibility of other existing dialysis facilities within the planning area.

Allowing the addition of 12 dialysis stations in Westchester County will create excess capacity that would be detrimental to surrounding facilities.

Recommendation

From a need perspective, disapproval is recommended.

**New York State Department of Health
Public Health and Health Planning Council**

January/February 2012

Residential Health Care Facilities - Establish/Construct

Exhibit #10

	<u>Number</u>	<u>Applicant/Facility</u>
1.	101068 E	Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC d/b/a Guilderland Center Rehabilitation and Extended Care Facility (Albany County)
2.	112218 E	Waterfront Health Care Center, Inc. (Erie County)



Public Health and Health Planning Council

Project # 101068-E

Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC d/b/a Guilderland Center Rehabilitation and Extended Care Facility

County: Albany (Guilderland)
Purpose: Establishment

Program: Residential Health Care Facility
Submitted: March 16, 2010

Executive Summary

Description

Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC d/b/a Guilderland Center Rehabilitation and Extended Care Facility, a limited liability company, is seeking approval for a change in ownership of Guilderland Center Nursing Home, an existing 127-bed, for-profit residential health care facility (RHCF) located at 428 Rte. 146, Guilderland Center. The current operator filed for Chapter 11 of the Bankruptcy Code. The facility filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code.

Ownership of the operation before and after the requested change is as follows:

<u>Current Owner</u>		<u>Proposed Owner</u>	
Eugene Nachamkin	1%	MEMBERS:	
Dianna Koehler	49%	Aaron Seligson	33.34%
Howard Grant	25%	Martin Rothman	33.33%
Scott Bialick	25%	Patricia Bruder	33.33%

Watchhill Consultants, LLC will purchase the operation and then assign it to Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC (Guilderland Center). Watchhill Consultants, LLC is owned by ten members, of which Aaron Seligson and Martin Rothman are members.

DOH Recommendation
Contingent approval

Need Summary

Utilization at Guilderland Center Nursing Home decreased from 94.6% percent in 2008 to 89.4% in

2009, but rose to 94.1% in 2010, which was comparable to the 94.5% rate for Albany County as a whole.

<u>County RHCF Bed Need</u>	<u>Albany</u>
2016 Projected Need	1,844
Current Beds	1,889
Beds Under Construction	20
Total Resources	1,909
Unmet Need	- 65

Program Summary

No changes in physical environment are being proposed in this application. No negative information has been received concerning the character and competence of the applicants.

Financial Summary

The purchase price for the operations is \$1,425,000, which will be satisfied as follows: \$150,000 deposit and the remaining \$1,275,000 will be paid as cash at closing from the proposed members.

Budget:	<i>Revenues:</i>	\$ 9,161,907
	<i>Expenses:</i>	<u>9,111,097</u>
	<i>Gain/(Loss):</i>	\$ 50,810

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project is for Establishment action only; therefore, no Architectural recommendation is required.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed settlement agreement that is acceptable to the Department of Health. [BFA]
2. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
3. Submission of a photocopy of the executed Articles of Organization of Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC, and any amendments or restatements thereof, acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Operating Agreement of Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC, acceptable to the Department. [CSL]
5. Submission of evidence of site control, acceptable to the Department. [CSL]
6. Submission of evidence of the transfer of the operational assets of the nursing home to the applicant, acceptable to the Department. [CSL]

Council Action Date

February 2, 2012.

Need Analysis

Background

Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC, seeks approval to be established as the new operator of Guilderland Center Nursing Home, a 127-bed residential health care facility (RHCF), located at 428 Rte. 146, Guilderland Center. Guilderland Center is certified for baseline RHCF services.

The facility, a proprietary LLC, is operated by Guilderland LTC Management, LLC.

Analysis

Utilization at Guilderland Center Nursing Home decreased from 94.6% percent in 2008 to 89.4% in 2009, but rose to 94.1% in 2010. Utilization for Albany County was consistent from 2008 to 2009, and decreased slightly in 2010.

<u>Facility/County</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Guilderland Center	94.6%	89.4%	94.1%
Albany County	95.8%	95.5%	94.5%

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	Guilderland Center Nursing Home, Inc.	Guilderland Center Rehabilitation and Extended Care Facility
<i>Address</i>	127 Main St. Guilderland Center	Same
<i>RHCF Capacity</i>	127	Same
<i>ADHC Program Capacity</i>	N/A	N/A
<i>Type Of Operator</i>	LLC	LLC
<i>Class Of Operator</i>	Proprietary	Proprietary
<i>Operator</i>	Guilderland LTC Management, LLC	Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC
	Members: Dianna Koehler 49% Howard Krant 25% Scott Bialick 25% Eugene Nachamkin 1%	Members: Patricia Bruder 33.33 % (managing member) Aaron Seligson 33.34 % Martin Rothman 33.33 %

Character and Competence

- FACILITIES REVIEWED:

Nyack Manor Nursing Home 1/1/2002 to present

A review of Nyack Manor Nursing Home over the last ten years revealed that a substantially consistent high level of care has been provided.

- INDIVIDUAL BACKGROUND REVIEW:

Aaron Seligson has a NYS Nursing Home Administrator license in inactive status since 2001. Mr. Seligson is licensed as attorney-at-law in good standing employed as a partner in the law firm Seligson, Rothman, & Rothman, ESQ. from 1955 to present.

Mr. Seligson discloses the following ownership interest:

- Nyack Manor Nursing Home, 1970 - present

Mr. Seligson also discloses former ownership interests, which were sold over ten years ago:

- Brookhaven Beach Nursing Home
- Brookhaven Beach Health Related Facility
- Rockville Residence Manor

Martin Rothman holds a NYS license as attorney-at-law in good standing. Mr. Rothman disclosed employment as partner in the law firm Seligson, Rothman, & Rothman, Esq., 1960 to present.

Mr. Rothman discloses the following ownership interest:

- Nyack Manor Nursing Home, 1970 - present

Mr. Rothman also discloses former ownership interests, which were sold over ten years ago:

- Brookhaven Beach Nursing Home
- Brookhaven Beach Health Related Facility
- Rockville Residence Manor

Ms. Patricia Bruder is a Registered Nurse (RN) and holds a NYS Nursing Home Administrator license in good standing. Ms. Bruder has been employed in the following positions:

Owner of Brown's Beach Properties, LLC, 2003-present,
Partner in Fee Owner of Long Term Care Properties, 2001-present,
Partner, Sterling Care Services, Inc. (nursing registry and staffing agency), 1999-2005,
Partner, Health Care Options (NYS LHCSA), 1998-2005,
Partner, Hudson Mgmt Consultants, Inc. (LTC Consulting and Staffing), 1982-1999,
Licensed Nursing Home Administrator Nyack Manor Nursing Home, 1972-1983,
Various positions including Director of Nursing, Licensed Nursing Home Administrator, and Consultant,
at Brookhaven Beach Health Related Facility, 1983-1999,
Long Term Care Consultant at various facilities including, Nyack Manor Nursing Home, Guilderland
Nursing Home, and Howd Nursing Home, 1984-present,
Director of Nursing Services at Parkview Nursing Home, 1969-1972,
Inservice Education Coordinator and Staff Nurse, Hudson View Nursing Home, 1969,
Public Health Nurse, Nassau County DOH, 1968 – 1969.

Ms. Bruder also indicates she holds no ownership interest in health care facilities.

Character and Competence – Analysis:

No negative information has been received concerning the character and competence of the applicants.

A review of the operations of Nyack Manor Nursing Home revealed no enforcements for the period reviewed, resulting in the conclusion that a substantially consistent high level of care has been provided since there were no enforcements.

Project Review

No changes in program or physical environment are proposed in this application. No administrative services/consulting agreement is proposed in this application.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The change in operational ownership will be effectuated in accordance with an executed asset purchase agreement, the terms of which are summarized as follows:

<i>Date:</i>	February 3, 2010
<i>Seller:</i>	Guilderland LTC Management, LLC
<i>Purchaser:</i>	Watchhill Consultants, LLC
<i>Assets Transferred:</i>	The business and operation of the facility; all licenses and permits held or owned; all leasehold improvements, furniture and equipment owned or leased by Seller; all unexpired, non-obsolete and undamaged inventory and supplies, to the extent authorized by the Court, all transferable contracts, agreements, leases and other arrangements; resident funds held in trust; the name "Guilderland Center Nursing Home"; all security deposits and prepayments; subject to the terms and conditions imposed by lessors and licensors; all telephone numbers and fax numbers used by the Facility; copies of all resident/patient records relating to the Facility; copies of all employee and payroll records; corporate goodwill; copies of all other books and records relating to the facility; Seller's Medicare and Medicaid provider numbers and provider agreements; the Accounts Receivable as of the date of the Closing; all cash, deposits and cash equivalents; all payments or cash equivalent credits relating to the Facility; all reserves and deposits held by landlord; all retroactive rate increases and/or lump sum payments and all other assets of Seller relating to the Facility.
<i>Assumed Liabilities:</i>	Seller shall retain and Buyer shall not assume nor in any manner be responsible for any of Seller's liabilities and obligations of any kind or nature.
<i>Purchase Price:</i>	\$1,425,000
<i>Payment of Purchase Price:</i>	\$150,000 deposit Cash at Closing The balance of the Purchase Price of \$1,275,000 shall be distributed at the Closing as follows: \$50,000 shall be paid to the Estate as a carve-out from GECC's first priority lien and security interest; \$75,000 shall be paid to the State of New York in satisfaction of the Initial Payment and \$1,150,000 shall be paid to GECC at the Closing in satisfaction of GECC's security interests and first priority liens in the Debtor's assets, including the Sale Proceeds. In addition, the APA Deposit shall be released to GECC at Closing.

Watchhill Consultants, LLC will assign the operation of Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC. As a contingency of approval, the applicant must provide an executed assignment agreement for the operation.

The applicant submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of this date, the applicant currently has outstanding liabilities and assessments of \$1,121,975.

Settlement Agreement

The applicant has submitted a draft settlement agreement in regards to the liabilities of the current operator, summarized below:

- Parties:* Guilderland LTC Management, LLC (Debtor); New York State Department of Health (DOH); New York Office of Medicaid Inspector General (OMIG); Watchhill Consultants, LLC (Watchhill or Buyer) and General Electric Capital Corporation (GECC).
- Treatment of DOH's Claim:* The DOH's unsecured priority claim against the Debtor's estate shall be reduced to and fixed at \$406,000 and shall be deemed as a single allowed unsecured priority claim against the Debtor's estate.
- Treatment of OMIG's Claim:* OMIG's general unsecured claim shall be reduced to and fixed at \$1,000,000 and shall be deemed as a single allowed general unsecured non-priority claim against the Debtor's estate. The DOH and OMIG's respective claims against the Debtor's estates shall be referred to as the "State Claims".
- Payment of State Claims:* Notwithstanding any provisions in the Asset Purchase Agreement (APA) or Sale Order to the contrary, the APA shall be deemed modified to provide that, as a condition for the sale of the Facility by the Debtor to Watchhill, Watchhill shall assume the Debtor's liability to pay the State Claims as follows:
- Initial Payment: Watchhill shall make a payment of \$75,000 to the State of New York at the Closing of the Sale of the Facility.
- Monthly Payments: Watchhill shall make 284 regular monthly payments of \$4,670.17 to the State of New York and then the last payment equal to \$4,671.72 so that all payments to New York State total \$1,406,000 in the aggregate.
- Modification to the Asset Purchase Agreement:* This agreement shall be deemed to modify the APA as follows:
- The purchase price is reduced to \$1,425,000 (inclusive of the \$150,000 APA deposit). The balance of the Purchase Price of \$1,275,000 shall be distributed at the Closing as follows: \$50,000 shall be paid to the Estate as a carve-out from GECC's first priority lien and security interest; \$75,000 shall be paid to the State of New York in satisfaction of the Initial Payment and \$1,150,000 shall be paid to GECC at the Closing in satisfaction of GECC's security interests and first priority liens in the Debtor's assets, including the Sale Proceeds. In addition, the APA Deposit shall be released to GECC at Closing.

Lease Rental Agreement

The applicant has submitted an executed lease that the applicant will occupy, of which the terms are summarized below:

Dated: July 31, 2009
Premises: 127 Main Street, Guilderland, New York
Lessor: Guilderland Manor Group, LLC
Lessee: Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC
Term: 20 years with a ten year renewal period
Rental: \$576,000 for year 1 through 20. The tenant is granted an option to renew this lease for a ten year period at the then market rent, but said market rent shall not be less than \$662,400 per year.

Currently, capital reimbursement is based on the return of and return on equity reimbursement methodology. After the change in ownership, reimbursement will continue to be based on the return of and return on equity reimbursement methodology. The useful life of the facility has expired.

Operating Budget

The applicant has submitted an operating budget, in 2011 dollars, for the first year subsequent to the change in ownership:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid	\$145.97	\$4,892,622
Medicare	304.35	1,768,577
Commercial	436.10	518,082
Private Pay	325.00	1,390,025
Ancillary Revenues		<u>592,601</u>
Total Revenues		\$9,161,907
Expenses:		
Operating	\$173.11	\$7,898,092
Capital	<u>26.58</u>	<u>1,213,005</u>
Total Expenses	\$199.69	\$9,111,097
Net Income		\$50,810
Utilization: (patient days)		45,625
Occupancy		98.42%

The following is noted with respect to the submitted RHCF operating budget:

- Expenses include lease rental
- Budgeted case mix of .9636 was utilized by the facility at the time of CON filing for change in ownership
- The capital component of the Medicaid rate is based on the return of and return and equity reimbursement methodology.
- Overall utilization for year one is projected at 98.42%. Utilization by payor source is expected as follows:

Medicaid	73.46%
Medicare	12.73%
Private Pay	9.37%
Commercial	4.44%

- Breakeven occupancy is projected at 97.88%.

Capability and Feasibility

The purchase price for the operations is \$1,425,000 and will be met as follows: \$150,000 deposit and the remaining \$1,275,000 will be paid as Cash at Closing from the proposed members.

Working capital requirements are estimated at \$1,518,516, based on two months of first year expenses. The proposed members will provide equity to be derived from the proposed member's personal net worth statement, which indicates the availability of sufficient funds to meet the equity requirement. Presented as BFA Attachment A, is the personal net worth statements of the proposed members of Guilderland Center Rehabilitation and Extended Care Facility Operating Company, which indicates the availability of sufficient funds to meet the working capital requirement and the purchase price. BFA Attachment C presents the pro-forma balance sheet of Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC. As shown, the facility will initiate operations with \$1,261,724 in member's equity.

The submitted budget indicates a net income of \$50,810. Following is a comparison of historical and projected revenues and expenses:

2010 Historical Revenue	\$8,581,447
2010 Historical Expense	8,722,306
2010 Net Income	\$(140,859)
Incremental Revenues	\$580,460
Incremental Expenses	388,791
Incremental Net Income	\$191,669
Projected Net Income	\$50,810

Incremental income includes an increase in overall utilization of 4.36% from 2010 and an increase in Medicare (6.40%), Private Pay utilization (2.45%), and trended Medicare and Private Pay reimbursement rates.

The reason for the increase in overall utilization and the shift from Medicaid to Medicare and Private Pay is as follows: it is expected that once the facility is no longer in Bankruptcy and the negative effects of that 'stigma', occupancy will increase; the facility's previous admissions coordinator and social worker have been replaced; the new individuals assigned with the task of admissions is focusing more on higher case mix individuals with more therapy needs. In 2009, the facility began to utilize an outside service for physical, occupational and speech therapy, with more staff and more intense services, which has increased Medicare utilization and is expected to increase rehabilitation admissions and the new operator will provide additional services such as IV therapy; pain management; post hospital care; infectious disease care; hospice/palliative care and bedside private telephones/internet in each patient room. Incremental expenses include rent expense and the payments made to the State and the difference between the current year and average historical levels.

Presented as BFA Attachment B, is a financial summary of Guilderland Center Nursing Home. As shown on Attachment B, the facility had an average positive working capital position and an average positive net asset position. Also, the facility incurred an average net loss of \$672,827. The loss in 2008 was attributed to an accrual in the amount of \$1,427,261 for the Medicaid audit of prior years. The facility in late 2006 through 2008 was operated by another management group, and the facility during that period of time had significant reduction in census and major cost increases. In June 2008, the current management (ownership) regained operational control and census was immediately increased and a new four year union contract was negotiated and is favorable to the future operation of the facility. The losses in 2009 and 2010 were attributed to the following: prior period expenses; bad debt expenses; penalties and late fees; expenses related to the cost of bankruptcy that on-going operations of the new entity would not be incurring. The applicant has indicated that the facility has incurred an operating loss of \$53,194 through July 31, 2011.

Presented as BFA Attachment D, is a financial summary of Nyack Manor Nursing Home. As shown on Attachment D, the facility had an average positive working capital position and an average positive net asset position from 2008 through 2010.

Also, the facility incurred an average operating net loss of \$20,345 from 2008 through 2010. The losses were a result of Medicaid retro-active rate adjustments for prior years and some bad debts that were written off. Also, the costs for Union Benefits includes amounts that in future years will not be continued, as per the Union contract which allows the facility to waive payments to certain funds. These items excluded, will show the facility to be profitable.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement - Proposed Members
BFA Attachment B	Financial Summary - Guilderland Center Nursing Home
BFA Attachment C	Pro-forma Balance Sheet of Guilderland Center Rehabilitation and Extended Care Facility Operating Company
BFA Attachment D	Financial Summary - Nyack Manor Nursing Home
BFA Attachment E	Establishment Checklist



Public Health and Health Planning Council

Project # 112218-E
Waterfront Operations Associates, LLC
d/b/a Waterfront Center for Rehabilitation and Health Care

County: Erie (Buffalo)
Purpose: Establishment

Program: Residential Health Care Facility
Submitted: October 12, 2011

Executive Summary

Description

Waterfront Operations Associates, LLC d/b/a Waterfront Center for Rehabilitation and Health Care is seeking approval to be established as the new operator of Waterfront Health Care Center, an existing 160-bed not-for-profit residential health care facility (RHCF) located at 200 Seventh Street, Buffalo.

Waterfront Health Care Center, Inc. entered into a voluntary receivership agreement with Waterfront Operations Associates LLC, which became effective August 15, 2011. In addition to the receivership agreement, Waterfront Health Care Center, Inc. also entered into an asset purchase agreement with Waterfront Operations Associates, LLC in order to transfer the total operating interest of the 160-bed RHCF. A separate real estate company, Waterfront Operations Associates, LLC, will acquire the facility's property. Ownership of the operation before and after the requested change is as follows:

Current Owner	
<i>Waterfront Health Care Inc.</i>	
MEMBER:	
-- Kaleida Health	100%
Receiver	
<i>Waterfront Operations Associates, LLC d/b/a Waterfront Center for Rehabilitation and Health Care</i>	
MEMBER:	
-- Kenneth Rozenberg	100%
New Owner/Operator	
<i>Waterfront Operations Associates, LLC d/b/a Waterfront Center for Rehabilitation and Health Care</i>	
MEMBER:	
-- Kenneth Rozenberg	60%
-- Jeremy Strauss	30%
-- Jeffrey Sicklick	10%

DOH Recommendation

Contingent approval

Need Summary

The facility has achieved occupancy rates above the 97% planning optimum for 2008 and 2009. While the RHCF's occupancy decreased slightly below in 2010, it remains above the occupancy for Erie County.

Program Summary

No changes in the program or physical environment are proposed in this application. No adverse information has been received concerning the character and competency of any of the applicants.

Financial Summary

The facility assets have been sold in accordance with the Asset Purchase Agreement effective August 1, 2011. This CON is effectively changing the status of the current receiver/operator to owner/operator and is adjusting the current ownership of Waterfront Operations Associates, LLC d/b/a Waterfront Center for Rehabilitation and Health Care. There are no project costs associated with this proposal.

Budget:	<i>Revenues:</i>	\$ 10,695,651
	<i>Expenses:</i>	<u>10,489,406</u>
	<i>Gain/(Loss):</i>	\$ 206,245

Subject to noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project is for Establishment action only; therefore, no Architectural recommendation is required.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a Loan commitment for working capital that is acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the executed Certificate of Amendment of Articles of Organization of Waterfront Operations Associates, LLC, and any past Certificates of Amendments of the Articles of Organization, acceptable to the Department. [CSL]
3. Submission of a photocopy of the fully executed Asset Purchase Agreement between Waterfront Healthcare Center, Inc. and the applicant, acceptable to the Department. [CSL]
4. Submission of a photocopy of the fully executed Agreement for Sale of Real Property between Waterfront Healthcare Center, Inc. and Waterfront Land Associates, LLC, acceptable to the Department. [CSL]

Council Action Date

February 2, 2012.

Need Analysis

Background

Waterfront Health Care Center, a voluntary not-for-profit corporation, submitted a closure plan to the Department of Health, which was not approved because the facility is a necessary healthcare resource. As a result, Waterfront Health Care Center entered into a receivership agreement with Waterfront Operations Associates, LLC and is now seeking to concurrently enter into an asset purchase agreement to transfer the operating interests.

<u>County RHCF Bed Need</u>	<u>Erie</u>
2016 Projected Need	5,291
Current Beds	6,340
Beds under Const.	- 332
Total Resources	6,008
Unmet Need	- 717

Analysis

As indicated below, Waterfront Health Care Center has achieved occupancy rates above the 97 percent planning optimum for 2008 and 2009. Waterfront's occupancy decreased slightly below to 95.8 percent in 2010 but remains above the occupancy for Erie County.

<u>RHCF Utilization</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Waterfront Rehab	98.7%	98.6%	95.8%
Erie County	94.8%	95.4%	93.9%

**2010 Data may be incomplete*

Conclusion

There will be no change in beds or services upon approval.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	<u>Existing</u>	<u>Proposed</u>
<u>Facility Name</u>	Waterfront Health Care Center, Inc.	Waterfront Center for Rehabilitation and Healthcare
<u>Address</u>	200 Seventh Street Buffalo, NY 14201	Same
<u>RRHCF Capacity</u>	160	Same
<u>ADHC Program Capacity</u>	N/A	Same
<u>Type Of Operator</u>	Corporation	Limited Liability Company
<u>Class Of Operator</u>	Voluntary	Proprietary
<u>Operator</u>	Waterfront Operations Associates, LLC Receivership Kenneth Rozenberg 100% Previously Kaleida Health and Waterfront Health Care Center, Inc.	Waterfront Operations Associates, LLC <u>Membership</u> Kenneth Rozenberg 60% (managing member) Jeremy Strauss 30% Jeffrey Sicklick 10%

Character and Competence

- **FACILITIES REVIEWED:**

- Residential Health Care Facilities

Williamsbridge Manor Nursing Home	1/1/02 to present
Bronx Center for Rehabilitation & Health	1/1/02 to present
University Nursing Home	1/1/02 to present
Dutchess Center for Rehabilitation	8/1/04 to present
Queens Center for Rehabilitation	6/1/04 to present
Brooklyn Center for Rehabilitation & Residential Health Care	3/1/07 to present
Bushwick Center for Rehabilitation and Health Care	11/1/01 to present
Boro Park Center for Rehabilitation	5/1/11 to present
Suffolk Center for Rehabilitation	5/1/07 to present
Rome Center for Rehabilitation and Health Care	11/1/11 to present
Chittenango Center for Rehabilitation and Health Care	11/1/11 to present

- Receiverships

Stonehedge Health & Rehabilitation Center-Rome	7/08 to 4/11
Stonehedge Health & Rehabilitation Center-Chittenango	7/2008 to 4/11
Wartburg Nursing Home	6/08 to 5/11
Holliswood Care Center, Inc.	11/1/10 to present
Waterfront Health Care Center, Inc.	8/15/11 to present

- Licensed Home Care Services Agency

Amazing Home Care	5/1/06 to present
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- Certified Home Health Agency

Alpine Home Health Care	7/08 to present
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- Ambulance Company

Senior Care Emergency Ambulance Services, Inc.	6/1/05 to present
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- **INDIVIDUAL BACKGROUND REVIEW:**

Kenneth Rozenberg is a licensed nursing home administrator in good standing, and also a licensed New York State Paramedic in good standing. Mr. Rozenberg has been employed as CEO of Bronx Center for Rehabilitation & Health Care since January, 1998. Mr. Rozenberg discloses the following health facility interests:

Williamsbridge Manor Nursing Home	11/19/96 to present
Bronx Center for Rehabilitation & Health	10/1/97 to present
University Nursing Home	8/16/01 to present
Dutchess Center for Rehabilitation	8/1/04 to present
Queens Center for Rehabilitation	6/1/04 to present
Brooklyn Center for Rehabilitation & Residential Health Care	3/1/07 to present
Stonehedge Health & Rehabilitation Center-Rome (receiver)	7/2008 to 4/11
Stonehedge Health & Rehabilitation Center-Chittenango (receiver)	7/2008 to 4/11
Rome Center for Rehabilitation and Health Care	5/1/11 to present
Chittenango Center for Rehabilitation and Health Care	5/1/11 to present
Bushwick Center for Rehabilitation and Health Care	5/1/11 to present
Wartburg Nursing Home (receiver)	6/08 to 5/11
Boro Park Center for Rehabilitation	5/1/11 to present
Holliswood Care Center, Inc. (receiver)	11/1/10 to present
Alpine Home Health Care	7/08 to present
Amazing Home Care	5/1/06 to present
Senior Care Emergency Ambulance Services, Inc.	6/1/05 to present
Waterfront Health Care Center, Inc. (receiver)	8/15/11 to present

Jeremy B. Strauss has been employed as Executive Director of Dutchess Center for Rehabilitation since April, 2003. Mr. Strauss discloses the following health facility interests:

Dutchess Center for Rehabilitation	8/1/04 to present
Queens Center for Rehabilitation	6/1/04 to present
Brooklyn Center for Rehabilitation & Residential Health Care	3/1/07 to present
Suffolk Center for Rehabilitation	5/1/07 to present
Rome Center for Rehabilitation and Health Care	5/1/11 to present
Chittenango Center for Rehabilitation and Health Care	5/1/11 to present
Bushwick Center for Rehabilitation and Health Care	5/1/11 to present
Boro Park Center for Rehabilitation	5/1/11 to present
Senior Care Emergency Ambulance Services, Inc.	5/1/05 to present

Jeffrey N. Sicklick is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator of Record at Bronx Center for Rehabilitation & Health since October, 1997. Mr. Sicklick previously served as Administrator of Record at Queens Center for Rehabilitation from June, 2004 to August, 2004 and Dutchess Center for Rehabilitation from May, 2003 to September, 2003. Mr. Sicklick discloses the following health facility interests:

Dutchess Center for Rehabilitation	8/1/04 to present
Queens Center for Rehabilitation	8/1/04 to present
Bushwick Center for Rehabilitation and Health Care	5/1/11 to present
Boro Park Center for Rehabilitation	5/1/11 to present
Rome Center for Rehabilitation and Health Care	5/1/11 to present
Chittenango Center for Rehabilitation and Health Care	5/1/11 to present

Character and Competence – Analysis:

The Board of Examiners of Nursing Home Administrators charged Mr. Rozenberg with practicing nursing home administration without a valid license at University Nursing Home, Bronx in violation of Public Health Law Sections 2897(1)(g) and 2896-g(5) and 10 NYCRR 96.4 for the period January 1, 2002 – February 1, 2002. Mr. Rozenberg was assessed a civil penalty of \$350.

No adverse information has been received concerning the character and competency of any of the applicants.

A review of Williamsbridge Manor Nursing Home for the period reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order issued February 12, 2004 for surveillance findings of July 31, 2002. Deficiencies were found under 10 NYCRR 415.4(b) Staff Treatment of Residents: Free from Mistreatment Neglect and Misappropriation of Property, 415.4(b) Staff Treatment of Residents: Nurse Aide Registry, and 415.12(h) Quality of Care: Adequate Supervision to Prevent Accidents; Administration.
- Williamsbridge Manor Nursing Home was fined \$1,000 pursuant to a Stipulation and Order issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

The review of operations for Williamsbridge Manor Nursing Home results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations of Bronx Center for Rehabilitation & Health Care, LLC for the period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued October 23, 2007 for surveillance findings of April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued August 25, 2011 for surveillance findings of April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.

The review of operations for Bronx Center for Rehabilitation & Health Care, LLC results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations of Stonehedge Health & Rehabilitation Center-Chittenango, for the period reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.

The review of operations for Stonehedge Health and Rehabilitation Center-Chittenango results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations of, for the period reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.

The review of operations of University Nursing Home, Dutchess Center for Rehabilitation, Queens Center for Rehabilitation, Brooklyn Center for Rehabilitation & Residential Health Care, Bushwick Center for Rehabilitation and Health Care, Boro Park Center for Rehabilitation, Stonehedge Health & Rehabilitation Center-Rome, Suffolk Center for Rehabilitation, Holliswood Care Center, Inc., Wartburg Nursing Home and Waterfront Health Care Center, Inc. for the time periods indicated reveals that a substantially consistent high level of care has been provided since there were no enforcements.

A review of Alpine Home Health Care, LLC and Amazing Home Care reveals that a substantially consistent high level of care has been provided since there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc. reveals that a substantially consistent high level of care has been provided since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services/consulting agreement is proposed in this application.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with an executed asset purchase agreement, the terms of which are summarized below:

- Date:* August 1, 2011
- Seller:* Waterfront Health Care Center, Inc.
- Purchaser:* Waterfront Operations Associates, LLC
- Purchased Assets:* All of the seller’s right, title and interest in the business and operation of the facility, all leasehold improvements, furniture, fixtures and equipment owned or leased by seller, all inventory, supplies and other articles of personal property. All transferable contracts specifically agreed by buyer at closing, all residents funds held in trust, the name “Waterfront Health Care Center” and all other trade names, logos, marks and services marks associated with the facility. All security deposits and prepayments for future services. All books, data and records for

the facilities, (except where transfer is prohibited) and does not include software associated with Kaleida Health. All phone and fax number, To the extent transferrable all licenses and permits relating to the ownership or operation of the facility as well as the Medicare and Medicaid provider numbers and the provider agreements. All accounts receivable, the leases all cash deposits and cash equivalents, all assets of seller existing on or after the date hereof, other than excluded assets.

Excluded Assets: Real Estate, all insurance policies, all union contracts and collective bargaining agreements and all pension plans. Any reimbursement received for services prior to receivership. All real estate tax refunds relating to a period or periods prior to the receivership date. The personal property listed on schedule 1.2.7. All amounts due from parties related to the seller.

Liabilities

Assumed : All liabilities and obligations exclusively arising with respect to the operation of the facility and/or basic assets on and after receivership date, including buyer loans set forth in section 4.1 and the balance sheet liabilities limited to the specific liabilities and amounts therefore, but excluding the assumption of any liabilities relating to any mortgage on the real estate, excluding retained liabilities, which includes all liabilities arising from the ownership or operation prior to the receivership date.

Purchase Price: \$806,718; \$706,218 assumption of liabilities, \$100,000 additional purchase price.

Payment of

Purchase Price: \$706,718 payable at closing, \$16,666.70 payable December 5, 2011, \$16,666.66 due 30 days after December 5th, payment, \$16,666.66 due 30 days after second payment, \$16,666.66 due 30 days after third payment, \$16,666.66 due 30 days fourth payment and \$16,666.66 due 30 days after fifth payment.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Currently, the facility has no outstanding Medicaid audit liabilities.

The member of the realty entity, Waterfront Land Associates, LLC, is as follows:

<u>Proposed Members</u>	<u>Ownership</u>
Daryl Hagler	100%

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy will continue to be subject to a lease agreement, the terms of which are summarized as follows:

Date: August 1, 2011
Premises: 160-bed not-for-profit residential health care facility (RHCF), located at 200 Seventh Street, Buffalo, New York (Erie County).
Lessor: Waterfront Land Associates, LLC
Lessee: Waterfront Operations Associates, LLC
Term: 30 years commencing on the execution of the lease.
Rental: \$200,000 per year (\$16,666.67 per month)
Provisions: Triple Net Lease

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the Landlord and operating entity.

The facility was being reimbursed for both interest and Depreciation, based on the current mortgage. With this change from a voluntary to a proprietary facility, the reimbursement methodology is going to be changed to interest and amortization for the remainder of the facility's mortgage term of 1 year, which ends in 2012.

Operating Budget

The following is a summary of the submitted operating budget, presented in 2011 dollars, for the first year subsequent to change in ownership:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid	156.28	\$7,523,724
Medicare	373.80	2,101,146
Private Pay	355.03	<u>1,070,781</u>
Total		\$10,695,651
Expenses:		
Operating		\$10,110,858
Capital		<u>378,548</u>
Total		\$10,489,406
Net Income		\$206,245
Utilization: (patient days)		56,780
Occupancy		<u>97.23%</u>

The following is noted with respect to the submitted operating budget:

- Overall utilization is projected at 97.23%, while utilization by payor source is expected as follows:

Medicaid	84.79%
Medicare	9.90%
Private Pay	5.31%

- Breakeven utilization is projected at 95.36%.

Capability and Feasibility

The purchase price and initiation of operations as a financially viable entity will be done by the applicant taking over the facility's liabilities of \$706,718, and also paying an additional \$100,000 for the operations. This will be accomplished through the member's equity. Presented as BFA Attachment A, is the summary net worth statement for the proposed members, which shows adequate resources to initiate operations.

Working capital requirements are estimated at \$1,748,234, based on two months' of first year expenses, which \$874,117 will be satisfied from the proposed member's equity. The remaining \$874,117 will be satisfied through a loan from Rockland Capital Funding, LLC at 7.00% over 5 years. Presented as BFA Attachment A, is the Net Worth of proposed members, which shows adequate resources.

The submitted budget indicates that a net income of \$206,245 would be maintained during the first year following change in ownership. Presented as BFA Attachment B, is the pro-forma balance sheet of Waterfront Operations Associates, LLC d/b/a Waterfront Center for Rehabilitation and Health Care (The Center), which indicates positive members' equity of \$1,016,407 as of the first day of operations.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues and maintain a viable operating entity. The submitted budget indicates that a net income of \$206,245 would be maintained during the first year following change in ownership.

The following is a comparison of 2010 and projected revenue and expense:

Annual 2010 Income	\$10,552,656
Annual 2010 Expense	<u>12,368,295</u>
Annual 2010 Net Income	(\$1,815,639)
Projected Incremental Income	\$142,995
Projected Incremental Expense	<u>(1,878,889)</u>
Projected Incremental Net Income	\$2,021,884
Incremental Net Income (Loss)	\$206,245

Projected income includes revenues at budgeted occupancy and payor source to accommodate Medicaid access requirements as well as the difference between current year and projected levels. Projected expenses include acquisition capital expense, expenses at budgeted occupancy, and the difference between current year and projected levels.

As shown on BFA Attachment C, Waterfront Center for Rehabilitation and Health Care (The Center) experienced average negative working capital and equity positions and an average net operating loss of \$2,447,825 for the years 2008-2010. The losses are primarily due to a low case mix, particularly in the non-Medicaid population, which results in a low Medicare Reimbursement, particularly in relation to the facility's expenses. In order to rectify this, the facility attempted to reduce their operating expenses so they would be more in line with the revenues. Expense reductions were unsuccessful, and the facility then decided to close. They tried to sell the facility and the operations, which did not occur, and they eventually submitted a voluntary receivership application to transfer the operation to a new operator, which became effective August 15th, 2011.

The 2010 loss of \$5,224,522 as shown on BFA Attachment C is extraordinary due to the fact that the facility included the loss on impairment of assets of \$3,408,882 in the balance sheet. The actual operating loss for 2010 was \$1,815,639, which the new owners have come up with ways to correct it. In the first year of operations, the facility has reduced employee's salaries, wages, employee benefits, professional fees, other direct expenses, as well as reducing their interest, depreciation and rent amounts. This overall reduction in costs is due in part to negotiations with the unions and through leasing the facility instead of owning it, as before. The overall reduction in costs is over 1.8 million dollars. They also increase revenues slightly by approximately \$143,000, which allows the facility to make a profit.

As shown on BFA Attachment D, Dutchess Center for Rehabilitation had an average negative working capital position and average positive net asset position, and generated an average net income of \$440,648 during the period 2008 through 2010.

As shown on BFA Attachment E, University Nursing Home had an average positive working capital position and average positive net asset position, and generated an average net income of \$415,645 during the period 2008 through 2010.

BFA Attachment F, Wartburg Lutheran Home for the Aging, in June 2008, had a receiver appointed and did not file cost reports for 2008-2010, therefore, there is no financial summary available for this facility.

In May 2010, the facility changed its name to Bushwick Center for Rehab and had the operations of both Wartburg Lutheran Home for the Aging and Wartburg Nursing Home, Inc. merged into one operation.

As shown on BFA Attachment G, Holliswood Care Center had an average positive working capital position and average positive net asset position, and generated an average net income of \$538,439 during the period 2008 through 2010.

As shown on BFA Attachment H, Queens Center for Rehabilitation had an average negative working capital position and average positive net asset position, and generated an average net income of \$566,019 during the period 2008 through 2010.

As shown on BFA Attachment I, Brooklyn Center for Rehabilitation had an average negative working capital position and average positive net asset position, and generated an average net income of \$270,803 during the period 2008 through 2010. The facility incurred a net loss of \$907,483 for 2008. This facility was acquired in March 2007. The applicant indicates that the facility has a rate appeal with the Department for Medicaid rebasing, which would offset the losses. This was not promulgated until 2009, and was subsequently approved, creating positive net income in both 2009 and 2010 of \$465,887 and \$1,254,006, respectively.

As shown on BFA Attachment J, Suffolk Center for Rehabilitation had an average negative working capital position and average negative net asset position, and generated an average net income of \$122,845 during the period 2008 through 2010. The 2008 loss was due to the facility still awaiting rebasing of their Medicaid rate as a result of their change of ownership and name change from Patchogue Center to Suffolk Center for Rehabilitation in 2007. The facility has now received its rebased rate and as can be seen in 2009 and 2010, it has achieved and maintained a positive net income.

As shown on BFA Attachment K, Boro Park Center for Rehabilitation had an average negative working capital position and average positive net asset position, and generated an average net income of \$1,672,823 during the period 2008 through 2010.

As shown on BFA Attachment L, in May 2010, Bushwick Center for Rehabilitation, the facility changed its name to Bushwick Center for Rehab, from Wartburg Lutheran Home for the Aging, and had the operations of both Wartburg Lutheran Home for the Aging and Wartburg Nursing Home, Inc. merged into one operation.

Due to this, the facility has not submitted a cost report and therefore there is no financial summary available for this facility.

As shown on BFA Attachment M, Rome Center for Rehabilitation had an average negative working capital position and average negative net asset position, and generated an average net income of \$277,272 during the period 2008 through 2010.

As shown on BFA Attachment N, Chittenango Center for Rehabilitation had an average negative working capital position and average positive net asset position, and generated an average net income of \$455,723 during the period 2008 through 2010.

As shown on BFA Attachment O, Williamsbridge Manor had an average negative working capital position and average positive net asset position, and generated an average net income of \$250,812 during the period 2008 through 2010.

As shown on BFA Attachment P, Bronx Center for Rehabilitation and Health had an average positive working capital position and average positive net asset position, and generated an average net income of \$ 1,130,270 during the period 2008 through 2010.

Based on the preceding, and subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary Waterfront Center for Rehabilitation and Health Care (The Center)
BFA Attachment D	Financial Summary, Dutchess Center for Rehabilitation
BFA Attachment E	Financial Summary University Nursing Home
BFA Attachment G	Financial Summary Holliswood Care Center
BFA Attachment H	Financial Summary, Queens Center for Rehabilitation
BFA Attachment I	Financial Summary, Brooklyn Center for Rehabilitation
BFA Attachment J	Financial Summary Suffolk Center for Rehabilitation
BFA Attachment K	Financial Summary Boro Park Center for Rehabilitation
BFA Attachment M	Financial Summary Rome Center for Rehabilitation
BFA Attachment N	Financial Summary Chittenango Center for Rehabilitation
BFA Attachment O	Financial Summary Williamsbridge Manor
BFA Attachment P	Financial Summary Bronx Center for Rehabilitation and Health
BFA Attachment Q	Establishment Checklist
BFA Attachment R	Organizational Chart

**New York State Department of Health
Public Health and Health Planning Council**

January/February 2012

Certified Home Health Agencies – Establish/Construct

Exhibit #11

<u>Number</u>	<u>Applicant/Facility</u>
1. 102239 E	North Shore University Hospital, Inc., d/b/a North Shore Home Care (Nassau County)



Public Health and Health Planning Council

Project # 102239-E
**North Shore University Hospital, Inc.
d/b/a North Shore Home Care**

County: Nassau (Westbury)
Purpose: Establishment

Program: Certified Home Health Agency
Submitted: September 17, 2010

Executive Summary

Description

North Shore University Hospital, Inc., d/b/a North Shore Home Care, a not-for-profit certified home health agency (CHHA) serving Nassau, Queens and Suffolk Counties, is seeking permanent approval to assume St. Vincent's Catholic Medical Centers (SVCMC) Home Health Agency operations in the counties of New York, Richmond, Bronx, Westchester and Kings.

Pursuant to U.S. Bankruptcy Court Case # 10-11963 (CGM), this proposed acquisition and merger by North Shore Home Care CHHA, and closure of SVCMC Home Health Agency CHHA, actually occurred on September 20, 2010, following an emergency approval for this transaction issued by the Department of Health's Metropolitan Area Regional Office on August 19, 2010. The emergency approval required subsequent submission of this CON application for Public Health and Health Planning Council approval

The North Shore-LIJ Home Care Network, within the North Shore-LIJ Health System, has provided management agreement services to their three member CHHAs, which include; Franklin CHHA, North Shore University Hospital CHHA, and Long Island Jewish CHHA since 2000. Those services include central intake, coordination of performance improvement, education, orientation, finance, information services, marketing and vendor management.

DOH Recommendation

Approval, with an effective date of September 20, 2010, the date of the actual court-ordered sale and transfer of assets from SVCMC Home Health Agency

CHHA to North Shore University Hospital, Inc., d/b/a North Shore Home Care CHHA.

Need Summary

As this project involves the change in ownership of an existing CHHA, no Need review will be provided.

Program Summary

Rather than operate two separate CHHA agencies upon transfer of ownership, North Shore Home Care will instead merge all the operations of, and approvals for, SVCMC Home Health Agency CHHA into its existing North Shore Home Care CHHA operations, resulting in the ultimate closure of the former SVCMC Home Health Agency. The acquisition of the assets of St. Vincent's CHHA, via this CON, ensures continuity of care for these patients.

Financial Summary

The asset purchase price is \$17,000,000 for the CHHA, and there will be no interruption of services or accounts receivables and accounts payables. There are no project costs associated with this proposal.

Budget:	Revenues:	\$ 15,575,613
	Expenses:	<u>13,871,819</u>
	Gain/(Loss):	\$ 1,703,794

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project is for Establishment action only; therefore, no Architectural review is required.

Recommendations

Health Systems Agency

There will be HSA recommendation for this application.

Office of Health Systems Management

Approval is recommended, with an effective date of September 20, 2010, the date of the actual court-ordered sale and transfer of assets from St. Vincent's Catholic Medical Centers (SVMC) Home Health Agency CHHA to North Shore University Hospital, Inc., d/b/a North Shore Home Care CHHA.

Council Action Date

February 2, 2012.

Programmatic Analysis

Background

St. Vincent's Catholic Medical Centers of New York, d/b/a St. Vincent's Catholic Medical Centers (SVCMC) Home Health Agency, was a not-for-profit Article 36 CHHA approved to serve Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, and Westchester Counties, and a not-for-profit Article 36 LTHHCP approved to serve Bronx, Kings, New York, Queens, and Nassau Counties. St. Vincent's Catholic Medical Centers of New York declared bankruptcy and proceeded to divest itself of its health care facilities and agencies, requiring the closure of St. Vincent's Catholic Medical Centers (SVCMC) Home Health Agency. Pursuant to U.S. Bankruptcy Court Case # 10-11963 (CGM), North Shore University Hospital, Inc., d/b/a North Shore Home Care, a not-for-profit Article 36 CHHA approved to serve Nassau, Suffolk, and Queens Counties, was the successful bidder to purchase, acquire, and merge the St. Vincent's Catholic Medical Centers (SVCMC) Home Health Agency CHHA only, into the existing North Shore Home Care CHHA. (Visiting Nurse Service of New York Home Care LTHHCP was the successful bidder to purchase, acquire, and merge the St. Vincent's Catholic Medical Centers (SVCMC) Home Health Agency LTHHCP only, which was resolved under a separate CON project #102124-C, receiving final State Hospital Review and Planning Council approval on October 4, 2010, and becoming effective on November 15, 2010, the date of sale.) Accordingly, since North Shore Home Care CHHA already had approval to serve Nassau, Suffolk, and Queens Counties, North Shore Home Care CHHA would acquire from the closed St. Vincent's Catholic Medical Centers (SVCMC) Home Health Agency CHHA, approval to add Bronx, Kings, New York, Richmond, and Westchester Counties as additional approved geographic service areas. In addition, North Shore Home Care CHHA will operate two new branch offices at locations that had served as branch office locations for the former St. Vincent's Catholic Medical Centers (SVCMC) Home Health Agency CHHA. These two new additional North Shore Home Care CHHA branch office practice locations being assumed from St. Vincent's Catholic Medical Centers (SVCMC) Home Health Agency CHHA are located in New York County and Richmond County. The actual court-ordered sale and legal transfer of assets of the CHHA occurred on September 20, 2010.

North Shore-Long Island Jewish Health System, Inc., a not-for-profit corporation, is the member corporation of Hospice Care Network, d/b/a Hospice Care of Long Island, Queens, South Shore, a not-for-profit Article 40 hospice, and of North Shore-Long Island Jewish Health Care, Inc., also a not-for-profit corporation. North Shore-Long Island Jewish Health Care, Inc., is in turn the member corporation of North Shore-Long Island Jewish Health System Laboratories, Inc., a clinical laboratory licensed pursuant to Article 5 of the Public Health Law, RegionCare, Inc., a not-for-profit Article 36 LHCSA, and the following not-for-profit corporations: the applicant North Shore University Hospital, Inc. (d/b/a North Shore Home Care), an Article 28 hospital which also operates Syosset Hospital, another Article 28 hospital, and North Shore Home Care, an Article 36 CHHA which in turn operates North Shore Home Care LTHHCP, an Article 36 LTHHCP; North Shore University Hospital Stern Family Center for Extended Care and Rehabilitation, an Article 28 RHCF; Staten Island University Hospital, an Article 28 hospital (including Staten Island University Hospital-North, and Staten Island University Hospital-South), which also operates Staten Island University Hospital University Hospice, an Article 40 Hospice; Glen Cove Hospital, Forest Hills Hospital, Plainview Hospital, Lenox Hill Hospital, Southside Hospital, and Huntington Hospital, all Article 28 hospitals; Long Island Jewish Medical Center, an Article 28 hospital (including Long Island Jewish Hospital, Cohen Children's Medical Center, and The Zucker Hillside Hospital), which also operates Long Island Jewish Medical Center Home Care Department, an Article 36 CHHA; and Franklin Hospital, an Article 28 hospital which also operates Orzac Center for Extended Care and Rehabilitation, an Article 28 RHCF, and Franklin Hospital Medical Center Home Health Agency, an Article 36 CHHA. An organizational chart is included.

The governing bodies of North Shore University Hospital, Inc. (d/b/a North Shore Home Care), its member North Shore-Long Island Jewish Health Care, Inc., and its member North Shore-Long Island Jewish Health System, Inc., all have the identical Board of Trustees members, as follows:

Richard S. Abramson – Trustee
SVP and Senior National Managing Director,
Bernstein Global Wealth Management
(Investments)

William Achenbaum – Trustee
Chairman, Gansevoort Hotel Group

John W. Alexander, CPA – Trustee
Chairman and Chief Executive Officer,
Northfield Bank

Philip S. Altheim – Trustee
Executive Vice President, Five Star Electric
Corp.

Michael L. Ashner, Esq. – Trustee
Chairman and Chief Executive Officer, Winthrop
Realty Trust

Ralph M. Baruch – Trustee
Retired

Frank J. Besignano – Trustee
Manager, Signature Bank

Affiliations:

- Board Director, Visiting Nurse
Association of Staten Island

Eric S. Blumencranz, Esq. – Trustee
Executive Vice President/Partner, BWD Group,
LLC (Insurance Broker)

David Blumenfeld – Trustee
Vice President, Self (Real Estate Developer)

E. Steve Braun – Trustee
Brokerage, Cassidy and Turley (Real Estate
Advisory)

Allen E. Busching – Trustee
Consultant and Private Investments, B&B
Capital

Michael Caridi – Trustee
Vice President, Kozy Shack (Food
Manufacturer)

Robert W. Chasanoff – Trustee
Chief Operating Officer, Chasanoff Properties
(Commercial Real Estate Investment)

Ira I. Altfeder – Trustee
President, Imperial/Harvard Label Company

Stanley A. Applebaum, Esq. – Trustee
Self-Employed - Law Practice

Beverly V.P. Banker – Trustee
Retired

Morton M. Bass – Trustee
Owner, Morton M. Bass, P.C. (Attorney at Law)

Elise M. Bloom, Esq. – Trustee
Partner, Co-Chair Labor and Employment Law
Department, Proskauer Rose, LLP (Law Firm)

Roger A. Blumencranz – Trustee
President, BWD Group, LLC (Insurance Broker)

Edward Blumenfeld – Trustee
President, Self (Real Estate Developer)

Dayton T. Brown, Jr. – Trustee
Chairman, Dayton T. Brown, Inc. (Independent
Engineering and Testing Laboratory)

Jonathan S. Canno – Trustee
Retired

Rudolph C. Carryl – Trustee
Chief Executive Officer and Chief Investment
Officer, Carryl Capital Management
Founder and Chief Executive Officer, CRT Asset
Management

Alan Chopp, NHA (NY, NJ, NH) – Trustee
Compliance/HIPAA/Risk Management Officer,
SentosaCare, LLC (Health Care Consulting)

Affiliations:

- Member, Avalon Gardens Rehab & HCC
(5/2003 – Present)
- Member, Bayview Nursing and Rehab
Center (4/2003 – Present)

Mark Claster, Esq. – Trustee
Former Attorney (Retired)
President, Carl Marks & Company, Inc
(Investment Banking)

Diana F. Colgate – Trustee
Retired

Philippe P. Dauman, Esq. – Trustee
President and Chief Executive Officer Viacom,
Inc. (Media Company)

Lorinda de Roulet – Trustee
Private Investor

Affiliations:

- Board Member, New York Presbyterian Hospital
- Board Member, Gracie Square Hospital

Thomas E. Dooley – Trustee
SVP and Chief Operating Officer, Viacom, Inc.
(Media)

Robert N. Downey – Trustee
Retired

Patrick R. Edwards, Esq. – Trustee
Retired

Michael A. Epstein, Esq. – Trustee
Partner, Weil, Gotshal & Manges, LLP (Law Firm)

Michael E. Feldman, Esq. – Trustee
Retired

Arlene Lane Fisher – Trustee
Retired

Barry H. Cohen, M.D. – Trustee
Physician/Partner, Northshore Internal Medicine
Association, P.C.

Daniel M. Crown – Trustee
President and Chief Executive Officer, Foray
Entertainment (Movie Production)

Daniel C. de Roulet – Trustee
President, Patrina Corporation (Computer
Services)

Thomas E. Dewey, Jr. – Trustee
Managing Member, Dewey Devlin & King, LLC
(Investment Banking)

Michael J Dowling – Trustee
President and Chief Executive Officer, North
Shore-LIJ Health System

Affiliations:

- Trustee, Huntington Hospital

Melvin Dubin – Trustee
President, Chairman/Owner, Slant/Fin Corporation
(Electrical Engineer)
Chairman, Redox Pharmaceutical

Affiliations:

- Trustee, Gurwin Jewish Nursing and Rehabilitation Center

Toni J. Elliott – Trustee
Managing Director, CitiGroup / Citi Private Bank

Leonard Feinstein – Trustee
Co-Chairman, Bed, Bath, and Beyond (Retail)

Anthony C. Ferreri – Trustee
President and Chief Executive Officer, Staten
Island University Hospital

Catherine C. Foster – Trustee
Retired

Eugene B. Friedman, M.D. – Trustee
Pediatrician, Park Pediatrics, LLP

Richard Guarasci, Ph.D. – Trustee
President, Wagner College

Richard D. Goldstein, Esq. – Trustee
Chairman and Chief Executive Officer, AEP
Capital, LLC (Investment Banking)

Michael Gould – Trustee
Chairman and Chief Executive Officer,
Bloomingdale's

Alan I. Greene – Trustee
Managing Director, Neuberger Berman, LLC
(Investment Management)

Affiliations:

- Director and Trustee, Eisenhower
Medical Center, California

Stanley Grey, CPA – Trustee
Retired

Henry L. Hackmann – Trustee
Retired

Stephen L. Hammerman, Esq. – Trustee
Retired

Linda W. Heaney, CPA – Trustee
Partner, Friedman, LLP (Accountants and
Advisors)

William O. Hiltz – Trustee
Senior Managing Director, Evercore Partners
(Investment Bank)

Gedale B. Horowitz, Esq. – Trustee
Senior Managing Director, Citigroup (Banking)

M. Allan Hyman, Esq. – Trustee
Senior Partner, Certilman, Balin, Adler, and
Hyman, LLP (Law Firm)

Jeffrey S. Jurick – Trustee
Chief Executive Officer and President, The
Jurick Group, Inc. (Privacy Breach Notification
and Risk Management Services)

Arthur Kalish, Esq. – Trustee
Retired

Sy Garfinkel – Trustee
Chief Executive Officer and Chief Financial Officer,
Fabrique DBA Sykel (Importer)

Lloyd M. Goldman – Trustee
President, BLDG Management Company, Inc.
(Building Management)

J. Joaquin Gonzalez – Trustee
Senior Program Manager, The Port Authority of NY
and NJ

Albert F. Granger, D.D.S. – Trustee
Dentist, Owner/Manager, Albert Granger DDS,
PLLC

James R. Greene – Trustee
Retired

Paul B. Guenther – Trustee
Retired

Amy M. Hagedorn – Trustee
Retired

Ira Hazan – Trustee
Retired

Marlene Hess – Trustee
Retired

Michael Hoffman – Trustee
Managing Director, Riverstone Holdings, LLC
(Investment)

Richard A. Horowitz – Trustee
Chairman, P & F Industries, Inc. (Manufacturer)

Mark Jacobson – Trustee
President, Grocery Haulers, Inc.

Lyn Jurick – Trustee
Retired

Steven L. Kantor, Esq. – Trustee
Executive Managing Director and Global Head of
Investment Bank, Cantor Fitzgerald (Investment
Banking)

David M. Katz – Trustee
Partner, Sterling Equities (Investments)

Saul B. Katz – Trustee
President, Sterling Equities (Investments)

Robert Kaufman – Trustee
President, William Kaufman Organization, LTD
(Real Estate)
President, Sage Realty Corporation

Stanley Kreitman – Trustee
Chief Executive Officer, Manhattan Assoc.
(Consulting and Investing)

Jeffrey B. Lane – Trustee
Chief Executive, Modern Bank

Kevin F. Lawlor – Trustee
President and Chief Executive Officer,
Huntington Hospital

David W. Lehr – Trustee
Retired

Sylvia Lester – Trustee
Chairman, North Shore University Hospital

Stuart R. Levine – Trustee
Chairman and Chief Executive Officer, Stuart
Levine & Associates (Management Consulting)

David S. Mack – Trustee
Senior Partner, The Mack Company (Real
Estate Development and Management)

Affiliations:

- Board Member, Joseph L. Morse
Geriatric Center, Florida

Howard S. Maier – Trustee
President, Maier Ventures, Inc. (Marketing and
Sales Consulting)

James S. Marcus – Trustee
Retired

Michael Katz, CPA – Trustee
Executive Vice President, Senior Partner, Sterling
Equities (Investments)

Lisa A. Kaufman – Trustee
Unemployed

Cary Kravet, Esq. – Trustee
President, Kravet, Inc (Wholesaler)

Affiliations:

- Trustee, Huntington Hospital

Seth H. Kupferberg – Trustee
Principle, Kepco, Inc. (Power Electronics)

Curt N. Launer – Trustee
Managing Director, Natural Resources Group,
Deutsche Bank Securities, Inc. (Investment
Banking)

Michael S. Leeds – Trustee
President, Flight Star, Inc. (Aviation Management)
Business Development Consultant, Pilot, Executive
Fliteways, Inc.

Jonathan W. Leigh – Trustee
President, Long Island Hearing & Speech Society
(Charity)

Arthur S. Levine – Trustee
Chief Executive Officer, Tahari Levine, LLC
(Apparel)

Seth Lipsay, Esq. – Trustee
Managing Director, New World Realty
Management, LLC (Real Estate)

William L. Mack – Trustee
Chairman and Founder, Area Property Partners
(Real Estate)

Linda Manfredi – Trustee
Assistant Principal, PS 29

Bradley J. Marsh, D.P.M. – Trustee
Managing Member, Jemcap, LLC (Real Estate)
Chief Executive Officer, Tripod Labs, Inc. (Health
and Beauty)

Jeffrey S. Maurer, Esq. – Trustee
Partner, Chief Executive Officer, Evercore
Wealth Management, LLC (Investment
Advisors)

F.J. McCarthy – Trustee
President, Site Selection Advisory Group, Inc.
(Real Estate)

Katherine T. McEnroe, RN – Trustee
Retired

Charles Merinoff – Trustee
Vice Chairman and Chief Executive Officer, The
Charmer Sunbelt Group (Wine and Spirits
Distribution)

Marilyn B. Monter, Esq. – Trustee
Executive Vice President, Holiday Organization,
Inc (Real Estate Development)

Richard Murcott – Trustee
President and Chief Executive Officer, Murcott
Merchandising (Supermarket Equipment)

Affiliations:

- Trustee, Huntington Hospital

Richard B. Nye – Trustee
President, Baker Nye Advisers (Investment
Management)

Arnold S. Penner – Trustee
Owner, Arnold S. Penner, Real Estate
Investments

Lewis S. Ranieri – Trustee
Partner, Chairman, President and Managing
Director, Ranieri Partners Management, LLC,
and Ranieri & Co., Inc. (Private Investment
Advisors and Management)

Affiliations:

- Board Director, Peninsula Hospital
Center (1989 – 4/15/2005)

William H. Frazier – Trustee
Managing Director, Gates Capital Corporation
(Securities Brokerage Firm)

Dennis L. Riese – Trustee
Chairman and Chief Executive Officer, The
Riese Organization (Restaurants)

Ronald J. Mazzucco, Esq. – Trustee
Attorney, Ronald J. Mazzucco, Esq.

Patrick F. McDermott – Trustee
Partner, McDermott & Thomas Associations
(Financial Planning/Employee Benefits)

James McMullen – Trustee
Retired

Aimée M. Merszei – Trustee
Retired

Richard D. Monti – Trustee
Vice President, Crest Hallow County Club

Ralph A. Nappi, Esq. – Trustee
President, North Shore-Long Island Jewish Health
Systems Foundation

Clyde I. Payne, Ed.D. – Trustee
Dean, Dowling College

John J. Raggio – Trustee
Vice President, Sealift, Inc. (U.S. Flag Ship
Owner)

Jay R. Raubvogel – Trustee
Retired

Corey Ribotsky – Trustee
Managing Member, The N.I.R. Group, LLC
(Financial Management)

Terry P. Rikin, M.D. – Trustee
President, Great Neck OB/GYN P.C.

Robert A. Rosen – Trustee
Chairman and Chief Executive Officer, Rosen Associates Management Corp. (Real Estate Management and Consulting)

Marcie Rosenberg – Trustee
Director of Development, Tilles Center for the Performing Arts, C.W. Post Campus of Long Island University

Bernard M. Rosof, M.D. – Trustee
Chief Executive Officer, Quality in Health Care Advisory Group, LLC (Consultants)

Affiliations:

- Trustee, Huntington Hospital

Barry Rubenstein – Trustee
Managing Partner, Wheatley Partners (Venture Capital)

Scott Rudolph – Trustee
Chairman and Chief Executive Officer, NBTY, Inc. (Manufacturer/Distributor Vitamins and Food Supplements)

Frank W. Scarangelo, Sr. – Trustee
Manager, Owner, President, Scaran Oil Service Heat and Air Conditioning

Lois C. Schlissel, Esq. – Trustee
Managing Attorney/Member, Meyer, Suozzi, English & Klein (Law Firm)

Robert F. Shapiro – Trustee
Vice Chairman, Klingenstein, Fields & Co., LLC (Investment Advisor)

Sean G. Simon – Trustee
President, Black Capital, LLC (Asset Management)

Michael C. Slade – Trustee
Retired

Howard D. Stave, Esq. – Trustee
Attorney, Howard D. Stave

Maganlal Sutaria, M.D. – Trustee
Chairman, Interpharm Holding, Inc (Generic Pharmaceutical Company)

Peter Tilles – Trustee
Managing Partner, Tilles Companies (Real Estate Investment Management)

Laura Lauria, RN – Trustee
Corporate Secretary/Treasurer, Mark Lauria Associates, Inc. (Insurance Agency)

Robert D. Rosenthal, Esq. – Trustee
Chairman and Chief Executive Officer, First Long Island Investors

Jack J. Ross – Trustee
Principle, Waterfall Asset Management, LLC

Herbert Rubin, Esq. – Trustee
President, Herzfeld & Rubin, P.C. (Law Firm)

Michael H. Sahn, Esq. – Trustee
Senior Partner, Sahn Ward Coschignano & Baker, PLLC (Law Firm)

Norman Schlanger – Trustee
Retired

John M. Shall, CPA – Trustee
Partner, DeSantis, Kiefer & Shall, LLP (CPA)

Marc V. Shaw – Trustee
Senior Vice Chancellor for Budget, Finance, & Financial Policy, CUNY

Richard Sims – Trustee
Vice President, Invogel DBA Scarlett (Apparel Mfg)

Phyllis Hill Slater – Trustee
President, Hill Slater Group (Electrical/Architectural)

Russell Stern – Trustee
President, Norsa Corporation (Importer/Distributor)

John B. Thomson, Jr. – Trustee
President, Ventura Marina Management Corp. (Retail)

Sandra Tytel, Esq. – Trustee
Retired

Tomas D. Morales, Ph.D. – Trustee
President, College of Staten Island

Nancy Waldbaum Nimkoff – Trustee
Director/Administrator, I. Waldbaum Family
Foundation

Gary Walter – Trustee
President, Theo Walter Co, Inc. (Jewelry)

Howard Weingrow – Trustee
President & Founder, Stanoff Corporation
(Investments)

Lewis M. Weston – Trustee
Retired

Jon A. Wurtzburger – Trustee
Retired

Barbara Hrbek Zucker – Trustee
Consultant, Manhattan Skyline Management
(Real Estate)

Donald Zucker – Trustee
Chairman of the Board, The Donald and Barbara
Zucker Family Foundation
Chairman of the Board, Donald Zucker Company
(Real Estate Management)

Roy J. Zuckerberg – Trustee
Private Investor, Roy J. Zuckerberg
Owner, Samson Investments

Rev. Demetrius S. Carolina, Ed.D. – Trustee
Professor, Strayer University
Director, First Central Baptist Church
CEO, Central Family Life Center (Community
Center)

All of the above listed Trustees also serve on the Board of Trustees of: North Shore University Hospital Stern Family Center for Extended Care and Rehabilitation, Staten Island University Hospital, Glen Cove Hospital, Forest Hills Hospital, Plainview Hospital, Lenox Hill Hospital, Southside Hospital, Long Island Jewish Medical Center, and Franklin Hospital.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

A search of all of the above named board members, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List.

The Office of the Professions of the State Education Department, the New York State Physician Profile, and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professionals associated with this application. In addition, the attorneys have all submitted current Certificates of Good Standing.

The Clinical Laboratory Evaluation Program in the Wadsworth Center reviewed the compliance history of the affiliated Article 5 clinical laboratory for the time period 2001 to present. It has been determined that the clinical laboratory has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The Division of Certification and Surveillance reviewed the compliance history of all affiliated Article 28 hospitals for the time period 2001 to present, or for the time periods specified as the affiliations, whichever applied.

An enforcement action was taken against North Shore University Hospital, Inc., in 2002 based on violations citing the performance of a brain procedure on the wrong side of the brain. This enforcement action was resolved with a \$10,000 civil penalty. An additional enforcement action was taken against North Shore University Hospital, Inc., in 2008 based on violations citing inadequate post-operative care leading to decubitus ulcers, falls, and renal failure. This enforcement action was resolved with an \$18,000 civil penalty.

An enforcement action was taken against Syosset Hospital in 2010 based on violations citing improper surgical clearance for a tonsillectomy that resulted in the patient's death. This enforcement was resolved with a \$42,000 civil penalty.

An enforcement action was taken against Staten Island University Hospital in 2007 based on violations citing wrong-sided chest tube insertion. This enforcement was resolved with an \$8000 civil penalty. An additional enforcement action was taken against Staten Island University Hospital, also in 2007, based on violations citing medication overdose, and continued medication with a drug that had been discontinued, resulting in the patient's death. This enforcement was resolved with a \$12,000 civil penalty.

An enforcement action was taken against Forest Hills Hospital in 2006 based on violations citing wrong-sided hernia repair. This enforcement was resolved with a \$12,000 civil penalty.

An enforcement action was taken against Southside Hospital in 2006 based on violations citing wrong-sided ovarian cyst surgery. This enforcement was resolved with a \$14,000 civil penalty.

An enforcement action was taken against Huntington Hospital in 2002 based on violations citing wrong-sided stent replacement, and performing surgery without proper consent. This enforcement was resolved with a \$16,000 civil penalty.

An enforcement action was taken against Long Island Jewish Medical Center Hospital in 2003 based on violations of regulations governing medical resident working hours. This enforcement was resolved with a \$6,000 civil penalty.

An enforcement action was taken against New York Presbyterian Hospital - Columbia in 2003 based on violations of regulations governing medical resident working hours. This enforcement was resolved with an \$18,000 civil penalty. An additional enforcement action was taken against New York Presbyterian Hospital – Columbia, again in 2003, based on violations of regulations governing medical resident working hours. This enforcement was resolved with a \$12,000 civil penalty. An additional enforcement action was taken against New York Presbyterian Hospital – Columbia in 2005 based on violations of regulations governing medical resident working hours. This enforcement was resolved with a \$6,000 civil penalty.

An enforcement action was taken against New York Presbyterian Hospital - Cornell in 2003 based on violations of regulations governing medical resident working hours. This enforcement was resolved with a \$6,000 civil penalty. An additional enforcement action was taken against New York Presbyterian Hospital – Cornell, again in 2003, based on violations of regulations governing medical resident working hours. This enforcement was resolved with a \$25,000 civil penalty. An additional enforcement action was taken against New York Presbyterian Hospital – Cornell in 2004 based on violations of regulations governing medical resident working hours. This enforcement was resolved with a \$50,000 civil penalty.

The Division of Certification and Surveillance also reports that there is currently a pending enforcement action against Glen Cove Hospital, which has been officially referred to the Division of Legal Affairs and of which the hospital has been officially notified. Executive Staff has recommended that this CON application proceed while the negotiations continue toward settlement of this pending hospital enforcement.

The Division of Residential Services reviewed the compliance history of all affiliated Article 28 nursing homes for the time period 2001 to present, or for the time periods specified as the affiliations, whichever applied.

An enforcement action was taken against Bayview Nursing and Rehabilitation Center in 2005 based on a November, 2004 survey citing violations in Quality of Life: Environment; Quality of Care; Quality of Care: Pressure Sores; and Quality of Care: Accidents. This enforcement was resolved with a \$7000 civil penalty. In addition, a federal civil monetary penalty of \$74,658.64 was imposed by CMS on Bayview Nursing and Rehabilitation Center based on this same survey. An additional enforcement action was taken against Bayview Nursing and Rehabilitation Center in 2007 based on a December, 2005 survey citing a violation in Comprehensive Care Plans. This enforcement action was resolved with a \$2000 civil penalty. An additional enforcement action was taken against Bayview Nursing and Rehabilitation Center in 2011 based on a December, 2010 survey citing a violation in Quality of Care: Pressure Sores. This enforcement action was resolved with a \$10,000 civil penalty.

An enforcement action was taken against Avalon Gardens Rehabilitation and Health Care Center in 2009 based on a May, 2008 survey citing a violation in Quality of Care: Accidents. This enforcement was resolved with a \$2000 civil penalty.

An enforcement action was taken against Gurwin Jewish Nursing and Rehabilitation Center in 2007 based on a February, 2005 survey citing a violation in Quality of Care, and a January, 2006 survey citing a violation in Quality of Care: Pressure Sores. This enforcement was resolved with a \$2000 civil penalty.

An enforcement action was taken against Franklin Hospital's Orzac Center for Extended Care and Rehabilitation in 2004 based on a January, 2002 survey citing a violation in Quality of Care: Nutrition. This enforcement was resolved with a \$1000 civil penalty.

The Division of Home and Community Based Services reviewed the compliance history of all affiliated Article 36 long term home health care programs, certified home health agencies, licensed home care service agencies, and Article 40 hospices, for the time period 2001 to present, or for the time periods specified as the affiliations, whichever applied. It has been determined that the long term home health care programs, certified home health agencies, licensed home care service agencies, and hospices have all exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations, and all have been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

Requests for compliance statements have been made to the States of California and Florida to provide the compliance status and histories of the out-of-state health care facilities listed above as affiliations. The Florida Agency for Health Care Administration reports that the health care facilities affiliated with the Joseph L. Morse Geriatric Center, Inc., are in compliance with all applicable codes, rules, and regulations, with no enforcement histories. As of this time, the State of California has not responded with the requested information regarding the health care facilities affiliated with Eisenhower Medical Center.

A review of all personal qualifying information indicates there is nothing in the background of the board members of North Shore University Hospital, Inc. (d/b/a North Shore Home Care), its member North Shore-Long Island Jewish Health Care, Inc., and its member North Shore-Long Island Jewish Health System, Inc., to adversely effect their positions on the board. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended, with an effective date of September 20, 2010, the date of the actual court-ordered sale and transfer of assets from St. Vincent's Catholic Medical Centers (SVCMC) Home Health Agency CHHA to North Shore University Hospital, Inc., d/b/a North Shore Home Care CHHA.

Financial Analysis

Asset Purchase Agreement

The change in operational ownership of the CHHA will be effectuated in accordance with an executed asset purchase agreement, the terms of which are summarized below:

<i>Date:</i>	August 10, 2010
<i>Seller:</i>	St. Vincent's Catholic Medical Centers of New York
<i>Buyer:</i>	North Shore University Hospital
<i>Included Assets:</i>	All assets used in operation of the business; tangible property, equipment; inventory and supplies; assignable contracts, licenses and permits, prepayments, phone numbers, financial books and records; cash, trade secrets, goodwill and intellectual property of Seller's Business; and any amounts payable under any insurance policies.
<i>Excluded Assets:</i>	Cash in bank on Effective Date, accounts receivable for services provided prior to effective date, excluded contracts, refunds, settlements and retroactive adjustments.
<i>Assumed Liabilities:</i>	All liabilities accruing from and after the closing with respect to assigned contracts and the purchase of real property leases, severance obligations and contingent Medicaid Liabilities up to \$1,500,000.

Excluded Liabilities: All liabilities arising from the operations prior to the closing.
Price: \$17,000,000 with a \$850,000 down payment and the remaining \$16,150,000 payable at closing.

The applicant has provided an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Operating Budget

The applicant has submitted an incremental operating budget, in 2011 dollars, for the first and third years of operation of the CHHA, summarized as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$6,873,149	15,575,613
Expenses	<u>9,651,198</u>	<u>13,871,819</u>
Net Income(Loss)	<u>\$(2,778,049)</u>	<u>\$1,703,794</u>

Expenses are allocated as follows:

<u>Year One</u>			
<u>Service</u>	<u>Total Expenses</u>	<u>Visits/Hours</u>	<u>Cost/Visit/Hour</u>
Nursing	\$6,230,422	23,921	\$260.46
Physical Therapy	1,321,333	8,726	\$151.42
Speech Therapy	60,518	324	\$186.78
Occupational Therapy	76,920	630	\$122.10
Home Health Aide *	1,825,363	70,433	\$25.92
Medical Social Services	<u>136,642</u>	975	\$140.15
Total	\$9,651,198		

* Data reported in hours

<u>Year Three</u>			
<u>Service</u>	<u>Total Expenses</u>	<u>Visits/Hours</u>	<u>Cost/Visit/Hour</u>
Nursing	\$7,791,886	54,194	\$143.78
Physical Therapy	2,236,032	19,746	\$113.24
Speech Therapy	98,946	728	\$135.91
Occupational Therapy	136,350	1,426	\$95.62
Home Health Aide *	3,375,608	162,006	\$20.84
Medical Social Services	<u>232,997</u>	2,193	\$106.25
Total	\$13,871,819		

* Data reported in hours

Utilization by payor source for years one and three is anticipated as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-for-Service	4.0	4.0
Medicare Fee-for-Service	66.0	65.0
Commercial Fee-For-Service	28.0	29.0
Charity Care	2.0	2.0

Utilization and expenses are based on the historical experience of the existing CHHA.

Capability and Feasibility

There are no project costs associated with this application.

The submitted incremental budget projects net loss of \$(2,778,049) and a net gain of \$1,703,794 during the first and third years, respectively.

NSUH has submitted a letter stating that the Hospital will absorb the loss of the CHHA. Review of BFA-Attachment B, 2010 financial summary of North Shore University Hospital, indicates the facility has maintained positive working capital, net asset position and net income. Revenues reflect prevailing reimbursement methodologies for CHHA services. Monthly expenses per registrant are not within the initial 2011 applicable geographic expenditure cap for year one but are below the geographic expenditure caps for year three.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart, North Shore-Long Island Jewish Health System, Inc.
BFA Attachment B	2010-September 30, 2011 Financial Summary, North Shore University Hospital

**New York State Department of Health
Public Health and Health Planning Council**

January/February 2012

CERTIFICATES

Certificate of Amendment of the Certificate of Incorporation

Exhibit #12

Applicant

1. BMA, Medical Foundation, Inc.

Certificate of Dissolution

Exhibit #13

Applicant

1. Mary McClellan Hospital, Inc.

New York State Department of Health

Memorandum

TO: Public Health and Health Planning Council (Council)

FROM: James E. Dering, General Counsel 

DATE: November 22, 2011

SUBJECT: Proposed Certificate of Amendment of the Certificate of Incorporation of BMA Medical Foundation, Inc.

Attached for the Council's review and approval is a photocopy of a Certificate of Amendment of the Certificate of Incorporation of BMA Medical Foundation, Inc. (Foundation). The Foundation seeks approval from the Council to (1) add to its powers and purposes the ability to raise funds for The New York Hospital Medical Center of Queens (NYH-Queens), which operates health care facilities pursuant to Article 28 of the Public Health Law (PHL); and (2) change its corporate name to "New York Hospital Queens Foundation, Inc."

The Foundation was incorporated on February 25, 1987 to raise funds for clinical studies for the prevention and treatment of diseases. It now desires to raise funds specifically for the benefit of NYH-Queens. The change of name will connect the Foundation to its beneficiary, which is also its sole member. The Council's approval for both the addition of powers and purposes to raise funds for NYH-Queens and for the Foundation to change its name is required pursuant to Public Health Law § 2801-a(1) and (6). The proposed Certificate of Amendment is legally acceptable in form and the Department has no objection to its filing.

In addition to the proposed Certificate of Amendment, the following documents and information are attached in support of the Foundation's requests for approval:

1. A letter from the Foundation's attorney describing the reason for the changes and the types of fundraising activities in which the Foundation will engage;
2. A letter from the President/Chief Executive Officer of NYH-Queens acknowledging that the facility will accept fund raised on its behalf by the Foundation; and
3. Disclosure information regarding the Foundation's Board of Directors.

Attachments

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BMA MEDICAL FOUNDATION, INC.

(Under Section 803 of the Not-for-Profit Corporation Law of the State of New York)

WE, THE UNDERSIGNED, being the President and a Director of BMA Medical Foundation, Inc. hereby certify that:

- FIRST The name of the Corporation is BMA MEDICAL FOUNDATION, INC.
- SECOND The Certificate of Incorporation of the Corporation was filed by the New York State Secretary of State on February 25, 1987 pursuant to the Not-For-Profit Corporation Law of the State of New York (the "NFPCL").
- THIRD The Corporation is a corporation as defined in Section 102(a)(5) of the NFPCL. The Corporation is a Type B corporation under Section 201 of the NFPCL shall remain a Type B corporation after this amendment is effectuated.
- FOURTH Paragraph First of the Certificate of Incorporation relating to Corporation's name is amended and restated, in its entirety, as follows:
- "FIRST: The name of the Corporation is New York Hospital Queens Foundation, Inc."
- FIFTH Paragraph Third of the Certificate of Incorporation relating to the purposes of the Corporation is amended and restated, in its entirety, as follows:
- "THIRD: The purposes for which the Corporation is formed are charitable, educational and scientific in nature and more particularly:
- A. Through the solicitation, receipt and disbursement of funds, income and real or tangible personal property obtained by bequests, gifts, donations, or otherwise, subject to any limitations imposed by the NFPCL or any other law of the State of New York, to render assistance and make grants to The New York Hospital Medical Center of Queens, a New York State not-for-profit corporation.
 - B. To solicit and receive grants, contracts and funds from federal, state and local government agencies, foundations or any other sources, to further the purposes of the Corporation.

- C To solicit, accept, receive and acquire by way of gift, devise, bequest, lease, purchase or otherwise, and to hold, invest and reinvest all property real or personal, including shares of stock, bonds and securities of other corporations and to dispose of property, real or personal, by gift, lease, sale or otherwise, all as may be necessary or desirable for the attainment of the purposes of the Corporation.
- D. To borrow money, contract, incur debt, issue notes and secure payment of the performances of its obligations and to do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the Corporation.
- E. To further by clinical study, research, publication and teaching, the knowledge of disease and the application of such knowledge to prevention and treatment of disease.
- F. To do anything and everything reasonably and lawfully necessary, proper, suitable or convenient for the achievement of the foregoing purposes or for the furtherance of said purposes.”

SIXTH The third sentence of Paragraph Fifth of the Certificate of Incorporation relating unauthorized activities is amended and restated, in its entirety, as follows:

“Nothing in the Certificate of Incorporation shall authorize the Corporation to either: (i) establish, operate, or maintain a hospital, or to provide hospital services or health related services or to operate a home care services agency, a hospice, or a health maintenance organization, or to provide a comprehensive health services plan, as provided for by Articles 28, 36, 40 and 44 respectively, of the Public Health Law of the State of New York, as amended; or (ii) establish, operate, construct, lease or maintain an adult home, enriched housing program, or residence for adults, as provided by Article 7 of the Social Services Law of the State of New York, as amended, or otherwise raise or obtain any funds, contributions or grants from any source for any such purpose.”

SEVENTH Paragraph Eighth of the Certificate of Incorporation relating to the dissolution of the Corporation is amended and restated, in its entirety, as follows:

“EIGHTH: In the event of dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the assets and property of the Corporation remaining after payment of expenses and the satisfaction of all liabilities shall be distributed to The New York Hospital Medical Center of Queens to be used for substantially similar purposes, subject to the approval of a court of competent jurisdiction upon application of the Corporation’s Board of Directors, provided that no such distribution shall be made to The New York Hospital Medical Center of Queens unless The New York Hospital Medical Center of Queens shall at that time qualify as an organization described in Section 501(c)(3) of the Code. Any of such assets not so distributed shall be distributed to such other charitable and educational organizations as shall

qualify under Section 501(c)(3) of the Code, subject to the approval of a Justice of the Supreme Court of the State of New York or such other court having jurisdiction over the Corporation.”

EIGHTH Paragraph Thirteenth of the Certification of Incorporation relating to service of process on the Corporation is amended and restated, in its entirety, as follows:

“THIRTEENTH: The Secretary of State of the State of New York is designated as the agent of the Corporation upon whom process against the Corporation may be served. The address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is c/o The New York Hospital Medical Center of Queens, 56-45 Main Street, Flushing, NY 11355.”

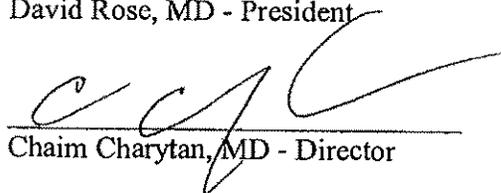
NINTH The amendment was authorized by the unanimous written consent of the members of the Board of Directors, as prior to the amendment, the Corporation had no members.

TENTH The Secretary of State of the State of New York is designated as the agent of the Corporation upon whom process against the Corporation may be served. The address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is c/o The New York Hospital Medical Center of Queens, 56-45 Main Street, Flushing, NY 11355.

IN WITNESS WHEREOF, we have signed this certificate on November 8, 2011, and do hereby affirm, under the penalties of perjury, that the statements contained herein have been examined by us and are true and correct.



David Rose, MD - President



Chaim Charytan, MD - Director

GARFUNKEL WILD, P.C.

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* LICENSURE IN NEW YORK
* LICENSURE IN NEW JERSEY
* LICENSURE IN CONNECTICUT
* RESPONSIBLE PARTNER FOR
NEW JERSEY OFFICE

FILE NO.: 5630.0001
REPLY TO: New York

WRITER'S EMAIL: lancona@garfunkelwild.com
WRITER'S DIRECT DIAL: (516) 393-2245

March 29, 2011

BY FEDERAL EXPRESS

Suzanne A. Sullivan
Senior Attorney
New York State Department of Health
Empire State Plaza
Corning Tower, 24th Floor
Albany, NY 12237-0029

Re: Proposed Certificate of Amendment of the Certificate of Incorporation of BMA
Medical Foundation, Inc. (the "Foundation")

Dear Ms. Sullivan:

We are writing in response to your letter, dated October 8, 2010 (the "Letter"), regarding the proposed Certificate of Amendment of the Certificate of Incorporation of Foundation, a copy of which is attached. We have addressed each of the items raised in your Letter below in the order in which they are addressed in your Letter.

1. Attached as Attachment 1A is a copy of the Bylaws of the Foundation currently in effect. Attached as Attachment 1B is a copy of the proposed Amended and Restated Bylaws of the Foundation to be adopted after the approval of the Certificate of Amendment of the Certificate of Incorporation of the Foundation. Attached as Attachment 1C is a revised, executed copy of the Certificate of Amendment of the Certificate of Incorporation for the Foundation. The Certificate of Amendment of the Certificate of Incorporation for the Foundation has been revised to incorporate the required language set forth in Item 1 of your Letter.

NEW YORK

NEW JERSEY

CONNECTICUT

2. Attached as Attachment 2A is a list of the current directors of the Foundation along with their home addresses, their present employment and their past and present affiliations with other nonprofit organization. Attached as Attachment 2B are Curriculum Vitae for each such director which lists their employment history and any other health care experience and community involvement of each such director.

3. New York Hospital Medical Center of Queens is the only entity which controls the Foundation, as is listed in its Certificate of Amendment of the Certificate of Incorporation for the Foundation and the proposed Amended and Restated Bylaws of the Foundation. Please note that in 1994 New York Hospital Medical Center Queens changed its name from Booth Memorial Hospital, as is listed in the current Bylaws of the Foundation. There are no other entities controlled by or controlling of the Foundation.

4. The Foundation intends to continue its current fundraising activities in support the operation of the New York Hospital Medical Center of Queens. The types of fund raising/development programs that the Foundation would undertake are as follows:

- a. Major Gifts Program (including direct solicitation, stewardship and cultivation)
- b. Direct Mail Campaign
- c. Planned Giving & Endowment Program
- d. Special Events including, but not limited to Annual Gala, Golf Outing, Pediatric Miniature Golf outing, Lang Dinner, Donor Recognition events
- e. Foundation, Corporate and Public Grant writing
- f. Capital Campaign (Major Modernization)
- g. Restricted Campaigns (i.e. Save a Life)
- h. Women's Auxiliary
- i. Employee Giving Campaign
- j. Physicians Annual Giving Campaign

5. Attached as Attachment 5 is a letter from New York Hospital Medical Center of Queens, which states that it is aware that the Foundation will solicit funds on its behalf and that it will accept those funds.

6. The Foundation has not previously received Public Health Counsel approval for activity.

Please contact me at 516-393-2245 should you have any questions or concerns regarding the responses above or the documents attached.

Very truly yours,



Lara Jean Ancona

GARFUNKEL WILD, P.C.



56-45 MAIN STREET
FLUSHING, NY 11355-5095

Stephen S. Mills, FACHE
President & Chief Executive Officer

Tel: 718-670-1025
Fax: 718-661-7937
ssmills@nyp.org

December 6, 2010

Susanne A. Sullivan
Senior Attorney
Bureau of House Counsel
State of New York, Department of Health
Empire State Plaza
Corning Tower, 24th Floor
Albany, NY 12237-0029

Re: BMA Medical Foundation, Inc. (the "Corporation")

Dear Ms. Sullivan:

This will confirm that New York Hospital Medical Center of Queens (the "Hospital") is aware that the Corporation intends to change its name to New York Hospital Queens Foundation, Inc. and solicit funds on behalf of the Hospital. The Hospital intends on accepting such funds.

The Hospital will be pleased to provide any further information or authorization required by any agencies of New York State in connection with the approval of the Certificate of Amendment to the Certificate of Incorporation of the Corporation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen S. Mills", written in a cursive style.

Stephen S. Mills

<u>Position</u>	<u>Name</u>	<u>NYHQ Date of Hire</u>	<u>Home Address</u>	<u>Present Employment</u>	<u>Title</u>	<u>Employment History</u>	<u>Healthcare Experience</u>	<u>Community Involvement</u>	<u>Affiliation Nonprofit Entities</u>
Chairman	Stephen Rimar	3/8/2007	300 Joyce Road Hamden, CT 06518	MD-NYHQ	Senior VP & Chief Medical Officer	See CV	See CV	See CV	Weill College of Medicine
Secretary	Chaim Charytan	9/6/1972	85 Verdon Avenue New Rochelle, NY 10804	MD-NYHQ & Nephrology Assoc, PC	Director, Nephrology	See CV	See CV	See CV	Albert Einstein College of Medicine Jacobi Montefiore None
Treasurer	James J. Rahal	12/15/1987	314 W. 77 th Street, #8B, NY, NY 10024	MD-ID- NYHQ	Director, Infectious Diseases	See CV	See CV	See CV	None
Board Member	Bruce S. Spinowitz	8/28/1979	95 Overlook Road New Rochelle, NY 10804	MD-NYHQ & Nephrology Assoc, PC	Associate Chairman, Assistant Director, Nephrology	See CV	See CV	See CV	Albert Einstein College of Medicine
Board Member	Moshe Rubin	1/22/2008	1020 Park Avenue, Fl. 1 NY, NY 10028	MD-NYHQ	Director, Division of Gastroenterology	See CV	See CV	See CV	Weill College of Medicine

Curriculum Vitae

Stephen Rimar, M.D., M.B.A.

Birthdate:	March 28, 1955	Citizenship:	USA
Birthplace:	Trenton, New Jersey	Family:	Wife: Joan Meighan Rimar Children: Elizabeth and Christine
Office:	56-45 Main Street Flushing, NY 11355 Tel: 718-670-1549 Cell: 347-924-2185 Email: srimar@nyp.org	Home:	300 Joyce Road Hamden, CT 06518 Tel: 203-288-0624 Email: srimar@hotmail.com

Education

Yale University, New Haven, CT	B.S.	1977
George Washington University, Washington, DC	M.D.	1982
University of New Haven, New Haven, CT	M.B.A.	1997

Post-Graduate Training

Intern in Pediatrics, Yale-New Haven Hospital, New Haven, CT	1982-83
Resident in Pediatrics, Yale-New Haven Hospital	1983-85
Resident in Anesthesiology, Yale-New Haven Hospital	1985-87
Clinical Fellow in Pediatric Anesthesiology, Yale University School of Medicine Program Director: Tae Oh, M.D.	1987
Post-Doctoral Fellow in Lung Pharmacology & Pathophysiology, Yale University School of Medicine, Program Director: C.N. Gillis, Ph.D.	1988-89

Appointments and Positions

Instructor in Anesthesiology, Yale University School of Medicine	1988-89
Assistant Professor of Anesthesiology & Pediatrics, Yale Univ Sch Med	1989-94
Associate Professor of Anesthesiology & Pediatrics, Yale Univ Sch Med	1994-01
Associate Professor (Joint Appointment), Yale School of Management	1998-01
Associate Clinical Professor of Pediatrics, Weill College of Medicine, Cornell Univ 03/2006-09	2001-
Professor of Anesthesiology, Robert Wood Johnson Medical School, UMDNJ	2005-07
Chief, Section of Pediatric Anesthesia, Yale University School of Medicine	1991-96
Vice-Chairman for Administration and Finance, Department of Anesthesiology, Yale University School of Medicine	1996-00
Executive Director, Yale Center for Pain Management	1996-97
Acting Administrator, Department of Anesthesiology, Yale Univ Sch Med	1997-98
Director, Yale Management Program for Physicians, Yale School of Management	1998-01
Medical Director, Yale Medical Group, Yale Univ Sch of Medicine	1999-01
Executive Director, Yale Corporate Medical Program	1999-01
Fellow, Silliman College, Yale University	1999-01

Appointments and Positions cont'd

Executive Vice President & Chief Medical Officer, The Brooklyn Hospital Center	2001-03
Executive Vice President & Chief Medical Officer, The Cooper Health System	2003-07
Chief Operating Officer, Cooper University Physicians	2003-07
Senior Vice President and Chief Medical Officer, New York Hospital Queens	2007-
Associate Attending in Anesthesiology, Yale-New Haven Hospital	1988-89
Attending in Anesthesiology, Yale-New Haven Hospital	1989-01
Medical Director, Pediatric Surgery Center, Children's Hospital at Yale	1993-96
Associate Director of Operating Rooms (Pediatrics), Yale-New Haven Hospital	1993-96
Attending in Anesthesiology, The Brooklyn Hospital Center	2001-03
Attending in Anesthesiology & Pediatrics, Cooper University Hospital	2003-07
Attending in Anesthesiology & Pediatrics, New York Hospital Queens	2007-
Senior Vice President & Chief Medical Officer, New York Hospital Queens	2007-

Honors and Awards

"Best Doctors in America"	1997
"Best Doctors in America"	1998
"Best Doctors in America"	1999
"Best Doctors in America"	2000
"Who's Who in Medicine and Health Care"	1999
"Who's Who in America"	2001
"Who's Who in the World"	2001
"Friend of Nursing Award", The Brooklyn Hospital Center	2002

Directorships, Boards and Advisory Panels

Children's Clinical Research Center, Yale University School of Medicine Advisory Board	1992-95
Yale University Health Professions Advisory Board	1995-01
Center for Outcomes Research and Evaluation, Yale-New Haven Hospital Clinical Advisory Board	1997-99
Impact Physician Management Services, Ltd Board of Directors	1999-01
Yale Dermatology Associates, PC Board of Directors, Secretary	1999-01
Association of American Medical Colleges, Group on Information Resources Leadership Advisory Board	1999-01
Yale-New Haven Physicians Independent Practice Association Board of Directors	2000-01
ComTrust, LLC, Healthcare Internet Security Medical Advisory Board	2001
Weill Medical College, Cornell University Council of Affiliated Deans	2001-03
LCME Advisory Panel	2002
Cancer Institute of New Jersey Board of Directors	2003-07
University of Medicine and Dentistry of New Jersey Camden Medical School Task Force	2004
RWJMS Dean's Executive Faculty Committee	2003-07

Certification and License

National Board of Medical Examiners	1983
American Board of Pediatrics	1987
American Board of Anesthesiology	1988
State of Connecticut #027805	1988-01
State of New York #222872	2001-
State of New Jersey #25MA07696800	2003-

Committees / Task Forces / Advisory Groups

Yale Department of Anesthesiology	
Curriculum Committee	1990-94
Resident Selection Committee	1990-99
Executive Committee	1991-00
Finance Committee, Chairman	1996-99
Yale Medical Group (Faculty Practice Plan)	
Ambulatory Care Information Systems Committee	1997-01
Credentialing Committee, Chairman	1996-01
Clinical Chiefs Committee, Chairman	1996-01
Contracting Committee	1999-01
Finance Committee	1996-01
HCFA Compliance Oversight Committee	1997-01
Marketing and Strategic Development Advisory Group	1998-01
IDX Implementation Steering Committee	1997-99
Infection Control Committee, Chairman	1999-01
Research and Education Committee	1999-01
Yale-New Haven Hospital / Yale-New Haven Health System	
Children's Hospital Task Force	1991-93
Operating Room Committee	1994-98
Conscious Sedation Task Force	1996-97
Conscious Sedation Committee, Chairman	1997-00
HIPAA Implementation Committee	2000-01
Information Services Steering Committee	2000-01
Medical Management Task Force	1999-01
Performance Improvement Leadership Group	2000-01
Yale-New Haven Heart Center, Cabinet Member	1999-01
Yale-New Haven Physicians Independent Practice Association	
Credentialing Committee	1999-01
Contracting Committee	1999-01
Utilization Management Committee	1999-01

Committees / Task Forces / Advisory Groups cont'd

Yale University / Yale School of Medicine	
Academic Mentorship Program in the Sciences, Yale College	1992-96
Clinical Information Task Force	1996-97
Clinical Information Confidentiality Committee (HIPAA), Chairman	1999-01
Telemedicine Clinical Subcommittee, Chairman	1998-99
MCIC Vermont, Claims and Risk Management Committee	1999-01
Y2K Steering Committee	1999-00
Yale New-Haven Health System Affiliation Agreement	
Managed Care/Corporate Services Group	1998

Professional Societies

American Academy of Pediatrics, Section on Anesthesiology	1988-97
American Board of Pediatrics, Program for Renewal of Certification	1992
American College of Healthcare Executives	2003-
American College of Physician Executives	1996-
American Heart Association, Council on Cardiopulmonary & Critical Care	1988-96
American Physiological Society	1995-98
American Society of Anesthesiologists	1985-01
Subcommittee on Pediatric Anesthesia	1996-97
Subcommittee on Experimental Circulation	1996-98
Association of American Medical Colleges	1996-
Group on Faculty Practice	1999-
Group on Information Resources – Program Committee	1999-01
Program Chair, 2001 Annual Meeting	2000
Association of University Anesthesiologists	1995-01
Connecticut State Society of Anesthesiologists	1992-01
National Legislative Conference Representative	1997-99
Medicare Carrier Advisory Representative	1998-00
International Anesthesia Research Society	1985-97
Medical Group Management Association	1998-01
Medical Society of the State of New York	2001-
Society of Cardiovascular Anesthesiologists	1990-95
Society for Pediatric Anesthesia	1988-01
Assistant Editor, Newsletter	1994-96
Program Committee	1996-00

Editorial Activities

Academic Medicine, Reviewer	2000-
American Journal of Physiology, Reviewer	1992-96
Anesthesia & Analgesia, Reviewer	1992-98
Anesthesiology, Reviewer	1991-98
Critical Care Medicine, Reviewer	2003-
Journal of Applied Physiology, Reviewer	1992-98
Journal of Clinical Anesthesia, Reviewer	1996-98
Pediatric Research, Reviewer	1995-98
Journal of Clinical Monitoring, Reviewer	1997

Research Grant Review

Thesis Review Committee, Yale University School of Medicine, Ad Hoc Reviewer, 1993
The Soros Foundation General Scholarship Competition, Ad Hoc Reviewer, 1994
NIH Special Emphasis Panel: Clinical Centers and Clinical Coordinating Center for a Clinical Network for the Treatment of Adult Respiratory Distress Syndrome (ARDS). NHLBI, 1994
NIH Special Emphasis Panel: Clinical Investigator Development Award. NHLBI, 1994
NIH Special Emphasis Panel: Clinical Scientist Development Award. NHLBI, 1995
NIH Special Emphasis Panel: Comprehensive Sickle Cell Centers, nitric oxide projects. NHLBI, 1997
Connecticut Hospital Association, Committee on Quality Assessment, 2000-02

Research Grants and Awards

National Research Service Award, NHLBI HL-07410, Research Training in Lung Pharmacology and Pathophysiology, Stephen Rimar, Post-Doctoral Fellow. C.N. Gillis, Preceptor. 1988-89

NIH BRSG RR 05358, Uptake of Angiotensin Converting Enzyme Inhibitors by the Coronary Circulation. Principal Investigator. 1989-90

Foundation for Anesthesia Education and Research Starter Grant, Effects of General Anesthesia on Endothelin Induced Coronary Vasoconstriction. Principal Investigator. 1990-91

Society of Cardiovascular Anesthesiologists Research Grant, Role of Circulating Endothelin in Post-Coronary Bypass Hypertension. Principal Investigator. 1991-92

Sanofi-Winthrop Pharmaceuticals Research Award, Mechanisms of Pulmonary Vasodilation by the PDE Inhibitors Amrinone and Milrinone. Co-Investigator. 1992-93

Astra Pharmaceuticals Research Award, EMLA Cream for Skin Anesthesia in Children Undergoing Invasive Procedures. Center Principal Investigator. 1992-93

Edward A. Bouchet Science Fellowship, Yale College. The Role of Cyclic Guanosine Monophosphate in Phosphodiesterase Inhibitor Induced Vasodilation. Abhijit Patel, Recipient. Stephen Rimar, Preceptor. 1992

Glaxo Research Institute Grant, A Randomized, Double-Blinded, Placebo-Controlled, Multicenter Study of Intravenous Ondansetron for the Prevention of Postoperative Emesis in Pediatric Patients Undergoing Outpatient Surgery. Center Principal Investigator. 1993-94

Howard Hughes Medical Institute Postdoctoral Research Fellowship, Effect of Free Radical Exposure on Pulmonary Endothelial Production of Nitric Oxide. Maxine Lee-Mengel, Postdoctoral Fellow. Stephen Rimar, Preceptor. 1992-95

NIH M01 RR 06022, General Clinical Research Center. Principal Investigator on Subproject: Inhaled Nitric Oxide in Neonatal Pulmonary Hypertension. 1993-98

Pharmaton Research Grant, Action of G115 on Free Radical-Induced Injury to the Vascular Endothelium and Relationship to Nitric Oxide Synthesis. Principal Investigator. 1994-95

MCIC Quality of Care and Risk Management Grant, The Use of a Conscious Sedation Policy to Improve Documentation and Outcomes, Principal Investigator. 1998-99

Partnerships for Quality Education, Managed Care Curriculum for Pediatric Residents, Robert Wood Johnson Foundation, Co-Investigator. 1999-2002

Bibliography

Laboratory Publications

- Rimar S. and Gillis C.N. Pulmonary vasodilation by inhaled nitric oxide following endothelial injury. *J Appl Physiol* 73(5): 2179-2183, 1992.
- Rimar S. and Gillis C.N. Differential uptake of endothelin-1 from the coronary and pulmonary circulations. *J Appl Physiol* 73(2): 557-562, 1992.
- Rimar S. and Gillis C.N. Rapid reversal of angiotensin converting enzyme inhibition by lisinopril in the perfused rabbit lung. *Pulm Pharm* 5: 103-109, 1992.
- Rimar S. and Gillis C.N. Selective pulmonary vasodilation by inhaled nitric oxide is due to hemoglobin inactivation. *Circulation* 88(5): 2884-2887, 1993.
- Zapol W.M., Rimar S., Gillis C.N., Marletta M., and Bosken C. NIH Workshop: Nitric oxide and the lung. *Am Journ Resp Crit Care Med* 149: 1375-1380, 1994.
- Rimar S. and Gillis C.N. Site of pulmonary vasodilation by inhaled nitric oxide in the perfused lung. *J Appl Physiol* 78(5): 1745-1749, 1995.
- Rimar S., Lee-Mengel M., and Gillis C.N. Pulmonary protective and vasodilator effects of a standardized Panax ginseng preparation following artificial gastric digestion. *Pulm Pharm* 9(4): 205-9, 1996.
- Rimar S. The pharmacology of inhaled nitric oxide. *Anaesthetic Pharmacol Physiol Rev* 4:88-95, 1996.
- Rimar S. and Gillis C.N. Effect of oxygen radicals on pulmonary endothelial function. In: *Nitric Oxide and Radicals in the Pulmonary Vasculature*, edited by Weir E.K, Archer AL, and Reeves, JT.. Futura, New York, 1996, pp 87-104.
- Rimar S. and Gillis C.N. Nitric oxide and experimental lung injury. In: *Nitric Oxide and the Lung*. Edited by Zapol W.M. and Bloch K.D. Marcel Dekker, New York, 1997, pp165-83.
- Bruckheimer E., Rimar S., Dubois A.B. and Douglas J.S. Measurement of endogenous nitric oxide production. *J Clin Monitoring* 16: 21-23, 2000.

Clinical Publications

- Schachter E.N., Rimar S., Littner M., Beck G.J., and Bouhuys A. Airway reactivity and exercise in health subjects. *Chest* 81: 461-465, 1982.
- Rimar S., Shaywitz S.E., Shaywitz B.A., Lister G., Anderson G.M., Leckman J.F., and Cohen D.J. Autonomic dysfunction, peripheral neuropathy and depression. *Ped Neurol* 1(2): 120-3, 1985.
- Rimar S., Westry J.A., and Rodriguez R.L. Compartment syndrome in an infant following emergency intraosseous infusion. *Clin Ped* 27: 259-260, 1988.
- Bell C., Rimar S., and Barash P.G. Intraoperative ST-segment changes consistent with myocardial ischemia in the neonate: A report of three cases. *Anesthesiology* 71: 601-604, 1989.
- Rimar S., and Urban M.K. Newborn physiology and development. In: *The Pediatric Anesthesia Handbook*, edited by Bell C., Hughes C., and Oh T.H. Mosby, St. Louis, 1991, pp 1-17.
- Rimar S. Valvular and congenital heart disease. *Curr Opin Anesth* 4: 59-61, 1991.
- Kain Z.N., Rimar S., and Barash, P.G. Cocaine abuse in the parturient and effects on the fetus and neonate. *Anesth Analg* 77: 835-845, 1993.
- Kain Z.N., Gaal D.J., Kain T., Jaeger D.D., and Rimar S. A first-pass cost analysis of propofol versus barbiturates for children undergoing magnetic resonance imaging. *Anesth Analg* 79: 1102-1106, 1994.
- Kain Z.N. and Rimar S. Management of Chronic Pain in Children. *Pediatrics in Review* 16: 218-222, 1995.
- Kain Z.N., Mayes L.C., Cicchetti D.V., Caramico L.A., Spieker M., Nygren M.M., and Rimar S. A measurement tool for pre-operative anxiety in children: the Yale Preoperative Anxiety Scale (YPAS). *Child Neuropsychology* 1(3): 203-210, 1995.
- Kain Z.N., Mayes L.C., Caramico L.A., Silver D., Spieker M., Nygren M.M., Anderson G. and Rimar S. Parental presence during induction of anesthesia. A randomized controlled trial. *Anesthesiology* 84(5): 1060-7, 1996.
- Kain Z.N., Ferris C.A., Mayes L.C., and Rimar S. Parental presence during induction of anesthesia: practice differences between the United States and Great Britain. *Paediatric Anaesthesia* 6(3): 187-93, 1996.
- Kain Z.N., Mayes L.C., Bell C., Weisman S., Hofstadter M.B., and Rimar S. Premedication in the United States: a status report. *Anesth Analg* 84(2): 427-32, 1997.
- Patel R.I., Davis P.J., Orr R.J., Ferrari L.R., Rimar S., Hannallah R.S., Cohen I.T., Colingo K., Donlon J.V., Haberkern C.M., McGowan F.X., Prillaman B.A., Parasuraman T.V., and Creed M.R. Single-dose ondansetron prevents postoperative vomiting in pediatric outpatients. *Anesth Analg* 85(3): 538-45, 1997.
- Roberts J.D., Fineman J.R., Morin F.C., Shaul P.W., Rimar S., Schreiber M.D., Polin R.A., Zwass M.S., Zayek M.M., Gross I., Heymann M.A., and Zapol WM. Inhaled nitric oxide and persistent pulmonary hypertension of the newborn. The Inhaled Nitric Oxide Study Group. *N Engl J Med* 336(9): 605-10, 1997.

Management Publications

Rimar S., and Garstka S.J. The Balanced Scorecard: Development and implementation in an academic clinical department. *Academic Medicine*. 74(2):114-22, 1999.

Kain Z., Fasulo A., and Rimar S. Establishment of a pediatric surgery center: Increasing anesthetic efficiency. *J Clin Anesth* 11: 540-44, 1999.

Rimar S. Medical group practice organizations have less influence on physicians' practice styles than expected. *J Evidence-Based Healthcare* 4(2): 32, 2000.

Rimar S. Teaching physicians to be leaders. *Academic Medicine* 75(10): 958, 2000.

Rimar S. Strategic planning and the balanced scorecard for faculty practice plans. *Academic Medicine* 75(12): 1186-1188, 2000.

Rimar S. The Balanced Scorecard: Strategy and performance for academic health centers. Proceedings of the 2000 Forum on Emerging Issues, Executive Leadership in Academic Medicine Program for Women, Philadelphia, PA, 2001.

Rimar S. Contributing author. Guidelines for academic medical centers' implementation of security and privacy regulations (HIPAA). Association of American Medical Colleges, Washington, DC, 2001.

Rimar S. Selling an idea. *Academic Physician and Scientist*, 2001.

Rimar S. *The Yale Management Guide for Physicians*. Wiley and Sons, New York, 2001.

Laboratory, Clinical and Management Presentations

- Rimar S., and Gillis C.N. Rapid reversal of angiotensin converting enzyme (ACE) inhibition by lisinopril in the perfused rabbit lung. *Circulation* 78(4): II-205, 1988.
- Rimar S., and Gillis C.N. Differential uptake of endothelin by the rabbit coronary and pulmonary circulation. *Circulation* 80(4): II-213, 1989.
- Rimar S., and Gillis C.N. Discrepancy between lisinopril binding and [³H]benzoyl-phe-ala-pro (BPAP) hydrolysis in the perfused rabbit lung. *Amer Rev Resp Dis* 239(4): 619, 1989.
- Rimar S., and Gillis C.N. Prolonged duration of inhaled nitric oxide-induced vasodilation in perfused rabbit lungs. *Circulation* 84(4): II-91, 1991.
- Rimar S., and Gillis C.N. Methylene blue does not prevent the pulmonary vasodilator response to inhaled nitric oxide in the perfused rabbit lung. *Amer Rev Resp Dis* 143(4): A774, 1991.
- Rimar S., and Gillis C.N. Pulmonary vasodilatation by inhaled nitric oxide is unaffected by free radical injury in the intact lung. *FASEB J* 5(6): A1722, 1991.
- Rosenkranz P.G., Rimar S., and Gillis C.N. Potentiation of endothelin-1-induced pulmonary vasoconstriction by acidosis. *Vascular Endothelium (NATO ASI)* 208: 286, 1991.
- Lee M., Rimar S., and Gillis C.N. Methylene blue does not inhibit guanylate cyclase activity during inhaled nitric oxide exposure in the perfused lung. *Circulation* 86(4): I-603, 1992.
- Lee M., Rimar S., and Gillis C.N. Amrinone-induced vasodilation is associated with elevated cGMP levels in the perfused rabbit lung. *Anesthesiology* 77(3A): A632, 1992.
- Rimar S., and Gillis C.N. Elevation of arterial endothelin-1 following cardiopulmonary bypass. *Amer Rev Resp Dis* 145(4): A641, 1992.
- Rimar S., and Gillis C.N. Selective pulmonary vasodilation by inhaled nitric oxide is due to hemoglobin inactivation. *FASEB J* 6(4): A947, 1992.
- Rimar S. and Gillis C.N. Site of pulmonary vasodilation by inhaled nitric oxide in the intact lung. *Circulation* 88(4): I-477, 1993.
- Kain Z.N., Gaal D.J., Jaeger D.D., Rimar S. Sedation for MRI in children: propofol vs barbiturates. *Anesthesiology* 79(3A): A1158, 1993.
- Kain Z.N., Mayes L., Cicchetti D.V., Caramico L., Speiker M., Nygren M., and Rimar S. A tool for measurement of pre-operative anxiety in children: the Yale Preoperative Anxiety Scale (YPAS). *Anesthesiology* 81: 1361, 1994.
- Rimar S., Chaisson K.M., Gillis, C.N. Oxygen free radical injury inhibits nitric oxide synthase (NOS) activity in the intact lung. *FASEB J* 8(5): A665, 1994.
- Urban M.K., Rimar S., McDonald M., Urquhart B. The increase in PVR associated with cemented total knee arthroplasty may be related to endothelin release. *Anesth Analg* 78: S446, 1994.

Kain Z.N., Mayes L., Nygren M., Speiker M., Brandriff C., and Rimar S. Does a preparation program decrease preoperative anxiety in children and parents? *Anesthesiology* 81: A1362, 1994.

Laboratory, Clinical and Management Presentations cont'd

Kain Z.N., Mayes L., Nygren M., and Rimar S. Behavioral disturbances in children following surgery. *Anesthesiology* 81: A1382, 1994.

Hannallah R, Davis PJ, Orr R, Ferrari L, and Rimar S. Prophylactic administration of ondansetron effectively decreases postoperative emesis in children. *Anesthesiology* 83: A1177, 1995.

Rimar S., Lee-Mengel M, and Gillis CN. Impaired acetylcholine induced cGMP and effluent nitric oxide release following free radical injury in the intact lung. *FASEB J* 9(3): A276, 1995.

Kain Z.N., Mayes L., Nygren M., Caramico L., Brandriff C., and Rimar S. How do parents react to surgery performed on their children? *Anesth Analg* 80: S222, 1995.

Roberts J.D., Fineman J., Morin F.C., Shaul P.W., Rimar S., Shreiber M.D., Polin R.A., Thusu K.G., Zayek M., Zwass M.S., Zellers T.M., Wylam M.E., Gross I., Zapol W.M., and Heyman M.A. Inhaled nitric oxide gas improves oxygenation in PPHN. *Ped Res* 39: 241A, 1996.

Rimar S., Lee-Mengel M, and Gillis CN. Pulmonary protective and vasodilator effects of ginseng (G115) following artificial digestion. *FASEB J* 10(3): A106, 1996.

Rimar S., and Garstka S.J. The Balanced Scorecard: a strategic management system for an academic anesthesiology department. *Anesthesiology* 87: A1016, 1997.

Swamidoss C., Crede W., and Rimar S. Documentation and Compliance in the Practice of Conscious Sedation. *Anesthesiology* 89: A1339, 1998.

Kain Z., Fasulo A., and Rimar S. Establishment of a pediatric anesthesia section: Does it make a difference? *Anesthesiology* 89: A1342, 1998.

Recent Invited Lectures and Panels

“The Balanced Scorecard: Strategy and Performance for Academic Health Centers”, ELAM Program, 2000 Forum on Emerging Issues, Bryn Mawr, PA, April 2000.

“HIPAA Compliance and Physicians”, Modern Healthcare Seminar, *Successful Business Strategies for HIPAA Compliance*, New York, NY, May 2000.

“Physicians and Medical Record Privacy”, Superior CEO Summit, Chicago, IL, September 2000.

“The Healthcare Supply Chain”, Electron Economy Healthcare Advisory Board, Cupertino, CA, October 2000.

“HIPAA: Are you ready?”, Association of American Medical Colleges Annual Meeting, Chicago, IL, November 2000.

“Conscious Sedation Policy Implementation in an Academic Medical Center”, MCIC Vermont Risk Management, New York, NY, February 2001.

“Academic Medical Centers and HIPAA: Impact on Core Missions”, University HealthSystem Consortium Annual Meeting, Washington, DC, March 2001.

“HIPAA: It’s Here to Stay, Everything You’ve Been Afraid to Ask...”, Association of American Medical Colleges Summer Symposium, Toronto, Canada, July 2001.

“Developing Leadership Skills for Physicians”, Association of Academic Dermatologic Surgeons Annual Meeting, Chicago, Ill, September 2001.

“2001 Management Practice Seminar”, Yale University School of Public Health, New Haven, CT, October 2001.

“How to Develop an Idea and Make It a Reality”, New York City Health & Hospitals Corporation Annual Physician Leadership Training Conference, November 2001.

“Teaching Physicians to Behave Like Managers”, Balanced Scorecard Collaborative Best Practices Conference, Cambridge, MA, April 2002.

Program Developer and Moderator, *2002 Physician Leadership Institute*, National Association of Public Hospitals and Health Systems, Chicago, IL, May, 2002.

“Performance Measurement and the Turnaround Hospital”, Balanced Scorecard Collaborative Health Care Summit, Hilton Head, SC, April 2003.

“Developing a Business Plan”, Executive Management Program, Yale School of Management, New Haven, CT, July 2004.

“Core Competencies and Corporate Planning in Healthcare”, Cooper-Wharton Leadership Development Program, Camden, NJ, October 2004.

“Business Planning and Medical Practice”, Executive Management Program, Yale School of Management, New Haven, CT, July 2005.

Stephen Rimar
“Developing and Using Business Plans”, Executive Management Program, Yale School of Management, New Haven, CT, July 2006.

CURRICULUM VITAE
CHAIM CHARYTAN, M.D.

Address N.Y. Hospital Queens, Renal Division/Nephrology Associates, P.C.
56-45 Main Street, Flushing, N.Y., 11355
07/1970-Present 1874 Pelham Parkway South, Bronx, New York, 10461

BIOGRAPHICAL
DATA:

Education Yeshiva University, B.A., Magna Cum Laude, 05/1960
Albert Einstein College of Medicine, M.D., 06/1964
Junior AOA

PROFESSIONAL
TRAINING:

07/64-06/65 Medical Internship, Bronx Municipal Hospital (of the Albert
Einstein College of Medicine)

07/65-06/67 Medical Residency, as above, Medicine

07/67-06/68 Renal Fellowship, Boston University and Boston City
Hospitals with Drs. Relman and Levinsky

MILITARY
SERVICE:

07/1968-07/1970 Captain, USAF
Renal Division at the 1000 bed Wilford Wall, USAF Medical
Center including Renal Hypertension Ward and Service,
Active Dialysis and Transplant Program, San Antonio, Texas

Chief, Renal Section Renin and Aldosterone Laboratory

Research Associate with the Aerospace Research Unit
(Clinical), San Antonio, Texas

CERTIFICATION:

11/1969 Diplomat, American Board of Internal Medicine
10/1974 Diplomat, American Board of Nephrology

SOCIETIES,

FELLOWSHIPS:

Alpha Omega Alpha
American Medical Association
American Society of Artificial Internal Organs
Bronx County Medical Society
Fellow, American College of Physicians
International Society of Artificial Internal Organs
International Society of Nephrology
International Society of Peritoneal Dialysis
New York Society of Nephrology
Renal Physicians Association

ACADEMIC/TEACHING
APPOINTMENTS

Clinical Professor of Medicine
Cornell University Medical College

Adjunct Clinical Professor of Medicine
Albert Einstein College of Medicine

07/1970-Present Chief, Renal Division
Director, Dialysis Units
New York Hospital Queens

LICENSURE: New York, License No. 94700; California

HOSPITAL
APPOINTMENTS:

07/1983-Present Consultant/Director, Bayside Dialysis Center, Inc.
07/1970-Present Attending, Albert Einstein College of Medicine
07/1970-Present Attending, New York Hospital Queens
07/1970-Present Attending, Montefiore Medical Center

OTHER
PROFESSIONAL
ACTIVITIES

07/1990-Present Editorial Board: Peritoneal Dialysis Bulletin, Clinical Nephrology, Nephron
07/1992-07/1996 Chairman, Council of New York Nephrologists
07/1997-07/1999 Nephrology Representative to the Carrier Advisory Committee
07/1989-07/2003 Consultant, Governor's Advisory Council on Nephrology (N.Y.S.)
Consultant in CAPD to Baxter Laboratories
Medical Advisory Board NY/NJ National Kidney Foundation
Queens NAPHT Advisory Council
Executive Committee, ESRD Network of N.Y.,
President, ESRD Network of New York,
President, Renal Physicians Association,
Board of Directors, RPA,
Consultant, Oxford HealthCare, Capitation Initiative

COMMITTEES:

Albert Einstein College of Medicine

Promotions - Einstein
Clinical Faculty Steering Committee
Alumni Council

COMMITTEES
CONT'D

New York Hospital Queens

House Staff
Evaluations
Recruitment
Curriculum
Executive Board, Faculty Practice Plan
Executive Board, BMA Foundation (Research/Education)
Computer Planning
Institutional Planning and Development
Public Affairs Committee
Department of Medicine Search Committee (for new Chairman)

OTHER

ESRD

Waste Disposal
Dialysis Technicians Certification
Computer Committee
Patient Referral and Transfer Policy (Involuntary Discharge)

Renal Physicians Association

Past Chairman, Carrier Relations
Member, Executive Board
Chair, Government Affairs Council
Chair, Nephrology Coverage Advisory Board, 2003-Present

Governmental Advisory Committees

Congresswoman Nita Lowy, Westchester County,
01/1990-Present
Chair, Government Affairs Council (RPA)
Nephrology Representative to Carrier Advisory Committee

CURRICULUM VITAE

NAME: James J. Rahal, Jr.
BORN: Boston, Massachusetts; October 14, 1933
EDUCATION: Harvard College, A.B. cum laude, 1955
Tufts University School of Medicine, M.D.
cum laude. Alpha Omega Alpha, 1959

POSTGRADUATE TRAINING:

Intern and Assistant Resident in Medicine
Second (Cornell) Medical Division
Bellevue Hospital, New York, N.Y. - 1959-1961.
Senior Resident in Medicine
New England Medical Center Hospitals - 1961-1962.
Chief Resident In Infectious Diseases
New England Medical Center Hospitals - 1963-1964
U.S.P.H.S Trainee in Infectious Diseases - New England
Medical Center Hospitals - 1962-1963; 1964-1965.

FULL TIME APPOINTMENTS:

Assistant Physician, Department of Medicine and
Infectious Disease Service, New England Medical
Center Hospitals 1965-1969.
Instructor in Medicine, Tufts University School
of Medicine 1965-1966.
Senior Instructor in Medicine, Tufts University
School of Medicine - 1966-1968.
Assistant Professor of Medicine, Tufts University
School of Medicine - 1968-1969
Assistant Professor of Medicine, New York University
School of Medicine - 1969-1974.
Chief, Division of Infectious Disease, Manhattan
Veterans Administration Medical Center - 1969-1986.
Chief, Infectious Disease Section, New York Infirmary
Beekman Downtown Hospital 1986-1988.
Associate Professor of Medicine, New York University
School of Medicine - 1974-1989.

Director, Infectious Disease Section, The New York Hospital Medical Center of Queens, formerly Booth Memorial Medical Center - 1988-present.

Associate Professor of Medicine, Albert Einstein College of Medicine - 1988-1991.

Visiting Professor of Medicine, Albert Einstein College of Medicine - 1994-present.

Professor of Medicine, Albert Einstein College of Medicine - 1991-1992.

Clinical Professor of Medicine, Weill College of Medicine, Cornell University - 1992-2000.

Professor of Medicine, Weill College of Medicine, Cornell University - 2001-present.

Assistant Dean, Weill College of Medicine, Cornell University - 2004-Present

Director, Certified Infectious Disease Training Programs:

New York (Manhattan) V.A. Medical Center 1970-1986
New York Hospital Medical Center of Queens 1988-present

SPECIALTY BOARDS:

American Board of Internal Medicine - 1967
American Board of Infectious Diseases - 1972

RESEARCH AWARDS:

Research Fellowship - Medical Foundation of Boston - 1966-1968
Principal Investigator - USPHS Research Grant #AI-07066
"Mechanism of Action of Bacterial Exotoxins" 1966-1969

Principal Investigator - Veterans Administration Research Grant -
"Biochemical Mechanisms in Septic Shock: The Role of Bacterial Toxins" 1971-1978

Chairman - V.A. Cooperative Study #89 - "Nafcillin Therapy of Staphylococcal Bacteremia: Four week versus six week therapy for staphylococcal endocarditis and two week versus four week therapy for bacteremia without evidence of endocarditis" - 1978-1981

Albion O. Bernstein, MD Award - April 17, 2004 - Presented by the Medical Society of the State of New York in recognition of identification, treatment and prevention of nosocomial infection with multi-drug resistant gram negative organisms.

TEACHING AWARDS:

Teacher of the year Award-Booth Memorial Medical Center Medical Housestaff - 1988-1989

First Annual Infectious Disease Fellows Award-Albert Einstein College of Medicine - 1991-1992

RESEARCH APPOINTMENT:

Visiting Investigator, Department of Biochemistry, Public Health Research Institute of the City of New York, 1969-1970

SCIENTIFIC SOCIETIES:

Fellow-Infectious Diseases Society of America

President, New York Society of Infectious Diseases 1996-97.

Fellow-American College of Physicians

American Federation for Clinical Research

American Society for Microbiology

American Association for the Advancement of Science

PROFESSIONAL COMMITTEES - REGIONAL AND NATIONAL:

Advisory Expert Committee on Infectious Disease Control - New York City Department of Health, Member, 1974-1985

Veterans Administration Advisory Committee on Infectious Disease, V.A. Central Office, Washington, D.C., Member, 1976-1981

New York State AIDS Institute - Subcommittee on Access to Therapeutic Trials - Member, 1987-1988

New York State Chapter, American College of Physicians - AIDS Subcommittee of the Health and Public Policy Committee - Member, 1988.

National Institute of Health - Data and Safety Monitoring Board for AIDS Treatment Evaluation Units - Member, 1988-1996

New York State Department of Health AIDS Institute: AIDS Drug Assistance Program - Chairman, Medical Advisory Council 1991-1993.

New York State Department of Health AIDS Institute: HIV Uninsured Care Programs-Member, Steering Committee and Chairman, Clinical Subcommittee - 1993-2001.

EDITORIAL BOARD MEMBER

Microbial Drug Resistance
Current Treatment Options in Infectious Diseases
Infectious Disease News

EDITORIAL REVIEWER

New England Journal of Medicine
Journal American Medical Association
Annals of Internal Medicine
Archives of Internal Medicine
Journal of Infectious Diseases
Clinical Infectious Diseases
The Medical Letter

INVITED LECTURES - NATIONAL OR INTERNATIONAL MEETINGS:

Rahal, J.J. - Treatment of Fungal Endocarditis Conference on Treatment of Bacterial Endocarditis. American Heart Association National Center, Dallas, Texas - April 28-30, 1980.

Rahal, J.J. - Staphylococcal Bacteremia and Endocarditis. Symposium on Current Problems in Staphylococcal Infections. 20th Interscience Conference on Antimicrobial Agents and Chemotherapy, New Orleans Louisiana - September 22-24, 1980.

Rahal, J.J. - Meningitis in Adults. Symposium on Bacterial Meningitis. 21st Interscience Conference on Antimicrobial Agents and Chemotherapy, Chicago, Illinois - November, 1981.

Rahal, J.J. - Teaching Staff. International Course on the Evaluation of Antibiotic Resistance Mechanisms: The Methicillin Resistant *Staphylococcus aureus*. Gulbenkian Institute of Science and Rockefeller University, Oeiras, Portugal, July 22, - August 2, 1991.

Rahal, J.J. - Antimicrobial resistance in Gram-Negative Pathogens: a Global View: Table Ronde Roussel UCLAF, No. 75, Microbial Antibiotic Resistance: Challenge to Science and Chemotherapy. Versailles, France. July 5-6, 1993.

Rahal, J.J. - Teaching Staff. Salzburg Cornell Seminar in Infectious Diseases. Soros Foundation, Salzburg, Austria. July 13-20, 1996.

Rahal J.J. - *Acinetobacter*: Fertile soil for the Emergence of Antibiotic Resistance. Infectious Diseases Society of America, Denver, Colorado. November 12, 1998.

Rahal J.J. Squeezing the antibiotic resistance balloon: Is it inevitable? 41st Interscience Conference Antimicrobial Agents and Chemotherapy, Chicago, Illinois -September, 2001.

Rahal J.J. Prevention of antibiotic resistance in hospitals. Meet the Experts Session. 41st Interscience Conference on Antimicrobial Agents and Chemotherapy, Chicago, Illinois - September, 2001.

Rahal J.J. Effects of Interferon Alpha-2b on St. Louis Virus Meningoencephalitis. National Institute of Allergy and Infectious Diseases Symposium on West Nile infection. Bethesda, Md. 11/21/02.

Rahal, J.J. Emerging Resistance in Nosocomial Pathogens - Multidrug-resistant *Acinetobacter* and *Pseudomonas*. International Conference on Emerging Infectious Diseases. Centers for Disease Control and Prevention, Atlanta, GA. 3/1/04.

Rahal J.J. Combination Therapy for Multiply Resistant *Acinetobacter* and *Pseudomonas*. Update on Serious Gram Negative Bacterial Infections in the I.C.U. University of Pittsburgh, Pittsburgh, PA. 5/8/04.

Rahal, J.J. Epidemiology and Control of Carbapenem Resistance. Interscience Conference on Antimicrobial Agents and Chemotherapy, American Society for Microbiology. Washington, D.C. 10/31/04.

Rahal, J.J. Multi-resistant *Acinetobacter*: A Worldwide Pandemic. Treatment Options. 45th Interscience Conference on Antimicrobial Agents and Chemotherapy. Washington, D.C. 12/18/05.

BIBLIOGRAPHY

1. Rahal JJ Jr, Plaut ME, Rosen H, Weinstein L. Purified Staphylococcal Alpha Toxin: Effect on Epithelial Ion Transport. *Science* 155:1118, 1967.
2. Rahal JJ Jr, Plaut ME, Weinstein L. Effect of Purified Staphylococcal Alpha Toxin on Active Sodium Transport and Aerobic Respiration in the Isolated Toad Bladder. *J Clin Invest* 47:1603, 1968.
3. Rahal JJ Jr, MacMahon HE, Weinstein L. Thrombocytopenia and Symmetrical Peripheral Gangrene in Staphylococcal and Streptococcal Bacteremia. *Ann Int Med* 69:35, 1968.
4. Rahal JJ Jr, Meyers B, Weinstein L. Treatment of Bacterial Endocarditis with Cephalothin. *N Eng J Med* 279:1305, 1968.
5. Rahal JJ Jr, Keusch GT, Weinstein L. Uncoupling of Oxidative Phosphorylation by Purified Staphylococcal Alpha Toxin. *J Lab Clin Med* 75:442, 1970.
6. Keusch G, Rahal JJ Jr, Weinstein L, Grady GF. Biochemical Effects of Cholera Enterotoxin: Oxidative Metabolism in the Infant Rabbit. *Am J Physiol* 218:703, 1970.
7. Rahal JJ Jr, Henle G. Infectious Mononucleosis and Reye's Syndrome: A Fatal Case with Studies for Epstein-Barr Virus. *Pediatrics* 46:776, 1970.
8. Rahal JJ Jr, Meade RH III, Bump C, Reinauer A. Upper Respiratory Carriage of Gram-Negative Enteric Bacilli by Hospital Personnel. *JAMA* 214:754, 1970.
9. Smithivas T, Hyams PJ, Rahal JJ Jr. Gentamicin and Ampicillin in Human Bile. *J Infect Dis* 124:S106, 1971.
10. Smithivas T, Hyams PJ, Matalon R, Simberkoff MS, Rahal JJ Jr. The Use of Gentamicin in Peritoneal Dialysis. I. Pharmacologic Results. *J Infect Dis* 124:S77, 1971.
11. Hyams PJ, Smithivas T, Matalon R, Katz L, Simberkoff MS, Rahal JJ Jr. The Use of Gentamicin in Peritoneal Dialysis. II Microbiologic and Clinical Results. *J Infect Dis* 124:S84, 1971.
12. Rahal JJ Jr. Rat Bite Fever. *Current Therapy* 1972.
13. Rahal JJ Jr. Comparative Effects of Purified Staphylococcal Alpha and Delta Toxin on Mitochondrial Metabolism. *J Inf Dis* 126:96, 1972.
14. Rahal JJ Jr. Treatment of Gram Negative Bacillary Meningitis in Adults. *Ann Intern Med* 77:295, 1972.

15. Hyams PJ, Simberkoff MS, Rahal JJ Jr. *In vitro* Bactericidal Effectiveness of Four Aminoglycoside Antibiotics. *Antimicrob Agents and Chemotherapy* 3:87-94, 1973.
16. Rahal JJ Jr. *In vitro* Effects of Staphylococcal Alpha and Delta Toxins on Liver Mitochondria. *Staphylococcal Infections. Recent Progress.* Edit. by Jeljaszewicz. Polish Medical Publishers 1973 pp.345-51.
17. Simberkoff M S, Rahal J J Jr. Acute and Subacute Endocarditis Due to *Erysipelothrix rhusiopathiae*. *Amer J Med Sci* 266: 53-57, 1973.
18. Rahal JJ Jr, Simberkoff MS, Hyams PJ. *Pseudomonas cepacia* Tricuspid Endocarditis; Treatment with Trimethoprim, Sulfonamide and Polymyxin B. *J Infect Dis* 128:S762-S767, 1973.
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24. Hyams P, Simberkoff MS, Rahal JJ Jr. Synergy Between Cephalosporin and Aminoglycoside Antibiotics Against *Providencia* and *Proteus*. *Antimicrob Ag Chemother* 5:571-77, 1974.
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39. Simberkoff M, Rahal JJ Jr. Parenteral Aminoglycoside Antibiotics 1977. *New York State J Med* 77:81-5, 1977.
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41. Rahal JJ Jr. Antibiotic Combinations: The Clinical Relevance of Synergy and Antagonism. *Medicine* 57:179-95, 1978.
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83. Rahal JJ Jr. Approach to Bacterial Infection of the Central Nervous System. In: *Textbook of Internal Medicine*; William N. Kelley, Edit. JB Lippincott Company, Philadelphia, 1989. Chapter 329, p.1730-37.
84. Rahal JJ Jr. Editorial-Preventing Second-Generation Complications due to *Staphylococcus aureus*. *Arch Intern Med* 149:592-93, 1989.
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87. Urban C, Rahal JJ, Dattwyler RJ, Gorevic P, Luft BJ. Penicillin-binding proteins in *Borrelia burgdorferi*. *J Bacteriol* 172:6139-41,1990.
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90. Rahal JJ. Corticosteroids as adjunctive therapy for pneumocystis pneumonia in patients with AIDS. *N Eng J Med (Letter)* 324:1666, 1991.
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CURRICULUM VITAE

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Renal Division, N.Y. Hospital Medical Center of Queens
56-45 Main Street, Flushing, N.Y. 11355

BIOGRAPHICAL DATA:

Date of Birth: February 4, 1948

Education:

1965-1969 Yeshiva University, B.A.
1969-1973 New York University School of Medicine, M.D.

POSTGRADUATE
TRAINING:

1972-1973 Internship, Internal Medicine, Bellevue Hospital
1973-1974 Resident, Internal Medicine, Bellevue Hospital
1975-1976 Sr. Assist. Resident, Internal Medicine, Bellevue Hospital

FELLOWSHIPS:

1974-1975 NIH Postdoctoral Fellowship, New York University School of
Medicine, Department of Physiology
1976-1978 Postdoctoral Fellow in Nephrology, New York University,
Bellevue Hospital Center

EMPLOYMENT:

1978-1979 Associate Director, Dialysis Services, Bellevue Hospital
Attending Physician, New York University Hospital
1979-Present Associate, Nephrology Associates, PC, (Offices in the Bronx
and Queens)

CERTIFICATION:

1976 American Board of Internal Medicine
1978 American Board of Nephrology

LICENSURE: New York, 1974

SOCIETIES:

1974 American Society of Internal Medicine
1978 American Society of Nephrology
1978 International Society of Nephrology
1981 American Society of Artificial Internal Organs
1987 Fellow, American College of Physicians

FACULTY

APPOINTMENTS:

1980-1987 Albert Einstein College of Medicine, Instructor in Medicine
1987-1992 Albert Einstein College of Medicine, Assistant Clinical
 Professor of Medicine
1992-1996 Albert Einstein College of Medicine, Associate Clinical
 Professor of Medicine
1996-Present Cornell University Medical College, Associate Clinical
 Professor of Medicine

HOSPITAL

APPOINTMENTS:

1978-1979 Attending Physician, University Hospital, New York, NY
 Associate Director, Dialysis Unit,
 Bellevue Hospital Center, New York, NY
1979-Present Attending Physician, Associate Director
 Division of Nephrology, New York Hospital Medical Center of
 Queens
1980-Present Attending, Hospital of the Albert Einstein College of
 Medicine
1980-Present Attending, Montefiore Hospital Medical Center
1995-Present Assistant Chairman, Department of Medicine
 New York Hospital Medical Center of Queens, Flushing, NY

CONSULTANT:

1982-Present Bronx Lebanon Hospital Center
1982-Present St. Barnabas Hospital
1982-Present Parkway Hospital
1982-Present Western Queens Community Hospital (formerly Astoria
 General)

COMMITTEES:

New York Hospital Medical Center of Queens

- Department of Medicine
 - Curriculum Committee
 - Residency Review Committee
 - Investigational Review Board
 - Pharmaceutical & Therapeutics Committee
- President, New York Hospital Medical Center of Queens
IPA (Independent Physicians Association)

Curriculum Vitae

February 2011

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Birthdate: October 28, 1957

Birthplace: New York, N.Y.

Citizenship: USA

College: Queens College (CUNY)
B.A. Psychology
1979

Medical School: Yale University
M.D. 1983

License: New York
158806

Internship: Internal Medicine
New York Hospital - Cornell Medical Center

1983 -1984

Residency: Internal Medicine
New York Hospital - Cornell Medical Center
1984 - 1986

Fellowship: Gastroenterology
Columbia - Presbyterian Medical Center
1986 - 1988

Board Certification: Internal Medicine - 1987
Gastroenterology - 1989

Society Membership: American College of Gastroenterology (Fellow)
American Gastroenterological Association
American Society of Gastrointestinal Endoscopy
New York Society of Gastrointestinal Endoscopy
American Medical Association
New York Clinical Society
Crohn's & Colitis Foundation

Academic Appointment: Associate Professor of Clinical Medicine, Weill-Cornell
Medical College, 2008-2010
Associate Clinical Professor of Medicine, Columbia
University, 1986- 2007

Hospital Appointments: Attending Physician New York Hospital Queens 2008-
Present
Attending Physician Lenox Hill Hospital 2007 – 2008
Attending Physician New York Presbyterian Hospital,
1988 – 2007

Administration: Director, Division of Gastroenterology, New York
Hospital Queens, 2008 – Present

Program Director, Gastroenterology Fellowship
Training Program, New York Hospital Queens, 2008-
Present

Member, Information Technology Committee, New York Hospital Queens, 2008 – Present

Member, GME Committee, New York Hospital Queens 2008 – Present

Member, Comprehensive Cancer Center Committee, New York Hospital Queens 2010

Member, New York Presbyterian Board of Trustees Special Committee on the Environment, 2002 - 2005

Director, GI Endoscopy Unit, Allen Pavilion, New York Presbyterian Hospital, 1988 – 1994

Director, GI Quality Care Committee, Allen Pavilion, New York Presbyterian Hospital, 1988-1994

Medical Staff Position: President, Society of Practitioners of The Presbyterian Hospital, 1998-2001

Vice President, Society of Practitioners of The Presbyterian Hospital, 1996 - 1998

Executive Board, Columbia Presbyterian Physician Network, 1997 – 2001

Board Member, Columbia-Cornell Care, 1998 -2001

Honors: Alpha Omega Alpha
Phi Beta Kappa
Alfred Markowitz, M.D. Service Award, New York Presbyterian Hospital, 2005

Teaching: Physical Diagnosis Course, Weill-Cornell Medical College, 2008-Present

Undergraduate Medical Education - Gastrointestinal Pathophysiology, Lecturer and Teacher of GI syllabus, Columbia University, classes of 25-30 2nd year medical students, reviewing lecture materials, case studies and grading papers.
1988- 2005

Undergraduate Medical Education – Columbia University, Physical Diagnosis Course, basic physical exam techniques, bedside evaluation of patients, 20 week course. 1988-2000

Graduate Medical Education - Internal Medicine Teaching/Supervising Medical Attending, General Medical Service, for Residents, Interns and Students, 4 weeks/year, 1988-2007

Gastroenterology Fellowship Training Program, Direct supervision of Fellows, in the evaluation and management of outpatients and inpatients including all routine and emergency endoscopic procedures, advanced endoscopic procedures including ERCP, polypectomy, percutaneous gastrostomy, stent insertion, dilation, control of hemorrhage, control of variceal bleeding, Double Balloon Enteroscopy, Capsule Endoscopy. 1988- 2007

Fellowship Research Mentor – Direct supervision of Fellows in clinical research including protocol development, funding, IRB submission, conduct of trials, collection of data, writing and submitting research papers. 1994 - 2007

Postgraduate – Gastroenterology, Lecturer in Board review courses and Endoscopy Society Meetings, 1990-2007

Subspecialty Areas: Celiac Disease
Inflammatory Bowel Disease
Wireless Capsule Endoscopy
Double Balloon Enteroscopy

BIBLIOGRAPHY

Articles in Peer-Reviewed Journals

1. Schacter, E. N. **Rubin, M.** The effect of an aerosolized antihistamine, chlorpheniramine maleate on exercise induced bronchospasm. *Ann Allergy*. 1985. Jan. 54(1). 14-18.
2. Bloch, S. Ashwanden, P. Neugut, A. I. Field, **M. Rubin, M.** et al. Utilizing television to promote a community colon cancer screening program. *Prog Clin Biol Res*. 1990. 339. 311-23.
3. McFarland, L.V. Surawicz, C.M. Greenberg, R.M. Fekety, R. Elmer, G. Moyer, K. Melcher, S.A. Bowen, K.E. Cox, J.L. Noorani, Z. Harrington, G. **Rubin, M.** Greenwald, D. A randomized placebo controlled trial of *Saccharomyces boulardii* in combination with standard antibiotics for *Clostridium difficile* disease. *JAMA* 1994 271(24), p.1913-1918
4. McFarland, L.V. Surawicz, C.M. **Rubin, M.** et al Recurrent *Clostridium difficile* disease: Epidemiology and clinical characteristics *Infect Control Hosp Epidemiol* 1999;20:43-50
5. Surawicz, C.M., McFarland, L.V., Greenberg, R.N., **Rubin, M.**, et al The search for a better treatment for recurrent *Clostridia difficile* disease: Use of high dose Vancomycin combined with *Saccharomyces boulardii* *Clinical Infectious diseases* 2000, 31:1012-1017
6. Larghi, A., Leffler, D., Frucht, H., **Rubin, M.**, et al, Hepatitis B Virus Reactivation After Kidney Transplantation and Lymphoma *J. Clin Gastroenterol*, 2003;36(3)
7. Culliford AN, Daly, J, Diamond, B, **Rubin, M**, Green, PH. The value of wireless capsule endoscopy in patients with complicated celiac disease. *Gastrointest Endosc*. 2005 Jul;62(1): 55-61
8. Green, P. and **Rubin, M.**, Capsule Endoscopy and Celiac Disease, *Gastrointest Endosc*. 2005, 62 (5), 797
9. Khali, M., Thomas, A., Aassad, A., **Rubin, M.** and Taub, R., Epitheloid angiosarcoma of the small intestine after occupational exposure to radiation and polyvinyl chloride: A case report and review of the literature. *Sarcoma*, 2005; 9(3/4): 161-164
10. Green, P.H. and **Rubin, M.** Capsule endoscopy in celiac disease: diagnosis and management. *Gastrointest Endosc Clin N Am*. 2006 Apr;16(2):307-16.
11. Hussain, S and **Rubin, M.** Identification of small bowel diverticula with double balloon endoscopy following non-diagnostic capsule endoscopy

- Dis Sci. 2009 Oct;54(10):2296-7. Epub 2008 Dec 3. PubMed PMID: 19051015.
12. Gonda TA, Khan SU, Cheng J, Lewis SK, **Rubin M**, Green PH. Association of Intussusception and Celiac Disease in Adults. Dig Dis Sci. 2009 Dec 24
 13. **Rubin, M**, Hussain, S, Shalomov, A, Cortes, R., Smith, M, Kim, S., Risk Stratification of Upper GI Bleeding Patients in the Emergency Room with LiveView Video Capsule Endoscopy – A Pilot study. Dig Dis Sci. 2010 Jul 15. [Epub ahead of print]
 14. Puri V, Alagappan A, **Rubin M**, Merola S. Management of bleeding from gastric remnant after Roux-en-Y gastric bypass. Surg Obes Relat Dis. 2010 Sep 16. [Epub ahead of print] PubMed PMID: 21130706
 15. John BK, Arramraju S, Shalomov A, Sison C, **Rubin M**. Antiplatelet Agents Do Not Impact the Hospital Course in Patients With Gastrointestinal Bleeding. J Clin Gastroenterol. 2011 Feb 2 [Epub ahead of print]

Books, book chapters and reviews

Sweeting, J. and **Rubin, M**. Inflammatory Bowel Disease. The Electronic Textbook, 1991. Columbia-Presbyterian Medical Center

Green, P.H. and **Rubin, M**. Malabsorption; Capsule Endoscopy Text and DVD, Ch. 17, St. Louis, MO: Elsevier; 2008

Abstracts

1. Stevens, P.D., Finegold J., Garcia, J., Greene, PHR., Meyer, F., Rosenberg, R., and **Rubin, M**. Effectiveness of a protocol based team approach to gastrointestinal hemorrhage Gastrointestinal Endosc 1997;45:AB51

2. Culliford, AN, **Rubin, M**, and Green, PH. High yield of capsule endoscopy in patients with celiac disease and recurrent abdominal pain. Am J Gastroenterol. 2003 Oct;98(10):AB P149

3. Culliford, AN, **Rubin, M**, Daly, J, Green PH. Interobserver variability in wireless capsule endoscopy: 40 cases of celiac disease Gastrointest Endosc. 2004 Apr;59(5)AB 1818

4. Daly, J, Culliford AN, **Rubin, M**, Green, PH. High yield of wireless capsule endoscopy in complicated celiac disease *Gastrointest Endosc.* 2004 Apr;59(5)AB 1806
5. Schnoll-Sussman, F, Bergwerk, A, Eliakim, R, Legnani, P, Lewis, B, **Rubin, M**, Schmelkin I. New Capsule Endoscopy Viewing Mode May Improve Reading Efficiency Without Effect On Pathology Detection Rate *Gastrointestinal Endoscopy* April 2006 (Vol. 63, Issue 5, Page AB227)
6. Arramraju, S; John, Bijo K.; Shalomov, A; Huang, Z; **Rubin, M**. High Mortality Rate in Hospitalized Patients Who Develop Clostridium Difficile Associated Diarrhea. *Gastroenterology*, May 2009, Vol. 136, Issue 5, Pages A-708
7. John, B; Arramraju, S; Shalomov, A; **Rubin, M**. The use of antiplatelet agents does not impact the hospital course of patients admitted with GI bleed. *Gastroenterology*, May 2009, Vol. 136, Issue 5, Pages A-634
8. Shalomov, A, Hussain, S, Cortes R. Kim¹, Somnay K,, Brodsky N, Smith, M.S., **Rubin M**. Risk Stratification Of Upper GI Bleeding Patients In The Emergency Room With “Real Time” Capsule Endoscopy *Am Journal of Gastroenterology* 104(3) ABS 1091, 2009
9. Shalomov, A, Hussain, S, Cortes R. Kim¹, Somnay K,, Brodsky N, Smith, M.S., **Rubin M**. Rapid Evaluation of the Upper GI Tract Using Real-Time Pillcam™ ESO in Emergency Room Patients with Acute UGI Bleeding. *Am Journal of Gastroenterology*, 104(3) ABS 1344, 2009
10. Arramraju, S, Shalomov, A, John, B, **Rubin, M**. Higher Resolution Rate of Clostridia Difficile Enteritis in Hospitalized Patients With Normal Vitamin D Levels *Gastroenterology* May 2010 (Vol. 138, Issue 5, Supplement 1, Page S-580)
12. Mukherjee, R, Sheikh, M, **Rubin, M**, Lebwohl, B, Green, P. Evaluation of Gastric and Small Bowel Transit Time by Video Capsule Endoscopy *Gastrointestinal Endoscopy* April 2010 (Vol. 71, Issue 5, AB373)
13. Gutkin, E, Gray, S, Judeh, H, Shalomov, A, Hussain, S, Cortes, Kim, S, **Rubin, M** PillCam ESO® Is More Accurate Than Clinical Scoring Systems in Risk Stratifying Emergency Room Patients With Acute Upper Gastrointestinal Bleeding *Gastrointestinal Endoscopy* April 2010 (Vol. 71, Issue 5, Pages AB157-AB158)

14. Gutkin, E, Hussain, S, Shalamov, A, Kim, S, Mehta, P, Du, L, and **Rubin, M**,
Diagnosis of Multifocal Small bowel Carcinoid with Double Balloon
Enteroscopy Am J Gastro, Vol.105, Supp 1, Oct 2010

Current Research:

Wireless Capsule Endoscopy in Acute Gastrointestinal Bleeding

Wireless Capsule Endoscopy in Celiac Disease

Double Balloon Endoscopy in small bowel disease

Clostridium difficile enteritis, epidemiology and association with Vitamin D levels

Antiplatelet agents and gastrointestinal bleeding

New York State Department Of Health

Memorandum

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel 

DATE: November 22, 2011

SUBJECT: Proposed Dissolution of Mary McClellan Hospital, Inc.

Mary McClellan Hospital, Inc. ("Mary McClellan") requests Public Health and Health Planning Council approval of its proposed Dissolution in accordance with the requirements of Not-For-Profit Corporation Law §1002(c) and §1003, as well as 10 NYCRR Part 650.

Mary McClellan was formed in 1916 under the Membership Corporations Law and operated a general hospital and residential health care center in Washington County until 2003, when Mary McClellan ceased operations and surrendered its operating certificates to the Department. Therefore, there is no longer a reason for Mary McClellan to exist. Pursuant to Mary McClellan's Plan of Dissolution, if approved by the Attorney General, Mary McClellan's remaining liabilities will be paid from a reserve fund it has maintained.

Attached are a copy of the duly executed proposed Certificate of Dissolution, a letter from Mary McClellan's attorney explaining the need for the proposed Dissolution, a proposed Plan of Dissolution, and a proposed Verified Petition seeking the Attorney General's approval of Mary McClellan's Certificate of Dissolution.

The Certificate of Dissolution is in legally acceptable form.

Attachments

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

677 Broadway - 9th Floor, Albany, New York 12207-2996 Tel: (518) 449-8893 Fax: (518) 449-8927

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June 2, 2011

Jean Quarrier, Esq.
Acting Director, Bureau of House Counsel
Division of Legal Affairs
New York State Department of Health
Corning Tower, 24th floor
Albany, New York 12237

**Re: Public Health and Health Planning Council Approval – Dissolution of
Mary McClellan Hospital, Inc.**

Dear Ms. Quarrier:

Pursuant to section 1002(c) of the Not-for-Profit Corporation Law, Mary McClellan Hospital, Inc. (Mary McClellan) is seeking approval of the Public Health and Health Planning Council to dissolve.

Mary McClellan was originally formed on April 12, 1916 under the Membership Corporations Law of the State of New York. Until 2003, Mary McClellan was a not-for-profit community health care provider with its primary location in Cambridge, New York. Financial difficulties caused Mary McClellan to cease operations, which at the time consisted of an inpatient hospital, an attached skilled nursing facility and four outpatient health centers. The hospital and nursing home were closed and the operations of the four health centers were transferred to Glens Falls Hospital. Mary McClellan subsequently filed for bankruptcy. Mary McClellan has emerged from bankruptcy, complied with its Bankruptcy Plan, sold all of its real property, and is now seeking a voluntary dissolution pursuant to Article 10 of the Not-for-Profit Corporation Law.

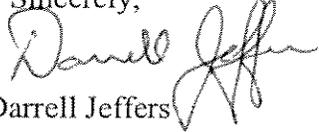
In conjunction with the Public Health and Health Planning Council's approval, enclosed are the following documents:

1. The proposed Certificate of Dissolution;
2. A copy of the Plan of Dissolution approved by the Board of Directors of Mary McClellan; and
3. Certificate of Incorporation of Mary McClellan and amendments.

Please let me know if you have any questions or require any additional information.

Thank you for your prompt consideration of this matter.

Sincerely,

A handwritten signature in black ink that reads "Darrell Jeffers". The signature is written in a cursive style with a large, looped initial "D".

Darrell Jeffers

Enclosures

Certificate of Dissolution

of

Mary McClellan Hospital, Inc.

Pursuant to § 1003 of the Not-for-Profit Corporation Law

I, Michael Catalfimo, the Chairman of Mary McClellan Hospital, Inc. certify:

1. The name of this corporation is Mary McClellan Hospital, Inc
2. The Certificate of Incorporation of Mary McClellan Hospital was filed by the Department of State of the State of New York on the 12th day of April, 1916.
3. The names and addresses of each of the officers and directors of the corporation and the title of each are as follows:

<u>Name</u>	<u>Title</u>	<u>Address</u>
James E. Briglin	Director	1120 County Route 64 Shushan, New York 12873
Michael. J. Catalfimo	Director and Chairman	20 Corporate Woods Blvd. Albany, NY 12211-2362
Arthur E. Center, Jr.	Director and Vice Chairperson	27 Washington Street Cambridge, New York 12816
Mal Lambert	Director	20 Jackson Avenue Greenwich, New York 12834
Dale MacNeil	Director and Secretary	244 Rexleigh Road Salem, New York 12865
Paul Tomlinson	Director and Treasurer	5025 State Route 22 Salem, New York 12865

4. Dissolution of the corporation was authorized by a unanimous vote of the Board of Directors.
5. The corporation elects to dissolve.

6. At the time of dissolution, the corporation is a Type B corporation.
7. The corporation filed with the Attorney General a certified copy of its Plan of Dissolution.
8. The Plan of Dissolution filed with the Attorney General included a statement that at the time of dissolution the corporation had no assets other than a reserve fund in the amount of \$24,906.90 to be used to pay both (i) the costs of winding up the organizations affairs such as attorneys and accountants' fees and (ii) any liabilities, which may not exceed a total of \$10,000.
9. The corporation has carried out its Plan of Dissolution, paid all of its liabilities and submitted a final report to the Attorney General.
10. At the time of the authorization of its Plan of Dissolution, the corporation did not hold any assets that are legally required to be used for a particular purpose pursuant to the Not-for-Profit Corporation Law.
11. Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General and the approval of the Public Health and Health Planning Council will be attached.

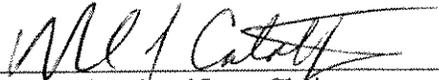
IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of Mary McClellan Hospital, Inc. this 25th day of October, 2011.


Signature

Michael J. Catalfimo, Chairman, Board of Directors
Name of Officer and Title

Certification

I, Michael J. Catalfimo, Chairman of the Mary McClellan Hospital, Inc. hereby certify under penalties for perjury that the within Plan of Dissolution was duly submitted and approved by unanimous written consent of the Board of Directors of the Corporation.



Michael J. Catalfimo, Chairman

Dated the 18th day of May, 2011.

PLAN OF DISSOLUTION
of
Mary McClellan Hospital, Inc.

The Board of Directors of Mary McClellan Hospital, Inc. by unanimous written consent, having considered the advisability of voluntarily dissolving the corporation, and it being the unanimous opinion of the Board that dissolution is advisable and it is in the best interests of the corporation to effect such a dissolution, and the Board of Directors having adopted, by unanimous vote, a Plan for a voluntary dissolution of the corporation, does hereby resolve that the corporation be dissolved in accordance with the following Plan:

1. There being no members of the corporation, no vote of membership is required to approve this dissolution, and action of the Board of Directors is sufficient.

2. Approval of the dissolution of the corporation is required to be obtained from the New York State Public Health and Health Planning Council, whose approval will be attached hereto.

3. (A) The corporation has a reserve fund in the amount of \$24, 906.90 to be used to pay both (i) the costs of winding up the organization's affairs, such as attorneys and accountants' fees, and (ii) liabilities, which may not exceed a total of \$10,000; and has no other assets to distribute. The amount of such fees are \$ 15,652.57.

(B) The corporation has liabilities of no more than \$10,000 and a description of those liabilities is as follows:

The Department of Health and Human Services	- \$ 131.83
DeTec	- \$ 11.18
The Mary McClellan Foundation	- \$8041.52
New York State Medicaid	- \$1069.80

4. Within ten (10) days after the authorization of the Plan of Dissolution by a vote of the board, a certified copy of the Plan shall be filed with the Attorney General of the State of New York pursuant to N-PCL § 1002 (d).

5. Within two hundred seventy days of filing of the Plan with the Attorney General, the corporation shall carry out the Plan and pay its liabilities.

6. A Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-for-Profit Corporation Law shall be attached thereto.

This consent in writing may be signed in one or more counterparts, each of which shall be deemed an original and constitute one and the same instrument.

Michael J. Catalfimo
Michael J. Catalfimo

5/9/11
Date

Arthur E. Center, Jr.

Date

Dale MacNeil

Date

Paul Tomlinson

Date

James E. Briglin

Date

Mal Lambert

Date

4. Within ten (10) days after the authorization of the Plan of Dissolution by a vote of the board, a certified copy of the Plan shall be filed with the Attorney General of the State of New York pursuant to N-PCL § 1002 (d).

5. Within two hundred seventy days of filing of the Plan with the Attorney General, the corporation shall carry out the Plan and pay its liabilities.

6. A Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-for-Profit Corporation Law shall be attached thereto.

This consent in writing may be signed in one or more counterparts, each of which shall be deemed an original and constitute one and the same instrument.

Michael J. Catalfimo

Date

Arthur E. Center, Jr.

Arthur E. Center, Jr.

May 5, 2011

Date

Dale MacNeil

Date

Paul Tomlinson

Date

James E. Briglin

Date

Mal Lambert

Date

4. Within ten (10) days after the authorization of the Plan of Dissolution by a vote of the board, a certified copy of the Plan shall be filed with the Attorney General of the State of New York pursuant to N-PCL § 1002 (d).

5. Within two hundred seventy days of filing of the Plan with the Attorney General, the corporation shall carry out the Plan and pay its liabilities.

6. A Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-for-Profit Corporation Law shall be attached thereto.

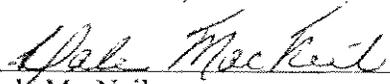
This consent in writing may be signed in one or more counterparts, each of which shall be deemed an original and constitute one and the same instrument.

Michael J. Catalfimo

Date

Arthur E. Center, Jr.

Date



Dale MacNeil

5/5/11

Date

Paul Tomlinson

Date

James E. Briglin

Date

Mal Lambert

Date

4. Within ten (10) days after the authorization of the Plan of Dissolution by a vote of the board, a certified copy of the Plan shall be filed with the Attorney General of the State of New York pursuant to N-PCL § 1002 (d).

5. Within two hundred seventy days of filing of the Plan with the Attorney General, the corporation shall carry out the Plan and pay its liabilities.

6. A Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-for-Profit Corporation Law shall be attached thereto.

This consent in writing may be signed in one or more counterparts, each of which shall be deemed an original and constitute one and the same instrument.

Michael J. Catalfimo

Date

Arthur E. Center, Jr.

Date

Dale MacNeil

Date

Paul Tomlinson

Date

Paul Tomlinson

James E. Briglin

5-5-11

Date

Mal Lambert

Date

4. Within ten (10) days after the authorization of the Plan of Dissolution by a vote of the board, a certified copy of the Plan shall be filed with the Attorney General of the State of New York pursuant to N-PCL § 1002 (d).

5. Within two hundred seventy days of filing of the Plan with the Attorney General, the corporation shall carry out the Plan and pay its liabilities.

6. A Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-for-Profit Corporation Law shall be attached thereto.

This consent in writing may be signed in one or more counterparts, each of which shall be deemed an original and constitute one and the same instrument.

Michael J. Catalfimo

Date

Arthur E. Center, Jr.

Date

Dale MacNeil

Date

Paul Tomlinson

Date

James E. Briglin

James E. Briglin

5/5/11

Date

Mal Lambert

Date

4. Within ten (10) days after the authorization of the Plan of Dissolution by a vote of the board, a certified copy of the Plan shall be filed with the Attorney General of the State of New York pursuant to N-PCL § 1002 (d).

5. Within two hundred seventy days of filing of the Plan with the Attorney General, the corporation shall carry out the Plan and pay its liabilities.

6. A Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-for-Profit Corporation Law shall be attached thereto.

This consent in writing may be signed in one or more counterparts, each of which shall be deemed an original and constitute one and the same instrument.

Michael J. Catalfimo

Date

Arthur E. Center, Jr.

Date

Dale MacNeil

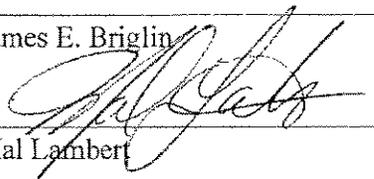
Date

Paul Tomlinson

Date

James E. Briglin

Date



Mal Lambert

5-4-11
Date

In the Matter of the Application of:

MARY McCLELLAN HOSPITAL, INC.,

For Approval of Certificate of Dissolution pursuant
to Section 1002 of the Not-for-Profit Corporation
Law.

VERIFIED PETITION
FOR APPROVAL OF
CERTIFICATE OF
DISSOLUTION

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL
Charities Bureau - The Capitol
Albany, New York 12224-0341

Petitioner, Mary McClellan Hospital, Inc., by Michael Catalfimo, Chairman of the corporation for its Verified Petition alleges:

1. Mary McClellan Hospital, Inc., whose principal address is P.O. Box 542, Cambridge, New York 12816, was incorporated pursuant to New York's Membership Corporation Law on April 11, 1916. A copy of the Certificate of Incorporation is attached.

2. The names, addresses and titles of the corporation's officers and directors are as follows:

<u>Name</u>	<u>Title</u>	<u>Address</u>
James E. Briglin	Director	1120 County Route 64 Shushan, New York 12873
Michael J. Catalfimo	Director and Chairman	20 Corporate Woods Blvd. Albany, NY 12211-2362
Arthur E. Center, Jr.	Director and Vice Chairperson	27 Washington Street Cambridge, New York 12816
Mal Lambert	Director	20 Jackson Avenue Greenwich, New York 12834

Dale MacNeil	Director and Secretary	244 Rexleigh Road Salem, New York 12865
Paul Tomlinson	Director and Treasurer	5025 State Route 22 Salem, New York 12865

3. The purpose for which the corporation was organized is as follows:
Establish hospital for persons suffering from injury or disease, and persons requiring medical or surgical attention, and for general hospital purposes.
4. The corporation is a Type B corporation.
5. Written consent was signed on May 18, 2011 by all of the directors of the corporation adopting a Plan and authorizing the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. A copy of the Plan, approved by unanimous written consent of the directors is attached as an exhibit.
6. The corporation has no members.
7. A certified copy of the corporation's Plan of Dissolution was filed with the Office of the Attorney General.
8. The corporation carried out the plan of Dissolution, and a copy of its final report showing zero assets has been filed with the Attorney General.
9. Approval of the dissolution of the corporation is required to be obtained from the Public Health and Health Planning Council, and a copy of such approval is attached.
10. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, Petitioner requests that the Attorney General approve the Certificate of Dissolution of Mary McClellan Hospital, Inc., a not-for-profit corporation, pursuant to Not-For-Profit Corporation Law Section 1003.

IN WITNESS WHEREOF, the corporation has caused this Petition to be executed the
____ day of _____, 2011.

By: _____
Michael Catalfimo, Chairman

VERIFICATION

STATE OF NEW YORK)
COUNTY OF _____) SS:

MICHAEL CATALFIMO, being duly sworn, deposes and says:

I am the Chairman of Mary McClellan Hospital, Inc., the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

MICHAEL CATALFIMO

Sworn to before me this
____ day of _____, 2011.

Notary Public - State of New York

**New York State Department of Health
Public Health and Health Planning Council**

January/February 2012

Home Health Agency Licensures

Exhibit #14

<u>Number</u>	<u>Applicant/Facility</u>
1640 L	Acute Care Experts, Inc. (Bronx, Queens, Kings, Richmond, Nassau, and New York Counties)
1956 L	Advantage Management Associates, Inc. d/b/a Advantage Homecare Agency (New York, Westchester, Kings, Queens, Bronx, and Richmond Counties)
1678 L	Amazing Grace Home Care Services, LLC (New York, Bronx, Kings, Richmond, and Queens Counties)
1696 L	Diana's Angels, Inc. (Putnum, Bronx, Westchester and Dutchess Counties)
1957 L	Evergreen Choice, LLC (New York, Bronx, Kings, Richmond and Queens Counties)
1668 L	Five Borough Home Care, Inc. (Bronx, Kings, New York, Richmond, and Queens Counties)
1733 L	Heritage Homecare Services, Inc. (New York, Kings, Queens, Bronx, Nassau, Suffolk and Richmond Counties)
1994 L	Independent Living for Seniors, Inc. (Monroe and Wayne Counties)

- 1835 L Longevity Care, LLC
(Westchester County)
- 1959 L Stat Staff Professionals, Inc.
(Saratoga, Warren, Albany, Greene, Franklin,
Washington, Rensselaer, Columbia, Clinton,
Fulton, Otsego, Ulster, Essex, Montgomery,
Schoharie, Hamilton, Schenectady, and
Delaware Counties)
- 2004 L Long Island Living Center, LLC d/b/a Long
Island Living Center
(Bronx, Kings, and Queens Counties)
- 2079 L Metrostar Home Care, LLC
(Kings, Bronx, Queens, Richmond, New York
and Nassau Counties)
- 1875 L ALJUD Licensed Home Care Services, LLC
(Nassau and Suffolk Counties)

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Acute Care Experts, Inc.
Address: Staten Island
County: Richmond
Structure: For-Profit Corporation
Application Number: 1640-L

Description of Project:

Acute Care Experts, Inc., a New Jersey business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has submitted a Certificate of Authority to do Business in New York State.

The applicant has authorized 200 shares of stock, which are owned as follows:

Frederick Lucich – 200 Shares

The Board of Directors of Acute Care Experts, Inc. comprises the following individuals:

Frederick Lucich, RN – President/Secretary Owner/President Acute Care Experts, Inc (NJ) Registered Nurse, Accerdo AHG of New York	Jennifer Lucich-Gralitzer – Treasurer Director of Operations, Acute Care Experts (NJ)
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The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located Staten Island, New York:

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to provide the following health care services:

Nursing

A 10 year review of the operations of Acute Care Experts, Inc., New Jersey was performed as part of this review.

The information provided by the New Jersey regulatory agency indicated that Acute Care Experts, Inc. has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 10, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Advantage Management Associates, Inc.
d/b/a Advantage Homecare Agency
Address: Fresh Meadows
County: Queens
Structure: For-Profit Corporation
Application Number: 1956-L

Description of Project:

Advantage Management Associates, Inc., d/b/a Advantage Homecare Agency, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned solely by Phillip Krivoruk.

The Board of Directors of Advantage Management Associates, Inc., d/b/a Advantage Homecare Agency comprises the following individual:

Phillip Krivoruk, sole director
Administrator, Focus Home Healthcare (Florida)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 61-43 186th Street, Fresh Meadows, New York 11365:

New York	Kings	Queens	Bronx	Richmond
Westchester				

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Disclosure Information indicates that the applicant has no affiliations with other health care facilities.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 9, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Amazing Grace Home Care Services, LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 1678-L

Description of Project:

Amazing Grace Home Care Services, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Amazing Grace Home Care Services, LLC is composed of the following members:

Grace Abakpa, R.N., 50% Staff Nurse, NYC Health & Hospitals Corporation	Charles Abakpa, 50% Case Manager, New York City HRA
---	--

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1215 East 83rd Street, Brooklyn, New York 11236:

New York	Kings	Queens
Bronx	Richmond	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 9, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Diana's Angels, Inc.
Address: Carmel
County: Putnam
Structure: For-Profit Corporation
Application Number: 1696-L

Description of Project:

Diana's Angels, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned solely by Drita Djeljevic.

The Board of Directors of Diana's Angels, Inc. comprises the following individual:

Drita Djeljevic, President
Self-employed home health aide

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 34 Avery Road, Carmel, New York 10512:

Putnam	Westchester	Dutchess
Bronx		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Disclosure Information indicates that the applicant has no affiliations with other health care facilities.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 9, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Evergreen Choice, LLC
Address: New York
County: New York
Structure: Limited Liability Company
Application Number: 1957L

Description of Project:

Evergreen Choice, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Evergreen Choice, LLC is currently operational as a companion care agency.

Evergreen Choice, LLC is composed of the following members:

Kelly A. Blundy, D.C., 50% Chiropractor, The Spine & Health Center of Montvale	Ann D. Stoller, 50% Manager, American Orthopedic and Sports Medicine
--	---

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1375 Broadway, 6th Floor, New York, New York 10018:

New York	Kings	Queens
Bronx	Richmond	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 9, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Five Borough Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 1668L

Description of Project:

Five Borough Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows:

Yuri Rozenblyum, 160 shares President, B I Analytics, Inc. (business intelligence & performance management company)	Emiliya Kozlenko, 40 shares Personal Specialist, Home Attendant Vendor Agency, Inc. (home care agency)
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The members of the Board of Directors of Five Borough Home Care, Inc. are as follows:

Yuri Rozenblyum, President (disclosed above)	Diana Zhelkover, HHA, PCA Vice President Case Coordinator, I and Y Senior Care, Inc. (home health care agency)
Emiliya Kozlenko, Secretary/Treasurer (disclosed above)	Anna Viderman, R.N., Director Assistant Director of Patient Services, I and Y Senior Care, Inc. Service Visiting Nurse, Excellent Home Care Services All Units Float RN, Staten Island University Hospital

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1374 East 70th Street, Brooklyn, New York, 11234:

Bronx Kings New York Richmond Queens

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care

Review of the Disclosure Information indicates that the applicant has no operational interest in other health care facilities.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 9, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Heritage Homecare Services, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 1733-L

Description of Project:

Heritage Homecare Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 20,000 shares of stock which are owned as follows:
35 shares owned by Gabriel S. Bomide, 35 shares owned by Margaret A. Bomide and 30 shares owned by Oluwafunmilayo B. Bomide. 19,900 shares remain unissued.

The Board of Directors of Heritage Homecare Services, Inc. comprises the following individuals:

Gabriel S. Bomide, Chairperson CEO, Heritage Homecare Services, Inc. Case Manager, Institute for Community Living, Inc.	Oluwafunmilayo B. Bomide, R.N., Vice Chairperson, Secretary Medical School Student, Windsor University School of Medicine
Margaret A. Bomide, Treasurer Fraud Investigator, City of New York HRA	Mary O. Ajibade, R.N. R.N., Richmond University Teaching Hospital, Behavioral Health Department
Tajudeen O. Dabiri, M.D. Clinical Assistant Professor, SUNY Downstate	Adebola A. Osewa, R.N. Staff Nurse, Harlem Hospital Center Clinical Nurse Manager, Wartburg Lutheran Home

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the New York Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicates no issues with the licenses of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1295 Herkimer Street, Brooklyn, New York 11233:

New York Kings Queens Bronx Richmond

The applicant proposes to serve the residents of the following counties from an office located in Nassau County:

Nassau Suffolk

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech Language Pathology
Medical Social Services	Homemaker	Housekeeper

Review of the Disclosure Information indicates that the applicant has no affiliations with other health care facilities.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: January 9, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Independent Living for Seniors, Inc.
Address: Rochester
County: Monroe
Structure: Not-For-Profit Corporation
Application Number: 1994-L

Description of Project:

Independent Living for Seniors, Inc., a not-for-profit business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The board members of Independent Living for Seniors, Inc. comprise the following individuals:

Linda S. Becker – Chair
Chief Executive Officer, Healthcare Benefits Network

Jeanne E. Grove, DO – Secretary/Treasurer
Partner, Panorama Valley OB/GYN

Affiliations:

- Chair, Behavioral Health Network, Inc. (2008 – Present)
- Chair, Rochester General Long Term Care d/b/a Hill Haven Nursing Home (2008 – Present)
- Chair, Rochester General Hudson Housing (2008 – Present)
- Member, Rochester General Health System (fka ViaHealth) (2002 – Present)
- Member, Rochester General Hospital (2008 – Present)

Affiliations:

- Member, Behavioral Health Network, Inc. (2008-Present)
- Member, Rochester General Long Term Care d/b/a Hill Haven Nursing Home (2008-Present)
- Member, Rochester General Hospital (2008-Present)
- Member, Rochester General Hudson Housing (2008-Present)

Mark C. Clement – Member
President/Chief Executive Officer, Rochester General Health System

Robert A. Dobies – Member
Retired

Affiliations:

- Member, Behavioral Health Network, Inc. (2006 – Present)
- Member, Rochester General Long Term Care d/b/a Hill Haven Nursing Home (2006 – Present)
- Member, Rochester General Hudson Housing (2006 – Present)
- Member, Rochester General Health System (fka ViaHealth) (2006 – Present)
- Member, Rochester General Hospital (2008 – Present)

Affiliations:

- Chair, Rochester General Health System (fka ViaHealth) (2004 – Present)

Daniel M. Meyers – Member
President, Al Sigl Community of Ages

Affiliations

- Member, Rochester General Hospital (1990-2010 and July 2011 – Present)
- Member, Rochester General Long Term Care d/b/a Hill Haven Nursing Home (1999 – Present)
- Member, Newark Wayne Community Hospital (2000 – Present)

Thomas E. Penn, MD – Member
Physician, Private Practice

Affiliations:

- Member, Behavioral Health Network, Inc. (2009-Present)
- Member, Rochester General Long Term Care d/b/a Hill Haven Nursing Home (2009 – Present)
- Member, Rochester General Hudson Housing (2009 – Present)
- Member, Rochester General Hospital (2009 – Present)

Margaret A. Sanchez – Member
Principal, Sanchez & Associates

Affiliations:

- Member, Behavioral Health Network, Inc. (2009-Present)
- Member, Rochester General Long Term Care d/b/a Hill Haven Nursing Home (2009 – Present)
- Member, Rochester General Hudson Housing (2009 – Present)
- Member, Rochester General Hospital (2009 – Present)

Robert R. Mayo, MD – Member
Sr. leader, Physician Patient Safety Officer, Rochester General Health System

Affiliations:

- Member, Behavioral Health Network, Inc. (2010-Present)
- Member, Rochester General Long Term Care d/b/a Hill Haven Nursing Home (2010 – Present)
- Member, Rochester General Hudson Housing (2010 – Present)
- Member, Rochester General Hospital (2010 – Present)

John R. Riedman, Member
Member of the Board of Directors, Brown and Brown Insurance Company

Affiliations:

- Member, Behavioral Health Network, Inc. (2010-Present)
- Member, Rochester General Long Term Care d/b/a Hill Haven Nursing Home (2010 – Present)
- Member, Rochester General Hudson Housing (2010 – Present)
- Member, Rochester General Hospital (2010 – Present)

Robert S. Sands – Member
President and Chief Executive Officer, Constellation Brands

Affiliations:

- Member, Behavioral Health Network, Inc.
- Member, Rochester General Long Term Care d/b/a Hill Haven Nursing Home
- Member, Rochester General Hudson Housing
- Member, Rochester General Hospital
- Member, Rochester General Health System Board

The board members of Rochester General Health System comprise the following individuals:

Robert A. Dobies – Chair
Retired

Affiliations:

- Member, Rochester General Health System (fka ViaHealth) (2004 – Present)

Joyce D. Haag, Esq. – Vice Chair
Retired

Affiliations:

- Member, Rochester General Health System (fka ViaHealth) (2008 – Present)

Robert F. Havrilla – Treasurer
Retired

Affiliations:

- Member, Rochester General Health System (fka ViaHealth) (2005 – Present)
- Member, Newark Wayne Community Hospital (2005 – Present)

Linda S. Becker – Member
(Previously Disclosed)

Mark C. Clement – Member
(Previously Disclosed)

John L. Genier, MD – Member
Physician, Private Practice

Affiliations:

- Member, Behavioral Health Network, Inc. (2002-Present)
- Member, Rochester General Long Term Care d/b/a Hill Haven Nursing Home (2002 – Present)
- Member, Rochester General Hudson Housing (2002 – Present)
- Member, Rochester General Hospital (2002 – Present)

Mary Sue Napoleon, MD – Member
Ophthalmologist, Wayne Regional Eye Care

Affiliations:

- Member, Rochester General Health System (fka ViaHealth) (2002 – Present)
- Member, Newark Wayne Community Hospital (2005 – Present)

John R. Riedman, Member
(Previously Disclosed)

Anna E. Lynch, Esq. – Secretary
Managing Partner, Underberg & Kessier, LLP

Affiliations:

- Secretary, Rochester General Health System (fka ViaHealth) (2006 – Present)

Charles Brown, Jr. – Member
Retired

Affiliations:

- Member, Rochester General Health System (fka ViaHealth) (2010 – Present)
- Member, Unity Hospital (2006-2009)

William W. Destler, Ph.D. – Member
President, Rochester Institute of Technology

Affiliations:

- Member, Rochester General Health System (fka ViaHealth) (2009 – Present)

Daniel M. Meyers – Member
(Previously Disclosed)

Pastor George Nicholas – Member
Pastor, Grace United Methodist Church

Affiliations:

- Member, Rochester General Health System (fka ViaHealth) (2008 – Present)

Robert S. Sands – Member
(Previously Disclosed)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the New York State Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professionals associated with this application.

A Certificate of Good Standing has been received for all attorneys.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

A 10 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

Rochester General Long Term Care, Inc. d/b/a Hill Haven Nursing Home
Rochester General Housing, Inc.
Rochester General Hospital
Unity Hospital (2006-2009)
Newark Wayne Community Hospital (2005 – Present)
Independent Living for Seniors, Inc. (LTHHCP)

Rochester General Hospital was fined six thousand dollars (\$6,000.00) pursuant to a stipulation and order dated June 11, 2002 for performing a wrong sided thoracentesis.

The information provided by the Division of Certification and Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations

Rochester General Long Term Care, Inc. d/b/a Hill Haven Nursing Home was fined two thousand dollars (\$2,000.00) pursuant to a stipulation and order dated October 21, 2002 for inspection findings of May 10, 2002 for violations 10 NYCRR Sections 415.12(c) – Quality of Care: Pressure Sores.

Rochester General Long Term Care, Inc. d/b/a Hill Haven Nursing Home was fined two thousand dollars (\$2,000.00) pursuant to a stipulation and order dated November 3, 2004 for inspection findings of March 19, 2004 for violations 10 NYCRR Sections 415.12(h)(2) – Quality of Care: Accidents.

The Information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Independent Living For Seniors, Inc. was fined nine thousand dollars (\$9,000.00) pursuant to a stipulation and order dated January 8, 2008 for inspection findings of January 31, 2007 for violations of 10 NYCRR Sections 763.4(a) & (h): Policies and Procedures of Service Delivery; 763.5(a): Patient Referral, Admission and Discharge; 763.6(b), (c) & (e): Patient Assessment and Plan of Care; 763.7(a): Clinical Records; and 763.11(a) & (b): Governing Authority.

Independent Living For Seniors, Inc. was fined six thousand five hundred dollars (\$6,500.00) pursuant to a stipulation and order dated November 2, 2011 for inspection findings of September 29, 2009 for violations of 10 NYCRR Sections 763.4(h): Policies and Procedures of Service Delivery; 763.6(a): Patient Assessment and Plan of Care; 763.6(b): Patient Assessment and Plan of Care; 763.6(e): Patient Assessment and Plan of Care; 763.11(a): Governing Authority; and 763.11(b): Governing Authority.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 2066 Hudson Avenue, Rochester, New York 14467:

Monroe Wayne

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Physical Therapy	Housekeeper	Speech-Language Pathology
Respiratory Therapy	Audiology	Nutrition	Homemaker

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 10, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Longevity Care, LLC
Address: Rye
County: Westchester
Structure: Limited Liability Company
Application Number: 1835-L

Description of Project:

Longevity Care, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The members of Longevity Care, LLC are as follows:

Edvard Joseph, 50% Director of Operations, Jefferson Plumbing	Sandra Joseph, R.N., 50% Home Care Nurse, Precise Care, LLC (Connecticut)
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A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of Westchester County from an office located at 411 Theodore Fremd Road, Suite 206, Rye, New York 10580.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Medical Social Services
Speech Language Pathology	Homemaker	Housekeeper
Audiology	Respiratory Therapy	Nutrition

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 9, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Stat Staff Professionals, Inc.
Address: Clifton Park
County: Saratoga
Structure: For-Profit Corporation
Application Number: 1959-L

Description of Project:

Stat Staff Professionals, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Stat Staff Professionals, Inc. is an existing medical staffing company providing professional services to acute care hospitals in the Capital District. Stat Staff Professionals, Inc. wishes to expand its services to include services in the home. Stat Staff Professionals, Inc. uses the name "Stat Staff Professionals, Inc." as its business name. However, it uses the d/b/a Adirondack Health & Wellness to indicate its educational division.

The applicant has authorized 200 shares of stock which are owned solely by David Theobald.

The Board of Directors of Stat Staff Professionals, Inc. comprises the following individual:

David M. Theobald, R.N.
CEO, Stat Staff Professionals, Inc.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 258 Ushers Road, Suite 103, Clifton Park, New York 12065:

Saratoga	Franklin	Clinton	Essex	Hamilton
Warren	Washington	Fulton	Montgomery	Schenectady
Albany	Rensselaer	Otsego	Schoharie	Delaware
Greene	Columbia	Ulster		

The applicant proposes to provide the following health care services:

Nursing	Physical Therapy	Occupational Therapy	Respiratory Therapy
Nutrition			

Review of the Disclosure Information indicates that the applicant has no affiliations with other health care facilities.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 9, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Long Island Living Center, LLC
d/b/a Long Island Living Center
Address: Far Rockaway
County: Queens
Structure: Limited Liability Company
Application Number: 2004-L

Description of Project:

Long Island Living Center, LLC, d/b/a Long Island Living Center, a limited liability company, requests approval of a change in ownership of Long Island Living Center Assisted Living Program under Article 36 of the Public Health Law. Long Island Living Center Assisted Living Program is a currently operational ALP and LHCSA operated as a sole proprietorship by Amram Shetrit. This proposal seeks to transfer 70% ownership interest to Jeffrey J. Edelman and convert the entity to a LLC to be called Long Island Living Center, LLC d/b/a Long Island Living Center.

Long Island Living Center, LLC d/b/a Long Island Living Center (LHCSA) was previously approved as a licensed home care services agency by the Public Health Council at its May 20, 1994 meeting and subsequently licensed as 9452L001.

The members of Long Island Living Center, LLC d/b/a Long Island Living Center are as follows:

Jeffrey J. Edelman, 70%	Amram Shetrit, 30%
Operator, Wavecrest Home for Adults	Operator/Administrator, Long Island
Operator, Parkview Home for Adults	Living Center
Affiliations: Wavecrest HFA	
Parkview HFA	

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to continue to serve the residents of the following counties from an office located at 431 Beach 20th Street, Far Rockaway, New York 11691:

Bronx	Kings	Queens
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The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Medical Social Services
Speech Language Pathology	Respiratory Therapy	Nutrition

A ten year review of the operations of the following facilities was performed as part of this review:

Parkview Home for Adults
Wavecrest Home for Adults
Long Island Living Center (ALP)
Long Island Living Center (LHCSA)

The information provided by the Division of Assisted Living has indicated that the adult care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the licensed home care services agency (LHCSA) reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: January 9, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Metrostar Home Care, LLC
Address: Far Rockaway
County: Queens
Structure: Limited Liability Company
Application Number: 2079-L

Description of Project:

Metrostar Home Care, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Metrostar Home Care, LLC is the proposed LHCSA affiliated with Central Assisted Living, LLC, an existing 186 bed adult home/ALP and a proposed 14 bed enriched housing program/assisted living program (EHP/ALP).

The members of Metrostar Home Care, LLC are as follows:

Boris Mendel, 85%

Eric Mendel, 15%

Affiliations:

Central Assisted Living LLC dba Central Home Care
Central Assisted Living (ACF/ALP)
New Central Manor (ACF/ALP)
Prime Home Health Services, LLC
NCM Home Care LLHCSA

Affiliations:

Central Assisted Living LLC dba Central Home Care
Central Assisted Living, LLC (ACF/ALP)
New Central Manor (ACF/ALP)
Prime Home Health Services, LLC
NCM Home Care LLHCSA

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 11-38 Foam Place, Far Rockaway, New York 11691:

Kings
Bronx

Queens
Richmond

New York
Nassau

The applicant proposes to provide the following health care services:

Nursing
Physical Therapy
Speech Language Pathology
Nutrition

Home Health Aide
Occupational Therapy
Audiology
Homemaker

Personal Care
Respiratory Therapy
Medical Social Services
Housekeeper

A review of the following facilities and agencies was performed as part of this review:

Central Assisted Living, LLC (2008- present)
Central Assisted Living, LLC d/b/a Central Home Care (2008- present)
New Central Manor ALP (2002 - 2008)
NCM Home Care LLHCSA
Prime Home Health Services, LLC (9/07 – present)

The information provided by the Division of Assisted Living indicated that the assisted living facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services indicated that the home care agencies reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: December 30, 2011

- Alfred Schonberger and Judith Schonberger d/b/a Thomas Jefferson Assisted Living Seniors LHCSA – Brooklyn
9438A002 Licensed Home Care Services Agency
- Alfred Schonberger and Judith Schonberger d/b/a Thomas Jefferson Assisted Living Seniors LLHCSA – Brooklyn
9438L003 Licensed Home Care Services Agency

The Bureau of Quality Assurance and Surveillance for Nursing Homes has indicated the following:

Aishel Avraham Nursing Home Corporations was fined four thousand dollars (\$4,000.00) pursuant to a stipulation and order dated May 20, 2003 for surveillance findings of October 3, 2001 and January 23, 2002. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care: Accidents.

The information provided by the Bureau of Hospital & Diagnostic and Treatment Center, Certification and Surveillance has indicated that the hospital has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the Licensed Home Care Services Agency has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Assisted Living has indicated that the Adult Care Facility has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Bureau of Professional Credentialing has indicated that Alfred A Schonberger, holds a NHA license #00983 issued 6/17/1971 in good standing. His license is currently voluntarily inactive and he may not practice nursing home administration in NYS. In order to qualify for reactivation of his license, he will need to document 48 hours of acceptable continuing education credits. The Board of Examiners of Nursing Home Administrators has never taken disciplinary action against Mr. Schonberger nor is such action pending.

The Bureau of Professional Credentialing has indicated that Judith Schonberger, holds a NHA license #01810 issued 6/16/1972 in good standing. Her license is currently voluntarily inactive with a \$40.00 penalty fee and she may not practice nursing home administration in NYS. In order to qualify for reactivation of her license, she will need to pay the penalty fee and document 48 hours of acceptable continuing education credits. The Board of Examiners of Nursing Home Administrators has never taken disciplinary action against Ms. Schonberger nor is such action pending.

A review of the above listed facilities has determined that all of the facilities have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: January 9, 2011

**State of New York
Public Health and Health Planning Council**

January/February 2012

COMMITTEE ON CODES, REGULATIONS AND LEGISLATION

Angel Gutiérrez, M.D., Chair

For Emergency Adoption

11-27 Amendment of Section 401.2 of Part 401 of Title 10 NYCRR
(Amendment to Limitations of Operating Certificates)

For Adoption

11-27 Amendment of Section 401.2 of Part 401 of Title 10 NYCRR
(Amendment to Limitations of Operating Certificates)

For Discussion

11-24 Amendment of Parts 763 and 766 of Title 10 NYCRR
(Certified Home Health Agency (CHHA) and Licensed Home
Care
Services Agency (LHCSA) Requirements)

Pursuant to the authority vested in the Public Health and Health Planning Council, and subject to the approval of the Commissioner of Health by Section 2803(2)(a) of the Public Health Law, section 401.2 of Part 401 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended to be effective upon filing with the Secretary of State, to read as follows:

Section 401.2 is amended to read as follows:

401.2 Limitations of operating certificates. Operating certificates are issued to established operators subject to the following limitations and conditions:

(a) The medical facility shall control admission and discharge of patients or residents to assure that occupancy shall not exceed the bed capacity specified in the operating certificate, except that a hospital may temporarily exceed such capacity in an emergency.

(b) An operating certificate shall be used only by the established operator for the designated site of operation, except that the commissioner may permit the established operator to operate at an alternate or additional site approved by the commissioner on a temporary basis in an emergency. [provided that an] An operating certificate issued for a facility approved to provide:

(1) chronic renal dialysis services shall also encompass the provision of such services to patients at home;

(2) comprehensive outpatient rehabilitation facility (CORF) services shall also encompass the provision of the following services offsite: physical therapy, occupational

therapy, speech pathology and in addition, home visits to evaluate the home environment in relation to the patient's established treatment goals; and

(3) outpatient physical therapy, occupational therapy and/or speech-language pathology services shall also encompass the provision of home visits to evaluate the home environment in relation to the patient's established treatment goals.

(c) An operating certificate shall be posted conspicuously at the designated site of operation.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in section 2803(2)(a)(v) of the Public Health Law, which authorizes the Public Health and Health Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, that define standards and procedures relating to hospital operating certificates.

Legislative Objective:

The regulatory objective of this authority is to permit the Commissioner of the Department of Health to ensure access to health care in communities where a crisis has prevented or limited an existing local health care facility operator from operating at the site designated on its operating certificate.

Needs and Benefits:

This amendment would give the Commissioner the ability to safeguard the health and welfare of residents of areas affected by emergency situations by permitting operators of health care facilities to resume operations at temporary sites. Under the existing regulation, the Commissioner has no authority to permit an operator to operate its health care facility at any site other than that designated on the operating certificate. In the event all or part of a facility cannot be used due to circumstances related to an emergency such as a natural disaster or a fire, this amendment would permit the

Commissioner to act quickly to ensure that the patients or residents of the operator are temporarily served at an alternate or additional site appropriate under the circumstances. The operator of the affected facility would be able to continue to meet the needs of its patients or residents at a safe and appropriate alternate or additional site pending the repair, replacement or relocation of the designated site of operation.

COSTS:

Costs for the Implementation of, and Continuing Compliance with this Regulation to Regulated Entity:

None. The ability to receive revenue through continued operations during the temporary relocation would be a benefit to the regulated entity.

Cost to the Department of Health:

There will be no costs to the Department.

Local Government Mandates:

This amendment will not impose any program service, duty or responsibility upon any county, city, town, village school district, fire district or other special district.

Paperwork:

This amendment will increase the paperwork for providers only to the extent required by the temporary relocation of their operations.

Duplication:

This regulation does not duplicate, overlap or conflict with any other state or federal law or regulations.

Alternatives:

No alternatives were considered, as § 401.2 (b) presents the only barrier to allowing a health care facility operator to operate at a site not designated on its operating certificate.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The proposed amendment will become effective upon filing with the Secretary of State.

Contact Person: Katherine Ceroalo
New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm. 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.state.ny.us

REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Businesses and Local Governments:

No impact on small businesses or local governments is expected.

Compliance Requirements:

This amendment does not impose new reporting, record keeping or other compliance requirements on small businesses or local governments.

Professional Services:

No new professional services are required as a result of this proposed action.

Compliance Costs:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Economic & Technology Feasibility:

This amendment does not impose any new financial or technical burdens upon regulated entities.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Small Business Participation:

Any operator of a hospital as defined under Article 28 of the Public Health Law, regardless of size, may need to operate its facility at another or additional location in an emergency. This amendment would allow it to do so.

No Amelioration or Cure Period Necessary:

This amendment does not involve the establishment or modification of a violation or of penalties associated with a violation. It merely gives operators of hospitals as defined under Article 28 of the Public Health Law the ability to temporarily operate at sites not designated on their operating certificates in times of emergency. Therefore, as no new penalty could be imposed as a result of this amendment, no cure period was included.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Number of Rural Areas:

This rule will apply to all operators of hospitals as defined under Article 28 of the Public Health Law. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

No new reporting, recordkeeping or other compliance requirements and professional services are needed in a rural area to comply with the proposed rule.

Compliance Costs:

There are no direct costs associated with compliance.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Rural Area Participation:

Any operator of a hospital as defined under Article 28 of the Public Health Law, including those in rural areas, may need to operate its facility at another location in an emergency. This amendment would allow it to do so.

JOB IMPACT STATEMENT

Nature of Impact:

It is not anticipated that there will be any impact of this rule on jobs or employment opportunities.

Categories and Numbers Affected:

This rule will apply to all operators of hospitals as defined under Article 28 of the Public Health Law.

Regions of Adverse Impact:

This rule will apply to operators of hospitals as defined under Article 28 of the Public Health Law in all regions within the State, but it will have no adverse impact on those operators or their employees.

Minimizing Adverse Impact:

The rule would not impose any additional requirements upon regulated entities, and therefore there would be no adverse impact on jobs or employment opportunities.

Self-Employment Opportunities:

The rule is expected to have no impact on self-employment opportunities.

EMERGENCY JUSTIFICATION

The amendment to 10 NYCRR 401.2 (b) will give the Commissioner the ability to safeguard the health and welfare of residents of areas affected by emergency situations by permitting operators of health care facilities licensed pursuant to Public Health Law Article 28 (“facilities”) to resume or continue operations at temporary sites.

Recent weather events have required the temporary evacuation of facilities in the New York metropolitan area and relocation of facilities in Broome and Tioga Counties due to flooding. Section 401.2 (a) of Title 10 allows operators to temporarily exceed the bed capacities stated on their facilities’ operating certificates, which, during the recent emergencies, has allowed operators of facilities impacted by those weather events to transfer their patients or residents to other facilities temporarily. This was effective in the New York metropolitan area due to the availability of adequate space in surrounding facilities and due to the lack of any significant damage to the evacuated facilities. In Broome and Tioga Counties, however, the heavy flooding caused lasting damage to facilities, thereby threatening patients’ access to health care in clinic space and requiring residents of nursing homes to be moved to space in other nursing homes in the area.

Because section 401.2 (b) of Title 10 currently limits an operator’s operating certificate to the site of operation set forth in the operating certificate, an operator of an impacted facility is not able to care for its patients or residents at any other site until the Commissioner has approved a certificate of need application for the relocation of the facility. In Broome County, a hospital filed applications to relocate some of its extension clinics, but a more expedient process could have better mitigated issues of access to

health care. Residents of flooded nursing homes have been cared for in other local nursing homes that had adequate space due to the recent decertification of beds in that area. Although an application to relocate one of the flooded nursing home is expected, currently, nursing homes in Broome County are now at capacity and are unable to accept hospital patients who need to be discharged to nursing home level of care. The number of such patients has been steadily increasing.

This amendment to 10 NYCRR 401.2 (b) is necessary now to allow appropriate arrangements by operators of affected facilities in a manner that will not adversely impact the ability of hospitals in Broome County to properly discharge patients to area nursing homes. The amendment is also necessary to ensure access to appropriate health care for patients or residents during the next time of emergency.

Pursuant to the authority vested in the Public Health and Health Planning Council, and subject to the approval of the Commissioner of Health by Section 2803(2)(a) of the Public Health Law, section 401.2 of Part 401 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 401.2 is amended to read as follows:

401.2 Limitations of operating certificates. Operating certificates are issued to established operators subject to the following limitations and conditions:

(a) The medical facility shall control admission and discharge of patients or residents to assure that occupancy shall not exceed the bed capacity specified in the operating certificate, except that a hospital may temporarily exceed such capacity in an emergency.

(b) An operating certificate shall be used only by the established operator for the designated site of operation, except that the commissioner may permit the established operator to operate at an alternate or additional site approved by the commissioner on a temporary basis in an emergency. [provided that an] An operating certificate issued for a facility approved to provide:

(1) chronic renal dialysis services shall also encompass the provision of such services to patients at home;

(2) comprehensive outpatient rehabilitation facility (CORF) services shall also encompass the provision of the following services offsite: physical therapy, occupational

therapy, speech pathology and in addition, home visits to evaluate the home environment in relation to the patient's established treatment goals; and

(3) outpatient physical therapy, occupational therapy and/or speech-language pathology services shall also encompass the provision of home visits to evaluate the home environment in relation to the patient's established treatment goals.

(c) An operating certificate shall be posted conspicuously at the designated site of operation.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in section 2803(2)(a)(v) of the Public Health Law, which authorizes the Public Health and Health Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, that define standards and procedures relating to hospital operating certificates.

Legislative Objective:

The regulatory objective of this authority is to permit the Commissioner of the Department of Health to ensure access to health care in communities where a crisis has prevented or limited an existing local health care facility operator from operating at the site designated on its operating certificate.

Needs and Benefits:

This amendment would give the Commissioner the ability to safeguard the health and welfare of residents of areas affected by emergency situations by permitting operators of health care facilities to resume operations at temporary sites. Under the existing regulation, the Commissioner has no authority to permit an operator to operate its health care facility at any site other than that designated on the operating certificate. In the event all or part of a facility cannot be used due to circumstances related to an emergency such as a natural disaster or a fire, this amendment would permit the

Commissioner to act quickly to ensure that the patients or residents of the operator are temporarily served at an alternate or additional site appropriate under the circumstances. The operator of the affected facility would be able to continue to meet the needs of its patients or residents at a safe and appropriate alternate or additional site pending the repair, replacement or relocation of the designated site of operation.

COSTS:

Costs for the Implementation of, and Continuing Compliance with this Regulation to Regulated Entity:

None. The ability to receive revenue through continued operations during the temporary relocation would be a benefit to the regulated entity.

Cost to the Department of Health:

There will be no costs to the Department.

Local Government Mandates:

This amendment will not impose any program service, duty or responsibility upon any county, city, town, village school district, fire district or other special district.

Paperwork:

This amendment will increase the paperwork for providers only to the extent required by the temporary relocation of their operations.

Duplication:

This regulation does not duplicate, overlap or conflict with any other state or federal law or regulations.

Alternatives:

No alternatives were considered, as § 401.2 (b) presents the only barrier to allowing a health care facility operator to operate at a site not designated on its operating certificate.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The proposed amendment will become effective upon publication of a Notice of Adoption in the New York State Register.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Businesses and Local Governments:

No impact on small businesses or local governments is expected.

Compliance Requirements:

This amendment does not impose new reporting, record keeping or other compliance requirements on small businesses or local governments.

Professional Services:

No new professional services are required as a result of this proposed action.

Compliance Costs:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Economic & Technology Feasibility:

This amendment does not impose any new financial or technical burdens upon regulated entities.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Small Business Participation:

Any operator of a hospital as defined under Article 28 of the Public Health Law, regardless of size, may need to operate its facility at another or additional location in an emergency. This amendment would allow it to do so.

No Amelioration or Cure Period Necessary:

This amendment does not involve the establishment or modification of a violation or of penalties associated with a violation. It merely gives operators of hospitals as defined under Article 28 of the Public Health Law the ability to temporarily operate at sites not designated on their operating certificates in times of emergency. Therefore, as no new penalty could be imposed as a result of this amendment, no cure period was included.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Number of Rural Areas:

This rule will apply to all operators of hospitals as defined under Article 28 of the Public Health Law. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

No new reporting, recordkeeping or other compliance requirements and professional services are needed in a rural area to comply with the proposed rule.

Compliance Costs:

There are no direct costs associated with compliance.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Rural Area Participation:

Any operator of a hospital as defined under Article 28 of the Public Health Law, including those in rural areas, may need to operate its facility at another location in an emergency. This amendment would allow it to do so.

JOB IMPACT STATEMENT

Nature of Impact:

It is not anticipated that there will be any impact of this rule on jobs or employment opportunities.

Categories and Numbers Affected:

This rule will apply to all operators of hospitals as defined under Article 28 of the Public Health Law.

Regions of Adverse Impact:

This rule will apply to operators of hospitals as defined under Article 28 of the Public Health Law in all regions within the State, but it will have no adverse impact on those operators or their employees.

Minimizing Adverse Impact:

The rule would not impose any additional requirements upon regulated entities, and therefore there would be no adverse impact on jobs or employment opportunities.

Self-Employment Opportunities:

The rule is expected to have no impact on self-employment opportunities.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Article 36 of the Public Health Law, Sections 763.3, 763.6, 763.7, 766.3, 766.4, 766.5 and 766.9 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 763.3 is amended as follows:

763.3 Patient care.

* * *

(b) An agency shall provide at least one of the services identified in paragraph (1) of subdivision (a) of this section [nursing, physical therapy, speech-language pathology or occupational therapy] directly, while any[additional] other services may be provided directly or by contract arrangement. For purposes of this Part, the direct provision of services includes the provision by employees compensated by the agency or individuals under contract with the agency, but does not include the provision of services through contract arrangements with other agencies or facilities.

Section 763.6 is amended as follows:

763.6 Patient assessment and plan of care.

* * *

(c) The plan of care shall cover all pertinent diagnoses, including mental status, types of services and equipment required, frequency of visits, prognosis, need for palliative care, rehabilitation potential, functional limitations, activities permitted, nutritional requirements, medications and treatments, any safety measures to protect against injury, instructions for timely discharge or referral, and any other appropriate items.

* * *

(e) The plan of care shall be reviewed as frequently as required by changing patient conditions but at least every 6[2]0 days.

Section 763.7 is amended as follows:

763.7 Clinical records. (a) The agency shall maintain a confidential clinical record for each patient admitted to care or accepted for service to include:

* * *

(3) medical orders and nursing diagnoses to include all diagnoses, medications, treatments, [and] prognos[is]es, and need for palliative care. Such orders shall be:

Section 766.3 is amended as follows:

766.3 Plan of care. The governing authority or operator shall ensure that:

* * *

(b) a plan of care is established for each patient based on a professional assessment of the patient's needs and includes pertinent diagnosis, prognosis, need for palliative care,

mental status, frequency of each service to be provided, medications, treatments, diet regimens, functional limitations and rehabilitation potential;

Section 766.4 is amended as follows:

766.4 Medical orders.

* * *

(d) Medical orders shall reference all diagnoses, medications, treatments, prognoses, need for palliative care, and other pertinent patient information relevant to the agency plan of care; and

Section 766.9 is amended as follows:

Section 766.9 Governing authority. The governing authority or operator, as defined in Part 700 of this Title, of a licensed home care services agency shall:

* * *

(l) appoint a quality improvement committee to establish and oversee standards of care. The quality improvement committee shall consist of a consumer and appropriate health professional persons [including a physician if professional health care services are provided]. The committee shall meet at least four times a year to:

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (“PHL”) §3612(5) authorizes the Public Health and Health Planning Council to adopt and amend rules and regulations to effectuate the provisions and purposes of Article 36 with respect to certified home health agencies. 3612(6) requires the commissioner to adopt, and amend as needed, rules and regulations to effectuate the purposes of Article 36 as regards quality of care and services.

Legislative Objectives:

To provide quality home care services to residents of New York State and to assure adequate availability as a viable alternative to institutional care.

Needs and Benefits:

On February 24, 2011 Governor Cuomo accepted a report from the Medicaid Redesign Team meeting the Medicaid spending target contained in the Governor’s 2011-2012 budget. The report included 79 recommendations to redesign and restructure the Medicaid program to be more efficient and get better results for patients. Included among the recommendations accepted are proposal numbers 109 and 147. These proposals are attached.

These amendments add a requirement that the plans of care and medical orders required for patients of certified home health agencies (CHHAs) and licensed home care services agencies (LHCSAs) address the patient’s need for palliative care. This is in response to MRT proposal number 109, which seeks to expand access to palliative care services.

The amendments also eliminate the need for a physician to serve on the quality improvement (QI) committee of LHCSAs, in response to MRT proposal number 147, which seeks to reduce regulatory burdens on providers.

Finally, some minor amendments were made to align these regulations with federal requirements and to correct errors. First, the amendments remove the requirement that CHHAs provide more than one qualifying service directly, to coincide with the federal standards as defined in 42 CFR §484.14(a). The current regulation appears to require CHHAs to provide more than one service directly, which the Department does not require, and this has led to confusion among interested agencies. Similarly, the amendments change the maximum period of time that may lapse before a comprehensive assessment is reviewed from 62 days to 60 days, as this was an error in the regulations as originally drafted. Federal regulations, at 42 CFR §484.55(d)(1), require review at least every 60 days.

Costs:

The only additional requirement that is imposed on agencies because of these regulations is that requiring the plan of care to address palliative care, which is not anticipated to result in any appreciable burden to agencies and should not add additional costs to current operations. All other amendments are cost neutral or will decrease costs.

Local Government Mandates:

There are no mandates in this rule specific to local government. There are 17 existing county-based LHCSAs and approximately 36 county based CHHAs, and these entities will be required to comply with the same requirements as other licensed agencies.

Paperwork:

Providers are not expected to have increased paperwork as a result of these amendments.

Duplication:

Proposed rules will not be duplicative of other requirements.

Alternatives:

The MRT proposals are specific in their mandates. The Department has made only those changes required to implement the MRT proposals and to remove language that is inconsistent with laws and regulations as they relate to timeframes for assessment.

Federal Standards:

There are no federal health care standards for LHCSAs. This provider type is a New York State construct. Federal regulations governing CHHAs are at 42 CFR Part 484.

Compliance Schedule:

Immediate compliance is expected.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

Licensed home care services agencies (LHCSAs) and certified home health agencies (CHHAs) operated by county health departments provide public health services in the home as required by Public Health Law. There are approximately 17 county-based LHCSAs and approximately 36 county-based CHHAs. The small businesses that will be affected are agencies employing fewer than 100 persons. Based on agency reports, the Department estimates that 860 LHCSAs and 168 CHHAs have less than 100 employees, and would be categorized as small businesses.

Compliance Requirements:

There is one new requirement imposed on agencies as a result of these amendments, which is to include the need for palliative care in each patient's plan of care and medical orders.

Professional Services:

No additional professional staff will be required because of these amendments. The requirement that agencies address the need for palliative care will be handled as a part of procedures already undertaken by agencies.

Compliance Costs:

It is not anticipated that there will be any increase in costs incurred by agencies as a result of these amendments. The amendments either remove existing obligations or add a minimal requirement that may be assumed with no increase in cost as part of current operations.

Economic and Technological Feasibility:

These rules can be implemented with no clear economic or technological impact. The only requirement imposed by these regulations is an unappreciable addition to current operations, and no additional technology will be required to comply.

Minimizing Adverse Impact:

The MRT proposals are specific in their mandates. The Department has made only those changes required to implement the MRT proposals and to remove language that is inconsistent with laws and regulations governing the scope of practice for LPNs.

Small Business and Local Government Participation:

The Department will meet the requirements of SAPA Section 202-b(6) in part by publishing a notice of proposed rulemaking in the State register with a comment period. All agencies and associations were able to participate in the MRT process.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

All counties in New York State (NYS) have rural areas with the exception of 7 downstate counties. Approximately 80% of licensed home care services agencies (LHCSAs) and 86% of CHHAs are licensed to serve counties with rural areas in NYS.

Reporting, Record Keeping and Other Compliance Requirements and Professional Services:

There is one new requirement imposed on agencies as a result of these amendments, which is to include the need for palliative care in each patient's plan of care and medical orders. This requirement adds only a minimal recordkeeping burden on agencies, as plans of care and medical orders are already required for every patient serviced by a LHCSA or CHHA. No new professional staff is required to comply.

Costs:

It is not anticipated that there will be any increase in costs incurred by agencies as a result of these amendments. The amendments either remove existing obligations or add a minimal requirement that may be assumed with no increase in cost as part of current operations.

Minimizing Adverse Impact:

The MRT proposals are specific in their mandates. The Department has made only those changes required to implement the MRT proposals and to remove language that is inconsistent with laws and regulations governing the scope of practice for LPNs

Rural Area Impact:

There is no impact specifically to rural areas as a result of these amendments, and the impact to all agencies is minimal.

JOB IMPACT STATEMENT

Nature of Impact:

The Department has determined that the proposed rules will not have a substantial adverse impact on jobs and employment opportunities.

Categories and Numbers Affected:

None

Regions of Adverse Impact:

None

Minimizing Adverse Impact:

Not applicable.

Self Employment Opportunities:

Not applicable.