STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

April 5, 2012

Immediately Following the Special Establishment and Project Review Committee Meeting
Scheduled for 10:00 a.m.

OGS Concourse Meeting Room #6
Albany, New York

I. INTRODUCTION OF OBSERVERS

Dr. William Streck, Chairman

II. APPROVAL OF MINUTES

February 2, 2012

Exhibit #1

III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

Nirav R. Shah, M.D., M.P.H., Commissioner of Health

B. Report of the Office of Health Systems Management Activities

Richard Cook, Deputy Commissioner, Office of Health Systems Management

C. Report of the Office of Health Information Technology Transformation Activities

Rachel Block, Deputy Commissioner, Office of Health Information Technology Transformation

D. Report of the Office of Health Insurance Programs Activities

Jason Helgerson, Deputy Commissioner, Office of Health Insurance Programs

E. Report of the Office of Public Health Activities

Dr. Guthrie Birkead, Deputy Commissioner, Office of Public Health
IV. **PUBLIC HEALTH SERVICES**

   **Report on the Activities of the Committee on Public Health**

   Jo Ivey Boufford, M.D., Chair of the Public Health Committee

V. **HEALTH POLICY**

   A. **Report on the Activities of the Committee on Health Planning**

      John Rugge, M.D., Chair of the Health Planning Committee

   B. **Update on the Results of Legislation Signed by Governor Cuomo Creating a Certificate of Still Birth**

      Guy Warner, Director, Vital Records

VI. **GUIDING POLICIES FOR PUBLIC HEALTH AND HEALTH PLANNING**

COUNCIL CORRESPONDENCE AND MEETING DELIBERATIONS

Discussion

***Break for Lunch***

VII. **REGULATION**

   **Report of the Committee on Codes, Regulations and Legislation**

   Angel Gutiérrez, M.D., Chair

For Adoption

09-17  Addition of New Part 403 and Amendment of Sections 700.2, 763.13 and 766.11 of Title 10 NYCRR; Amendment of Sections 505.14 and 505.23 of Title 18 NYCRR (Home Care Services Worker Registry)

For Discussion

Part 757 of Title 10 NYCRR – Chronic Renal Dialysis Services

Sections 405.9 and 405.5 of Title 10 NYCRR – Release of a Deceased Person From a Hospital

Section 405.13, 405.22, 405.30 and 405.31 of Title 10 NYCRR – Organ Transplant Provisions

**Exhibit #2**
VIII. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Jeffrey Kraut, Chair

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 1: Applications Recommended for Approval – No Issues or Recusals, Abstentions/Interests

NO APPLICATIONS

CATEGORY 2: Applications Recommended for Approval with the Following:

- PHHPC Member Recusals
- Without Dissent by HSA
- Without Dissent by Establishment and Project Review Committee

**CON Applications**

Diagnostic and Treatment Center – Construction

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 121076 C</td>
<td>Institute for Urban Family Health/Sidney Hillman Center (New York County) Mr. Fassler - Interest</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

Residential Health Care Facility – Construction

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
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</thead>
<tbody>
<tr>
<td>1. 121079 C</td>
<td>Boro Park Operating Co., LLC d/b/a Boro Park Center for Rehabilitation and Healthcare (Kings County) Mr. Fassler - Recusal</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

CATEGORY 3: Applications Recommended for Approval with the Following:

- No PHHPC Member Recusals
- Establishment and Project Review Committee Dissent, or
- Contrary Recommendations by HSA
NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

- PHHPC Member Recusals
- Establishment and Project Review Committee Dissent, or
- Contrary Recommendation by HSA

NO APPLICATIONS

CATEGORY 5: Applications Recommended for Disapproval by OHSM or Establishment and Project Review Committee - with or without Recusals

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

Residential Health Care Facility – Construct

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
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<tbody>
<tr>
<td>1. 102376 C</td>
<td>Albany County Nursing Home (Albany County)</td>
<td>To be presented at the Special Establishment/Project Review Committee on 4/5/12</td>
</tr>
</tbody>
</table>

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 1: Applications Recommended for Approval – No Issues or Recusals, Abstentions/Interests

CON Applications

Ambulatory Surgery Centers – Establish/Construct

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
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</thead>
<tbody>
<tr>
<td>1. 112222 B</td>
<td>Brooklyn SC, LLC (Kings County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2. 112287 B</td>
<td>Plastic Surgery Center of Westchester (Westchester County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>3. 112347 E</td>
<td>Executive Woods Ambulatory Surgery Center, LLC</td>
<td>Approval</td>
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</tbody>
</table>
### Diagnostic and Treatment Center – Establish/Construct

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>E &amp; A Medical Solutions, LLC d/b/a Forest Hills Health Center (Queens County)</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

### Residential Health Care Facility – Establish

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Hopkins Ventures, LLC d/b/a Hopkins Center for Rehabilitation and Healthcare (Kings County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2.</td>
<td>Rockville Operating, LLC d/b/a Advanced Center for Rehabilitation and Nursing at Rockville (Nassau County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>3.</td>
<td>St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center (Suffolk County)</td>
<td>Contingent Approval</td>
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### Certificate of Incorporation

<table>
<thead>
<tr>
<th>Applicant</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Oswego Health Foundation</td>
<td>Approval</td>
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### Certificate of Amendment of the Certificate of Incorporation

<table>
<thead>
<tr>
<th>Applicant</th>
<th>E.P.R.C. Recommendation</th>
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</thead>
<tbody>
<tr>
<td>1. United Cerebral Palsy and Handicapped Children’s Association of Chemung County, Inc.</td>
<td>Approval</td>
</tr>
</tbody>
</table>
Certificate of Dissolution

Applicant

1. Lutheran Center for the Aging, Inc. Approval

HOME HEALTH AGENCY LICENSURES

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
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<tbody>
<tr>
<td>2106-L</td>
<td>St. Lawrence County Public Health Department (St. Lawrence County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2068-L</td>
<td>Hudson Valley Home Health Care, LLC (Westchester, Putnam, Ulster, Rockland, Dutchess, Orange, and Sullivan Counties)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2075-L</td>
<td>Golden Acres Home for Adults SP, LLC (Rockland, Putnam, Bronx, Orange, Ulster, Sullivan, Dutchess and Westchester Counties)</td>
<td>Contingent Approval</td>
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<tr>
<td>2034-L</td>
<td>Robynwood, LLC d/b/a Robynwood Home Care (Chenango, Delaware, Otsego, and Schoharie Counties)</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

CATEGORY 2: Applications Recommended for Approval with the Following:
- PHHPC Member Recusals
- Without Dissent by HSA
- Without Dissent by Establishment and Project Review Committee

CON Applications

Acute Care Services – Establish

<table>
<thead>
<tr>
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<tr>
<td>1. 121051 E</td>
<td>Corning Hospital</td>
<td>Contingent Approval</td>
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### Diagnostic and Treatment Centers – Establish/Construct

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<tr>
<td>1. 112184 B</td>
<td>Huther Doyle Memorial Institute, Inc. (Monroe County) Mr. Booth – Interest</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2. 112343 B</td>
<td>Corning Centerway (Steuben County) Mr. Booth - Interest</td>
<td>Contingent Approval</td>
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### Hospice – Establish/Construct

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<th>Number</th>
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<tr>
<td>1. 102454 E</td>
<td>Compassionate Care Hospice of New York, Inc. (Bronx County) Ms. Regan – Interest</td>
<td>Contingent Approval</td>
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<tr>
<td>2. 112211 B</td>
<td>Jacob Perlow Hospice Corporation d/b/a MJHS Hospice and Palliative Care (Kings County) Mr. Fassler – Interest Ms. Regan - Interest</td>
<td>Contingent Approval</td>
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</tbody>
</table>

### Certified Home Health Agencies – Establish

<table>
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<th>Number</th>
<th>Applicant/Facility</th>
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<tr>
<td>1. 111413 E</td>
<td>Genesee Region Home Care Association, Inc. d/b/a Lifetime Care (Schuyler County) Mr. Booth – Recusal Ms. Hines – Recusal</td>
<td>Contingent Approval</td>
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<tr>
<td>Number</td>
<td>Applicant/Facility</td>
<td>E.P.R.C. Recommendation</td>
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<td>------------------------------------------------------------------------------------</td>
<td>--------------------------</td>
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<tr>
<td>1. 111456 E</td>
<td>4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool (Onondaga County) Mr. Booth - Interest</td>
<td>Contingent Approval</td>
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<tr>
<td>2. 111462 E</td>
<td>1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster (Erie County) Mr. Booth - Interest</td>
<td>Contingent Approval</td>
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<tr>
<td>3. 111463 E</td>
<td>20 Bassett Road Operating Company, LLC d/b/a Elderwood Health Care at Williamsville (Erie County) Mr. Booth - Interest</td>
<td>Contingent Approval</td>
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<tr>
<td>4. 111466 E</td>
<td>2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield (Niagara County) Mr. Booth - Interest</td>
<td>Contingent Approval</td>
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<tr>
<td>5. 111467 E</td>
<td>4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst (Erie County) Mr. Booth - Interest</td>
<td>Contingent Approval</td>
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<tr>
<td>6. 111468 E</td>
<td>2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island (Erie County) Mr. Booth - Interest</td>
<td>Contingent Approval</td>
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<tr>
<td>7. 111469 E</td>
<td>225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga</td>
<td>Contingent Approval</td>
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</table>
8. 111470 E 5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg (Erie County) Mr. Booth - Interest Contingent Approval

9. 111471 E 37 North Chemung Operating Company, LLC d/b/a Elderwood at Waverly (Tioga County) Mr. Booth - Interest Contingent Approval

10. 112218 E Waterfront Operations Associations, LLC d/b/a Waterfront Center for Rehabilitation and Healthcare (Erie County) Mr. Fassler – Recusal Mr. Booth - Interest Contingent Approval

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #18**

<table>
<thead>
<tr>
<th>Number</th>
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<tr>
<td>1691-L</td>
<td>ABC Home Care, Inc. (Bronx, Richmond, Kings, New York and Queens Counties) Ms. Regan - Interest</td>
<td>Contingent Approval</td>
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<tr>
<td>1882-L</td>
<td>BaCOR Healthcare Solutions Group, LLC d/b/a BaCOR Care for Life (Nassau and Richmond Counties) Ms. Regan - Interest</td>
<td>Contingent Approval</td>
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<tr>
<td>1716-L</td>
<td>Elite Home Care Service Agency, Inc. (New York, Nassau, Kings, Queens, Bronx and Richmond Counties) Ms. Regan - Interest</td>
<td>Contingent Approval</td>
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<tr>
<td>L</td>
<td>Agency Name</td>
<td>Counties</td>
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<td>----------------------------------------------------------------------------</td>
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<td>1634-L</td>
<td>Healing Touch Home Care, Inc.</td>
<td>(Bronx, Kings, New York, Queens and Richmond Counties)</td>
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<td>1962-L</td>
<td>Louis Career Development Center, Inc., d/b/a Smart Home Care Agency</td>
<td>(New York, Nassau, Kings, Queens, Bronx, and Richmond Counties)</td>
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<tr>
<td>1996-L</td>
<td>Steps in Home Care, Inc.</td>
<td>(Westchester, Nassau, Bronx, and New York Counties)</td>
</tr>
<tr>
<td>1906-L</td>
<td>JS Homecare Agency of NY, Inc.</td>
<td>(Bronx, Richmond, Kings, Westchester, New York, Queens, Dutchess, Suffolk, Nassau, Sullivan, Orange, Rockland, Putnam and Ulster Counties)</td>
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<td>1901-L</td>
<td>Heritage Christian Services, Inc.</td>
<td>Genesee, Wayne, Livingston, Monroe, Erie, Niagara, and Ontario Counties)</td>
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<tr>
<td>2107-L</td>
<td>Niagara County Department of Health</td>
<td>(Niagara County)</td>
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<tr>
<td>2108-L</td>
<td>Tompkins County Health Department</td>
<td>(Tompkins County)</td>
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<tr>
<td>Application Number</td>
<td>Description</td>
<td>Approval Type</td>
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<td>2096-L</td>
<td>Yates County Public Health (Yates County) Mr. Booth - Interest</td>
<td>Contingent Approval</td>
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<tr>
<td>2010-L</td>
<td>Samaritan Senior Village, Inc. (Jefferson, Lewis, and St. Lawrence Counties) Mr. Booth - Interest</td>
<td>Contingent Approval</td>
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<td>2028-L</td>
<td>229 Bennett Road Operating Company, LLC d/b/a Elderwood Home Care at Cheektowaga (Erie County) Mr. Booth - Interest</td>
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<td>2029-L</td>
<td>580 Orchard Park Road Operating Company, LLC d/b/a Elderwood Home Care at West Seneca (Erie County) Mr. Booth - Interest</td>
<td>Contingent Approval</td>
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<td>2030-L</td>
<td>76 Buffalo Street Operating Company, LLC d/b/a Elderwood Home Care at Hamburg (Erie County) Mr. Booth - Interest</td>
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<tr>
<td>2031-L</td>
<td>44 Ball Street Operating Company, LLC d/b/a Elderwood Home Care at Waverly (Tioga County) Mr. Booth - Interest</td>
<td>Contingent Approval</td>
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</tbody>
</table>

**CATEGORY 3:** Applications Recommended for Approval with the Following:

- No PHHPC Member Recusals
- Establishment and Project Review Committee Dissent, or
- Contrary Recommendations by or HSA

**NO APPLICATIONS**
**CATEGORY 4:** Applications Recommended for Approval with the Following:

- PHHPC Member Recusals
- Establishment and Project Review Committee Dissent, or
- Contrary Recommendation by HSA

**Ambulatory Surgery Center – Establish/Construct**  
**Exhibit #19**

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>112382 B North Country Eye Center (Saratoga County)</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

**CATEGORY 5:** Applications Recommended for Disapproval by OHSM or Establishment and Project Review Committee - with or without Recusals

**NO APPLICATIONS**

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**Ambulatory Surgery Center – Establish/Construct**  
**Exhibit #20**

<table>
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<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
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<tbody>
<tr>
<td>1.</td>
<td>112086 B 1504 Richmond, LLC d/b/a Richmond Surgery Center (Richmond County) Mr. Kraut – Recusal</td>
<td>No Recommendation</td>
</tr>
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</table>

**X. PROFESSIONAL**

**Report of the Committee on Health Personnel and Interprofessional Relations**

Dr. Theodore Strange, Chair  
One Case

**XI. NEXT MEETING**

May 24, 2012 - NYC  
June 7, 2012 - NYC

**XII. ADJOURNMENT**
The meeting of the Public Health and Health Planning Council was held on Thursday, February 2, 2012, at the New York State Department of Health, 90 Church Street, Rooms 4A and 4B, New York, New York. Chairman, Dr. William Streck, presided.

COUNCIL MEMBERS PRESENT:

Dr. William Streck, Chair
Dr. Howard Berliner
Mr. Christopher Booth
Dr. Jo Ivey Boufford
Mr. Michael Fassler
Mr. Howard Fensterman
Dr. Ellen Grant
Dr. Angel Gutiérrez
Ms. Victoria Hines
Mr. Robert Hurlbut
Mr. Arthur Levin
Mr. Jeffrey Kraut
Dr. Glenn Martin
Dr. John Palmer
Ms. Ellen Rautenberg
Ms. Susan Regan
Mr. Peter Robinson
Dr. John Rugge
Dr. Theodore Strange
Dr. Ann Marie Theresa Sullivan
Dr. Anderson Torres
Dr. Patsy Yang
Commissioner Shah (ex-officio)

DEPARTMENT OF HEALTH STAFF PRESENT:

Dr. Guthrie Birkhead
Ms. Rachel Block
Anna Colello (Albany via video)
Ms. Barbara DelCogliano (Albany via video)
Mr. Christopher Delker
Mr. James Dering
Ms. Ellen Flink (Albany via video)
Ms. Sandy Haff
Mr. Jason Helgerson
Ms. Mary Ellen Hennessy
Ms. Celeste Johnson
Ms. Lora Lefebvre
Ms. Karen Lipson
Ms. Karen Madden
Mr. Keith McCarthy (Albany via video)
Dr. John Milliren
Ms. Joan Cleary Miron (Albany via video)
Ms. Sylvia Pirani
Ms. Linda Rush (Albany via video)
Ms. Kelly Seebald (Albany via video)
Ms. Lisa Thomson
INTRODUCTION:

Dr. Streck called the meeting to order and welcomed Commissioner Shah along with Council members, meeting participants and observers to the Councils Annual Meeting.

Dr. Streck informed the meeting participants that the meeting would be broadcast over the internet which would give greater access to the public.

Next, Dr. Streck reminded the audience that the New York State Temporary Commission on Lobbying is requiring that a form be filled out before entering the meeting room which records their attendance.

MEETING OVERVIEW:

Dr. Streck gave a brief overview of what would be covered at the Council meeting.

APPROVAL OF THE MINUTES OF DECEMBER 8, 2011:

Dr. Streck asked for a motion to approve the December 8, 2011 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval which was seconded by Dr. Gutiérrez. The minutes were unanimously adopted. Please refer to page 7 of the attached transcript.

ELECTION OF OFFICERS

As outlined in the Council’s bylaws, Dr. Streck motioned for the appointment of Mr. Jeffrey Kraut to serve as the Council’s Vice Chair. This motion was seconded by Dr. Gutiérrez. The motioned carried. Please see page 7 of the attached transcript.

Dr. Streck announced the Standing Committee and Ad Hoc Committee Chairs and stated members can reference their Committee assignments with the chart they have been given. See the attached document for Committee assignments.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Dr. Streck introduced Commissioner Shah who presented the Report of the Department of Health.

Executive Budget Proposal

Commissioner Shah began his report by addressing Governor Cuomo’s executive budget proposal for the 2012/2013 state fiscal year released on January 17, 2012. He commends the efforts on the part of the Department in working with the Governor’s office and state legislature on these proposals. Dr. Shah highlighted some of the items included in these proposals.
Dr. Shah first addressed Medicaid spending. It was agreed upon last year, that spending will increase by four percent for an approximate 614 million dollars, in order to ensure that New York will be able to meet the needs of Medicaid beneficiaries while still maintaining a tight rein on spending growth. Dr. Shah adds that the Medicaid Redesign Team has made great strides in reforming and restructuring the Medicaid program, and there are continued efforts in the transition to a care management system.

Dr. Shah continues on to discuss the creation of a health insurance exchange which is a priority of the Governor. Governor Cuomo’s budget called for the enactment of a health exchange, which will assist an estimated one million New Yorkers in obtaining health insurance coverage. The development of such an exchange began a year ago and Commissioner Shah is confident that the Department will be able to come to an agreement this year.

Commissioner Shah also commented on local Medicaid cost. He reported that through the work of the MRT, New York took decisive action in order to control the overall Medicaid spending growth last year. The Governor has proposed a plan to help control Medicaid spending at the low level by calling for a phased in 100 percent state takeover of local Medicaid growth. Under this proposal, the existing three percent caps on growth will be reduced to two percent in 2013, drop to one percent in 2014, and be eliminated entirely in 2015. This plan will save counties approximately 1.2 billion dollars over the next five years.

The Commissioner concluded his discussion of the executive budget proposals by suggesting that these three proposals exemplify the New York reform, revitalization and accountability and adds that the Department will continue to work with the executive chamber and legislature to make sure that all of these goals are implemented. Dr. Shah will keep the PHHPC members apprised of these efforts.

Doctors Across New York Program

Dr. Shah went on to briefly address the Department’s continued effort to respond to the shortages of primary care and specialized care providers. He reports that The Doctors Across New York Program has been working to alleviate these shortages by providing critical support to recruit and retain physicians in underserved areas across the state. This is done through salary or productivity enhancement, sign-on bonuses, loan repayments or direct funding.

Dr. Shah indicated that in late December, the Department announced 500,000 dollars in state funding for five health care centers under the Doctors Across New York Program, the physician practice support component. He explained that each of the five awardees will receive 100,000 dollars over two years, and all of them have made multiyear commitment to providing services in underserved areas. Two of the grant recipients, Ellis Hospital in Schenectady and Dr. Alseny Balde in the Bronx received inner city awards for Family Medicine. Additionally, three providers received rural awards, Nathan Littauer Hospital Association in Gloversville for urology, FLH Medical, PC in Geneva for psychiatry, and Geneva General Hospital for general surgery.
Dr. Shah praised The Doctors Across New York Program as it has played an important role in addressing health care provider shortages in many communities. He advised that there is an additional 12 million dollars that is still available to health care providers who apply for grants by March 30th of 2012.

Obesity

Dr. Shah transitioned into the discussion of obesity, which is another critical health challenge the Department faces. Obesity is a public health epidemic that often starts at a young age. The Department in conjunction with the State Education Department has tracked a weight status of school children in New York State outside of New York City which has its own fitness and tracking system. The Department will soon be issuing a report on these findings.

Dr. Shah announced that the results of this report are alarming. Thirty-two percent of children in New York public schools are either overweight or obese. The data are based on information obtained during the 2008/2009 school year and the 2009/2010 school year. Approximately 17 percent of school children were found to be obese, which means having a body mass index, or BMI, greater than the 95th percentile of all children. An additional 15 percent are overweight with a BMI between the 85th and 95th percentile.

Dr. Shah advised that The Department has shared this information with local health departments and school districts, and will continue to work with them on local planning efforts to improve child and adolescent health. The high prevalence of childhood weight problems is cause for concern. Obese and overweight children face a much greater risk of developing serious health problems such as diabetes, asthma, coronary disease. New York has numerous programs designed to promote healthier lifestyles and prevent childhood obesity, including the Healthy Schools New York Initiative. The Healthy Schools New York initiative is a collaboration between the Department of Health and the State Education Department that focuses on healthy eating and control activities. The Department is working with state and local partners to provide students with free or low cost nutritious meals, and to create a healthier environment.

Dr. Shah stated that evidence shows that children who are at a healthy weight achieve better educational outcomes. Obesity is a challenge across the nation and even globally. This data from the student weight and status report will help the Department meet this challenge and develop and expand evidence-base programs to reverse the prevalence of obesity amongst children.

Influenza

Dr. Shah concludes his report by addressing flu in New York State. It has not been a major problem this winter. The number of hospitalizations due to flu has been very low this season, with only ten hospitalizations with flu in the first week of January. In fact, the numbers of hospitalizations have averaged just ten cases per week over the past month compared with hundreds of hospitalized patients during the same period last year. He adds that it is too early to figure out why these numbers are so low or to declare this a very mild flu season. The typical peak time for flu cases is approaching and the Department expects to see flu activity pickup considerably in the next couple months. Therefore, there is still time to get your flu shots.
Dr. Shah thanked Dr. Birkhead and everyone in Public Health at the state and local levels who have been active in educating the public about promoting flu vaccination. In light of the high numbers of cases of H1N1 just a few years ago, this is good news.

Dr. Streck thanked Commissioner Shah for his report and opened the floor for questions and comments from council members.

To review Dr. Shah’s full report and the questions and comments please refer to pages 9 through 17 of the attached transcript.

Dr. Streck thanked Dr. Shah for his report and moved to the next item on the agenda and introduced Ms. Lefebvre to give the Report on the Activities of the Office of Health Systems Management.

**REPORT OF THE OFFICE OF HEALTH SYSTEMS MANAGEMENT ACTIVITIES**

Ms. Lefebvre thanked Dr. Streck and advised the council that she will report on two items. She intends to provide the council with a brief update on HEAL request for grant applications that the Department has out as well as an update on CON design satisfaction, provided by Mr. Abel.

**HEAL UPDATE**

Ms. Lefebvre reports the MRT Group, specifically the Brooklyn Workgroup and the Payment Reform Workgroup have been looking for ways that the state could support in assisting the existing provider network out there to deliver structural change trying to get out of the four walls oftentimes of the hospitals or nursing homes and really start directing itself toward taking care health outcomes in the communities.

She states that the OHSM issued a request for grant applications on November 28, 2011. The OHSM is looking for applications that support the principles of development of meaningful primary care in communities, rescaling acute care infrastructure, or asking for the creation of a provider network that focus on improving population health.

Ms. Lefebvre announced that the grants that are available are both capital grants and temporary operating assistance. There is 450 million dollars available both in HEAL and acting federal funds, as well as a temporary Medicaid rate adjustment that will be made available for good applications. She added that this is the last significant allocation of HEAL dollars that will be available for New York State. The Department successfully persuaded the federal government to extend the approval of the waiver through March of 2014, at which time the money that is available to the Department needs to be expended.

Ms. Lefebvre advised that applications are due back to the Department February 10, 2012. This time frame was provided at the request of the provider community in order to allow more time to prepare applications. There was also a conference held on January 13, 2012, in order to clarify what it was the OHSM was looking for as well as answer
questions. The OHSM is excited about repeating some creative kind of transformative applications, which will have some very real and positive impacts on population health in the communities that providers serve.

Ms. Lefebvre concluded her HEAL update and was prepared to respond to any question.

Dr. Streck opened the floor for questions, of which there were none, and turned the floor over to Mr. Abel to report on CON redesign satisfaction.

CON Redesign

Mr. Abel began his report by addressing the user feedback as the electronic CON application and tracking process has been in use for thirteen months. From the end of October 2011 through November 2011, the Division of Health Facility Planning (DHFP) had made up a user satisfaction survey for NYSE-CON and Mr. Abel reports that the DHFP has received a good amount of feedback.

The survey was comprised of 26 multiple-choice questions, which takes about ten minutes to complete. The purpose of this survey was to obtain feedback from health care facilities, agencies, consultants and the general public who is using the system for searches. There were 55 respondents, 29 from hospital staff, five consultants, four from long term care facilities, two from ENTC and fifteen other respondents. Thirty-four reported that they had submitted construction applications, nine had submitted establishment applications. There were 18 respondents that reported they had submitted between one and three applications, ten submitted four to seven, and nine submitted eight applications. Mr. Abel believes that this survey rendered a good representation of NYSE-CON users.

In terms of satisfaction, Mr. Abel reports that the DHFP aw that 46 percent reported that it took less time electronically than through the hardcopy process to prepare and submit an application and 43 percent reported that it took about the same amount of time as the previous method. Thirty-five percent reported that uploading documents on NYSE-CON is very easy. Only three percent of users reported that the electronic application system was difficult for them. Fifty-seven and a half percent found the new system east or very easy to review their application online through the NYSE-CON system, 30 percent found it not to be difficult, and 12 reported having difficulty. Eighty-six percent found the correspondence function to be useful.

Mr. Abel stated that one of the major suggestions received from NYSECON survey respondents was that they would like to be able to get additional information on status updates of their CON as it was progressing through the review cycle. Participants reported that they liked having less paper, the ease of submission, the speed of the DOH response to applications and being able to review their application online. Mr. Abel informed the council that the DHFP has already implemented a number of suggestions that came through the NYSECON survey process. Mr. Abel proceeded to address the problems and concerns the respondents had. Thirty-eight percent of respondents said they were able to resolve their issues without any assistance from the DOH. Of the respondents that required assistance from the DOH, twenty-one or twenty-four reported that their experience was either good, very good, or excellent. Three respondents found DOH assistance to be poor.
Dr. Streck thanked Mr. Abel for his report and opened the floor to questions and comments from the council.

To review the full report Office of Health Systems Management and the questions and comments please refer to pages 17 through 25 of the attached transcript.

Dr. Streck proceeded to introducing Ms. Block who reported on the activities of the Office of Health Information Technology Transformation.

**REPORT OF THE OFFICE OF HEALTH INFORMATION TECHNOLOGY TRANSFORMATION ACTIVITIES**

Ms. Block began her report stating that she will be providing two quick updates for the council on issues previously discussed.

Substance Abuse and Mental Health

Ms. Block reports that in the last six months the OHITT received two communications from the Substance Abuse Mental Health Administration in Washington regarding clarifications on policy issues relating to the sharing of mental health and substance abuse information in the context of Health Information Technology and Health Information Exchange activities.

Ms. Block assured the Council that this has been a topic of great interest for the Department since many of our Heal 17 programs in fact envision the collaboration of behavioral health with acute care and primary care systems, and now with the advent of health homes and many of the other initiatives that we're enhancing.

Ms. Block suggests that with this most recent communication the Department thinks that it has enough clarification from Stamford to reevaluate the policies that it has implemented thus far, and hopefully announce an update to those policies in the very near future that will clarify for our stakeholders and hopefully facilitate the availability and appropriate use of that information in conjunction with federal policies. Ms. Block is confident that the OHITT will have a more detailed update before the next Council meeting.

Meaningful Use

Ms. Block had two brief announcements to share with the council in regard to Meaningful Use. She advised that at the last council meeting OHITT was able to announce the soft launch of the Medicaid registration system. That is now up and running. The Department already has over 2000 eligible professionals registered in the system, and everyday there is significant volume of new registrations.

The OHITT has been asked to work with the federal government to accelerate the process by which eligible professionals are registering both for Medicare and Medicaid, and are working closely with the key stakeholders across New York state to accomplish that goal.
Ms. Block reports the Department is anticipating the publication of Stage 1 of meaningful use requirements probably next week. She believes that it will create a great flurry of discussion across the IT community. The OHITT will provide the council with an update at the next council meeting.

Dr. Streck thanked Ms. Block for her report and opened the floor to questions and comments from the council.

To review the full report on the Activities of the Office of Health Information Technology Transformation and the questions and comments please refer to pages 25 through 28 of the attached transcript.

Dr. Streck proceeded to introducing Mr. Helgerson who reported on the activities of the Office of Health Insurance Programs Initiatives.

**REPORT OF THE OFFICE OF HEALTH INSURANCE PROGRAMS ACTIVITIES**

Mr. Helgerson began his report by addressing the executive budget. He touched upon additional themes and issues that the Commissioner did not directly address but thought might be of interest to the council.

**MEDICAID BUDGET PROPOSAL**

Mr. Helgerson first addressed important items in the Governor's Medicaid budget proposal this year. After many years of traditional cost containment efforts, across the board reduction, and other sorts of draconian efforts particularly targeted that provider community. The Governor's executive budget contains none of those actions for the first time in a number of years. He state that the key reasons for that were the Governor's commitment, which he is fulfilling, of allowing the budget to grow by four percent, but also to the success of many of the reforms enacted in the last budget which came out of the work of the Medicaid Redesign Team.

Mr. Helgerson reminded the Council that the team was passed as finding a considerable amount of money in savings. The state share was about 2.2 billion within all the funds terms or gross terms in state and in the federal amounted to account as well total about 4 million dollars in spending reductions in this fiscal year. The value of those grow into next year, and it is the key reason why we are able to live within the four percent world without any traditional cost containment.

Mr. Helgerson moved on to addressing how the proposal also moves for the number of the Phase 2 MRT initiatives. MRT was really sort of two committees, as some people put it. The first was tasked with finding immediate budgetary savings. And the second, which has been meeting throughout the spring, summer, and into the fall, concluded its work in December on a Phase 2, a second effort where we broke it into ten workgroups, work on a variety of different topics across the entire expansive program, they came up with many recommendations. Twenty-five of those recommendations are actually included in the Governor's proposed budget. The Department is very excited to move with some of those important reforms.
Mr. Helgerson next expanded upon what the Commissioner discussed about the takeover of growth in the county contribution to Medicaid expenses. He goes on to inform the Council that what the Governor also proposed is a fundamental change in the state and local relationship when it comes to administration of the Medicaid program. New York has historically relied upon a few other states in the country, on local- governments to play a key role in administration, whether in eligibility determination or other functions, fee for service system, those local districts have played a vital role. What this budget does is really change that system fundamentally. It's basically a five year state takeover of Medicaid administration.

Mr. Helgerson provided the Council with a sense of the scale of this change. He stated that there are 5500 county and city workers across the state who is taking an interest in this particular outcome. Over the next five years, the work of those individuals is going to have to be transferred to the state. The major expansion that is going to work for the Department of Health or they're proposing to add 120 FTEs, and the only part of state government that will be getting new FTEs on any scale in this budget as we take on that responsibility.

Mr. Helgerson was happy to announce that there is a workgroup of stakeholders chaired by Steve Acquerio and Ann Monroe who co-chairs with a similar group as part of Phase 2 MRT. They are going to work with stakeholders to advise the Department on how to effectively implement, which is a very complex new initiative.

Mr. Helgerson concluded his remarks on the Medicaid budget by advising the Council that there are a couple of documents available on the MRT website. One is a PowerPoint presentation and it’s presented in a webinar. The webinar itself is also available on the website, which summarizes the Medicaid budget in more detail. There is also a matrix on there, which Mr. Helgerson finds to be very useful in tracking particular initiatives that were included in the Governor’s budget back to the work of the individual work groups, so you can actually see which of those recommendations the Governor has moved forward with.

Mr. Helgerson added that the Department is going to, for the first time, try to do a Twitter Q and A live on February 3, 2012 at 8:30 a.m. He stated that he hopes that this will be a good opportunity for the Department to answer questions pertaining to the Governor’s proposed Budget and Medicaid.

Phase One Proposal

Mr. Helgerson moved on to discuss the implementation of the Phase 1 proposal. He reminded the Council that there were 78 reforms included that were adopted by the legislature that came out of the MRT process. The Department has been working fast and furious to try to implement these as quickly and effectively as possible.
Mr. Helgerson advised that we now live within a world where there is a Medicaid global spending cap that the state share of the Department controls of Medicaid budget, which is the vast majority of the Medicaid budget. That spending cap basically assumed that the Department of Health would be able to hold Medicaid spending in this fiscal year compared to last fiscal year at a less than one percent rate of growth. Mr. Helgerson provided as an example; when this budget process was started before MRT began its work, DOB estimated that the growth rate was going to be about 13 percent. The key reasons why the DOH had to find so many saving were to bring that growth rate down to what the Governor initially proposed, but the Department of Health really went into the fiscal year with some risk, a lot of unknowns, particularly around enrollment. So far, through November Mr. Helgerson is able to say that the Department is under the global spending cap amount through November by an impressive $4 million, which some people may sound like a lot of money, but in the Medicaid world it is .001 percent total. Therefore, the Department is very closely managing this budget.

Mr. Helgerson added that one of the best things coming out of MRT was the creation of the lower spending cap and how it has forced the state to track expenses in this very large and complex program far more closely than ever before. And so, there is information on how we're doing at the global committee cap, it's also available on the website because we are publishing a monthly report.

Mr. Helgerson continued on to provided a quick update on three important initiatives that came out of the Phase 1 recommendation. He points out, as the Commissioner said, we are moving to a care management for all strategies really over the next three years, proposing a fundamental change to the Medicaid program by really ending fee for service and moving virtually all services and all populations into manage care, that's a real fundamental change for this population. Roughly half of the total Medicaid budget is in fee for service, tens of billions of dollars moving away from directing and for providers to plan on a capitation basis.

Long Term Care

Mr. Helgerson suggests one of the big areas of movement is in long-term care, particularly home and community based long-term care, which is a cost category that has really been a major driver of cost for Medicaid. The Department, is beginning this spring with moves to mandatory managed long-term care. It's to take us two years to fully phase that in and the Department needs to work with the federal government in getting full approval but preparing for that important initiative.

Health Homes

Following long-term care, Mr. Helgerson addressed Health Homes. He mentioned how Dr. Rugge was describing some of the challenges that he at least in an effort up in the Adirondack that created Health Homes. It really is an exciting but very challenging initiative, which is really trying to bring together providers from across the various care silos working together sharing information, really targeting new resources at a population that is really a major challenge for the Medicaid program. These are our highest cost, highest needs of Medicaid members, traditionally the ones bouncing between behavioral health providers, the physical health care, the acute care system, these are the individuals in and out of the emergency room 50 times a year. The Department is trying through Health Homes to really build networks of providers to work together focusing on this population.
Mr. Helgerson advises that the Office of Health Insurance Programs is very excited about some of the first wave of Health Homes that are moving forward. Beginning next week the first enrollees will be enrolled into Health Homes as we move forward with sort of ten phase one counties.

Mr. Helgerson concludes his report by addressing patients that are in medical homes. He states that he is with Dr. Rugge on this as well. This is one of our leading lights on medical homes. The state for quite a while has had an effort around trying to incentivize providers to become patient center medical homes and achieve NQA accreditation. Back in the beginning of 2011 we had a little bit less than 800,000 individuals of Medicaid patients who were benefiting from services provided to patients in medical homes. I can report today that it's over 1.4 million. It has seen a substantial increase in the number of practices, physicians who have met those criteria, and that it inherently meant that there are more Medicaid patients who are benefiting from high quality, highly coordinated service.

Dr. Streck opened the floor to questions and comments from the council.

To review the full report of the Activities of the Office of Health Insurance Programs and the questions and comments please refer to pages 28 through 44 of the attached transcript.

PUBLIC HEALTH SERVICES

Dr. Streck proceeded to introducing Dr. Birkhead who will provide the council with a report on the activities of the Office of Public Health.

REPORT OF THE OFFICE OF PUBLIC HEALTH ACTIVITIES

Dr. Streck introduced Dr. Birkhead to address activities of the Office of Public Health.

Dr. Birkhead reported on the results of the Ad Hoc Committee that was held on February 1, 2012. This meeting dealt with the specifics which were established several meetings ago to address the new round of the State Health Improvement Plans. Dr. Birkhead also informed the Council that Dr. Boufford would also be reporting on the Public Health Committee.

Dr. Birkhead explained that the State Health Improvement Plan concerned itself with a Prevention Agenda from 2008 through 2012. We are now in the initial stages of planning for the next round of the Improvement Plan from 2013 through 2017. The first meeting of the stakeholders group which is a widely constituted group that includes all sectors of the public health system. This Ad Hoc Committee will help guide the work of the State Health Department in setting up a State Health Improvement Plan. Goals and principles as well as the criteria for selecting priorities were discussed.

Dr. Birkhead explained that the vision of the overall plan is that “New York is the Healthiest State.” Health considerations should be considered in ALL policy changes whether it is the Health Department, transportation or agriculture, etc. Eliminating health disparities was a major theme and the major focus of the activities. Data that actually details slides from the February 1, 2012 session will be posted on the website.
Dr. Birkhead said the goal of strengthening the State and local public health infrastructure including the ability of that infrastructure to engage in a partnership and stakeholders at the State and local level to promote a sustainable public/private partnership was widely discussed. There is a need to develop ways of encouraging collaboration at all levels of State agencies, local agencies and private enterprises to support the public health infrastructure.

Dr. Birkhead felt that one means of accomplishing this goal is strengthening the integration of public health and the personal health care systems. The Department must help communities become aware of their local health problems and how to address them.

Using slides Dr. Birkhead illustrated that the government plays a role in coordinating, convening and developing policies, but that accomplishing the goal of strengthening the health infrastructure involves effort of local communities as well as other sectors including business, media, academia, etc.—the system is everybody’s responsibility and everybody needs to work on improving the system.

Dr. Birkhead presented the next section of slides which indicated the dichotomy or the paradox of the belief that access to medical care accounts for a minority of health status. A minority, whether it be 10 or 20 or 30 percent, are believed to be influenced or not influenced by the medical care system so that behavioral, environmental, and genetic factors need to be considered in the realm of what the public health system tries to influence.

Dr. Birkhead stated that the Ad Hoc Committee concluded the meeting by discussing the point that access to health care will be greatly improved by the implementation of health reforms. The Committee agreed that insurance is necessary but not sufficient for equal access to health care so there will still be a public health role in providing this access. Preventative services rated A or B by the U. S. Preventative Services Task Force are to be provided in the new systems. A lot of time is spent in public health trying to fill gaps and assure that preventative services are provided so removing barriers is important.

Dr. Birkhead expressed that a major focus of our efforts is to develop children’s health home models to go along with adult health homes in an effort to improve coordination of care in the public health arena and to support preventative services and community base services to the MRT proposals. As Commissioner Shah referenced there is a number of proposals that are now moving forward in the Governor’s budget around MRTs that support what had been traditionally public health services but are now able to cover for Medicaid children.

Dr. Birkhead led a discussion on selecting the priority areas on which to focus and the development of the criteria to select those priorities. Priority areas might include the morbidity and mortality of disease burden, a premature mortality and morbidity of diseases and the health risk conveyed. Are there evidence-base interventions that we can employ? If not, what efforts would be feasible on which to focus? We need to consider existing r and potential resources and how to align these resources with our priorities. Question to ask is whether there is community and partner support that the community recognizes as priority areas. Health departments are the convener of these efforts and in some ways direct them at the State and local level because they have the leverage to make change. We can move the needle in terms of health disparities. In terms of actual causes to support, health is another way of looking at this and is there a way to monitor what they’re doing.
Dr. Birkhead stated that the current prevention agenda has ten priority areas that range from access to care to chronic environmental maternal child health, and infectious diseases. Mental health and substance abuse were also discussed. These two areas are where the public health part of the State Health Department does not have any levers to pull. It was agreed that unless populations don’t address substance use and mental health issues, then we are not going to make headway on the physical health issues that people are facing.

In conclusion, Dr. Birkhead felt that the Committee concurred that focus should be in the area of chronic diseases and not a disease specific focus with emphasis on risk factors, obesity and physical activities, nutrition and access to screening for cancer; in particular, where we might use disease measures as outcome measures. This lead to a definition of a healthy environment; does a health environment only include just food and water or does this also apply to the local home environment and other kinds of environment and how this impacts. This area needs more amplification. Having healthy mothers, babies and children, controlling infectious diseases, childhood immunization are areas that were discussed for priorities.

Dr. Birkhead advised that the Committee plans to meet several more times by June to develop these priority areas and then by year’s end develop a plan to engage the public health system in supporting these priorities. We will then be ready to move ahead in 2013.

Dr. Streck thanked Dr. Birkhead for her report and asked for questions or comments. To review Dr. Birkhead’s complete report and the Council member’s comments and questions, please refer to pages 44 through 58 of the attached transcript.

**Report on the Activities of the Committee on Public Health**

Dr. Streck introduces Dr. Boufford to give her report on the activities of the Committee on Public Health and the Ad Hoc Committee.

Dr. Boufford listed the three priorities of the Public Health Committee. (1) Working with Dr. Birkhead and his colleagues on planning and goals, (2) Being an advisory to the Department on renewal and the revitalization of the S H I T for the next four years, the State Health Improvement Plan, and the accreditation application in which the State will be applying for accreditation in the new voluntary system, and (3) picking one of the new priorities and focusing our efforts on the Committee to support those of the Department and other involved stakeholders.

Dr. Boufford stated that the Ad Hoc Committee is constituted in two ways: Volunteers from the Public Health Committee and twenty-one volunteers from across the state. These individuals represent a very exciting and diverse area including local health departments, medical society professionals, business representatives, public health leadership, nursing leadership, organizations including Medicaid.
Dr. Boufford explained the meeting was started by reviewing the progress of the prevention agenda. The Committee reviewed the current status of New York State health conditions and then began the process of developing priorities and setting criteria for those priorities. The Committee would like to design a system to involve broader stakeholders and then developing those ideas into a final decision. A number of indicators were presented.

Dr. Boufford advised that the other review process included the partnership process. Through a legislative activity, we were able to get a concurrent review of the local health department health planning plan submission and the hospital community benefit plan submission. This proved quite helpful. Reminder, we are off by one year but from 2013 forward this will become current. Analyzing the effects of the partnership process brought excellent engagement between hospitals and local health departments. Access to care being the number one concurrence, chronic disease being number two, and tobacco being number three. While there were good initial meetings and some collaborative planning, there collaborations began to deterioration due in large part to resource availability. A small amount of money, 7 million dollars was made available for grant programs to support activities in a number of local areas. The money did help in sustaining their partnerships and continuing implementation and evaluation.

Dr. Boufford went on to say that the topic of metrics was discussed. There is not a lot of measurement of what was done. This was due to the fact that timeframes were shorter but also a very heavy concern of the complete ones going forward that we will be able to measure, define metrics in the first instance and then be able to track and measure them. Again, the resources in public health data are poor, and I think that raises an issue certainly for racial groups and for other HIT programs on how to capture information from some of the clinical providers.

Dr. Boufford felt that the overall New York state health data is about a key position. The plans indicate two things in characteristic: increase in the aging population and decrease in the birth rate with significant increase in the diversity of the statewide population. The highest avoidable mortality factors are tobacco, exercise, die and alcohol and that is where we will be developing methods to prevent these things. They affect a whole set of chronic disease.

Dr. Boufford listed the outcomes of the meeting: Strategies being developed that really reflect an appreciation of the broader determinative health—things that really help people make healthy choices; and Control. Can there be a goal out there where the health departments can’t control all the variables in making change. The questions are how we develop collaborations and partnerships that make each other mutually accountable. Can we get appropriate collaboration across the difference agencies in government as well as with the public and private sector? With decentralization the State can’t really assume they can have a large impact. The State can set statewide priorities, but the application will be at the local level.

Dr. Boufford elaborated on the MRT process. She explained that one of the challenges of this process is that the process moves very quickly and it is very complex. Also, we stayed with the MCH because it represents a large focus of MRT. It is very important to link the complimentary public health and prevention set of activities.
Dr. Boufford also explained that the Committee had a long and productive discussion on the merits of keeping mental health and substance abuse on the agenda. Even with all the caveats of how hard it is on the prevention side and the community base side to intervene, we need to be in a partnership with the provider community.

Dr. Boufford went on to mention the metrics issue can include multiple chronic diseases but that we must also look at diabetes, heart disease, and pulmonary diseases. Metrics can provide excellent data. The Committee felt that the merits of including oral health should be included on the agenda. Dentists argue that early evidence of certain chronic diseases such as diabetes can be seen in the dentist’s office. The Committee is going to have further discussion on this topic.

Going forward, the Committee would like to reach out to the stakeholder community in a timely manner to obtain data sets. Therefore, the Committee will communicate through e-mail and then have another face-to-face meeting within a month to finalize the basics and then reach out to their constituents throughout the state. After this information is gathered, the Committee will have a final set of recommendations by the June meeting. Workshops will meet over the summer finalizing recommendations goals, criteria and metrics, for the November meeting. Interim reports will be issued as the workshops meet.

Please refer to Pages 59 through 68 to view the full discussion.

HEALTH POLICY

Dr. Streck introduced Dr. Rugge who will report on health policy.

Report on Activities of the Committee on Health Planning

Dr. Rugge reported that the Health Planning Committee is working hard to address the charge that has been given to us by Commissioner Shah. This was a two-part charge:

(1) To develop recommendations for consideration by this Council at the June 2 for administrative streamlining of the process that currently exists. This process was started at a special meeting on January 18 and will continue through a series of meeting until the June meeting.

(2) To reform and re-conceptualize the CON process in light of all the payment and delivery system changes that we are experiencing. This work will help set the table for further action in 2013 and in the Governor’s agenda. Dr. Rugge thanked Mr. Delker, Ms. Lipson, Ms. Madden and special advisor Dr. Alaigh for their help in giving us a broader perspective on CON.

Dr. Rugge reported that there was a shared understanding or consensus about the rational for CON as it now exists. Four goals were agreed upon by the Department.
A slide presentation presented the benefits of CON, its drawbacks and those inherent to the kind of reviews were discussed. Also presented were the shortcomings of the current system and how they could be approved. The Committee welcomes contributions from everyone here and all members of the public and key stakeholders.

Dr. Rugge stated that the Committee then moved to all the stakeholder’s recommendations that had been submitted to date regarding administrative streamlining. After much discussion and editing, the Committee has some seven suggestions that could well turn into recommendations for the full council to consider. These suggestions will then be referred back to the Department for further consideration. This referral will generate another series of additional ideas that will be subject to further discussion at the next meeting which will be on March 21, 2012.

Dr. Rugge went on to say that the topic of this meeting will be Why CON? The Committee will draft a repurposing statement taking into effect how CON is now intended to serve and how in light of all the changes we have been experiencing we will redefine the purpose. The main idea to be discussed will be why we need CON in view of all the new incentives and all the new forces occurring. CON is only one of many tools available and currently in play in a larger economy. We need to understand how this tool connects to all the others and strike a balance to meet competitive market dynamics.

Dr. Rugge stated that following the meeting on March 22, 2012, Commissioner Shah will be joined by Commissioners Burke, Hogan and Sanchez to look at how CON may integrate physical health behavior and mental health service to the developmentally disabled and to those with substance abuse issues.

Dr. Rugge stated that there will also be a joint meeting with the Public Health Committee with the goal of understanding how health planning needs are to be organized community by community and region by region and eventually at the statewide level. As we are fully aware, CON is very difficult to undertake unless there is some kind of organized health planning activity that provides a basis for decision making when the projects come one by one to the Project Review and Establishment Committee.

Dr. Rugge concluded his report. To review the complete report, please see pages 69 through 74 of the attached transcript.

Dr. Streck thanked Dr. Rugge and his Committee for all their hard work. The meeting briefly adjourned. The Council went into Executive Session for the Report of the Committee on Health Personnel and Interprofessional Relations.

REGULATION

The Council reconvened into public session. Dr. Streck introduced Dr. Gutiérrez to present the report on the Report of the Committee on Codes, Regulations and Legislation.
Report of the Committee on Codes, Regulations and Legislation

For Emergency Adoption

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

Dr. Gutierrez began his report introducing a regulation for emergency adoption  
emergency adoption concerning limitations of operator certificates. Last year’s event required a  
temporary recreation of facilities in the New York metropolitan area, relocation of facilities in  
Broome and Dyer County due to flooding because Section 401.2 limits an operators operating  
certificate to the site of operation set forth in the operating certificate. An operator's affected  
facility is not able to care for his patients or residents at any other site until the Commissioner  
has approved the Certificate of Need application for the relocation of the facility. This  
amendment 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 certificate in times of  
emergency. It was adopted as an emergency at the October 6 and December 8, 2011 at the Full  
Council meeting. Dr. Gutiérrez motion for emergency adoption which was seconded by  
Dr. Berliner. The motion carried. Please see pages 75 through 78 of the attached transcript.

For Adoption

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

Dr. Gutiérrez moved to the next item the adoption of the identical permanent version of  
the amendment communications of operating certificate proposal was also in the Codes agenda  
for regular adoption. Dr. Gutiérrez moved the regulation for adoption. Dr. Berliner seconded  
the motion. The motion carried. See page 77 of the attached transcript for the vote.

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)

Lastly, Dr. Gutiérrez described the next item for discussion regarding Certified Home  
Health Agency and Licensed Home Care Services Agency Amendments. This regulation will  
incorporate two recommendations from the Medicaid Redesign Team. The first recommendation  
would add a requirement that the plans of care and medical orders required for patients of CHHA  
and LHCSA address the patient needs for care. The second recommendation would eliminate  
the need for a physician to serve on the quality improvement committee of the LHCSA. This  
measure would also remove the requirement of the CHHA to provide more than one quality  
service directly to coincide with the federal standards. It also changes the maximum period of  
time that may lapse before the comprehensive assessment is reviewed from 62 to 60 days which  
is also the federal standard. Dr. Gutiérrez concluded his report. Dr. Streck inquired if there were  
questions from Council members. Hearing none, Dr. Streck moved to the next item on the  
agenda. To review the report, please see pages 77 through 79 of the attached transcript.
Dr. Streck called upon Mr. Kraut to give his report on the Committee on Establishment and Project Review.

REPORT OF THE COMMITTEE ON ESTABLISHMENT OF HEALTH CARE FACILITIES

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 1: Applications Recommended for Approval – No Issues or Recusals, Abstentions/Interests

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>112074 C University Hospital (Suffolk County)</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

Acute Care – Construction

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>112250 C Smile New York Outreach, LLC d/b/a Smile Program Mobile Dentists (Queens County)</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

Diagnostic and Treatment Center – Construction

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>112116 C Dominican Sisters Family Health Service, Inc. (Westchester County)</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

Long Term Home Health Care Program – Construction

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>112206 T St. Mary’s Healthcare (Montgomery County)</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

Mr. Kraut began his report by introducing applications in Category 1 and motioned for approval. Dr. Berliner seconded the motion. The motion carried. Please see pages 79 through 81 of the attached transcript.
CON Applications

**CATEGORY 2:** Applications Recommended for Approval with the Following:

- PHHPC Member Recusals
- Without Dissent by HSA
- Without Dissent by Establishment and Project Review Committee

CON Applications

Acute Care Services – Construction

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 112059 C</td>
<td>New York Presbyterian Hospital – New York Weill Medical Center (New York County) Ms. Regan - Interest</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

Mr. Kraut moved to Category 2 and introduced application number 112059 and stated for the record that Ms. Regan has declared an interest. Mr. Kraut motioned for approval which was seconded by Dr. Gutiérrez. Members discussed this application and the motion failed. There was further discussion regarding the psychiatric services, the loss associated with psychiatric beds, and the length of stay for the outpatient unit. Dr. Boufford motioned for approval adding a contingency to state that submission of documentation of approval by the Commissioner of the Office of Mental Health after considering the deliberations of the New York State Mental Health Services Council. The new motion was seconded by Dr. Grant. Please see pages 81 through 109 of the attached transcript to review the complete discussion.

| 2. 112259 C | North Shore University Hospital (Nassau County) Mr. Kraut – Recusal | Contingent Approval |

Mr. Fensterman and Mr. Kraut declared a conflict on application 112259 and exited the meeting room. Dr. Strange indicated an interest. Mr. Booth briefly described the application and motioned for approval. The motion was seconded by Dr. Berliner. The motion carried with Dr. Strange’s noted interest and Mr. Fensterman and Mr. Kraut’s recusals. Mr. Fensterman and Mr. Kraut re-entered the meeting room. Please see pages 109 and 110 of the attached transcript.

**CATEGORY 3:** Applications Recommended for Approval with the Following:

- No PHHPC Member Recusals
- Establishment and Project Review Committee Dissent, or
- Contrary Recommendations by HSA

**NO APPLICATIONS**
CATEGORY 4: Applications Recommended for Approval with the Following:
  - PHHPC Member Recusals
  - Establishment and Project Review Committee Dissent, or
  - Contrary Recommendation by HSA

Residential Health Care Facility – Construction

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 111435 C</td>
<td>The Wartburg Home (Westchester County) Mr. Fassler - Interest</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

Mr. Kraut introduced application 111435 and noted for the record Mr. Fassler’s interest. Mr. Kraut motioned for approval which was seconded by Dr. Berliner. The motion carried with one opposed. Please see page 110 and 111 in the transcript.

CATEGORY 5: Applications Recommended for Disapproval by OHSM or Establishment and Project Review Committee - with or without Recusals

Diagnostic and Treatment Center – Construction

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 101018 C</td>
<td>Doctors United, Inc. (New York County)</td>
<td>Disapproved</td>
</tr>
</tbody>
</table>

Mr. Kraut advised that Mr. Fensterman has declared a conflict and exited the meeting room. Mr. Kraut then described application 101018 and stated the Department is recommending disapproval based on need only. Mr. Kraut motioned for disapproval which was seconded by Dr. Gutiérrez. Application 101018 was disapproved with Mr. Fensterman’s recorded recusal. Mr. Fensterman entered the meeting room. Please see pages 112 through 117 of the attached transcript.

CATEGORY 6: Applications for Individual Consideration/Discussion

Residential Health Care Facility – Construction Addendum

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 112344 C</td>
<td>Coler-Goldwater Specialty Hospital and Nursing Facility Goldwater Nursing Facility site (New York County) Dr. Boufford – Recusal Dr. Sullivan – Recusal Mr. Fassler - Interest</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>
Mr. Kraut stated that Dr. Boufford and Dr. Sullivan are recusing and have left the meeting room and noted Mr. Fassler’s interest. Mr. Kraut briefly described application 112344 and motioned for approval. Dr. Berliner seconded the motion. The motion carried with Dr. Boufford and Dr. Sullivan’s recusals as well as Mr. Fassler’s recorded interest. Please see pages 117 through 119 of the transcript.

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 1: Applications Recommended for Approval – No Issues or Recusals, Abstentions/Interests

CON Applications

Diagnostic and Treatment Center – Establish/Construct  Exhibit #11

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 101164 B</td>
<td>Mobile Health Services, LLC (New York County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2. 112142 E</td>
<td>Primary Health Care Plus, Inc. (Nassau County)</td>
<td>Approval</td>
</tr>
</tbody>
</table>

Residential Health Care Facility – Establish  Exhibit #12

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 101068 E</td>
<td>Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC d/b/a Guilderland Center Rehabilitation and Extended Care Facility (Albany County)</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

Certificate of Amendment of the Certificate of Incorporation  Exhibit #13

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. BMA, Medical Foundation, Inc.</td>
<td>Approval</td>
</tr>
</tbody>
</table>

Certificate of Dissolution  Exhibit #14

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Mary McClellan Hospital, Inc.</td>
<td>Approval</td>
</tr>
</tbody>
</table>
Mr. Kraut introduced Category 1 and briefly described the applications. Mr. Kraut motioned for approval of all application is Category 1. Dr. Berliner seconded the motion. The motion carried. See pages 119 through 122 of the attached transcript.

**CATEGORY 2:** Applications Recommended for Approval with the Following:
- PHHPC Member Recusals
- Without Dissent by HSA
- Without Dissent by Establishment and Project Review Committee

**CON Applications**

**Acute Care Services – Establish**

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Inter-Lakes Health, Inc.</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td></td>
<td>(Essex County)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mr. Booth –Interest</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Dr. Rugge – Interest</td>
<td></td>
</tr>
</tbody>
</table>

Mr. Kraut noted for the record that Mr. Booth and Dr. Rugge have interests in application 112185 and described the application. Mr. Kraut motioned for approval, Dr. Gutiérrez seconded the motion to approve. The motion carried. Please see pages 122 and 123 of the attached transcript.
Ambulatory Surgery Centers – Establish/Construct  Exhibit #17

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 112244 E</td>
<td>Unity Linden Oaks Surgery Center, LLC (Monroe County) Mr. Booth – Interest Ms. Hines – Recusal Mr. Robinson – Recusal</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

Ms. Hines and Mr. Robinson exited the meeting room declaring a conflict on application 112244 and Mr. Booth has a noted interest. Mr. Kraut explained the application, moved to approve the application which was seconded by Dr. Berliner. The motion carried with Ms. Hines and Mr. Robinson’s recusal and Mr. Booth’s noted interest. Ms. Hines and Mr. Robinson re-entered the meeting room. Please see pages 123 and 124 of the transcript.

Certified Home Health Agencies – Establish  Exhibit #18

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 102239 E</td>
<td>North Shore University Hospital, Inc., d/b/a North Shore Home Care (Nassau County) Mr. Fensterman – Recusal Mr. Kraut – Recusal Dr. Strange - Interest</td>
<td>Approval</td>
</tr>
</tbody>
</table>

Mr. Fensterman and Mr. Kraut exited the meeting room declaring a conflict on application 102239. Dr. Strange noted an interest. Mr. Booth described the application and moved to approve the application which was seconded by Dr. Gutierrez. The motion to approve carried with Mr. Fensterman and Mr. Kraut’s recusals and Dr. Strange’s interest. Mr. Fensterman and Mr. Kraut re-entered the meeting room. Please see pages 124 through 126 of the attached transcript.

Residential Health Care Facility – Establish  Exhibit #19

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 112218 E</td>
<td>Waterfront Operations Associates, LLC d/b/a Waterfront Center for Rehabilitation and Health Care (Erie County) Mr. Booth - Interest Mr. Fassler – Recusal</td>
<td>DEFERRED AT THE DEPARTMENT’S REQUEST</td>
</tr>
</tbody>
</table>

Mr. Kraut advised the Council that application 112218 has been deferred at the Department’s request. See page 126 of the attached transcript.
HOME HEALTH AGENCY LICENSURES

Exhibit #20

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994 L</td>
<td>Independent Living for Seniors, Inc.</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td></td>
<td>(Monroe and Wayne Counties)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mr. Booth – Interest</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ms. Hines- Recusal</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mr. Robinson – Recusal</td>
<td></td>
</tr>
</tbody>
</table>

Ms. Hines and Mr. Robinson exited the room declaring a recusal on licensure 1994 L and Mr. Booth declared an interest. Mr. Kraut described the licensure and moved to approve with Dr. Berliner seconded the motion. The motion to approve carried with Ms. Hines and Mr. Robinson’s recusals and Mr. Booth’s interest. Ms. Hines and Mr. Robinson re-entered the room. Please see pages 126 and 127 of the attached transcript.

**CATEGORY 3:** Applications Recommended for Approval with the Following:

- No PHHPC Member Recusals
- Establishment and Project Review Committee Dissent, or
- Contrary Recommendations by or HSA

**Ambulatory Surgery Centers – Establish/Construct**

Exhibit #21

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 111552 B</td>
<td>The Surgery Center of Bayside, LLC</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td></td>
<td>(Queens County)</td>
<td></td>
</tr>
<tr>
<td>2. 112032 B</td>
<td>PBGS, LLC d/b/a Downtown Brooklyn Gynecology Center</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td></td>
<td>(Kings County)</td>
<td></td>
</tr>
</tbody>
</table>

Mr. Kraut introduced applications in Category 3 and briefly described the applications and noted one member opposing both applications. He then moved the applications for approval which was seconded by Dr. Berliner. The motion to approve the applications carried. Please see pages 127 through 128 of the attached transcript.
**CATEGORY 4:** Applications Recommended for Approval with the Following:

- PHHPC Member Recusals
- Establishment an Project Review Committee Dissent, or
- Contrary Recommendation by HSA

**HOME HEALTH AGENCY LICENSURES**

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1640 L</td>
<td>Acute Care Experts, Inc. (Bronx, Queens, Kings, Richmond, Nassau, and New York Counties) Ms. Regan – Interest</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>1678 L</td>
<td>Amazing Grace Home Care Services, LLC (New York, Bronx, Kings, Richmond, and Queens Counties) Ms. Regan – Interest</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>1696 L</td>
<td>Diana’s Angels, Inc. (Putnum, Bronx, Westchester and Dutchess Counties) Ms. Regan – Interest</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>1957 L</td>
<td>Evergreen Choice, LLC (New York, Bronx, Kings, Richmond and Queens Counties) Ms. Regan – Interest</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>1668 L</td>
<td>Five Borough Home Care, Inc. (Bronx, Kings, New York, Richmond, and Queens Counties) Ms. Regan – Interest</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>
Mr. Kraut then moved to the licensure applications in Category 4. He noted Ms. Regan’s interest on all applications. He made a motion for approval and Dr. Berliner seconded the motion. The motion to approve all the licensure applications carried. Please refer to pages 128 through 131 of the attached transcript.

**CATEGORY 5:** Applications Recommended for Disapproval by OHSM or Establishment and Project Review Committee - with or without Recusals

**NO APPLICATIONS**

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**Certified Home Health Agencies – Establish**

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 111096 E</td>
<td>L. Woerner, Inc., d/b/a HCR (Schoharie County) Mr. Booth – Recusal Ms. Hines – Recusal</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>
2. 121027 E  L. Woerner, Inc. d/b/a HCR (Delaware County)  Contingent Approval
Mr. Booth – Recusal
Ms. Hines - Recusal

Residential Health Care Facility – Establish  Exhibit #24

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 112031 E</td>
<td>Alliance Health Associates, Inc. d/b/a Linden Gardens Rehabilitation and Nursing Center (Kings County)</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

Mr. Kraut then moved to applications in Category 6 for individual consideration. Ms. Hines and Mr. Booth exited the room declaring a conflict on applications 111096-E and 111027-E. Mr. Kraut described both applications and moved them for approval. Dr. Berliner seconded the motion which was carried. Both Ms. Hines and Mr. Booth re-entered the room.

Mr. Kraut moved to the final application 112021-E. He described that the application was moved for approval at the November 17, 2011 Establishment and Project Review Committee, but was deferred at the Full Council meeting on December 8, 2011. After considerable discussion, Mr. Kraut made a motion to approve the application which Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 132 through 136 of the attached transcript. Mr. Kraut concluded his report.

Dr. Streck thanked Mr. Kraut for his report.

**ADJOURNMENT:**

Dr. Streck adjourned the meeting.
STATE OF NEW YORK PUBLIC HEALTH AND HEALTH PLANNING
COUNCIL

ANNUAL MEETING

February 2, 2012
10:15 a.m.

90 Church Street
New York, New York

BEFORE: Dr. William Streck, Chairman
COUNCIL MEMBERS:

DR. HOWARD BERLINER
MR. CHRISTOPHER BOOTH
DR. JO IVEY BOUFFORD
MR. MICHAEL FASSLER
MR. HOWARD FENSTERMAN
DR. ELLEN GRANT, PH.D
DR. ANGEL GUTIERREZ, M.D.
MS. VICTORIA HINES
MR. ROBERT HURLBUT
MR. JEFF KRAUT
MR. ARTHUR LEVIN
DR. GLENN MARTIN, M.D.
DR. JOHN PALMER, PH.D
MS. ELLEN RAUTENBERG
MS. SUSAN REGAN
MR. PETER ROBINSON
DR. JOHN RUGGE, M.D.
DR. THEODORE STRANGE, M.D.
DR. ANN MARIE THERESA SULLIVAN, M.D.
DR. ANDERSON TORRES, PH.D
DR. PATSY YANG, PH.D
COMMISSIONER SHAH
STAFF:

DR. GUTHRIE BIRKHEAD, M.D.
MS. RACHEL BLOCK
MS. KAREN MADDEN
MS. CELESTE JOHNSON
MR. ROBERT SCHMIDT
MR. CHRIS DELKER
MS. LARA LEFEVBRE
MR. CHARLES ABEL
MR. JASON HELQUESON
MR. JAMES DERING
DR. NIRAV SHAH, M.D.
MS. COLLEEN FROST
MS. LISA THOMSON
MS. SANDRA HAFF

GUEST:

DR. POONAM ALAIGH
DR. STRECK: Good morning, everyone.

Welcome to the Public Health and Health Planning Council meeting. I'm Dr. William Streck, I'm the Chair of the Council. We are beginning at 10:15. Everyone's silent preparation for the meeting is greatly appreciated. We just started at this time because we had anticipated that we would have longer earlier meetings, but having published the 10:15 start time that's why we have been appearing to be quite ineffective and effectual here for the last 15 minutes, so. We are now beginning the meeting. In doing so I want to outline how we're going to approach the meeting. We're going to change the itinerary a little bit this morning.

I'd like to remind the council members and staff that the meeting is subject to the Open Meeting Law. Webcast can be accessed at the Department of Health's website, and they are available no later then seven days after the meeting and for 30 days thereafter.

We do have ground rules. We have synchronized captioning, so it's important not to speak over one another. The first time you speak we would ask that you identify yourself as a
council member or staff member. Microphones are hot. That means they pick up ruffling sounds and sidebar conversations, so those should be limited.

There is a record of appearance form for the audience that is at the entrance to the meeting and it is required by New York, the New York State Commission of Public integrity that you fill out that form, and we appreciate your compliance.

I'd like to give you a brief overview of what we'll cover today. We'll have the Department of Health report. We will hear from Commissioner Shah. Ms. Lefebvre will give an update on the Office of Health Systems Management activity. Ms. Block will report on the activities of the Office of Health Information Technology Transformation. Mr. Helgerson will give an update on the Office of Health Insurance Programs activities, and Dr. Birkhead will give a report on the activities of the Office of Public Health. Those all fall under the category of our Department of Health reports.

The next category is that of Public Health Services where Dr. Boufford will give an update on the initiatives of the Committee on Public Health. Under the category of Health
PHHPC ANNUAL MEETING

Policy, Dr. Rugge will give a report on the activities of the Health Planning Committee as well as the Committee recommendations for designated stroke center.

At the conclusion of those reports we will break for lunch, and we hope to do that somewhere around 11:30 at which time the full council will go into executive session from 11:30 to noon. We will then break for lunch. We will resume at 12:30, 12:30 or so. At that time we will begin with the report of the committees. Dr. Gutierrez will present the recommendations of the Codes and Regulations Committee. From there we will advance to the Project Review Recommendations and Establishment actions.

I would ask that members of the council and most of our guests are aware that there are policies in terms of conflicts of interests, and I would ask that council members be sure if they have declared any conflicts or interest and are planning to deal with the issues, with those issues recognized.

We do batch applications, as some of you may be aware, to facilitate a more effective review
of the programs, and you will see that batching
process in the way when we cover Establishment and
Project Review. So, those are the ground rules.

Our next agenda item is the adoption of
the minutes from the last meeting. I would
entertain a motion for adoption of the December 8,
2011 Public Health and Health Planning Council

A VOICE: So moved.

DR. STRECK: Moved and seconded.

Those in favor "Aye."

(A chorus of "Ayes.")

DR. STRECK: Thank you.

This is also the annual meeting of the
Public Health and Health Planning Council, and as
prescribed by the bylaws, the Chair makes the
motion for election of the Vice Chair and I would,
therefore, make the motion to elect Mr. Kraut as
the Vice Chair of the Council.

May I have a second.

A VOICE: Second.

DR. STRECK: We have a motion and a
second.

Those in favor "Aye."

(A chorus of "Ayes.")
DR. STRECK:  Opposed?

Okay, Jeff, pretty good.

Committee assignments are available in front of each of the council members. There's a document. I'll just briefly review the committee chairs and co-chairs for our group. The Committee on Codes and Regulations and Legislation, Dr. Gutierrez is Chair, Dr. Palmer is Vice Chair. The Committee on Establishment and Project Review, Chair Mr. Kraut and Vice Chair Mr. Christopher Booth. The Committee on Public Health, the Chair is Dr. Boufford, Vice Chair Dr. Torres. Dr. Strange has joined the Committee on Public Health. The Committee on Health Planning, Dr. Rugge is Chair, Dr. Grant as Vice Chair, and the Committee on Health Personnel and Interprofessional Relations, Dr. Strange is Chair and Dr. Bhat as Vice Chair. An Ad Hoc Committee to lead the state's health improvement plan will be chaired by Dr. Boufford and the membership of that distinguish group is also attached. So, with that, those are our housekeeping duties for the annual meeting, the rules of engagement for today, and it's now my pleasure to turn the microphone over to Dr. Shah
PHHPC ANNUAL MEETING

for a report on the Department's activity.

COMMISSIONER SHAH: Thank you, Dr. Streck. Good morning.

On January 17th Governor Cuomo released his executive budget proposal for the 2012/2013 state fiscal year. So plans continue to great progress we've made last year and serve as a blueprint for the Governor's vision for a new New York. Department staff has been actively working with the Governor's office and the State legislature on these budget proposals. And I wanted to highlight a few of the health related items on the executive budget.

First, Medicaid spending. As agreed upon last year, will increase by four percent for an approximate $614 million. This funding increase will ensure that New York is able to meet the needs of Medicaid beneficiaries while maintaining a tight rein on spending growth. Over the past few years the Medicaid Redesign Team has made great strides in reforming and restructuring our Medicaid program. These efforts, including a transition to a care management system are continuing.

Another key program and priority of the
Governor is the creation of a health insurance exchange. Governor Cuomo's executive budget called for the enactment of a health exchange, which will assist an estimated one million New Yorkers obtain health insurance coverage. The development of that health insurance exchange began a year ago, and I am confident we will be able to reach agreement this year.

The final budget related item I want to mention is local Medicaid cost. Last year through the work of the MRT, New York took a decisive action to control overall Medicaid spending growth. As these efforts continue, the Governor has proposed a plan to help control Medicaid spending at the low level. The executive budget called for a phased in 100 percent state takeover of local Medicaid growth. Under this proposal the existing three percent cap on growth will be reduced to two percent in 2013, then drop to one percent in 2014 and will be eliminated entirely in 2015. This plan will save counties approximately $1.2 billion over the next five years.

These three proposals exemplify the major theme of Governor Cuomo's strategy for New
York reform, revitalization and accountability. The Department will continue to work with the executive chamber and legislature to make sure that all of these goals are implemented, and I will keep you appraised of these efforts.

I would like to talk briefly about the Department's continued effort to address shortages of primary care and specialized care providers. The Doctors Across New York Program has been working to alleviate these shortages. The program provides critical support to recruit and retain physicians in underserved areas across the state through salary or productivity enhancement, sign-on bonuses, loan repayments or direct funding.

In late December the Department announced $500,000 in state funding for five health care centers under the Doctors Across New York Program, the physician practice support component. Each of the five awardees will receive $100,000 over two years, and all of them have made multiyear commitment to providing services in underserved areas. Two of the grant recipients, Ellis Hospital in Schenectady and Dr. Alisani Alday in the Bronx, received intercity awards from Family Medicine. In
addition, three providers received rural awards. These include Nathan Littauer Hospital in Gloversville, FLH Medical, PC in Geneva, and Geneva General Hospital in general surgery. The Doctors Across New York Program has played an important role in addressing health care provider shortages in many communities, and I'm pleased to announce that an additional $12 million is still available to health care providers who apply for grants by March 30th of 2012.

Another critical health challenge we face is obesity. Obesity is a public health epidemic that often starts at a young age. The Department in conjunction with the State Education Department has tracked a weigh status of school children in New York state outside of New York City which has its own fitness and tracking system. We'll soon be issuing a report on these findings. The results are alarming. Thirty-two percent of children in New York public schools are either overweight or obese. The data are based on information obtained during the 2008/2009 school year and the 2009/2010 school year. Approximately 17 percent of school children
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were found to be obese. That means having a body mass index, or BMI, greater than the 95th percentile of all children. An additional 15 percent are overweight with a BMI between the 85th and 95th percentile.

The Department has shared this information with local health departments and school districts, and we will continue to work with them on local planning efforts to improve child and adolescent health.

Clearly, the high prevalence of childhood weight problems is cause for concern. Obese and overweight children face a much greater risk of developing serious health problems such as diabetes, asthma, coronary disease ultimately. New York has numerous programs designed to promote healthier lifestyles and prevent childhood obesity, including the Healthy Schools New York Initiative.

This initiative is a collaboration between the Department of Health and the State Education Department that focuses on healthy eating and control activities. We are working with state and local partners to provide students with free or low cost nutritious meals, and to create a
healthier environment.

Evidence shows that children who are at a healthy weight achieve better educational outcomes. We know that obesity is a challenge. Not only here in New York but across our nation and even globally. This data from our student weight and status report will help us meet this challenge and develop and expand evidence-base programs to reverse the prevalence of obesity amongst children.

I would like to conclude my remarks on a positive note. So far this winter flu has not been a major problem in New York state. The number of hospitalizations due to flu has been very low this season, only ten hospitalizations with flu in the first week of January. In fact, the number of hospitalizations have averaged just ten cases per week over the past month compared with hundreds of hospitalized patients during the same period last year. It's too early to figure out why these numbers are so low or to declare this a very mild flu season. We're approaching the typical peak time for flu cases, and we expect we will see flu activity to pickup considerably in the next couple months. And so, that means there's still time to
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dget your flu shots.

I want to thank Dr. Birkhead and
everyone in Public Health at the state and local
levels who have been active in educating the public
about promoting flu vaccination. In light of the
high numbers of cases of H1N1 just a few years ago,
this is good news. Let's hope the number of flu
cases and hospitalizations remain low.

Thank you very much.

DR. STRECK: Thank you, Commissioner.

Are there questions or comments for the
Commissioner?

Dr. Berliner.

DR. BERLINER: Commissioner, will the
Department be reintroducing its attempt to have
mandatory flu vaccination for health workers?

COMMISSIONER SHAH: The question related
to mandatory flu vaccinations for health workers.
Certainly if you're getting care in any hospital
system, if your mom or dad is in a hospital, you
would like them to be exposed to immunized folks as
opposed to folks that may transmit a flu to them.
And it is a public health priority to see that that
policy ultimately is achieved. It's a matter of
question right now how best to achieve it because there are other stakeholders who yet need to be convinced. And so, we are actively working on that.

DR. BERLINER: Thank you.

DR. STRECK: Ms. Rautenberg.

Ms. RAUTENBERG: Will the budget have any good news for the Department? I think you have been worried and have voiced that about your own staffing at the department.

COMMISSION SHAH: So, the budget is what it is. It includes a two and half percent cut across all of the agencies and that applies to health as well. In the grand scheme of things it could be much worse. And the reality is that we found ways to work with partners in different ways to expand our ability get things done on a tighter budget. I'll give you a specific example.

The Department of Health in public health is moving less -- is moving away from a service base approach and more toward a policy base approach. When we can get Medicaid to cover led, asthma and other things that are included in the current budget, it means that we need fewer folks
in the Department of Health to do these activities because the health care system are taking care of it under the Medicaid program. And I think that's an important initiative and the future is more along those lines. Less service, more policy from the Department of Health, as it should be.

DR. STRECK: Mr. Fassler.

MR. FASSLER: Will there be any new initiative for housing people who are disabled in nursing homes?

COMMISSIONER SHAH: As part of the Medicaid Redesign Team's recommendation, we have specific proposals that are being advanced on supportive housing, not only for the disabled but for behavioral health populations and others. So, there is good news on that front.

DR. STRECK: Other comments or questions for the Commissioner?

Thank you, Commissioner.

COMMISSIONER SHAH: Thank you.

DR. STRECK: We will now move to a report from the Office of Health Systems Management. Ms. Lefebvre.

MS. LEFEBVRE: Thank you. Good morning.
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I have two items today. I'm going to provide you with a brief update on Heal request for grant applications that we have out, and also Charley will give you a brief update on the CON satisfaction, design satisfaction. So, for the Heal update.

In keeping with -- you hear a lot about MRT and certainly all the work that the MRT Group has done, specifically the Brooklyn Workgroup and the Payment Reform Workgroup really was looking for ways that the state could support assisting the provider network, the existing provider network out there to deliver structural change trying to get out of the four walls oftentimes of the hospitals or nursing homes and really start directing itself toward taking care of communities and outcomes, health outcomes in the communities.

In keeping with that, we issued a request for grant application on November 28th. We were looking for applications and we are looking for applications that support the principles of development of meaningful primary care in communities, rescaling the acute care, you know, infrastructure and also creating or asking for the
creation of provider network that focus on improving population health.

The grants that are available are both capital grants and also temporary operating assistance. There's $450 million available both in Heal and acting federal funds, and there's also a temporary Medicaid rate adjustment that will be made available for good applications. This is the last significant allocation of Heal -- dollars that will be available for New York state. We successfully persuaded the federal government to extend the approval of the waiver. They did so through March of 2014. And the money that is available to us needs to be expended by that point in time, so this is really the last effort and then we're going to push to get the money spent.

Applications are due back into the Department in February, February 10th. Based on request from the provider community we extended that time frame in January. And I think folks felt like they needed a little more time to prepare applications, so we extended that. We also held a conference on January 13th to try to get more clarity on what it is we were looking for and
certainly answer any questions that folks had about that. So, we're really excited about repeating some creative kind of transformative applications, what will have some very real and positive impact on population health in the community, in the communities that providers serve. That's about it on the Heal update for us. 

If there are any questions I can answer them now or if not I'll turn it over to Charley. 

DR. STRECK: Questions for Laura? 

I think we will just stick with her topic and then move to Charley. 

Any questions on the Heal process? 

Okay. Thank you. 

Mr. Abel. 

MR. ABEL: Hello. It's been over 13 months now that we had our new electronic CON application and tracking process in place. We implemented it in December of 2010. And so, we thought it would be a good opportunity for us to take a look at how the users are responding to it. So, at the end of October and through November we put up a users, Nicecon users satisfaction survey using a survey monthly on line and we got a good
amount of feedback. The survey consists of 26 multiple choice questions, takes about ten minutes to complete and, of course, the purpose is to get feedback from health care facilities, agencies, consultants and the general public who are using the system for searches.

We had 55 respondents. 29 from hospital staff, five from consultants, four from long-term care facilities, two from ENTC and about 15 other types of respondents. Thirty-four reported that they had submitted a construction application, nine had reported that they submitted establishment applications, 18 respondents reported that they submitted from one to three applications, ten submitted four to seven, nine submitted more than eight applications. So, I think we got a good selection of folks who have had varied experience with the Nicecon product.

What we saw in terms of results, 46 percent reported that it took less time than the hardcopy application process that preceded Nicecon to prepare and submit an application. Forth-three percent reported that it took about the same time to submit. Almost 35 percent reported uploading
documents to Nicecon is easy, very easy. Only
about three percent reported that that was a
difficult process for them. Fifty-seven and a half
percent of respondents found it easy or very easy
to review their application on line through
Nicecon, 30 percent found it not to be difficult,
12 percent did report that it was difficult.
Seventy-nine percent found the search function to
be intuitive. Eighty-six percent found the
correspondence function, meaning the applicant and
the Department to be useful.

Comments and suggestions, one of the big
suggestions was that the respondents report that
they wanted to get additional information on status
updates of their CON as it was progressing through
the review cycle. Participants said that they
liked having less paper, the ease of submission,
the speed of DOH response to applications and being
able to see their application on line. Already we
have implemented a number of suggestions that came
through the Nicecon survey process. Things that
were easily implemented are now in place. So, we
were able to be responsive to applicant's
suggestions in a number of areas that make
usability easier.

In terms of when problems or concerns arose with respect to using the product, the Nicecon product, 38 respondents said they could resolve their issues without any assistance from DOH. Twenty-one or twenty-four respondents raise that their experience in seeking assistance from DOH to be either good, very good or excellent, three found it to be poor. Twenty of 23 respondents rated the quality of the assistance they received from DOH to be either good, very good or excellent.

We concluded that survey at the end of November and we just wanted to be sure that we reported back on our findings.

DR. STRECK: Thank you.

Are there questions or comments?

Mr. Kraut.

MR. KRAUT: Charley, when we -- and congratulations, by the way, on giving birth to the system and the issue. When we were conceptualizing the possibility of Nicecon, it was going to be rolled out in multiple phases. And one of the future phases was enhancing community engagement
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and awareness, you know, by pushing out e-mails and things. Could you comment, is there yet another phase of functionality that's in the works?

MR. ABEL: Multiple phases. The Nicecon application is absolutely evolutionary. We wanted to put out an effective mechanism for allowing the applicant community to upload applications, to view their -- to be able to correspond electronically with the Department, and we wanted the public to be able to have an opportunity and application that would allow them to search through the applications that were submitted in a more effective manner. And, frankly, we want something that's going to create a more efficient process for the reviewer. You know, what we have in place is only the first phase of the progression that will ultimately bring more CON application information to the general public, be able to view more specific information about the application and other mechanisms to allow the public when they are interested in a particular application or particular region rather than coming into the system to look for applications that had been submitted. We hope that the system functionality can progress to be more proactive and
be able to go out, and when folks have expressed an
interest in something be able to alert individuals
when their applications have been submitted that
meet that criteria.

Clearly we want additional functionality
to help reviewers be efficient in their reviews,
and we also want improved functionality to allow
applicants to upload their data in a more efficient
manner. Right now the -- essentially the browse
and upload functions there's different schedules
that apply to a CON application, it works, it kind
of duplicates electronically what we had in place
on a paper process, but we want to go beyond that
and create forms to be able to capture the data
that is being uploaded for a CON application so we
can use that data more efficiently, so the public
can use that data more efficiently, and ultimately
we have a better product.

DR. STRECK: Other comments or
questions?

Thank you for those reports.

We'll now move to Ms. Block who will
report on the activities of the Office of Health
Information Technology Transformation.
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MS. BLOCK: Thank you, Mr. Chairman.

Just two quick updates for the council on issues that we discussed in the past.

In the last six months or so we received two communications from the Substance Abuse Mental Health Administration in Washington regarding clarifications on policy issues relating to the sharing of mental health and substance abuse information in the context of Health Information Technology and Health Information Exchange activities.

This has been a topic of great interest for us since many of our Heal 17 programs in fact envision the collaboration of behavioral health with acute care and primary care systems, and also, obviously, now with the advent of health homes and many of the other initiatives that we're enhancing.

With this most recent communication we think that we have enough clarification from Stamford to reevaluate the policies that we have implemented thus far, and hopefully announce an update to those policies in the very near future that will clarify for our stakeholders and hopefully facilitate the availability and
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appropriate use of that information in conjunction with federal policies. So, I'm sure we'll have a more detailed update on that before the next council meeting.

Also with regard to meaningful use, two brief announcements. At the last council meeting we were able to announce the soft launch of the Medicaid registration system. That is now up and running. We have over 2000 eligible professionals already registered in the system, and everyday we are getting significant volumes of new registrations there.

We have been asked to work with the federal government to really accelerate the process by which eligible professionals are registering both for Medicare and Medicaid, and we're working closely with the key stakeholders across New York state to accomplish that goal.

The other is that we are anticipating the publication of Stage 1 of meaningful use requirements probably next week, and I'm sure that will create a great flurry of discussion across the IT community. And we'll get the council an update on that at the next council meeting as well.
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Thank you.

DR. STRECK: Questions?

Dr. Palmer.

DR. PALMER: I just want to say we can't clarify those issues with the federal government too quickly because that particular population dies about 20 years sooner than the average person in the state. Thank you.

DR. STRECK: Other comments or questions?

Thank you.

Next we have Mr. Jason Helgerson here to give us an update on the Office of Health Insurance Programs Initiatives. Mr. Helgerson, as you know, oversaw the Medicaid Redesign Team implementation process and quite remarkable efforts came with Governor Cuomo's early activities. I was thrilled to serve on that expansive and ever expanding group, I would say. But the final product is, I think about to be released. But the work over a wide range various in the state was quite remarkable, and Jason's ability to keep track, in my mind, was remarkable as well. So, I'm just glad to have you here and welcome your report.
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MR. HELQERSON: Thank you, Chairman.

It's a pleasure to be here today to give you an update on a couple different items. First off, regarding the executive budget, so I have down a couple of additional themes or issues that the Commissioner did not directly address, but I think might be a bit of interest for the this group.

First off, I think what was important about the Governor's Medicaid budget proposal this year is what's actually not in it. After many years of traditional cost containment efforts, across the board reduction, other sort of draconian efforts particularly targeted that provider community. The Governor's executive budget contains none of those such actions for the first time in a number of years. Key reasons for that are the Governor's commitment, which he is fulfilling, of allowing the budget to grow by four percent, but also to the success of many of the reforms enacted in the last budget which came out of the work of the Medicaid Redesign Team.

People might remember that team was passed as finding a considerable amount of money in savings. The state share was about 2.2 billion
within all the funds terms or gross terms in state
and in the federal amounted to account as well
total about $4 million in spending reductions in
this fiscal year. And the value of those grow into
next year, and it's the key reason why we're able
to live within the four percent world without any
traditional cost containment.

Secondly, the proposal also moves for
the number of the Phase 2 MRT initiatives. As you
remember, MRT was really sort of two committees, as
some people said. The first was tasked with
finding immediate budgetary savings. And the
second, which has been meeting throughout the
spring, summer into the fall and concluded its work
in December on a Phase 2, a second effort where we
broke it into ten workgroups, work on a variety of
different topics across the entire expansive
program, they came up with many recommendations.
Twenty-five of those recommendations are actually
included in the Governor's proposed budget. And
so, we're very excited to move with some of those
important reforms.

Next, while the Commissioner talked
about the takeover of growth in the county
contribution to Medicaid expenses, what the Governor also proposed is a fundamental change in the state and local relationship when it comes to administration of the Medicaid program. New York has historically relied, like a few other states in the country, on local -- governments to really play a key roll in administration, whether that's eligibility determination or other functions, fee for service system, those local districts have played a vital role. What this budget does is really change that system fundamentally. It's basically a five year state takeover of Medicaid administration.

To give you a sense of the scale of this change. There are 5500 county and city workers across the state who are taking an interest in this particular outcome. So, the next five years the work of those individuals are going to have to be transferred to the state. The major change, the major expansion that is going to work for the Department of Health or they're proposing to add 120 FTEs, and the only part of state government that will be getting new FTEs on any scale in this budget as we take on that responsibility.
I'm also happy to say that there's a workgroup of stakeholders chaired by Steve Acquerio and Ann Monroe who co-chairs with a similar group as part of Phase 2 MRT. So, they're going to work with stakeholders to advise the Department on how to effectively implement, which is a very complex new initiative.

And then finally in terms of more information on the Medicaid budget. There's a couple documents that are available on the MRT website. First off, it's a power point presentation and it's presented in a webinar. The webinar itself is also available on the website that we did yesterday that summarizes the Medicaid budget in more detail. There's also a matrix out there that I think is very valuable in order for tracking particular initiatives that were included in the Governor's budget back to the work of the individual workgroups, so you can actually see which of those recommendations the Governor has moved forward.

And then finally, we're going to try something new. Taking a lesson out of the Governor's playbook. We're going to try to do a
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twitter Q and A live, I've never done this before, tomorrow morning at 8:30. And so, hopefully it will be a good opportunity for us to answer questions about the Governor's proposed budget to Medicaid.

Next, I just wanted to give a quick update in terms of implementation of Phase 1 proposal. As you might remember, there were 78 reforms included that were adopted by the legislature that came out of the MRT process. And so, we've been working fast and furious to try to implement these as quickly and effectively as we can.

First and foremost, I think people are aware we now live within a world where we have Medicaid global spending cap that -- the state share of the DOH control of Medicaid budget, which is the vast majority of the Medicaid budget. That spending cap basically assumed that we would be able to hold Medicaid spending in this fiscal year compared to last fiscal year at a less than one percent rate of growth. I'll give you a comparison.

When we started this budget process
before MRT began it work, DOB estimated that the
growth rate was going to be about 13 percent. So,
a lot of the key reasons why we had to find so much
savings was to bring that growth rate down to what
the Governor's initially proposed, but we really
went into the fiscal year with some risk, a lot of
unknowns, particularly around enrollment. But so
far around through November I'm able to say that we
are under the global spending cap amount through
November by an impressive $4 million, which some
people may sound like a lot of money, but in the
Medicaid world it's .001 percent total. So, we are
very, very much managing this budget extremely
closely.

And I think one of the best things
coming out of MRT was the creation of the lower
spending cap and how it has forced the state to
track expenses in this very large and complex
program far more closely than ever before. And so,
there is information on how we're doing at the
global committee cap, it's also available on the
website because we are publishing a monthly report.

COMMISSIONER SHAH: No superpowers.

MR. HELQERSON: No superpowers yet. We
do see that the Commissioner has superpowers and he has got a cape in his closet which we're hoping to not have to use, but he is right.

And then finally, just a quick update on sort of three important initiatives that came out of the Phase 1 recommendation. As the Commissioner said, we are moving to a care management for all strategies really over the next three years, proposing a fundamental change to the Medicaid program by really ending fee for service and moving virtually all services and all populations into manage care, that's a real fundamental change for this population. Roughly half of the total Medicaid -- in fee for service. So, you're talking about tens of billions of dollars moving away from directing and for providers to plan on a caputation basis.

One of the big areas of movement is in long-term care, particularly home and community base long-term care, which is a cost category that has really been a major driver of cost for us of Medicaid. We're beginning this spring with moves to mandatory managed long-term care. It's to take us two years to fully phase that in, but we're very
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excited and need to work with the federal government getting full approval but preparing for that important initiative.

Also Health Homes, Rachel mentioned them earlier and Dr. Rugge was describing some of the challenges that he -- at least an effort up in the Adirondack that created Health Homes. It really is an exciting but very challenging initiative, which is really trying to bring together providers from across the various care silos working together sharing information, really targeting new resources at a population that is really a major challenge for the Medicaid program. These are our highest cost, highest needs of Medicaid members, traditionally the ones bouncing between behavioral health providers, the physical health care, the acute care system, these are the individuals in and out of the emergency room 50 times a year, very challenging population that our past systems and efforts really haven't worked that well on. And so, we're trying through Health Homes to really build networks of providers to work together focusing on this population.

We're very excited about some of the
first wave of Health Homes that are moving forward. And I'm happy to say that beginning next week the very first enrollees will be enrolled into Health Homes as we move forward with sort of ten phase one counties, so I'm very excited with that.

And then finally, patients that are medical homes. I sit next to Dr. Rugge here on this as well. This is one of our leading lights on medical homes. The state for quite a while has had an effort around trying to incentivive providers to become patient center medical homes and achieve NQA accreditation. Back in the beginning of 2011 we had a little bit less than 800,000 individuals of Medicaid patients who were benefiting from services provided by patients in medical homes. I can report today that it's over 1.4 million. So, it's seen a substantial increase in the number of practices, physicians who have met those criteria, and that it inherently meant that there are more Medicaid patients who are benefiting from high quality, highly coordinated service. Thank you.

DR. STRECK: Questions or comments?

Dr. Grant.

DR. GRANT: -- Commissioner Shah, is
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there anything that is going to talk about the --

ECO?

MR. HELQERSON: Certainly. We as part

of Phase 1 of MRT approved language to create, I

think it's five pilots, five or seven pilots, ECO

pilots, and we are in conversations with a number

of different entities both large group practices,

IPAs as well as a couple of hospitals. We do have

one Medicare pioneer ACO which is Montefiore, right

here in New York City, who is pursuing that. And

so, we remain very interested in working with

providers who are willing to come together to

accomplish this.

DR. GRANT: Thank you.

DR. STRECK: Mr. Fassler.

MR. FASSLER: Two questions. Regarding

the home care patients, is the April 1st date still

in effect or has that been changed?

Mr. HELQERSON: So, the April 1st date

is right now challenged because we need federal

approval. And when you back up from April 1 where

we sit today at the very beginning of February,

it's a little bit of a challenge. So, we're in the

process -- not that we had problems with federal
approval, it's just that it's a complex thing, there's a lot of steps involved in it. So, we may very well have to modify that date, but hopefully the slippage won't be --

MR. FASSLER: Second question. In terms of the nursing home population, is there data yet in terms of what we are facing in that population of managed care?

MR. HELQERSON: Very good question. What we're in the process of doing right now is putting together a very detailed document that will really layout the multiyear plan for basically the entire population and also the entire span. It's not just people, but also their services that are carved out and at what point they will be moving in. But yes, existing nursing home population is a key question in terms of when exactly we will begin that migration.

MR. FASSLER: Thank you.

DR. STRECK: Ms. Rautenberg.

MS. RAUTENBERG: With increase in the patients in primary care medical homes, are we seeing any improvement in the indicators in the prevention agenda that we can attribute to primary
MR. HELQERSON: Sure. In fact, we're in the process and Dr. Foster Gassin, who is the Chief Medical Officer for the Medicaid program, is actually in the early stages of doing an evaluation to try to figure out what has been the impact and the benefits of patients home medical homes. So, I think what might make sense, he gets that analysis a little bit more complete so then we come back to this group and do a more formal presentation. But that is -- the state is spending millions trying to encourage the question are we getting the outcomes we would hope.

DR. STRECK: Jason, in terms of population in trying to keep them under caputation, what about the mental health and OP -- group, are those in the cue to be incorporated, and what is the time span for that?

MR. HELQERSON: Certainly. First in terms of the people with significant persistent mental illness. One of the recommendations coming out of Phase 2 we actually had a group that focused on behavioral health issues, was actually the creation of a special needs plan for people with
significant persistent medical illness, modeled to -- extent on a special needs plan program that operates for people with AID/HIV, that would be specially designed to meet the needs of people who, as Mr. Hogan, the Commissioner of Mental Health said, is really sort of the deep end of the pool. Folks who have significant needs, people coming out of inpatient psych situations and really need intensive highly coordinated behavioral health care. It's true that behavioral health while it's not in and of itself a major cost category for the program, those individuals who have behavioral health drive a lot of our cost overall because they end up -- they also have complex health care conditions. So, we're particularly excited about that particular initiative.

We also have behavioral health organizations which is an effort to bring carved out services to begin care management, for those service that initiative is already up and running. We have behavioral health organizations now running in all parts of the state. And the value in terms of the developmental disabled community, we are actually on a somewhat separate track but a very
similar path with regard to the depopulation,
roughly a 100,000 developmentally disabled
individuals. So, a part of one of the largest most
complex DD systems in the country that in essence
is overseen by the office of people with
developmental disabilities because sometimes people
have to hear that. I was surprised when I heard it
when I came to New York, that there are 23,000
employees who work for the office of people with
developmental disabilities, that's roughly a third
of the total work force. It's a very large and
very complex system with, obviously, a long and
challenged history, but the path forward there.
And we're in the process of working with CMS,
hopefully in the final phase, working with CMS on a
waiver that basically will move them from what is a
sort of uncoordinated fee for service system to a
much more coordinated care management system where
they will, in essence, look to create a contract
with highly specialized care management
organizations to initially model on our managed
long-term care plans starting with the long-term
care services, but eventually envisioning fully
integrated care management. So, bringing in the
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acute, the behavioral health, and they're looking
at a five year time horizon for that population.
So, it will be a really major restructuring of the
DD population, but very much the move is toward
capulation.

DR. STRECK: Other questions or comments
for Mr. Helgerson?

Thank you much.

I'm sorry. Dr. Palmer.

DR. PALMER: Just one. Yesterday I was
able to sit in on discussions of the state health
improvement plan, and I'm wondering in the planning
that the state is going to run for the DD
population, is there integration of the work that
the -- improving of the health plan going forward
is doing with the planning that you're doing now?

MR. HELQERSON: That's a good question.
I don't know the answer to it. I'll follow-up. It
certainly seems like it should considering that's a
huge part of the health care or broader long-term
care infrastructure. We want to make sure, I think
it is our role, sort of the Department of Health,
to make sure that those very systems are talking.
So, I will follow-up with Commissioner Berk to make
sure that's happening.

DR. STRECK: Dr. Birkhead, do you have a comment on that?

DR. BIRKHEAD: I'll address that in my next comments here and Dr. Boufford as well with the public health education.

DR. STRECK: Well, talk about a perfect segway, here we are. Next is Dr. Birkhead to answer Dr. Palmer's question and to address other activities of the Office of Public Health.

DR. BIRKHEAD: Thank you very much. I'm going to speak from a set of color slides that people have at their desk. I won't project them, get people riled up. So, I am going to report on a meeting that we had yesterday of the Ad Hoc Committee of the specifics which you established a couple meetings ago to look at the new round of state health improvement plans. I will talk about what we presented at the meeting and Dr. Boufford will talk about some of the discussions in her report on the Public Health Committee.

So, people are familiar with a prevention agenda. That's been our state health improvement plan from 2008 through this year, 2012,
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and we're in the initial stages of planning for the
next round of state health improvement plans, the
next five year period 2013 to 17.

And yesterday we had the first meeting
of our stakeholder group. This is a widely
constituted group that includes all sectors of the
public health system. And I'll show you subsequent
slides of what that system is, but we are heavily
using this committee to help guide the work of the
State Health Department in setting up a state
health improvement plan.

At the meeting yesterday we talked about
the goals and principles as well as the criteria
for selecting priorities in the next phases of
this.

The vision for the overall plan is
fairly simply stated, that New York is the
healthiest state, that is our overall vision.

The goals, and these are some of the
goals that we talked about yesterday and we will
add to this based on the discussion, but our two
advance say health in all policies approach in New
York. That is in any sector or among other state
agencies as they are considering policy changes for
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example in transportation or agriculture that
health considerations also be included.

Eliminating health disparities was a
major theme yesterday and seems to be a major focus
or our activities, and we have a lot of data that
actually details slides from yesterday's session
and will be posted on the website.

Strengthening the state and local public
health infrastructure, and included in that the
ability of that infrastructure to engage in
partnership and stakeholders at the state and local
level to promote a sustainable public private
partnership was discussed a lot.

We had a number of cross cutting
principles that we talked about, encouraging
collaboration at all levels between public and
private, at the state level between public and
private and public and public. In order words,
engaged the other state government agencies and
similarly at the local level and in so doing
support the public health infrastructure.

Strengthening the integration of public
health and the personal health care systems, and
that I think gets -- we'll get to the discussion
from Dr. Palmer with the question about how do we integrate the public health efforts with the clinical care systems, and that's an ongoing challenge and opportunity, I think, to really make a difference in both arenas.

And building awareness and capacity in local communities of what their health problems are and how to address them.

We have what we call the bubble slide here which is the public health system to really make the point that it's not simply a governmental effort, but the government certainly plays a role in coordinating, convening and developing policies, but this is really an effort that involves communities to health care systems and other sectors like employers and business, the media, academia, and we added a few more bubbles from yesterday to this diagram to really make the point that the system is everybody's responsibility and everybody needs to work on improving the system.

The next couple of slides just indicate sort of the dichotomy or the paradox that we have that we believe that access to medical care only accounts for a minority of health status. We had
discussion yesterday whether it's ten percent or 20 percent or 30 percent, but it's a minority of health status that is believed to be influenced or uninfluenceable in the medical care system, so that behavioral factors, environmental factors and genetic factors need to also be considered in the realm of what the public health tries to influence. But the funding is always been in balance here, and whether the numbers are off by a few percentage points, the point is that it's less than ten percent of our health care expenditures in a sort of public health sector.

And then finally we talked about the context in which we're operating out of health reform over the next couple years, health insurance, and presumably then access to care will be greatly improved by the implementation of health reforms. I think we agreed on the committee that insurance doesn't equal access, but is necessary but not sufficient for access, so there will still be a public health role in the system with access to care.

Preventative services rated A or B by the U.S. Preventative Services Task Force are to be
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provided in the new systems. So, that's good news in terms of public health. We spend a lot of time now in public health trying to fill gaps and assure that preventative services are provided, so removing barriers there is important.

Improving coordination of care through health homes, and we on the public health side are helping develop specifically children's health home models to go along with the adult health home models that we have, and we assume maternal to child health is a major focus of our efforts in the public health arena.

And to support preventative services and community base services to the MRT proposals. As Commissioner Shah referenced, there's a number of proposals that are now moving forward in the Governor's budget around MRTs that support what had been traditionally public health services, but now being able to cover for Medicaid children primarily through the proposal.

We talked about criteria, and the next phase of this effort will be sort of selecting our priority areas to focus on. So, we talked about criteria to select those priorities, those would
include disease burden, what is the morbidity and mortality, a premature mortality and morbidity of diseases and health risk conveyed. Are there preventible. In other words, evidence-base interventions that we can employ. If they're not, then I guess it's questionable what our efforts there would focus on.

What is the feasibility in terms of existing resources and potential resources, how would we try to align resources with what the priorities would be. Is there a community and partner support that the community recognizes as priority areas for them, if they don't then you're in trouble. And the health departments who are, as I mentioned, the convener of these efforts and in some ways direct them at the state and local level because they have the leverage in order to make the changes. And, you know, can we move the needle in terms of health disparities. And in terms of actual causes to support health is another way of looking at this, and is there a way to monitor what they're doing.

So, those are the things that the Committee talked about. The current prevention
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agenda has ten priority areas which are listed on
the next slide that range from access to care to
chronic environmental maternal child health,
infectious diseases. Mental health and substance
abuse are on this list and we had quite a bit of a
discussion yesterday about that. Those are areas
where the public health part of the State Health
Department does not have any levers to pull. And I
think we agreed in the end that, and Dr. Boufford
can comment on this, that needed to be there
because of the prior discussion that these
populations just don't address substance use and
mental health issues, then you're not going to make
headway on the physical health issues that people
are facing.

So, we talked about limiting the
proposed focus areas and had quite a bit of
discussion. These slides really just help guide
that discussion and don't represent the conclusions
on the Committee which we will work on and try to
get to you, but I think the focus is certainly in
the area of chronic diseases was not to be a
disease specific focus, but to be more focusing on
risk factors, obesity, physical activities,
nutrition and access to screening for cancer in particular where we might use disease measures as outcome measures, but the real focus would not be a disease specific focus.

Some discussion about what it means to have a healthy environment. Is that just food and water or does that also apply to the local home environment and other kinds of environmental impact on people, not just what you normally think of.

So, I think we'll be amplifying that area as well.

Healthy mothers, babies and children is sort of mom and apple pie literally. And I think we will keep the component there and try to focus -- the challenge now will be to focus on areas where we can make progress there.

Controlling infectious diseases. I think, again, that's a traditional public health area. But as some members pointed out in the discussion yesterday, when we have a crisis infectious disease outbreak or H1N1 then everybody moves into lock steps. So, we may need to think more critically about what it means to have a priority in this area. I think childhood immunization certainly would fit in that arena. I
think this final slide will be delineated much more fully and Dr. Boufford will comment more about the discussion that we had.

Our plan with this group is to have a couple meetings by June and then to have established the priorities by that time. And then in the second half of the year talk about how we engage the public health system in supporting these priorities and then be ready in 2013 to move ahead with improved state health improvement plan. So, we'll be reporting on this in a couple meetings with the council going forward. So, that's my report.

I can answer questions, but you may want to have Dr. Boufford amplify the discussion yesterday.

Dr. Streck: Questions or comments for Dr. Birkhead?

Dr. Berliner.

Dr. Berliner: Dr. Birkhead, the vision is for New York to become the healthiest state, where do we stand now?

Dr. Birkhead: We actually had discussions yesterday. There are a number of
rankings out there. One of the most prominent ones list us as I think number 18. There are about 25 different factors totaled up into an index. So, we're in the middle of the path. And we agree that our goal is not to stay at number 18, but to try and move away.

DR. BERLINER: Thank you.

A VOICE: I'd just like to say that it's much appreciated that we attempt to really integrate with mental health and substance abuse issues with anything that comes out of this kind of preventable agenda. Even when you think of things like healthy moms and healthy babies, often there's issues of postpartum depression, stress, et cetera, is critical, but it's not kind of emphasized when those things come out. And then there's maybe depression initiative which comes out and fails to emphasize sometime the other important health. So, the more we can integrate as those initiatives come out and make sure it's coordinated, I think we get more, you know, bang for our buck in what we're doing in terms of relative to reaching the populations. So, I think that's even greater if we incorporate.
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DR. STRECK: Mr. Kraut.

MR. KRAUT: You know, I listened, you know, you talk about New York being the healthiest state and the importance of New York, you know, you and your colleagues exchanging information with other states across the country reminded me of when we were at the SHRPHC we were notified two years ago that the Department of Health's travel had been curtailed which prevented you and your colleagues in the Department of Public Health from attending the national meetings of the public health association. And I suspect that is still an issue in the Department and I don't know if that's in fact the case, but if it is, I would like to know it because then I would like to just make another comment.

DR. BIRKHEAD: No. I think we're obviously making a lot more use of electronic communications. There are webinars occurring frequently. And are federal partners seeking -- primary ones recognize that also their budgets are squeezed. So, I think we're seeing much more in the way of electronic meetings and communications and there still are in person meetings and we get
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people at every critical meeting that happens.

MR. KRAUT: I would just say that it's important for New York to be represented in person, not necessarily in amorphus webinar where there are important meetings. And that to the degree the Commissioner we had raised the issue that if that still continues to be a restriction in the Department's budget, that, you know, from the Public Health and the Public Health Committee that it behooves us to find the funding, if not within the budget but maybe outside the Department within the ethical guidelines to have some discretionary dollars so you are represented.

DR. BIRKHEAD: Thank you.

MR. KRAUT: I just wanted to throw that out there.

DR. STRECK: Gus, in view of your extensive portion of the budget that you represent on your draft here, instruct me if you look at the goals in the public health initiatives which are, I think, noble and socially oriented they, at least in the health arena, align pretty well with the insurance industry's goals of making money in terms of delivering services. And I mean, they're pretty
compatible. It would benefit most insurance companies to have all these initiatives to be part of their population management. And it just struck me looking at this today, do we have any crosswalk discussions with the insurance industry? How are they involved in this process whereas they would have, you know, a very legitimate interest in the success of the public health initiative?

DR. BIRKHEAD: The insurance industry is a key stakeholder, and we have representatives from the -- Association, for example, a member of the group that met yesterday. So, they are a key part of the public health system that I highlighted. You're right that I think our only goals are an alignment. Part of the difficulty is that prevention, which is what the focus of public health activity is, may take time to benefit. Each child may not develop a medical cost or condition that will lead to medical cost the next two years, but maybe later on down the line. So, you need to have a somewhat longer view. But there's quite a bit on return of investment work now being done with the public health and primary prevention that are part of our discussions now and hope to make
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those forms.

DR. STRECK: Thank you.

Other comments or questions for Dr. Birkhead?

Dr. Boufford.

DR. BOUFFORD: Thank you. I'm just going to do a little color commentary on what Gus said. First of all, just to remind everyone, the Public Health Committee has sort of three priorities for the year. One is working with John and his colleagues on planning and goals, we'll be talking about that. The second we had a number of, actually all joint meetings I think since that process started on the CON modernization. The second one is being advisory to the Department on the renewal and the revitalization of the S H I T for the next four years and the state health improvement plan and the accreditation application that the state will be applying for accreditation in the new voluntary system. And then finally, once the new priorities are set, going forward we commit ourselves to picking one of those and seeing where we might move the needle by really focusing our efforts on the Committee to support those of
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the Department and other involved stakeholders.

We met yesterday, as Gus said, in Troy and New York City for four hours, for five hours, actually, from 12 to 4. And the group that met is called the Ad Hoc Committee to lead the state's health improvement planning process. And the goal being to come up with recommendations to you, as Gus said, November of this year for beginning in 2013 for the next four years. And the Committee is constituted in two ways. One, we're volunteers from the Public Health Committee. Six of our colleagues volunteered, and I was delighted that three or four other members of SPHHPC were with us the whole time yesterday, even though they're not members, which was really great. And then we have 21 volunteers from across the state. These were individuals, some of them had been in part representing organizations, statewide organizations. The goal being that their statewide umbrella would then provide the sort of mechanism of reaching into the local health departments, the local community level for action. We have Medical Society Professional Association, the New York -- the West New York Eastern Business -- a new
representative from IBM who joined us. We really
wanted to go after more business representation
which we had not had previously. Public health
leadership, nursing leadership and come to add a
few foundations. We were delighted that New York
State Health Foundation joined us for the meeting
and representatives from Greater New York and HANY.
So, it's a very wide group, a number of asset
organizations including Medicaid matters and
others, cancer society. So, it was really, really
exciting. I think a very engaged group, a very
sophisticated group in terms of these discussions.
We had some fantastic support and
analytic data available. There's never enough data
for people in public health, but. We had a lot of
really good information from Gus and his staff,
especially Sylvia Pirani and a new colleague
Ms. Trems, Julia Trems, I'm mispronouncing her
name, stepped in on the data side, and she was
really, really helpful.
The goals of this Committee are to -- we
started up the meeting to take a look back over
progress on the prevention agenda, take a look at
the current status of New York state health
conditions, and then going through this process that Gus just described to you, begin to develop priority setting criteria for a new set of priorities for the coming four years, and then design a way to involve broader stakeholders and consulting on the draft of those ideas and then using that input to refine the final decision.

Just a few observations on the review process of the prevention agenda. There were 51 indicators, 35 we're going in the right direction, three were actually met, 14, however, we're going in the wrong direction. A number of those were in areas of adult obesity, alcohol use, diabetes, STDs, and some increase rates of hospitalization which were something that really creates that bridge, I think, between what we're trying to do to prevent these issues and the cost in the overall health care system.

The other review process was looking at the partnership process, which you will recall through a legislative activity we were able to get a concurrent review of the local health department health planning plan submission and the hospital community benefit plan submission, and that proved
to be quite helpful. I think we're delighted that that's going to be possible. Again, we're off by one year, but then from 2013 on it will become current again.

In analyzing the effects of the partnership process, there was I think a good bit of engagement between hospitals and local health departments, a good concurrence of agendas. The access to care being the number one, chronic disease being number two, and tobacco being number three, and most of them shared that in their top five.

What we did find, however, while there were good initial meetings and some collaborative planning, the collaborations begin to kind of deteriorate. I mean, a lot of it is timeframe, but there were less and less apparent in the implementation stages and in the evaluation process, and some of that is directly related to resource availability.

There was a small amount of money made available, 7 million, for grant program to support activities in a number of the local areas. And those, I think those districts and communities that
were able to get that small amount, that amount of
money through the grant did better in sustaining
their partnerships and went further along that
continuum of implementation and evaluation. So
that's really an issue. That's why you see that
goal of sustainable partnerships there, that
they're building that capacity.

The other thing that came out a lot is
the metrics, so we don't have lot of measurement of
what was done. Some, again, because the timeframes
were shorter, but it was, I think, a very heavy
concern of the complete ones going forward that we
will be able to measure, define metrics in the
first instance and then be able to track and
measure them. Again, the resources in public
health data are poor and I think that raises an
issue certainly for racial groups and for the other
HIT programs just to figure out how to capture
information from some of the clinical providers.

The overall New York state health data,
as Gus mentioned, is about a key position. When we
looked at the plans we see two things in
characteristics, not surprising, increase in the
aging population and decrease in the birth rate and
much significant increase in the diversity of the widespread population. So, those also present their challenges. The highest avoidable mortality factors are tobacco, exercise, diet and alcohol, and that's where we'll start thinking in terms of what we can do to prevent these things. They affect a whole set of these chronic diseases.

As Gus mentioned, just to highlight the areas where we spent a lot of time and there was a lot of consensus, is that we want to see the strategies that are developed really reflect an appreciation of the broader determinative health, the things that really help people make healthy choices in the communities in which they live. And there was a lot of discussion about the control issue. This comes up in all of these conversations. Can we put a goal out there where the health department can't control all the variables involved in making change. This is, obviously, a concern in the provider community as well, how can we be expected to act on community health interventions that are beyond our direct control. So, I think this issue there's some tension that speaks to the value of these
collaborations and partnerships in trying to make each other mutually accountable, but it's going to be an issue. And I think it will an interesting debate as we go forward and we come up with a final set of goals for the plan.

The issue of health and all speaks to can we get appropriate collaboration across the different agencies in government as well as with the public and private sector. We do want to build capacity at the local level because, obviously, in the further decentralized area the state can't really assume that they can have that kind of impact. And also one thing is very clear, we can set statewide priorities, but the applications will be at the local level. They're going to pick issues that are relevant to them, they're going to design how to tackle them in ways that are relevant to them. So, if they have an active business community, some community business community would be quite involved. Others say they may not be able to be involved as closely, same as other kinds of leadership.

On the context side Gus mentioned the MRT process. I was glad to see that the question
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was asked. I think one of the challenges really is that the MRT process moves very quickly and it's very complex. Where are the opportunities to see an impact on some of these priorities going to be selected. We stayed with the MCH, one, largely because -- on health because we know the it's a big focus of MRT. We want to look at the complimentary public health and prevention set of activities to link to there, but very important.

As Gus said, in the last slide stuff that you have here, long and productive discussion about how can mental health and substance abuse not be there. With all of the caveats of how hard it is on the prevention side and the community base side to intervene, but we need to do that and then we need to do it in partnership with the provider community. I think the realization that it is very much a hidden factor in so many areas, and that will be a challenge I think in putting together the agenda.

The notion of risk factors for multiple chronic diseases rather than falling into the sometimes trap of dealing with the silos of disease, but specific care. And, again, the
metrics issue can include diseases, as Gus said, and probably the best data available in cancer, but we don't want to not look at the diabetes, heart disease, pulmonary disease, consequences of exactly the same risk factors.

And the other thing I would mention is oral health. It came up in our discussion again. Sometimes the hidden issue, we talked about a lot in the context of maternal child health agenda, but also arguably some of the chronic disease prevention, some of the dentist argue that the first manifestation of diabetes is seen in the dentist's office, and the connections aren't made often. They will claim they can see early evidence of other chronic diseases and gingivitis and other things. And interestingly, men who won't go to the doctor go to the dentist. So, there is an interesting potential there. And so, we're going to stalk with that a little. We weren't convinced it needed to be a -- list, but it ought to be there somewhere.

And our plan is to revise this sort of data set, which would be kind of the go out to the stakeholder community data set very quickly, have
comments by e-mail from the Committee and then have one face-to-face meeting maybe within a month if we can do that so to sort of finalize the basis on which they will then do outreach to their constituents throughout the state. Bring that information back, give them a couple months, six to eight weeks to do that consultation, and with that information we would need to get in June and then come up with the final set of recommendations. Workgroup will be reporting to you during that period. Workgroups on each of the priorities would meet over the summer and then have recommendations, specific recommendations around the issue of goals, criteria and metrics, et cetera, for the November meeting of this committee. So, that's it.

    DR. STRECK: Thank you. So, you anticipate the full report at the November meeting? I'm just looking ahead at our agenda.

    DR. BOUFFORD: There will be interim reports, but that's our target.

    DR. BIRKHEAD: Yes.

    DR. STRECK: Thank you.

    Next is Dr. Rugge with a report on health policy.
DR. RUGGE: It's always good to follow Dr. Birkhead and Dr. Boufford. It's always good to follow the public health discussion. It makes you feel like with health planning we represent the 99 percent to occupy.

The Health Planning Committee is working hard to address the charge that has been given to it in no small part by Commissioner Shah. Thank you for that. It is a two-part charge. The first is to develop recommendations for consideration by this council in the June 2 meeting for administrative streamlining of the process that currently exist, presuming that we can streamline CON as the Governor is trying to streamline all of the state government. And we began that discussion on a special meeting on January 18th and continued on the 19th and will be continuing that through a series of meetings until June.

At the same time are undertaking a larger effort to reform and reconceptualize the CON process in light of all the payment and delivery system changes that we are experiencing. This is the exercise leading the report in the fall that will hopefully help to set the table for further
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action in 203 in the Governor's agenda.

We have been helped enormously by the staff, Chris Delker, Sharon Lipson, Karen Madden, and also by -- particularly on -- and as our special advisor Dr. Poonam Alaigh who has been enormously helpful in terms of giving a broader perspective on CON. All these documents, I presume, have been distributed to members of the council and are available to members of the public and would recommend them because they are our starting points for a shared understanding of CON as it is now.

At our last meeting we reviewed I think a shared understanding of consensus about the rational for CON as it has and are now performing. We actually agree on four overall goals as suggested by the Department. We then began to consider the benefits of CON, its drawbacks and those inherent to the kind of reviews that were undertaken. And then going on to shortcomings of areas where the current process could be approved, but we are not addressing adequately.

This slide indicates the benefits as we currently understand them. These have been -- by
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the Committee or -- and, obviously, for further amendment and revision by members of the council, and we would welcome contribution from everybody at this time and for sure all members of the public and key stakeholders who have really provided the basis for all the deliberations we have been doing.

This list constitutes the drawbacks as we understand them. And the shortcomings also represents a longer list, too long to put on one slide. Again, all this material will be distributed for everyone's reading pleasure.

Based on the -- census, the Committee then moved to all the stakeholder recommendations that have been submitted to date regarding administrative streamlining and essentially condensed, and edited those suggestions, added to and have some seven suggestions that could well turn into recommendations for the full council to consider.

These have been referred back to the Department so that we as a Committee and vision of the council can understand implications intended and unintended that proceed along these lines may have.
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This is what the Committee has yet to see, is another series of additional ideas that have been generated by the Department on the basis of the referral that we have made. It will be subject to further discussion at the next meeting.

All this will shortly be available to everyone, and will require digestion at the next meeting.

We next meet in a special session on the afternoon of March 21 with a two-part agenda for the Committee. One is to begin to draft, a repurpose statement having agreed on how CON is now intended to service, how in light of all the changes that we're experiencing we would redefine the purpose of the reconsidered CON starting with a basic question. Why CON? Why do we need it at all in light of all the new incentives and all the new forces playing out? That's part two.

I think a fundamental understanding came from a discussion at our last meeting, CON is only one of many tools available at the state and currently in play in a larger economy. We need to understand how this tool connects to all the others, that we're not reaching too far with CON
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and trying to do too much, but also understand they
need to be balanced and currently meet the public
oversight even in the competitive market dynamics.

Following that meeting Commissioner Shah
has -- to convene the other commissioners who -- on
the issues we take before Commissioners Berk, Hogan
and Sanchez will join him for a discussion at the
regular committee meeting coming up on March 22.

And one of our priorities is to look at how CON may
integrate physical health behavior and mental
health services service to the developmentally
disabled and to those with substance abuse issues.

In the course of this we also have to
have a joint meeting with the Public Health
Committee to begin to understand how health
planning needs are to be organized community by
community and region by region and eventually at
the statewide level, because after all, CON is very
difficult to undertake unless there's some kind of
organized health planning activity that provides a
basis for decision-making when the projects come
one by one to the Project Review and Establishment
Committee.

That's all we have been able to do so
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far, but we expect to do much more in the coming

months.

DR. STRECK: Thank you, John. Thank

you. That documents a lot of work and it's very

nice -- of that work.

Are there any comments or questions?

If not we will look forward to the

report on the next series of meetings. And in

fact, both of these reports as they mature through

the year will be important ones for the council.

We have to make certain we allow for a full

consideration, so thank you.

We're now going to adjourn the public

part of this meeting. Ask all guests if they would

absent themselves, seek lunch, refreshment and

entertain elsewhere.

We're going to have an executive session

of the full council that will probably last perhaps

30 minutes which we would then break for lunch.

So, we will resume not before -- we will not begin

before 12:35.

MR. KRAUT: 12:15.

DR. STRECK: We will adjourn in a to

follow mode.
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MR. KRAUT: Right.

DR. STRECK: We will adjourn. We will conduct this, break for lunch and we will resume. If I were offering advice, I would say be back by 12:20. Thank you.

(Break was taken.)

DR. STRECK: Welcome back everyone to the Public Health Council. For new arrivals, I'm Dr. William Streck, the Chair of the council. I just remind you that we're being webcast. We do have appearance forms outside in the lobby if you wish to have your attendance reported.

We're now continuing and beginning that part of the council deliberations that involve the report of the standing committees of the Public Health and Health Planning Council. And we will begin with the Codes and Regulations Committee chaired by Dr. Gutierrez.

DR. GUTIERREZ: Good afternoon and thank you, Dr. Streck. The Codes Regulations and Legislation committee reviewed two regulations earlier today. One for both emergency and regular adoption and one for discussion.

The first item on the agenda was an
emergency adoption concerning limitations of
operator certificates. Last years event required a
temporary recreation of facilities in the New York
metropolitan area, relocation of facilities in
Broome and Dyer County due to flooding because
Section 401.2 limits an operators operating
certificate to the site of operation set forth in
the operating certificate. An operator's affected
facility is not able to care for his patients or
residents at any other site until the Commissioner
has approved the Certificate of Need application
for the relocation of the facility. This amendment
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 certificate in times of emergency.
It was adopted as an emergency at the October 6 and
December 8, 2011 full council meeting. After a
motion and second the Codes Committee unanimously
voted to recommend emergency adoption to the full
council, and I so move.

DR. STRECK: There is a motion.
May I have a second, please.

DR. BERLINER: Second.
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DR. STRECK: Thank you.
Is there a discussion on this emergency recommendation?
Hearing no discussion I would ask for those who are in favor of the recommendation as proposed say "Aye."

(A chorus of "Ayes.")

DR. STRECK: Opposed?
Thank you.

DR. GUTIERREZ: And a identical permanent version of the amendment communications of operating certificate proposal was also in the Codes agenda for regular adoption. After a motion and a second the Codes Committee unanimously voted to recommend adoption to the full council, and I so move.

DR. BERLINER: Second.

DR. STRECK: There is a motion to approve and a second.

Is there further discussion on the motion?
Hearing none, those in favor "Aye."

(A chorus of "Ayes.")

DR. STRECK: Opposed?
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Thank you. The motion carries.

DR. GUTIERREZ: The next proposal was a discussion item regarding Certified Home Health Agency and Licensed Home Care Services Agency Amendments. This regulation will incorporate two recommendations from the Medicaid Redesign Team. The first recommendation would add a requirement that the plans of care and medical orders required for patients of CHHA and LHCSA address the patient needs for -- care. The second recommendation would eliminate the need for a physician to serve on the quality improvement committee of the LHCSA. This measure would also remove the requirement of the CHHA to provide more than one quality service directly to coincide with the federal standards. It also changes the maximum period of time that may lapse before the comprehensive assessment is reviewed from 62 to 60 days which is also the federal standard.

And that, Mr. Chairman, concludes my report.

DR. STRECK: Comments?

Questions?

Hearing none.
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Thank you.

That concludes the Codes and Regulations report. We will now move to the Establishment and Project Review. Just to remind everyone, we do this in batches and there are two series here. There's a Project Review batch and then an Establishment batch. Same protocols in terms of doing things. I'll turn the Chair over to Mr. Kraut.

MR. KRAUT: Thank you, Chairman. We're going to move first to Category 1 application, these are applications that are recommend for approval where there have been no issues, recusals, abstentions or interest declared by Committee members.

The following application is 112074 C, University Hospital in Suffolk which is to expand its bone marrow transplant unit through the certification of an additional six BMP beds which will bring the unit certified bed count to 10.

OHSN recommends approval with conditions and contingencies. The Establishment Project Review Committee is recommending approval as well.

There was no discussion.
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Application 112250 C, Smile New York Outreach, LLC doing business as Smile Program Mobile Dentists in Queens County to expand the service area of a mobile diagnostics treatment center to provide dental services to children in Westchester County schools through the school base center dental program.

OHSM recommended approval for a five year limited life with conditions and contingencies is recommend. The Establishment Review Committee also similarly recommends that approval for a five year limited life with conditions and contingencies. There was no discussion.

Application 112116 C, Dominican Sisters Family Health Service, Inc. of Westchester County to increase the long-term home health care program by 50 slots in the Bronx County, 50 slots in Kings County, 50 slots in Queens County and 75 slots in New York County.

OHSM recommended approval with a condition and a contingency as recommended the Establishment Committee also recommended approval with a condition and contingency as recommended. There was no discussion.
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Application 112206 T, St. Mary's Health Care in Montgomery County, to create a 11 bed transitional care demonstration project.

OHSN recommended approval with conditions and contingencies. The Project Review Committee recommended approval with conditions and contingencies. There was no discussion.

And I so move these applications.

DR. BERLINER: Second.

DR. STRECK: These applications have been moved and seconded unencumbered by criticisms, recusals or otherwise.

Is there any discussion on any of these applications?

Hearing none I would ask for those who are in favor of the applications as presented and seconded to say "Aye."

(A chorus of "Ayes.")

DR. STRECK: Opposed?

The group is approved. Thank you.

MR. KRAUT: The next Category 2 applications that are recommended for approval, however, we have either recusals but no dissent by either the HSA or the Establishment and Project
Review Committee. I'm going to call the first application. New York 112059 C, New York Presbyterian Hospital, the New York Weill Medical Center in New York County. An interest has been declared by Ms. Regan. Convert 32 of a 68 in-patient psychiatric bed to in-patient medical surgical beds and add 12 new surgical beds to its overall medical surgical bed capacity to create a 44 bed medical surgical unit to be located on the south wing of the 11th floor of the Greenberg Pavilion.

OHSN recommended approval with conditions and contingencies. The Establishment Project Review Committee also recommended approval with conditions and contingencies.

There was discussion about the questions regarding the psychiatric services, the loss associated with psychiatric beds, and the length of stay for the outpatient unit. In a roll call vote the motion was passed seven in favor, three in opposition to bring it to the full council and I so move.

A VOICE: Second.

DR. STRECK: So, the application or the
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recommendation has been moved and seconded.

Is there a discussion on this application?

Dr. Martin.

DR. MARTIN: Thank you, Mr. Chairman. I am one of the people that voted against it the first time at the Committee level I just want to explain a little bit to the full committee my views. My concern was the downsizing of the psychiatric service not the increase to the medical service in particular. This is a very significant drop in the inpatient beds at a hospital that has been running traditionally in the last five year I believe the numbers were in the 85 to 90 percent range maybe a little lower. Recently on their inpatient service that in testimony they acknowledged a transfer between five and 600 patients out of their emergency room out of area mainly because of lack of beds at the time -- because of a preference and the fact that they will be closing their beds before they open their CPEP, which can I understand the need to do it from a physical plant point of view, but the fact is is that it is one of the really turning arguments that
they'll be able to provide the necessary psychiatric needs of the neighborhood by extensive use of CPEP and outpatient. The CPEP won't even be in place and I am concerned that the negative impact on the mental health provision for the -- size and the catchment area are just not adequately taken care of.

DR. STRECK: Thank you, Dr. Martin.

Dr. Palmer.

DR. PALMER: I echo those concerns. In addition I think the loss of beds that St. Vincent's in Manhattan adds to the concern about the loss of these particular beds. In addition, there are ten child adolescent beds that go along with the loss of these beds. The child and adolescent beds in the borough of Manhattan have long been sent to be under the needs for these inpatient services. And to take these out without explanation I think is of concern. So, I quote those concerns that have been made.

DR. STRECK: Dr. Sullivan.

DR. SULLIVAN: I would just like to the echo the concerns both Dr. Palmer and Dr. Martin. I think it's important to be aware that throughout
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New York city there's also the 90 to 95 percent occupancy on psych beds and that recall those of us who operate those and those of us who very busy psychiatric emergency rooms call all over the city sometimes to find access to beds. And I think that while I also don't quite understand the numbers that have been suggested relative to being able to cover what really is a hefty number of psychiatric beds coming down by just having your CPEP as a partial hospital fund. So, I think this is something that can impact even a larger geographic area then the particular area the hospital is in, so I think it's kind of very serious. And my other concern is if this should go through, is anyone monitoring to see what the impact really is on those rounds of hospital. Is there some way to get some feedback? Because often beds that come down in St. Vincent's, they come down in borough of Queens and they come down from a number of hospitals and we're all suffering from the issue how to move some of these patients. Now, I know the long-term plan of the state is maybe we don't need as many inpatient psychiatric beds, but transition times are very difficult -- and for this
to come down at this point in time when we're at a high occupancy across the city.

There's also something mentioned about underserved patients. I don't understand how underserved patients can sometimes move up to out of New York city which is where often they get referred then up to, Westchester or other places there's no need for transportation -- so, I just think this is coming at a time when the city is -- mental health inpatient beds are at super capacity and -- I think is very scary.

DR. STRECK: Other comments?

Mr. Fensterman and then Ms. Regan.

MR. FENSTERMAN: Mr. Chairman, I know the chairman of the Committee says there was vote seven to three?

MR. KRAUT: Yes.

MR. FENSTERMAN: I didn't have the opportunity to go to that committee hearing. I heard three physicians in opposition and I haven't heard anybody speak up as to the reason why the vote was seven to three, so if it would be possible somebody to articulate why there was seven votes the other way I would appreciate hearing.
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DR. STRECK: I'm not sure we will get to that. I'm not sure where Ms. Regan will be on that tail.

MS. REGAN: I was on the positive side. I'll give the argument. Well, what we heard from the hospital was that their med/surge occupancy is way over their capacity and several back ups in the emergency room. So, that is an issue that they needed to address. The thing that concerns me, and maybe we need to get a little more information.

Apparently OMH has reviewed this application and has been working consistently with New York hospitals to work out this arrangement and that OMH has been persuaded that those psychiatric needs would be met. We're not really in a position to second guess them and maybe the thing to do now is to get something more from them other than just their -- you know, maybe they did adequately look into this as was represented to us, but apparently there's still an issue.

DR. STRECK: Dr. Strange.

DR. STRANGE: To follow-up on some points because, again, similar to you, Mr. Fensterman, what was the occupancy on the psych
unit previous to this and was the occupancy was
less than a hundred percent, is that the reason why
this is -- your point with occupancy on the
med/surge unit was way over and -- clearly there's
corns in that population and we agree coming
from Staten Island we're oftentimes looking
elsewhere for psych beds, but I can't imagine if --
occupancy for their psych beds, that this would
have been, you know, even entertained by OMH at
that point, so there's some information I would
like.

DR. STRECK: Dr. Martin.

DR. MARTIN: Just two things. One is
the mental hygiene service council that would be
reviewing this in a --- committee doesn't get to it
until tomorrow. So, we can all talk about the
timing and the coordination that we had this
morning, about how well it's working now.

The other issue was, again, I'm sure
I'll be corrected if I misspeak, we're not talking
about over a 100 such beds on medicine, they were
running I believe around 90 to 95 percent it was
making it difficult to put people on the
specialized floor that they wanted and the like.
And I made the come last time I thought maybe it was interesting that when medicine runs between 90 and 95 we increase the beds, but when psych runs between 85 to 90 we cut them in half, and with the -- we're transferring five or 600 people out of the emergency room. So, I'm not saying that there is no need to expand, there's no doubt there's a need to expand the medical beds, but it's just the client as a whole I have dealt with.

DR. STRECK: Ms. Abel, do you have some information that might help us in terms of some of the questions that have emerged?

MR. ABEL: Just in terms of point of clarification. OMH will take this associated bar application to its council tomorrow, as was previously stated. We're advancing this project and the Department still believes a recommendation for approval based on a few factors. One multiple phone calls, conference calls that we have had with New York Presbyterian and OMH throughout the review process and OMH's verbal consent for it to be advanced to this council. We have a contingency, number two, for final OMH approval. This project will not be able to move forward unless that
contingency can be satisfied. We do defer to OMH on this particular expertise with respect to the number of beds and within the service area and this application.

DR. STRECK: So, in a sense the motion --- I'm sorry. Dr. Boufford.

DR. BOUFFORD: I wanted to clarify your issue of OMH versus the council meeting tomorrow. It sounds like OMH has verbally said okay but the council might have a different position? I'm trying to understand the sequencing vis-à-vis our decision-making.

MR. ABEL: Yes, that's possible, OMH has given a verbal. We would not advance such a project to this council without having a verbal approval from OMH, and we do have that contingency for ultimate approval.

DR. BOUFFORD: Assuming that the council says no, then it would be off.

DR. STRECK: The contingency specific to the council, I guess, is what Dr. Boufford is asking.

MR. ABEL: I don't know as the -- who is the decision-maker throughout that process on OMH.
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It could be the council or it could be the Commissioner of OMH. On construction applications here, this body has a recommendation, has the responsibility to make a recommendation to the Commissioner of DOH and the Commissioner of Health has the ultimate responsibility and authority to approve or disapprove an application.

DR. STRECK: Mr. Kraut.

MR. KRAUT: My understanding, just to maybe expand on that a bit, is OMH is -- just as OHSM recommended approval of this application, OMH was recommending approval on the par application. As far as who has the final say, you know, I defer to that. But I also -- I think I was one of the individuals, no, I know I was one of the individuals who voted in favor. So, just to respond to the question and not to take anything away from the concerns expressed by Drs. Palmer, Martin and Sullivan, which I think are valid. Anybody in the mental health field can't help but feel the whole service is under attack in many respects and whether its policy, a supply side policy and demand side policy. But the recognition, at least this applicant recognized
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that the removal of these beds, and, you know, we
can argue whether the, you know, the inpatient is
but a little part of that continuum of care, and
albeit an important one and albeit a critical one,
they have made the effort to replace a good part of
that with, you know, the day hospital treatments
and other ambulatory care. I note today that the
state announced the closure of Kings Borough
Psychiatric and its desire to reduce the bed supply
or possibly consolidate, and I only know as we look
ahead in our mental health beds, particularly
looking at that continuum of care and the role of
beds, as we've seen the pressure on length of stay
and the decline with what we think is happening is
we're going to at some point in time need fewer
beds, not today because of the nature that we don't
have housing and other options for discharge, but
certainly in the future. And we're also believing
that we probably have to co-locate more beds in
fewer places just to make that program manage more
efficiently.

I just was struck at least by the
applicant's recognition of some of those trends and
trying to balance the needs of medical/surgical and
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the mental health recognizing, you know, Dr. Martin you made the point, you know, when the two are chosen why does the medical/surgical always kind of win out, and there's a lot of reasons that you're well a care of. But, you know, I felt that here this was kind of with where the future was going and, again, that applicant made a very cogent argument in my mind that it was trying to mitigate what it was concerned about and that's why I voted for the application.

DR. STRECK: Dr. Sullivan.

DR. SULLIVAN: Again, I am not disagreeing with some sense of the future that the mental health will probably involve a significant number of decrease in inpatient beds, but I think at this point in time the system is not designed, in my opinion in New York city, to be able to handle the kind of -- that talks about here very easily and I'm just concerned that while, and especially that come up after the beds are down, I think is something that really needs to be thought about because we're being proposed is a way out of this is not going to be there when those beds come down. So, I'm just saying that I think it requires
a little more thought and the impact it can have on
the entire system of care, and I'm not saying that
the future may be a very different place, but at
the timing and this particular situation in New
York city right now.

DR. STRECK: Mr. Booth.

MR. BOOTH: I voted for it as well and
my reasoning is that, you know, the mental health
process and the Office of Mental Health can
determine the impact on the mental health. I don't
think we have the information, the process, et
ce tera, in making the determination on the mental
health side. I look at it and say we're looking at
the needs of the medical side and the Office of
Mental Health will take care of what the
implications are on the other side and obviously if
they have a problem with it and they think it could
have negative impact they would say no.

DR. STRECK: Any additional comments?

Dr. Palmer and Dr. Boufford.

DR. PALMER: I was concerned, again, by
the presentation because it really identified about
a thousand patients a year that would be negatively
impacted by this, less than a thousand patients
that they felt would need inpatient services. They
had an answer for some of those patients as we
talked about as CPEP, but the CPEP alone couldn't
just make an adjustment for those, that number of
patients that they were short through comes their
door requiring service at least at some point. So,
a big concern about what kind of plans that were
going to be made for these patients plus whatever
other patients were involved.

DR. STRECK: Dr. Boufford.

DR. BOUFFORD: I wondered if the
Committee considered just delaying until getting
the full benefit of the analysis on the OMH side.
I mean, I think one of these is we're trying to sit
here and being more holistic in our thinking about
the mind and body in terms of services. And so, it
seem to be that that would be an option as to defer
a pending the full -- I'm assuming many of these
issues would to have to get sort of thrashed out
and their council proceedings and, you know, the
Commissioner's position after he received them.

DR. STRECK: Are there additional
comments?

Ms. Regan.
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MS. REGAN: I'm agreeing with that and I do feel like, you know, we don't really have what we need to comfortably go ahead with this. What about the possibility of modifying our contingency to be a little more -- maybe seeking the input from the, I don't know, is the Commission you mentioned a group like this one is, it an expert citizens commission?

A VOICE: Yes.

MS. REGAN: Maybe we can seek their input in terms of what our contingency ought to be, which I guess would require us to defer.

DR. STRECK: Mr. Kraut.

MR. KRAUT: My, and correct me if I'm wrong, Charley, but my recollection is, if we vote for the motion that's made and the Mental Health Services Council denies the par application, I believe it has to return -- you have to correct me, does it then return back to the applicant to amend, because don't you need both approvals to go forward?

MR. ABEL: I cannot -- I am not positive if the New York State Mental Health Council functions in the same capacity as if it does and
that is a recommending body to the Commission. I don't know that is a fundamental opinion of -- I think to in answer to your question. But I would just like to say that, you know, to the extent that, and I, you know, said it so many times, time is money and with respect to facilities being able to reconfigure themselves in a timely fashion to meet the patient needs, we have affixed a contingency to this project such that for OMH approval and that's under a presumption for a five year -- the Commissioner of OMH has the ultimate authority over that par application. Clearly if that is not the case, if the Mental Health Council is the ultimate decision-maker on that application, we could make that modification to the contingency such that this would not -- this application and project would not be delayed by virtue of the timing differences between the councils, two month delay, conceivably it could even more than that, is a significant delay for the applicant, I believe.

DR. STRECK: Mr. Kraut.

MR. KRAUT: I understand that. I would just suggest once you clarify this issue if we are the deciding council, then we shouldn't be acting
until we have the benefit of the Mental Health Council in my opinion just because we find ourselves in this position kind of deferring or not deferring and we're not sure, and that's just a coordination issue maybe with, you know, OMH and OHSM, but it would be helpful to avoid these in the future, but I do hear what you're saying about not delaying but allowing it to go through if, you know...

DR. STRECK: Mr. Booth.

MR. BOOTH: What's to prevent the other council from doing the same thing? Going back to my point, I think we each have our own obligation and we should be fulfilling our one obligation and acting on our own experience. We talk about streamlining CON. And I'm saying I think we're trying to broaden in the scope of our review in this case to take in other legitimate factors that are the responsibility of different organizations.

DR. STRECK: Mr. Fensterman.

MR. FENSTERMAN: One of the difficulties that I'm having is that I don't quite know what the purviews and responsibilities of those other organizations, and that's the difficulty I'm
having. And I guess I have a question for the Establishment Chairman. Is it your view now given what you just said that you were supporting deferral of this?

MR. KRAUT: Actually, I'm motivated by what Mr. Booth said. So, I'm rescind what I said. I mean, I think it still should be coordinated just for the sake of benefiting, but I think you have an obligation to act and I have no problem acting today based on the facts I have.

DR. STRECK: Let me try to organize our options here. There is a recommendation to approve with the contingency as written specifying that OMH must approve. There was a suggestion from Ms. Regan and Mr. Abel that we could modify the recommendation for approval to say that the OMH council must approve. There is the option to defer which would require defeating the motion on the floor and then introducing a motion to defer. I think those are the four options that have emerged from this discussion. So, three of those are not applicable if on the first vote the motion passes, and that would require 13 votes of this group. So, I think those are the four options. But the first
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option is we must deal with the one on the floor
and seconded and that is the original motion from
the Committee for approval.

So, is there more discussion before I
ask for that vote?

Ms. Madden.

MS. MADDEN: I just checked the OMH
website. The Mental Health Services Council bylaws
that state their positive use and make
recommendations to the full council -- so, that
would be the recommendation to approve it.

DR. STRECK: So, it's very parallel to
us, it's very parallel to this process.

MR. KRAUT: But then that's -- what's
the length of time of that process? They're going
to have the first step in that process tomorrow.
So, it goes from there and then it goes to the full
council, which is two weeks later, then it goes to
their Commissioner.

MS. MADDEN: Their bylaws don't state a
timeline for that, but they have 90 days to act on
this.

DR. STRECK: Thank you for that update.
I think it still keeps the fours options the same.
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Other questions or comment?

DR. STRANGE: Just one clarification, if we defeat the option on the table now we would then go to option two or three?

DR. STRECK: We would go to any option that any council member put out as a motion.

Dr. Martin.

DR. MARTIN: As far as I recall the Committee meeting is in the morning, the full council is in the afternoon. It will all be tomorrow. If we were to defer it the full council will be able to act on the recommendation tomorrow.

DR. STRECK: They're, obviously, more efficient than we are.

So, just to clarify. Option to approve, two different modifications or defer. The later of the three, of the later three, one or -- would have to be introduced by a council member, and that only applies if the motion that is now on the floor does not pass.

So, if there's no further discussion I would ask for those who are in favor of the motion as initially presented by the Project Review Committee to approve the recommendation with the
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reference to OMH approval, the non-specific reference to OMH approval that is now before the group. Those in favor of that please raise your hand. Nine votes. So, the floor is open for additional motions because that motion did not pass.

Dr. Boufford.

DR. BOUFFORD: I would, in the spirit of comprise, I'll move that we add contingency of approval by the county, whatever the name of the council is, the Mental Health Council and the Commissioner, you know, on behalf of the Department, obviously that we want too, that if that goes through fully and it's fully debated, then I would then defer to their expertise or judgement, but I think that's important.

DR. STRECK: There's a motion and a second that we specify that the OMH council or its official name we'll use and the Commissioner of Mental Health we would require their approval as a contingency for the approval that has been presented by the group. So, we would amend our original motion to that effect. I think that could be a friendly amendment to the Chairman. Are you
willing to accept that as a -- no. Actually no.  
So, this is an entirely new motion to that effect.  
Okay. A motion made and seconded along those  
terms.  
Discussion?  
Charley.  
Mr. Abel: Just as a procedural matter,  
it is possible, because we've seen in this council,  
I think that the Mental Health Services council to  
either disapprove or take no action on this  
project, in which case, as Karen had described the  
process is here, the matter would ultimately go on  
to the Commissioner and the Commissioner could  
approve that project. So, by having the  
contingency as you explained, it would seem to  
require both approval of the OMH Commissioner and  
the council, and in which case if the scenario went  
as I previously described, we would not be able to  
satisfy this contingency.  
Dr. Boufford: What if we -- I don't  
know the right way to frame it, but what if the  
issue was that the Commissioner is in full  
possession of the deliberation of the council  
before making that decision or something that sort
of says their debates, their deliberations ought to be available to the Commissioner. I mean, if they say no I would, who knows, we, may override them, but that is him asserting expertise or authority.

MR. ABEL: Which is the intent of the original contingency. I don't mind making the modification.

DR. BOUFFORD: Because it isn't specific.

DR. STRECK: Dr. Gutierrez.

Dr. GUTIERREZ: Procedurally is Mental Health Council participating in the Certificate of Need, because I think that's a CON issue?

DR. STRECK: Well, we are the CON pathway. We are making our pathway subject to a non-CON contingency by this motion.

DR. GUTIERREZ: So if they say this is okay -- with the motion as it is, we have okayed it already?

DR. STRECK: Yes, that's correct. That is the intent of this motion.

MR. KRAUT: A clarification, but if they take no action, would we then also assume it is approved?
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DR. STRECK: I think not.

MR. KRAUT: Well, I mean, because we -- I will argue strenuously against just sending this application into a limbo. I would just say that that's unfair to the applicant, it's unfair to the process. So, what happens if there is no action taken? I would just say after the council, if you would consider it, if the council meets and says approved, the contingency has been fulfilled and it's approved. If they take no action, we still allow the contingency to be approved. That they've taken no action, they acted. They've taken no action. And if they said no then what happens? I'm trying to understand. So, if they say no they can't fulfill that contingency, and then our approval is not granted.

DR. BOUFFORD: I think what I was trying to say was that whatever their process, whatever -- that they would deliberate and whatever the outcome of that deliberation was, would have been completed and then the Commissioner would make a decision, that's what -- you know, if it's a no action, if it's wonderful, if it's terrible and you can still act, you know, that's okay. I mean, it's not
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contingent on that language.

DR. STRECK: Following the consideration by the Council on Mental Health and with the Commissioner's approval. Is that what it's going to require? Following deliberation by the council and with the Commissioner's approval this can go. So, we are approval the CON and leaving it up to the Commissioner of Mental Health which is where it's been, actually, at the beginning of this discussion.

MR. KRAUT: Is it Mental Health or DOH?

This is an Article 28 action.

DR. STRECK: We're deferring it to -- are contingency empowers the Commissioner of Mental Health to stop this. I mean, that's our contingency. We said that in the beginning.

A VOICE: That's the current contingency.

MR. KRAUT: Oh, okay.

A VOICE: And I think what we're doing is modifying the contingency to make sure that we know the --

MR. KRAUT: Okay.

DR. STRECK: Yes, Mr. Fensterman.
MR. FENSTERMAN: This is for our council hearing, I believe that at one point several meetings ago I had asked you, and I just want to be clear about it, that we as a council have the authority to consider such other matters as we deem relevant and appropriate, which is a catchall phrase. And I think what's happening here is that we have our strict purview of what we look at when we handle as a CON, and now this catchall phrase which is in the purview of our authority, consider such others matter that we deem relevant and appropriate, it's very obvious that many of the council members are very concerned about the opinion as an agency that's specialized in this area. So, I think that's what is inherently a problem. So, if we're going make that a contingency, then we need to recognize that that's what we're doing, we're falling into that catchall phrase, not look at what another agency's views are on an area that we believe it has expertise in.

DR. STRECK: We are recognizing that we are not making it a precedent.

DR. BOUFFORD: I just have one comment. I don't want to prolong it, but I think in the
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spirit of what you're saying is a very important issue. What we're really talking about, you know, fundamentally CON and community needs and community health needs, and I don't think we are stopping at the neck in terms of the conversations we have. I mean, if you look at the comorbidities of people with mental illness on the medical side, I mean it's -- so, we had this discussion this morning, so enough said. So, I think to me it's a perfect conversation around getting expertise and advice on community need questions which we are not in, perhaps, in the best position to opine on. So, it seems to be quite reasonable for us to ask these questions and take advantage of that expertise.

DR. STRECK: Ms. Rautenberg.

MS. RAUTENBERG: And also that three of our members who seem closest to the site situation in northern Manhattan, Queens, have spoken against this proposal, so.

DR. STRECK: Well, we have the motion that's on the floor in the sense returns us to the original motion with a clarification sought based on the concerns expressed by members of the council, I think that's where we are now. We want
to know exactly what that contingency says, we have now clarified that with the second motion. And if there is no further discussion on the motion that is on the floor, I would ask for those in favor of that motion to raise your hand.

And those opposed?

We have to do this again.

Those in favor, because we do need an absolute number.

MS. FROST: We stopped counting at 14.

You want the exact count?

DR. STRECK: Yes. Up again, please.

MS. FROST: 19.

DR. STRECK: And those opposed.

MS. FROST: Two.

DR. STRECK: So the motion carries.

Thank you for that thoughtful discussion.

Mr. Booth will take the next item.

MR. BOOTH: The next application is 112259 C, North Shore University Hospital. Recusal by both Mr. Kraut and Mr. Fensterman, both of whom who have left the room. Undertake a major modernization concerning an -- service with no changes to beds.
Both OHSM and the Committee recommend approval with conditions and contingencies.

DR. BERLINER: Second.

DR. STRECK: The motion has been moved and seconded.

Is there a discussion on the motion?

Dr. Strange.

DR. STRANGE: My apologies, I have an interest -- North Shore system, but I have no input into anything.

DR. STRECK: I will note an interest.

Thank you.

Further discussion, comments on the motion as presented?

Hearing none, those in favor of the motion please say "Aye."

(A chorus of "Ayes.")

DR. STRECK: Opposed.

Thank you. That motion passes.

MR. KRAUT: In Category 4, applications recommended for approval with the following Public Health Council member recusals, Establishment and Project Review Committee descend for a contrary recommendation by the HSA.
PHHPC ANNUAL MEETING

I'm going to call application 111435 C, the Wartburg Home in Westchester County. An interest has been declared by Mr. Fassler, who is an applicant who is a member of Leading Age New York. To certify 30 residential health care facility beds, construction replacement nursing facility to house 50 beds and the relocation of the medical and social adult day care health care programs. The total RHCF beds will decrease from 240 to 210.

OHSN is recommending approval with conditions and contingencies. The project Review Committee concurred with one member opposing, and I so move it.

MR. BERLINER: Second.

DR. STRECK: The motion has been moved and seconded.

Is there a discussion on the proposal as noted?

Hearing none those in favor "Aye."

(A chorus of "Ayes.")

DR. STRECK: Opposed?

Thank you. The motion carries.

There was an opposed.
PHHPC ANNUAL MEETING

MR. KRAUT: Category 5, applications recommended for disapproval by OHSM or Establishment and Project Review Committee without recusals.

I'll call application 101018 C, Doctors United, Inc. of New York County certified extension clinic at 1977 Seventh in New York. The applicant request certification for health fares, nutrition, podiatry, primary medical care and physical therapy at the proposed extension site.

OHSM recommended disapproval based on need only. The Project Review Committee Establishment recommended disapproval. The discussion was held regarding the model of care and public needs. And we have a recusal from Mr. Fensterman, who is out of the room. And I so move.

DR. STRECK: So we have a motion and a second on this proposal.

MR. KRAUT: We received a letter. You want me to --

DR. STRECK: You should mention that we have received a letter essentially requesting deferral.
MR. KRAUT: We received a -- during the Committee there was discussion regarding the model of care as was indicated and the lack of primary care and the concern about the amount of primary care in the neighborhood. It was very -- I guess physical therapy or habitation therapy concentrated. The applicant indicated a willingness to revise the model of care, but a motion had been made and a recommendation to disapprove. In the interim we received, members of the council and the Department received a letter asking for a deferral of that application. What we are -- similar to one of the previous projects we have -- a motion has been made and seconded. Was it seconded?

MS. THOMSON: Yes.

MR. KRAUT: So, we have to vote on the motion in order to grant deferral of that motion would have to be turned down and an alternate motion made for a deferral based on the information you had received.

DR. STRECK: Thank you for that clarification.

I would ask, just as Mr. Kraut is
Chairman of the committee, are there, or Mr. Abel, are there substantial reasons to not consider the deferral request? I mean, I think that would be the first question the group might want some information about.

MR. ABEL: First, just to make clear, the Department didn't receive the information until yesterday. I wasn't able to review the material. Only three hours ago I began reviewing it. I haven't been able to review it in its entirety. I seek comment though, just to respond to the cover letter that is attached to the letter for this Commission. First of all, one could have been lead to believe that one solicited this -- there is a regulation citation that is in the opening paragraph that gives me the impression that the Department or this council should review this as a modification or that the applicant has the right to file this modification under that citation is incorrect. Correct citation, that citations for establishment projects that have received approval by the council but not yet issued an operating certificate. I did take a look at the specialties, the lines of service service lines of products
proposed by the applicant. Many of those are specialties and -- to be primary care. But beyond that we have not had an opportunity to review the material, and at this point we are recommending, continue to recommend disapproval of the application.

DR. STRECK: Thank you.

Comments or questions?

Mr. Kraut, any further comments?

MR. KRAUT: No.

DR. STRECK: So, the recommendation presented by the Committee moved and seconded is for disapproval, request, a late arriving request for deferral had been addressed.

Any further discussion?

Hearing none I would ask for those in favor of the motion as presented to say "Aye."

(A chorus of "Ayes.")

DR. STRECK: Those opposed?

The motion passes. Thank you.

MR. ROBINSON: Just a question about the -- we heard the Department's recommendation of the issue of a deferral, any comments, Jeff, from you or the staff on that?
MR. KRAUT: Well, if the council was so predisposed to have the, you know, they had to vote no on the --

MR. ROBINSON: That's why I'm asking.

MR. KRAUT: I mean, I personally, you know, if there was a way I guess to withdraw it before we acted it would have been beneficial, but I'm assuming they're going come to back to us with a revised application.

MR. ROBINSON: I guess my question is --

MR. KRAUT: This is without prejudice, isn't it?

MR. ROBINSON: I don't know. I guess the question really is, do we need a motion for deferral now that there has been a disapproval or the does the same process occur whether we defer or not now.

MR. ABEL: I believe I told the applicant that we would have no problem accepting a new application, but given the fact that we were recommending disapproval that the Committee was recommending unanimous disapproval, now it seems as though the council has acted. I think the matter is taken care of.
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MR. KRAUT: I think procedurally we're bound to bring the recommendation of the Committee to council for voting up or down.

DR. STRECK: We'll continue now with -- that was really the Project Review part of, Project Review and Establishment. We will now move to the Establishment section where we will, again, go through these six categories of applications.

Mr. Kraut.

MR. KRAUT: Now I'm going to Category 6, which is an application for an individual consideration discussion. This is application 112 -- hold on a second. You want to clarify.

DR. STRECK: I thought we did not have any applications for --

MR. KRAUT: This was taken up at a special meeting of the Project Review this morning.

DR. STRECK: I apologize, so we're still in Project Review. Thank you.

MR. KRAUT: So, that's are Category 6 applications for individual consideration and discussion. This is 112344 C, Coler-Goldwater Specialty Hospital and Nursing Facility Goldwater Nursing Facility site in New York County. We have
PHHPC ANNUAL MEETING

a recusal from Dr. Sullivan and Dr. Boufford who
are leaving the room. And an interest declared by
Mr. Fassler. The applicant is a member of the CCLC
in which he is an officer, and similarly an
interest declared by Dr. Martin.

Dr. Boufford and Dr. Sullivan have left
the room.

Coler-Goldwater Specialty Hospital and
Nursing Facility located at One Main Street,
Roosevelt Island is the Goldwater site is seeking
approval to reduce the number of beds for its
proposed replacement RHCF approved CON number
102253 C to 164 beds. In addition, as part of that
total bed count this amendment request permission
to certify 20 ventilator dependent vent beds and an
additional 12 ventilator capable vent capable beds
for future expansion.

OHSN recommends approving with
conditions and contingencies. And this morning at
a Special Meeting of the Establishment and Project
Review Committee, they upheld the same approval
with conditions and contingencies. And I so move.

DR. BERLINER: Second.

DR. STRECK: The motion has been moved
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and seconded for approval.

Is there a discussion on this project?

Hearing none I would ask for those who

are in favor of the project to say "Aye."

(A chorus of "Ayes.")

DR. STRECK: Opposed?

Thank you.

MR. KRAUT: Thank you. We'll ask Dr.

Boufford and Dr. Sullivan to return.

We're now going to turn to applications

for establishment and construction those in

Category 1. These are applications recommended for

approval, no issues, recusals, abstentions or

interest were declared. Therefore, I'm going to

move them as a single batch.

Application 101164 B, Mobile Health

Service, LLC, to establish and construct and

Article 28 D&TC that 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. For the record, I'd like to

note that contingency number five should read,

submission of a written agreement that a percentage

on total visits annually by Medicaid Managed Care
and fee for service beneficiaries in the aggregate to the approved extension clinics will be at least 30 percent.

OHSIM recommends approval with conditions and contingencies. The Establishment and Project Review Committee recommended approval with conditions and contingencies. There was no discussion of this application.

Application 112142 E, Primary Health Care Plus, Inc., Nassau County, certify the permanent life of the diagnostic and treatment center previously approved for a five year limited life through project number 051049.

OHSIM recommended approval with conditions and the Establishment Project Review Committee similarly recommended approval with conditions. There was no discussion.

Application 101068 E, Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC, doing business as the Guilderland Center Rehabilitation and Extended Care Facility in Albany County, to establish the Guilderland Center Rehabilitation and Extension Care Facility Operating Company LLC doing business as the
PHHPC ANNUAL MEETING

Guilderland Center Rehabilitation Extension Care Facility as the new operator of the Guilderland Center Nursing Home.

OHSM approval with contingencies is recommended, the Establishment and Project Review approval with contingencies also was recommended. There was no discussion on this application.

We have Certificate of Amendment of the Certificates of Incorporation for the BMA, Medical Foundation, Inc.. The foundation seeks approval to add to its powers and purposes the ability to raise funds for New York Hospital Medical Center of Queens and change its corporate name to the New York Hospital Queens Foundation Inc..

OHSM recommended approval, the Project Review Establishment recommended approval with no discussion.

The Certificate of Dissolution for the Mary McClellan Hospital, Inc.. Mary McClellan ceased operations and surrender its operating certificate to the Department in 2003.

OHSM recommends approval, the Establishment Project Review recommended approval with no discussion.
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We have Home Health Agency Licensures.


OHSM recommended approval, the Establishment Project Review recommended approval with no discussions.

And I so move the batch.

MR. BERLINER: Second.

DR. STRECK: Discussion on the motion?

Hearing none, those in favor "Aye."

(A chorus of "Ayes.")

DR. STRECK: Opposed?

Thank you.

MR. KRAUT: I next move applications recommended for approval with the following, a member recusal, without dissent by the HSA, without dissent by Establishment and Project Review.

The first application is 112185 E, Inter-Lakes Health, Inc., Essex County. An interest has been declared by Mr. Booth, who is an employer contracting with the providers for medical
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care, and another interest had been declared by Dr. Rugge whose organization contracts for services with Inter-Lakes. The application is to establish Inter-Lakes Health, Inc. as the co-operator of the 84 beds Moses Ludington Company, Inc., and a 15 bed Moses Ludington Hospital, Inc.

OHSN recommends approval with contingencies is recommended, and Establishment Project Review recommended approval with contingencies was recommended. There was no discussion.

Also move -- oh, wait. No. We're going to move that separately because we have a recusal on the next one.

Motion made and seconded.

Discussion?

Those in favor of the motion "Aye."

(A chorus of "Ayes.")

DR. STRECK: Opposed?

Thank you.

MR. KRAUT: Now I'm to call application 112244 E, Unity Linden Oaks Surgery Center, LLC in Monroe County. Recusal by Ms. Hines and Mr. Robinson who are leaving the room. And an interest
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decided by Mr. Booth who is an employer
contracting with the providers of care.

Both Ms. Hines and Mr. Robinson have
left the room.

Unity Linden Oaks Surgery Center, a
limited liability company request approval to
become the operator of Linden Oaks Surgery Center
and an existing Article 28 freestanding ambulatory
surgery center.

OHSM recommends approval with
contingencies. The Establishment and Project
Review recommended approval with contingencies. No
discussion was held on the application. And I so
move.

DR. BERLINER: Second.

DR. STRECK: Moved and seconded.

Is there a discussion?

Hearing none, those in five "Aye."

(A chorus of "Ayes."")

DR. STRECK: Opposed?

Thank you.

MR. KRAUT: Ms. Hines and Mr. Robinson
will return to the room and I will turn over the
Chair to Mr. Booth.
PHHPC ANNUAL MEETING

MR. BOOTH: Next application is 102239 E, North Shore University Hospital d/b/a North Shore Home Care. Recusal by Mr. Kraut, who has left the room, as well as Mr. Fensterman who left the room.

To assume operations at the St. Vincent's Catholic Medical Center certified home health agency in Westchester, New York, Richmond and Bronx and Kings County.

Both OHSM and the Committee recommend approval with an effective date of September 20, 2010 which is the date of the actual court ordered sale and transfer of assets from St. Vincent's Catholic Medical Centers Home Help Agency, CHHA to North Shore University Hospital, d/b/a North Shore Home Care, CHHA. There was no discussion. And I move.

A VOICE: Second.

DR. STRECK: Moved and seconded.

Is there a discussion?

Dr. Strange.

DR. STRANGE: Once again I declare an interest just by my affiliation with North Shore.

DR. STRECK: Noted.
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Other comments?

Hearing none those in favor "Aye."

(A chorus of "Ayes.")

DR. STRECK:  Opposed?

Thank you.

MR. KRAUT:  I'll now call application

112218 E, Waterfront Operations Associates, LLC, doing business as Waterfront Center for Rehabilitation and Health Care, Erie County. This application has been deferred at the Department's request.

Next application is 1994 L, it's a Home Health Agency Licensure, Independent Living for Seniors, Inc. in Monroe and Wayne Counties. We have a recusal by Ms. Hines and Mr. Robinson, who are leaving the room. And an interest declared by Mr. Booth who is an employer contracting with these providers for medical care. Both Ms. Hines and Mr. Robinson have left the room.

OHSNM has recommended approval. The Establishment and Project Review had recommended approval. There was no discussion on the application. And I so move.

DR. BERLINER:  Second.
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DR. STRECK: Moved and seconded.

Any discussion?

Hearing none, those in favor "Aye." Let me try that again.

(A chorus of "Ayes."

DR. STRECK: Those opposes?

Thank you.

MR. KRAUT: We'll ask Ms. Hines and Mr. Robinson to return.

Now I'll move to Category 3 applications recommended for approval with the following, no

Public Health Health and Planning council member recusals, Establishment and Project Review Committee dissent, no dissent or contrary recommendation by the HSA.

Application 11552 B, The Surgery Center of Bayside, LLC, Queens County, to establish and construction a multi-specialty freestanding ambulatory surgery center to be located at 45-64 Francis Louis Boulevard in Bayside.

OHSIM recommends approval for a five year limited life with conditions and contingencies, the Establishment and Project Review recommends approval for a five year limited life with
PHHPC ANNUAL MEETING

conditions and contingencies was recommend one

member was opposing.

Application 112032 B, PBGS, LLC doing

business as the Downtown Brooklyn Gynecologic

Center in Kings County to establish and construct a

single specialty freestanding ambulatory surgery

center to be located at 81 Willoughby Street in

Brooklyn.

OHSN recommends approval for a five year

limited life with conditions and contingencies and

the Establishment and Project Review recommends

approval for a five year limited life with

conditions and contingencies with one more

opposing. And I so move these two applications.

DR. BERLINER: Second.

DR. STRECK: Move and seconded.

Discussion?

Hearing none, those in favor "Aye."

(A chorus of "Ayes.")

DR. STRECK: Opposed?

Thank you.

MR. KRAUT: I'll move Category 4,

applications recommended for approval with the

following member recusals, Establishment and
PHHPC ANNUAL MEETING

Project Review Committee dissent or contrary recommendation by the HSA.

Application 1640, Acute Care Experts, Inc., Bronx, Queens, Kings, Richmond, Nassau, and New York Counties. An interest was declared by Ms. Regan.


Application 1678 L, Amazing Grace Home Care Services serving New York, Bronx, Kings, Richmond, and Queens Counties. An interest declared by Ms. Regan.

1696 L, Diana's Angels, Inc., Putmum, Bronx, Westchester and Dutchess Counties. An interest is declared by Ms. Regan.

1957 L, Evergreen Choice, LLC, New York, Bronx, Kings, Richmond and Queens Counties.

Actually, all the applications will have -- I'll state that Ms. Regan is declaring an interest this group.

1668 L, Five Borough Home Care, Inc.,
PHHPC ANNUAL MEETING

Bronx, Kings, New York, Richmond, and Queens, Counties.

1733 L, Heritage Homecare Services, Inc., New York, Kings, Queens, Bronx, Nassau, Suffolk and Richmond Counties.

1835 L, Longevity Care, LLC, Westchester County.

2004 L, Long Island Living Center, LLC, doing business as the 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.

All the applications that I'm moving have an interest declared by Ms. Regan.

OHSHM is recommending approval.

Establishment and Project Review recommends approval with one member opposing. I so move.

DR. BERLINER: Second.

DR. STRECK: Moved and second.

Discussion on any of these application from any member of the council?
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Hearing none those in favor of the recommendation please say "Aye."

(A chorus of "Ayes.")

DR. STRECK: Opposed?

Thank you.

MR. KRAUT: Category 5, applications for individual consideration and discussion.

Application 111096 E, L. Woerner, Inc., doing business as HCR, Schoharie County. A recusal by Ms. Hines, who is leveling the room. I'll call another application, 121027 E, L. Woerner, Inc., doing business as HCR in Delaware County, also a recusal by Ms. Hines. Oh, I'm sorry. And Mr. Booth. So, the first application, 111096 E, L. Woerner, Inc., doing business as HCR is to acquire the Schoharie County Department of Health CHHA serving Schoharie County.

OHS returns recommends approval with conditions is recommended. This morning the Establishment and Project Review Committee met to consider this application, also recommends approval.

The second application 121027 E, is to acquire the Delaware County CHHA, the CHHA, and long-term home health care program.
PHHPC ANNUAL MEETING

OHSN recommended approval with conditions and contingencies. This morning in a meeting of the Establishment and Project Review Committee, they similarly recommended approval with conditions and contingencies. Both these applications Ms. Hines and Mr. Booth have declared a recusal. And I so move.

DR. BERLINER: Second.

DR. STRECK: These have been moved and seconded.

Any discussion?

Hearing none, those in favor "Aye."

(A chorus of "Ayes.")

DR. STRECK: Opposed?

Thank you.

MR. KRAUT: Now we'll ask Ms. Hines and Mr. Booth to return.

I'll now call application 112031 E, Alliance Health Associates, Inc., doing business as the Lindens Garden Rehabilitation and Nursing Center in Kings County to establish Alliance Health Associates, Inc., doing business as Linden Gardens Rehabilitation and Nursing Center as the new operator of Ruby Western Manor Residential Health
PHHPC ANNUAL MEETING

Care Facility.

OHSN recommended approval with contingencies. The Establishment and Project Review recommended approval with contingencies initially at the November 17, 2011 meeting. The application was subsequently deferred at the December 8, 2011 full council meeting. You have in your, you should have received or have in your place today a memorandum dated February 1, 2012 from our general counsel James Dering regarding this application. If you recall there was an issue here about a proposed stockholder and that stockholder's role in the character and competence review. And maybe I'll turn it over to the Department to elaborate on that.

MR. DERING: As indicated, there was an issue with regard to the stock ownership of the entity. There was --

MR. KRAUT: I so move the application.

Sorry.

DR. STRECK: Now we have moved and seconded the application. So now Mr. Dering, you may begin.

MR. DERING: As stated, there was an
issue with regard to the ownership of the entity. There was a full opportunity given to the party to provide information on that. Based on the information that was submitted the Department feels that it would be appropriate to move forward, whether the parties decided to have litigation with regard to the -- dispute is a different issue and depending on how that turned out there could be changes with regard to the ownership and we come before the council in the future.

DR. STRECK: There were concerns expressed that the meeting this morning some of the individuals associated with -- were not aware of the meeting or something to that effect?

MR. DERING: It's my understanding that this meeting is posted, so there was public notice of that. There was an opportunity for people to provide comments at that time. There had been a prior opportunity to provide written submissions which people in entities took advantage of. This was previously with the Committee before, went to the full council it had been deferred. So, there have been many opportunities to provide input and comment with regard to this matter.
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DR. STRECK: Thank you.

We have a motion and a second on the floor.

Is there further discussion on this application as presented?

Mr. Fensterman.

MR. FENSTERMAN: Yes, Mr. Chairman, I just want to ask, Mr. Dering, just for the record, when was the notice of this mornings meeting posted.

MR. DERING: I would have to defer to --

MS. FROST: The meeting materials went out last Friday.

MR. FENSTERMAN: Is that timeframe in accordance with our rules and regulations of giving adequate notice.

MS. FROST: Yes, that's what's been historically done.

MR. FENSTERMAN: I just want our general counsel, do you agree with Ms. Frost's statement?

MR. DERING: Yes. I think it would be in compliance with the Open Meetings Law.

MR. FENSTERMAN: That's all I wanted to know.
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DR. STRECK: Any further discussion on

the motion?

Hearing none, those in favor of the

motion as presented please say.

(A chorus of "Ayes.")

DR. STRECK: Those opposed?

So the motion carries and the

recommendation is approved.

MR. KRAUT: That concludes the report of

the Committee. I would only share some late

breaking information with the council.

Punxsutawney Phil saw his shadow, so we're having

six more weeks of winter. However, Staten Island

Chuck disagreed and predicts an early spring, but

he was -- he disagreed with Malverne Mel who he

proposed six more weeks. But I can only tell you

both Staten Island Chuck and Malverne Mel agreed

that they predict that the Giants will win this

weekend. I so move a recommendation by the council

to sustain that opinion.

That concludes our report.

DR. STRECK: Are there other issues that

anyone wishes to bring before the council?

If not we will adjourn the Public Health
PHHPC ANNUAL MEETING

Health Planning Council. Thank you for your commitment and attention. We are adjourned.

(Time noted: 1:35 p.m.)
CERTIFICATION

I, SHERRY SPALLIERO, a Court Reporter and Notary Public, within and for the State of New York, do hereby certify that I reported the proceedings in the within-entitled matter, on February 2, 2012, and that this is an accurate transcription of these proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of February 2012.

__________________________________________

SHERRY SPALLIERO
PHHPC STANDING COMMITTEES

COMMITTEE ON CODES, REGULATIONS AND LEGISLATION

Reviews new or revised regulations relating to medical facility operational and structural standards, including quality of care and the need for the facilities and/or services. Reviews amendments to the State Sanitary Code and other matters referred by the Commissioner. The Codes Committee will also include work of the SHRPC’s Fiscal Policy Committee which was charged to review proposed changes to part 86 of the State Hospital Code concerning medical facility rates of Reimbursement.

NUMBER: 9

CHAIR – Angel Gutierrez, M.D.
VICE CHAIR – John Palmer, Ph.D.
Jodumutt Bhat, M.D.
Jo Ivey Boufford, M.D.
Michael Fassler
Robert Hurlbut
John Rugge, M.D.
Ann Marie Theresa Sullivan, M.D.
Patsy Yang, Dr.P.H.

COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Responsible for reviewing the CON applications involving construction, service changes or establishment, and transfers of ownership.

NUMBER: 13

CHAIR – Jeffrey Kraut
VICE CHAIR – Christopher Booth
Howard Berliner
Howard Fensterman
Ellen Grant, Ph.D.
Angel Gutierrez, M.D.
Victoria G. Hines
Arthur Levin

Glenn Martin, M.D
Susan Regan
Peter Robinson
Ann Marie Theresa Sullivan, M.D
Anderson Torres, Ph.D.
COMMITTEE ON PUBLIC HEALTH

Charged with addressing the statewide governmental public health infrastructure (including workforce, IT, laboratory and other organizational capacity consistent with the Essential Public Health Functions) and support actions to assure readiness for future public health agency accreditation and public health workforce certification. It will also promote interagency collaborations across government to support a “Health in All Policies” approach by State leadership. These activities would be combined with the current Ad Hoc Prevention Committee of PHC.

NUMBER: 10

CHAIR – Jo Ivey Boufford, M.D.
VICE CHAIR – Anderson Torres, Ph.D.
Christopher Booth
Carla Boutin-Foster, M.D
Angel Gutierrez, M.D.
Victoria G. Hines
Arthur Levin
Ellen Rautenberg

COMMITTEE ON HEALTH PLANNING

Advises the Council on need-methodologies, health facility plans, and emerging health care issues. Monitors major health care initiatives and advises the Council on progress and/or problems. The Committee will also include functions from the SHPRC’s Committee on Major Medical Equipment and Appropriateness whose responsibilities were to develop and review appropriateness standards (Part 708) for various services. The Committee evaluates high technology equipment, and advises the Council on such specialized services as organ transplants. The Committee will also take into consideration matters relative to the collaboration with the Rural Health Council. The Committee will also handle matters that were considered under the SHPRC’s Information Systems Review Committee whose general purpose was to advance a framework for CON to ensure interoperable health information technology is an underpinning to health care delivery and supports health care stakeholders. Advise the DOH on health information policy relevant to health care stakeholders.

NUMBER: 12

CHAIR – John Rugge, M.D.
VICE CHAIR – Ellen Grant, Ph.D.
Howard Berliner
Christopher Booth
Jo Ivey Boufford, M.D.
Michael Fassler
Jeffrey Kraut
Arthur Levin

Glenn Martin, M.D.
John Palmer, Ph.D.
Ellen Rautenberg
Peter Robinson
COMMITTEE ON HEALTH PERSONNEL AND INTERPROFESSIONAL RELATIONS

Pursuant to 2801-b of the Public Health Law, the Council also considers verified complaints submitted by physicians, podiatrists, optometrists, dentists, and licensed midwives whose hospital privileges have been terminated, suspended or denied.

NUMBER:  5

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AD HOC COMMITTEE TO LEAD THE STATE HEALTH IMPROVEMENT PLAN

The Public Health Committee of PHHPC has established an Ad Hoc Committee to oversee the development of the next state health improvement plan. The current state health department five year plan, the Prevention Agenda toward the Healthiest State, ends in 2012.

The new five year plan will make an assessment of the current health status of the state’s residents, describe progress to date in meeting the Prevention Agenda objectives, identify the state’s public health priorities for the next five year period and describe evidence based strategies that the state and communities will pursue to address the priorities.

Members of the new Ad Hoc Committee include PHHPC Public Health Committee members and public health stakeholders.

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2/6/12 Updated
New York State Department of Health
Public Health and Health Planning Council

April 5, 2012

Report of the Committee on Codes, Regulations and Legislation

Angel Gutiérrez, M.D., Chair

For Adoption

09-17 Addition of New Part 403 and Amendment of Sections 700.2, 763.13 and 766.11 of Title 10 NYCRR; Amendment of Sections 505.14 and 505.23 of Title 18 NYCRR (Home Care Services Worker Registry)

For Discussion

Part 757 of Title 10 NYCRR – Chronic Renal Dialysis Services

For Discussion

Sections 405.9 and 405.5 of Title 10 NYCRR –
Release of a Deceased Person From a Hospital

For Discussion

Section 405.13, 405.22, 405.30 and 405.31 of Title 10 NYCRR –
Organ Transplant Provisions
Summary of Express Terms

This rule creates a new Part 403 in Title 10 (Health) of the NYCRR. This part defines the rules for implementing Chapter 594 of the Laws of 2008 (Public Health Law § 3613) which requires the Department of Health (DOH) to establish a Home Care Worker Registry and the rights, duties and obligations of home care services workers, home care services agencies, and home care training and education programs.

Workers providing home health aide services and personal care aide services are covered by the rule. All agencies providing either home health aide or personal care aide services, including those operated by municipalities, are covered. All education and training programs for home health or personal care aides approved by either DOH or the State Education Department are covered.

The statute requires that, starting September 25, 2009, information about each and every home care services worker and every training program must be entered into a registry that is accessible to the public and to employers and prospective employers of such workers. The registry must be available through the DOH website and by a toll-free number.

Section 403.1 defines the groups and classes of persons and entities to whom the regulation applies.

Section 403.2 includes all of the definitions applicable to the rule. These include Commissioner, Department, home care services entity (entity), home care services worker (worker), home care services worker registry (registry), home care services
worker trainee (trainee), state-approved education or training program (program), successfully completed or successful completion, and senior official.

Section 403.3 includes general requirements applicable to education and training programs.

Section 403.4 includes the responsibilities of state-approved education and training programs. Among those responsibilities are the entry of data about each and every training program that begins on or after September 25, 2009, into the registry within 10 business days after the beginning of the program, and entering required information from PHL § 3613(3)(a)-(e) about each trainee who completes the program into the registry within 10 days after completion of the program. Programs must also certify that they have verified the identity of each trainee within 10 days after the aide has successfully completed a training program, and must issue a certificate of completion to the trainee within 10 business days after execution of the certification of identity. Programs are also responsible for correcting incorrectly entered information that they entered.

Section 403.5 includes the responsibilities of home care services entities. Among these is the entry of required information into the registry about all employees prior to their performing home care services. Entities are required to check that the employee’s training information is in the registry before they are allowed to provide home care services. Entities must update the registry to include additional information provided by the employee. Entities are also responsible for correcting incorrectly entered information that they entered. Required information must be entered into the registry within 10 business days after a triggering event. Entities must also create original entries into the
registry about persons who completed their home care services worker training before September 25, 2009, and who were employed on that date. This information must have been entered before September 25, 2010.

Section 403.6 includes the responsibilities of home care services workers and trainees. They are required to provide training programs and home care services entities with all information required for the registry and all identity information.

Section 403.7 describes other responsibilities including record keeping requirements.

Conforming amendments to existing regulations are included in Title 10, sections 763.13 and 766.11 and Title 18, sections 505.14 and 505.23.
Pursuant to the authority vested in the Commissioner of Health by section 3613(9) of the Public Health Law, a new Part 403 is added and sections 763.13 and 766.11 of Title 10 (Health), and sections 505.14 and 505.23 of Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York, are amended, to be effective on publication of a Notice of Adoption in the New York State Register, to read as follows:

A new Part 403 is added to Title 10 NYCRR to read as follows:

CHAPTER V, SUBCHAPTER A
MEDICAL FACILITIES – MINIMUM STANDARDS

PART 403
HOME CARE WORKER REGISTRY
(Statutory Authority: Public Health Law section 3613(9))

Sec.

403.1 Applicability

403.2 Definitions

403.3 General Requirements

403.4 Responsibilities of State Approved Education or Training Programs

403.5 Responsibilities of Home Care Services Entities

403.6 Responsibilities of Home Care Services Workers and Trainees

403.7 Other responsibilities
Section 403.1 Applicability.

(a) This Part shall apply to every home care services agency certified, licensed or authorized under Article 36 of the Public Health Law, including agencies exempt under Public Health Law Section 3619; any education or training program for home health aides or personal care aides that is authorized, licensed or approved by either the Department or the New York State Education Department; and any person who has successfully completed a state approved education or training program.

(b) Nothing in this Part shall be construed to amend, supersede or otherwise modify any requirements of the regulations of the Department of Health relating to the education or training of home health aides or personal care aides by New York State authorized education or training programs.

Section 403.2 Definitions.

For purposes of this Part, the following terms shall have the following meanings:

(a) “Commissioner” means the Commissioner of Health of the State of New York.

(b) “Department” means the New York State Department of Health.

(c) “Home care services entity” or “entity” means a home care services agency or other entity providing home care services subject to Article 36 of the Public Health Law or exempt under section 3619 of such law.

(d) “Home care services worker” or “worker” means any person engaged in or applying to become engaged in providing home health aide services, as defined in Public
Health Law section 3602(4) or personal care aide services, as defined in Public Health Law section 3602(5).

(e) “Home care services worker registry” or “registry” means the home care services worker registry established by Public Health Law section 3613.

(f) “Home care services worker trainee” or “trainee” means an individual who has applied for and been accepted into a state approved education or training program.

(g) “State approved education or training program” or “program” means a program that provides education or training for persons to meet any requirement established by the Department for providing home health aide services or personal care services, which program is approved by the Department or the New York State Education Department.

(h) “Successfully completed” or “successful completion” means, in connection with home health aide training, compliance with 10 NYCRR 700.2(b)(9); in connection with personal care aide training, it means compliance with 18 NYCRR 505.14(e).

(i) “Senior official” means an individual with responsibility for oversight of a training program and who is authorized to execute a legally binding instrument on behalf of the operator of the program. The senior official may be the operator if the operator is a natural person.

Section 403.3 General requirements.

(a) Each state approved education or training program and home care services entity must request and submit information required for the registry as specified in this Part. Each program and entity shall designate at least two individuals to access and enter
data in the registry and shall submit the names, positions and contact information for each
such individual to the Department in the form and manner required by the Department.

(b) Each program or entity subject to the provisions of this Part shall have policies
and procedures designed to implement the provisions of this Part.

(c) Only an individual designated in accordance with subsection (a) of this section
shall submit the information to the registry. Home care services workers or trainees may
submit information to any such individual for inclusion in the registry as specified in this
Part.

Section 403.4 Responsibilities of State Approved Education or Training Programs.

(a) Any entity that offers or provides a state approved education or training
program shall, for each trainee who begins a training program:

(1) (i) verify the identity of the trainee by examining at least one of the following
unexpired documents:

(a) Driver’s license or identification card issued by a State or outlying possession
of the United States, provided it contains a photograph or information such as name, date
of birth, gender, height, eye color and address;

(b) Identification card issued by federal, state or local government agencies or
entities, provided it contains a photograph or information such as name, date of birth,
gender, height, eye color, and address;

(c) School identification card with a photograph;

(d) Voter’s registration card;

(e) United States Military card or draft record;
(f) Military dependent’s identification card;

(g) United States Coast Guard Merchant Mariner Card;

(h) Native American tribal document;

(i) Driver’s license issued by a Canadian government authority;

(j) United States Passport or United States Passport Card;

(k) Permanent Resident Card or Alien Registration Receipt Card; or


(ii) For any such document examined, information regarding the document title, issuing authority, document number and expiration date, if any, must be recorded and maintained in the permanent records of the program.

(iii) If the trainee fails to provide any of the documents specified in subsection (a), the training program must deny participation in the program.

(2) Obtain all of the information required by section 3613(3)(a)-(e) of the Public Health Law and maintain such information in the permanent records of the program;

(3) Within 10 business days of successful completion of the program, enter the information required by section 3613(3)(a)-(e) of the Public Health Law into the registry in the form and manner required by the Department;

(4) Upon request of a trainee or a person who has successfully completed an approved education or training offered by the program, and upon proof of identity, provide access to complete registry information relating to such person, including a printed report if requested.
(5) Within 10 business days after a request by a trainee or a person who has successfully completed an approved education or training offered by the program, correct information entered incorrectly into the registry by the program. A program must request verification from the worker supporting the correction.

(6) Within 10 business days after a trainee has successfully completed an approved education or training offered by the program, ensure that a written sworn statement by the senior official of the entity, made under penalty of perjury, has been fully executed and included in the permanent records of the program. The written sworn statement must:

(a) identify each trainee who has successfully completed the program by name, address, date of birth and date of completion of the program;
(b) describe the nature of the education or training covered in the program;
(c) certify that the trainee has in fact successfully completed the identified program; and
(d) certify that the entity has verified the true identity of each trainee who has successfully completed the identified program as required in subsection (a)(1) of this section.

(7)(a) Within 10 business days after the written sworn statement described in subsection (a)(6) of this section has been executed by the senior official of the entity, print and sign the certificate of successful completion generated by the Department and provide a copy of the signed certificate to the trainee. The original certificate must be maintained in the permanent records of the program.
(b) Any entity that offers or provides a state approved education or training program shall submit information to the registry about each class offered to train or educate home care services workers, before or within 10 business days after the commencement of the class, regarding the following:

(1) Name and date of birth of each person attending the program;

(2) The location, dates and times where the classroom portion of the program will be held;

(3) The name, title and qualifications of the person(s) who will be delivering the classroom instruction; and

(4) The anticipated date of graduation.

Section 403.5 Responsibilities of Home Care Services Entities.

(a) A home care services entity will have the following responsibilities with respect to home care services workers employed on or after September 25, 2009:

(1) For any home care services worker who began their training on or after September 25, 2009, a home care services entity shall access the worker’s registry information prior to the worker beginning to provide home care services for that entity.

(2) A person who successfully completed a state approved education or training program for home health aides or personal care aides that began on or after September 25, 2009, may not provide home care services unless the person’s information has been posted to the registry by the education or training program.
(3) within 10 business days after the worker has been employed by the home care services entity, enter the information required by section 3613(3)(f) of the Public Health Law into the registry in the form and manner required by the Department;

(4) For all home care services workers who successfully completed training before September 25, 2009, prior to the worker beginning to provide home care services, a home care services entity must access the worker’s registry information. If the worker is not yet listed in the registry, the entity shall, prior to the individual beginning to provide home care services:

   (i) Obtain the information required by section 3613(3)(a)-(f) of the Public Health Law from the home care services worker;

   (ii) Obtain a copy of the certificate issued to the prospective employee by the state-approved training program; and

   (iii) Enter the information required by Public Health Law section 3613(3)(a)-(f) into the registry.

(5) Within 10 business days after the home care services worker begins to provide home care services, update the registry information to show the worker’s employment with the entity, including the start date;

(6) Within 10 business days after receiving information from a home care services worker that is not in the registry, update the registry to include the new or updated information. If the updated information is a change of name, obtain and retain documentation of the change as provided in section 403.6(a)(4) of this Part;
(7) Within 10 business days after a home care services worker’s employment with the entity is terminated, update the registry with the date on which the worker’s employment with the entity was terminated;

(8) Upon request of any home care services worker currently employed by the entity, provide access to complete registry information relating to the employee, including a printed report if requested.

(9) Within 10 business days after a request by a home care services worker, correct information in the registry that was entered incorrectly by the entity. An entity must request verification from the worker supporting the correction. If the correction involves a change of name, obtain and retain documentation of the change as provided in section 403.6(a)(4) of this Part.

(b) For every home care services worker who was employed by a home care services entity as of September 25, 2009, the home care services entity shall, on a schedule provided by the Department, enter all of the information required by section 3613(3)(a)-(f) of the Public Health Law on the registry with respect to such workers.

Section 403.6 Responsibilities of Home Care Services Workers.

(a) Home care services workers have the following responsibilities:

(1) Workers must retain in good order their certificate of successful completion of training and display it to a prospective employer when requested;

(2) If a worker discovers that a training program or entity incorrectly entered information regarding the worker in the registry, the worker must provide corrected
information, including any verification of the change that may be requested, to the
training program or entity;

(3) If any information required for the registry changes, the worker must inform
the program or entity of the changes and provide verification of the change as requested
by the program or entity;

(4) If a worker changes his or her name, the worker must provide proof of the
name change to the program or entity. The program or entity will change the worker’s
name in the registry and must retain a copy of the proof submitted in the entity’s
permanent records. Appropriate proof of change of name includes copy of a certificate of
marriage, decree of divorce, or other court order authorizing a person to change his or her
name.

Section 403.7 Other responsibilities.

(a) Each program shall establish, maintain, and keep such records as are required
to show compliance with this Part for a period of 6 years after the successful completion
of training, unless otherwise directed by the Department or the New York State
Education Department.

(b) Each entity shall establish, maintain, and keep such records as are required to
show compliance with this Part for a period of 6 years after the termination of a worker’s
employment, unless otherwise directed by the Department.

Subdivision (b) of section 763.13 of Title 10 NYCRR is amended to read as follows:
(b) (1) that qualifications as specified in section 700.2 of this Title are met; [and]

(i) that the information required by Public Health Law section 3613(3)(a)-(f) has been entered into the home care services worker registry in accordance with Part 403 of this Title; and

(ii) a criminal history record check to the extent required by section 400.23 and Part 402 of this Title.

Subdivision (b) of section 766.11 of Title 10 NYCRR is amended to read as follows:

(b) (1) that qualifications for home health aide and personal care aide as specified in section 700.2 of this Title are met; and

(2) that the information required by Public Health Law section 3613(3)(a)-(f) has been entered into the home care services worker registry in accordance with Part 403 of this Title.

Paragraph (4) of subdivision (d), of section 505.14 of Title 18 NYCRR is amended to read as follows:

(4) The minimum criteria for the selection of all persons providing personal care services shall include, but are not limited to, the following:

(i) maturity, emotional and mental stability, and experience in personal care or homemaking;

(ii) ability to read and write, understand and carry out directions and instructions, record messages, and keep simple records;

(iii) sympathetic attitude toward providing services for patients at home who have medical problems; [and]
(iv) good physical health, as indicated by the documentation in the personnel file of all persons providing personal care services. This documentation must include the same assurances and proof of good physical health that the Department of Health requires for employees of certified home health agencies pursuant to 10 NYCRR 763.4[.];

(v) a criminal history record check to the extent required by 10 NYCRR 400.23[.]; and

(vi) compliance with Part 403 of Title 10 NYCRR, as required in that Part.

Paragraphs (7), (8) and (9) of subdivision (e) of section 505.14 of Title 18 NYCRR are amended to read as follows:

(7) The successful participation of each person providing personal care services in approved basic training, competency testing and continuing in-service training programs shall be documented in that person's personnel records. Documentation shall include the following items:

(i) a completed employment application or other satisfactory proof of the date on which the person was hired; and

(ii) (a) for persons who completed a training program before September 25, 2009, a dated certificate, letter or other satisfactory proof of the person's successful completion of a basic training program approved by the department; or

(b) for persons who completed a training program on or after September 25, 2009, that information required by Part 403 of Title 10 NYCRR.

(iii) dated certificates, written references, letters or other satisfactory proof that the person:
(a) meets the qualifications specified in clause (4)(i)(a) or (b) of this subdivision; and

(b) has successfully completed competency testing and any remedial basic training necessary as a result of such testing. The dated and scored competency testing instruments and record of any remedial training provided shall be maintained;

(iv) an in-service card, log or other satisfactory proof of the employee's participation in three hours of in-service training semiannually.

(8) The local social services district shall develop a plan for monitoring the assignments of individuals providing personal care services to assure that individuals are in compliance with the training requirements. This plan shall be submitted by the local social services district to the Department for approval and shall include, as a minimum, specific methods for monitoring each individual's competency testing, and in-service requirements specified in this subdivision. Methods of compliance with the basic training, monitoring may include: onsite reviews of employee personnel records; establishment of a formal reporting system on training activities; establishment of requirements for submittal of certificates or other documentation prior to each individual's assignment to a personal care service case; or any combination of these or other methods. The monitoring plan must include provision for assuring that training programs have complied with the requirement Part 403 of Title 10 NYCRR related to the home care services worker registry.

(9) When a provider agency is not in compliance with department requirements for training, or when the agency's training efforts do not comply with the approved plan for that agency, or the agency has failed to comply with the requirements of Part 403 of Title 10 NYCRR, the Department shall withdraw the approval of that agency's training plan.
No reimbursement shall be available to local social services districts, and no payments shall be made to provider agencies for services provided by individuals who are not trained in accordance with department requirements and the agency's approved training plan.

Subparagraph (iii) of paragraph (3) of subdivision (a) of section 505.23 of Title 18 NYCRR is amended to read as follows:

(iii) home health aide services, as defined in the regulations of the Department of Health, provided by a person who meets the training requirements of the Department of Health, whose information as required by Part 403 of Title 10 NYCRR has been entered into the home care services worker registry, is assigned by a registered professional nurse to provide home health aide services in accordance with a recipient's plan of care, and is supervised by a registered professional nurse from a certified home health agency or a therapist, in accordance with the regulations of the Department of Health.
Regulatory Impact Statement

Statutory Authority:

The statutory authority for this rule is Chapter 594 of the Laws of 2008, which requires the Department of Health to create and populate a health care services worker registry. The Chapter has been codified as Section 3613 of the Public Health Law.

Legislative Objectives:

To protect homebound, care-dependent New Yorkers by establishing a central registry of persons who have successfully completed state approved education or training programs for home health aides and personal care aides.

Needs and Benefits:

According to the sponsor’s memorandum for the legislation, the Office of the Attorney General (OAG) investigations uncovered “fraud and abuse in the home health care industry, . . . as it relates to the education and training . . . [of] home health aides or personal care aides . . .” These investigations uncovered instances of training programs issuing fraudulent certificates to persons who either had not been trained or had not demonstrated competence to perform necessary tasks. The memo proposed that the existing methods for verification of education and training were “insufficient to prevent and deter fraud. In some cases, the training programs issuing fraudulent certificates, when contacted by home care services entities, represented that the fraudulent certificates were valid, when, in truth and fact, they were not. Frauds relating to fraudulent
certificates…[were]… occurring throughout the State, endangering New York's most vulnerable population and costing taxpayers tens of millions of dollars.”

Again, citing the sponsor’s memo, the statute being implemented by this regulation is the legislature’s “crucial first step” in reducing or eliminating fraudulent training. Using the nurse aide registry established by Public Health Law section 2803-j as a model, the legislation proposes to extend protections that exist in the nursing home context to homebound, care-dependent persons. The public nature of the registry will allow not only contractors and employers of home care services workers access to education and training information, but also will make this information available to members of the public.

Certified aides will not be able to gain employment until their training and employment information is posted on the Registry. For this reason, the Department decided on timeframes that were reasonable, but would not prevent an aide from being employed.

A central registry will help facilitate the Department's ability to track home care services workers, and will thus provide greater transparency and accountability, which, in turn, will enhance the quality of care delivered to the vulnerable population served by the home health care industry.

Costs:

Costs to Regulated Parties for the Implementation of and Continuing Compliance with the Rule:
Those agencies that hire additional staff solely for the purpose of collecting, entering and maintaining data related to the requirements of the registry will incur a continuing cost for such staff. The extent of the cost will be tied to the rate of pay for such employee(s) and will likely vary depending on skill level. It is estimated that it will take approximately a third of an hour (20 minutes) for an administrative staff person, with an average hourly wage of fifteen dollars, to enter the required data into and maintain it on the registry. This cost would apply to information that must be entered by the training program and also by the employer. In 2008, there were approximately 50,000 new home care and personal care aides. Based on this information, the overall administrative cost for entering information pertaining to new aides would be $500,000 spread across the state. There will be an additional cost during the first year to input aides currently employed into the Home Care Registry. These costs will be incurred by the employers only.

**Costs to the Agency, the State and Local Governments for the Implementation and Continuation of the Rule:**

Two million dollars was appropriated for implementation of the registry at the State level in the 2009-10 State Budget. These funds have been used in part to develop the software and hardware linkages needed to house the registry, and in part to fund state staff to maintain the registry once it is operational. Approximately $1 million will be needed annually to maintain the state staff and the registry functionality.
The information, including the source(s) of such information and the methodology upon which the cost analysis is based:

Information about appropriation levels was included in the 2009-10 State Budget. Information about staffing and worker training and retention was received from the home care provider associations and SEIU Local 1199.

Local Government Mandates:

Local governments that operate home care services agencies are exempt from many of the requirements of Article 36 of the Public Health Law. However, the enabling legislation for this regulation expressly includes exempted entities under its mandate. Thus, those local governments that operate home care services agencies must comply with the requirements for obtaining, reviewing, maintaining and updating registry information for home care services workers employed by such local governments.

In accordance with Executive Order 17, the following fiscal impact relates to the costs associated with the implementation of this regulation on local governments. Local governments will incur the same administrative costs as any other employment related entity. No additional funds are provided for local government to implement this new mandate. Of the 1,200 licensed and certified home care services agencies, approximately 5% are operated by counties. Most Certified Home Health Agencies (CHHAs) do not hire aides directly, but subcontract with a Licensed Home Care Services Agency (LHCSA). Therefore much of the local administrative costs associated with this regulation will be borne by the county operated LHCSAs.
In order to determine the true impact this regulation will have on local
governments, the Department limited the scope of agencies with employment
responsibilities to the approximately 900 LHCSA sites operating in the state. Of this
amount, only 11 LHCSAs (1% of the total) are operated by counties. Each year,
approximately 500 new aides are employed through county operated LHCSAs. It should
be noted that local governments do not operate training programs, and therefore will only
incur the administrative costs associated with home care employers. Assuming all
administrative costs are equal, it is estimated that the overall cost to implement this new
requirement will be approximately $2,500 in total for all local governments operating
LHCSAs. As with the general administrative costs associated with the Home Care
Registry, costs will be higher in the first year to accommodate the necessary data entry
required to enter all currently employed aides into the system.

**Paperwork:**

This rule requires significant “paperwork”, although most of it may be addressed
with electronic rather than actual paper documentation.

State approved training and education programs must:

- Collect and maintain identity information from all trainees;
- Maintain information about all training programs;
- Post information about all training programs to the registry;
- Post names of trainees to the registry;
Collect, maintain and post to the registry statutorily required information about trainees who have completed the training program;
Maintain a written certificate of completion and issue a copy to trainees who complete the training program; and
Complete, retain and provide a copy of a signed certificate for the required training for each trainee.

Home care services agencies must:
Collect and maintain identity information from employees providing home care services;
Maintain information about duration of employment for employees providing home care services; and
Collect, maintain and post statutorily required information to the registry about employees who provide home care services.

**Duplication:**
Some of the information required to be collected and entered into the registry by employers may be the same information employers are required to provide to the Department for mandatory criminal history record check. At the present time, these systems have different forms and do not communicate, thus requiring the employer to submit some information more than once. Given the limited time frame, the Department is not able to link these systems at this time, but there may be opportunities in the future to limit some of the duplicative information.
Alternatives:

Because the enabling legislation is very prescriptive, other alternatives, such as waiting until other DOH systems were linked to the Registry to avoid initial duplication of information, were not considered. This regulation is the minimum implementation required to give full effect to the statute by the required implementation date.

Federal Standards:

Not applicable.

Compliance Schedule:

Full compliance will be achieved immediately, as most aspects of these regulations have been implemented.

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Consolidated Regulatory Flexibility Analysis for Small Businesses and Local Governments

Effect of Rule:

Small businesses that will be affected by this rule include home care services agencies in the state that employ 100 or fewer persons and most state approved education and training programs for home health and personal care aides. There are approximately 500 training and education programs operating from approximately 700 sites statewide and approximately 1300 home care services agencies, many of which qualify as small businesses, and some of which are County operated. All of these will feel some impact from this rule, as all are affected by its requirements.

Compliance Requirements:

This rule establishes reporting and record keeping requirements for all impacted entities. Workers providing home health aide services and personal care aide services are required to report information to state approved education and training programs and employers. All education and training programs for home health or personal care aides approved by either DOH or the State Education Department are required to enter specific information about training programs, trainers and trainees into the registry, to maintain specific training records for six years after training is complete, and to issue a standardized certificate developed by the Department. All agencies providing either home health aide or personal care aide services, including those operated by municipalities, are required to collect and maintain identity and training information about covered home care services workers and must check the home care services worker registry before
assigning a worker to provide services, and update or enter required information into the registry if such information is not present.

The Department does not intend to publish a small business regulation guide in connection with this regulation. While this regulation will impact a substantial number of small business and local governments, the Department has determined that the impact itself is not “substantial.” The Department does plan to issue additional guidance once the regulation has been published.

**Professional Services:**

No special professional services should be required to maintain the records or complete the data entry required by this rule, although covered educational programs and home care services agencies may need additional employees to perform these activities.

**Compliance Costs:**

Nominal capital and annual cost is anticipated for most impacted entities, including county governments that operate home care services agencies. All home care services agencies are already required to maintain a computer connection to the Health Provider Network (HPN) to receive and transmit information from and to the Department. No additional computer connections should be required. Those education and training programs that are not associated with a home care services agency will need to obtain an HPN account and maintain a computer connection to the internet. There is no charge for an HPN account; most organizations already maintain internet access of
some sort. The costs for small business and local governments should not be significantly different from the costs of other affected providers. The only significant continuing cost would be additional staff to perform the functions required by the regulation which would accrue to entities that do not presently have sufficient staff to perform these additional functions.

**Economic and Technological Feasibility:**

The Department has considered the economic and technical feasibility impact associated with this rule on small business and local government. While there may be economic issues associated with this rule, such as the need to hire additional staff, the legislation that this rule implements would require the same investment in staff and technology as the rule requires.

**Minimizing Adverse Impact:**

While the Department has considered the options of State Administrative Procedure Act (SAPA) Section 202-b.1 in developing this rule, the statutory mandate for the creation of the registry does not allow significant discretion in implementation. The Department has chosen generally to include only reporting and record keeping required by the legislation for home care services agencies. Most training programs are not in rural areas. The statute does not allow exemption from reporting to any particular entity type.
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. The Department has already conducted meetings with representatives of statewide provider organizations representing home care services agencies and training programs including the Empire State Association of Assisted Living, NYS Association of Home Care Providers, Home Care Association of NYS, NY Association of Homes and Services for the Aging, as well as representatives of SEIU Local 1199, which represents significant numbers of home care services workers downstate. When the legislation was first introduced, most of the provider associations supported the bill.
Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

All rural areas of the State in which home care services agencies are located are equally affected. The impact on rural areas should be no greater and present no unique issues that differ from the impact on other areas of the State where these agencies are located.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

This rule establishes reporting and record keeping requirements for all covered entities. Workers providing home health aide services and personal care aide services are required to report information to state approved education and training programs and employers. All such programs for home health or personal care aides approved by either DOH or the State Education Department are required to enter specified information about training programs, trainers and trainees into the registry, must maintain specific training records for six years after training is complete, and must issue a standardized certificate developed by the Department. All agencies providing either home health aide or personal care aide services, including those operated by municipalities, are required to collect and maintain identity and training information about home care services workers and must both check the home care services worker registry before assigning a worker to provide services, and update or enter required information into the registry if such information is not present.
No special professional services should be required to maintain the records or complete the data entry, although covered educational programs and home care services agencies may need additional employees to perform these activities.

**Costs:**

Nominal capital and annual cost is anticipated for most impacted entities. All home care services agencies are already required to maintain a computer connection to the Health Provider Network (HPN) to receive and transmit information from and to the Department. No additional computer connections should be required. Those education and training programs that are not associated with a home care services agency will need to obtain an HPN account and maintain a computer connection to the internet. There is no charge for an HPN account; most organizations already maintain internet access of some sort. The cost in rural areas should not be significantly more than the cost in other areas of the state. The only significant continuing cost would be the possible need for additional staff to perform the functions required by the regulation.

**Minimizing Adverse Impact:**

The statutory mandate authorizing the creation of the registry does not allow the Department of Health significant discretion in implementation. The Department generally requires only such reporting and record keeping as provided for in the legislation for home care services agencies. Most training programs are not in rural areas. The statute does not allow exemption from reporting to any particular entity type.
Rural Area Participation:

The Department participated in an April 28, 2009 meeting on the implementation of the registry with representatives of statewide provider organizations representing home care services agencies and training programs, including the Empire State Association of Assisted Living, NYS Association of Home Care Providers, Home Care Association of NYS, NY Association of Homes and Services for the Aging, as well as representatives of SEIU Local 1199, which represents significant numbers of home care services workers downstate.
Job Impact Statement

Nature of Impact:

The Department has determined that the proposed rule will not have a substantial adverse impact on jobs and employment opportunities.

Categories and Numbers Affected:

There may be a minor increase in the number of jobs in office and administrative support occupations statewide, depending upon how many affected entities choose to hire additional staff to meet the record keeping requirements of the rule.

Regions of Adverse Impact:

None.

Minimizing Adverse Impact:

None.

Self-employment Opportunities:

Not applicable.
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 of the Public Health Law, Part 757 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Part 757 Chronic Renal Dialysis Services is REPEALED in its entirety, and New Part 757 is added as follows:

PART 757 CHRONIC RENAL DIALYSIS SERVICES

(Statutory authority: Public Health Law §2803)

Sec.

§757.1 Pertinent federal standards.

§757.2 Additional requirements for approved dialysis centers.

§757.3 Chronic renal dialysis service staffing.

§757.1 Pertinent federal standards.
Operators of health care facilities that provide chronic dialysis services shall comply with the federal codes and standards referred to in this subdivision. If a conflict occurs between the following codes and standards or between them and regulations elsewhere in this Chapter, then compliance with the more restrictive regulation is required. The following codes and standards are hereby incorporated by reference, with the same force and effect as if fully set forth at length herein. Copies of such codes and standards are available for inspection and copying at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, NY 12237. Copies also available from the publisher or issuing organization at the addresses listed below.


(b) In the document entitled "Guidelines for the Prevention of Intravascular Catheter Related Infections", the provisions entitled "Recommendations for Placement of Intravascular Catheters in Adults and Children", Parts I -IV; and "Central Venous Catheters, Including PICCs, Hemodialysis and Pulmonary Artery Catheters in Adult and Pediatric Patients", pages 16 through 18, *Morbidity and Mortality Weekly Report*, volume 51, number RR-10, August 9, 2002. This publication is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Central Building, Baltimore, MD or at the National Archives and Records Administration, United States Government Printing Office, Washington, D. C. 20402.
§757.2  Additional requirements for approved dialysis centers.

(a) Whenever referred to in this section, the following definitions shall have the following meanings:
(1) *Dialysis station.* A dialysis station is an individual treatment area that provides space to accommodate the dialysis equipment and the routine and emergency care indicated, and has sufficient separation from other dialysis stations to afford protection from cross-contamination with blood-borne pathogens. A hemodialysis station shall be equipped with a chair or a bed, a hemodialysis machine, and access to a purified water source and dialysate concentrates.

(2) *End-Stage Renal Disease (ESRD) network.* ESRD networks are government contract organizations that collect and share data and other information between Centers for Medicare and Medicaid Services (CMS) and Medicare approved dialysis facilities within a specific geographic area.

(3) *Approved dialysis center.* An approved dialysis center is a facility authorized by CMS to provide dialysis services and licensed by the New York State Department of Health to provide such dialysis services.

(b) Chronic renal dialysis service providers shall comply with Parts 751 and 752 of this Subchapter.
(c) The governing body, medical director, and operator shall comply with the following requirements:

(1) **Pediatrics.** Approved dialysis centers that treat pediatric patients on other than an emergency basis, shall have the consultation services of a board certified or otherwise qualified pediatric nephrologist. Such approved centers or facilities treating pediatric patients must follow current CMS approved clinical practice standards for evaluating and monitoring the pediatric patient population in this area.

(2) **Water and Dialysate Quality.** Each approved dialysis centers shall ensure that its water treatment and dialysate supply systems protect hemodialysis patients from adverse effects arising from known chemical and microbial contaminates that may be found in water and improperly prepared dialysate. Each approved dialysis center shall ensure that the water and dialysate is correctly formulated as required by this Part and that policies and procedures related to water treatment, dialysate, and reuse are understandable shall include, but not be limited to, the following:

   (i) water and dialysate shall be sampled on the following schedule:

      (A) for microbiological examination at least once each month, and

      (B) for chemical examination water shall be sampled at least once every three months; and
(ii) water samples shall be examined in a laboratory approved by the Department for the analysis of potable water by the Department of Health (see section 502 of the Public Health Law).

§ 757.3 Chronic renal dialysis service staffing.

(a) **Governing Body Responsibilities.** In addition to other responsibilities set forth in this Chapter, the governing body of an approved dialysis center shall be responsible for the following:

1. Assuring that a registered professional nurse (RN) is present, on duty and available to provide nursing services at all times when patients are present at the facility.

2. Determining, if specially trained licensed practical nurses (LPNs), under the supervision of a qualified RN, nurse practitioner (NP), or physician, are authorized to perform intravenous therapy procedures in accordance with the provisions set forth in Section 400.15 of this Chapter.

3. Determining, if LPNs working in chronic hemodialysis outpatient settings will be allowed to access and provide care to patients with central venous catheters under the direction of a RN under the following conditions:
(i) Facilities that choose to participate in the program allowing LPNs to access central venous catheters must include the training and competency requirements in the facility’s policies and procedures and review and update such policies and procedures at least annually, or more frequently as determined appropriate by the facility and made available to all services and units of the facility;

(ii) The governing body will be responsible for identifying the LPN candidates determined to be eligible for completion of a training curriculum to access and provide care to patients with central venous catheters. Such training is to be accomplished with the understanding that the final determination for an LPN to provide this service will be at the discretion of the supervising RN;

(iii) Assurance that the LPN successfully completes an initial and thereafter an annual training program for central venous access which includes successful completion of a written examination and competency demonstration. This training must be approved by the governing body and the medical director. Onsite documentation of such training must be maintained;
(d) The governing body shall review and approve policy and procedures that define the minimum experience and training qualifications of all patient care technicians (PCTs) who provide services in an approved dialysis center as well as the services that PCTs are authorized to perform. The governing body shall maintain documentation that demonstrates that PCTs in their facility are currently certified by a CMS approved national commercial dialysis technician certification organization within 18 months post hire. Such PCTs must complete a training program approved by the medical director and the governing body, carried out under the direction of a registered professional nurse.

(b) Approved dialysis facility employees and contract staff must meet the personnel qualifications and demonstrated competencies necessary to serve collectively the comprehensive needs of the patients. In addition:

(1) *Registered Professional Nurse.* All registered professional nurses (RNs) working in an approved dialysis facility must hold an active New York State license to practice as set forth in Article 139 of the Education Law and in accordance with the Education Commissioner’s regulations. In the chronic hemodialysis outpatient setting, supervising RN responsibilities also include:
(i) Non-catheter patient assessment and documentation that must be completed within 60 minutes of initiation of dialysis;

(ii) Catheter patient assessment and documentation that must be completed within 45 minutes of initiation of dialysis;

(iii) A clear understanding of the LPN training program at that facility to ensure a thorough understanding of the tasks that may be delegated to the LPN(s) under their supervision;

(iv) The ultimate responsibility for nursing care for the dialysis patient. Delegation of tasks to the LPN are at the discretion of the RN; and

(v) Direct supervision of all LPN activities in accordance with New York State Education Law.

(vi) Direct supervision of unlicensed staff that have dialysis care responsibilities.

(2) **Licensed Practical Nurse.** All licensed practical nurses (LPNs) working in an approved dialysis facility must hold an active New York State license to practice as set forth in Article 139 of the Education Law and in accordance with the New York Education Commissioner’s regulations. LPN responsibilities shall be consistent with the
authorization and training provided by the facility. In addition, LPNs practicing at
approved facilities and who have received training and demonstrated the competencies
required by such approved facilities may access and provide care to patients with central
venous catheters with the understanding that the final determination for an LPN to
provide this service will be at the discretion of the supervising RN.

(3) Qualified Social Worker. The facility must have a qualified social worker who is
licensed and registered by the New York State Education Department to practice as a
licensed master social worker (LMSW) or licensed clinical social worker (LCSW), with
the scope of practice defined in Article 154 of the Education Law.

(4) Patient Care (Dialysis) Technician. A patient care technician (PCT) is an
unlicensed, certified, assistive staff member who has responsibility for direct patient care
under the supervision of the RN.
REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for the promulgation of this regulation is contained in Public Health Law (PHL) section 2803. Section 2803 authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection and promotion of the health of the residents of New York State by requiring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost, including chronic renal dialysis services.

Needs and Benefits:

Part 757 of Title 10 of the New York Codes Rules and Regulations (NYCRR) outlines the chronic renal dialysis requirements for services provided in New York State renal dialysis facilities. This regulation currently specifies that these facilities must comply
with the regulations contained in Title 42 of the Code for Federal Regulations (CFR), Public Health, Part 405, Subpart U – Conditions for Coverage of Suppliers of End State Renal Disease (ESRD) Service, (42 CFR Part 405), 1988 edition. In 2008 the 42 CFR Medicare and Medicaid Programs Conditions for Coverage for End-Stage Renal Disease (ESRD) Facilities were amended. As a result, Part 757 of 10 NYCRR is outdated and also needs to be amended to be in compliance with the new federal provisions.

The 2008 federal regulatory amendments establish new conditions for coverage that dialysis facilities must meet to be certified under the Medicare Conditions for Coverage. It establishes performance expectations for facilities and encourages patients to participate in their plan of care and treatment. It also reflects advances in dialysis technology and standard care practices.

The federal ESRD requirements were first adopted in 1976. They have been amended several times since 1976, but they have not been comprehensively revised since then. New York State’s current Part 757 provisions in Title 10 NYCRR incorporate by reference the provisions contained in the 1988 edition of the federal ESRD regulations.

The federal ESRD conditions for coverage (health and safety provisions for dialysis facilities) have been moved from existing 42 CFR Part 405, Subpart U, to a new 42 CFR Part 494, where they will follow regulations establishing standards for other Medicare providers (hospitals, long-term care facilities and home health agencies).
It is imperative that the provisions in Part 757 10 NYCRR be updated to be in compliance with the updated federal Medicare Conditions for Coverage for End State Renal Disease Facilities and better regulate current technology and practice in the field of ESRD care.

**Costs:**

Medical facilities that provide chronic renal dialysis services are already required to meet these requirements pursuant to the federal Conditions for Coverage for End Stage Renal Disease (ESRD). This regulation will not impose any additional costs.

**Local Government Mandates:**

This provision does not impose any additional mandates on local governments.

**Paperwork:**

There is no additional paperwork required as a result of this proposal.
**Duplication:**

This regulation does not duplicate any other State or federal regulation. It incorporates by reference amended federal standards and clarifies such standards for New York State chronic renal dialysis services.

**Alternatives:**

There are no viable alternatives. The current regulations in Part 757 are outdated and do not reflect current technology and practice. Federal changes in 42 CFR Part 494 renders the provisions in Part 757 that were incorporated by reference as obsolete.

**Federal Standards:**

This proposal incorporates by reference and conforms to the federal changes in 42 CFR Part 494. In addition it clarifies certain definitions, water and dialysate quality provisions and personnel provisions specific to New York State standards.

**Compliance Schedule:**

This 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 of Rule:

There are 246 ESRD sites in New York State and 120 ESRD operators. There are 8 large operators (100 employees or more) and 113 small operators (1 to 99 employees). Of the 246 ESRD sites, 73 are run by large operators and 173 are run by small operators.

Compliance Requirements:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. ESRD facilities are already in compliance with these provisions as this measure incorporates by reference amended federal standards and clarifies such standards for New York State chronic renal dialysis services. Therefore a cure period was not included in the rule.
**Professional Services:**

No additional professional standards are required as a result of this proposal. This measure incorporates by reference amended federal standards and clarifies such standards for New York State chronic renal dialysis services.

**Compliance Costs:**

None. This measure incorporates by reference amended federal standards and clarifies such standards for New York State chronic renal dialysis services.

**Economic and Technological Feasibility:**

This proposal is economically and technologically feasible.

**Minimizing Adverse Impact:**

There is no adverse impact.
**Small Business and Local Government Participation:**

Outreach to the affected parties is being conducted. Organizations who represent the affected parties and the public can also obtain the agenda of the Codes, Regulations and Legislation Committee of the Public Health and Health Planning Council (PHHPC) and the proposed regulation on the Department’s website. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

Dear Chief Executive Officer (CEO) letters were sent to affected parties outlining the components to the federal rule summarizing the general requirements that apply and linking them to the full text of the ruling online and a Departmental contact for any questions.
RURAL AREA FLEXIBILITY ANALYSIS

No Rural Area Flexibility Analysis is required pursuant to section 202-bb (4) (a) of the State Administration Procedure Act (SAPA). It is apparent, from the nature of the proposed amendment that it will not impose any adverse impact on rural areas, and the rule does not impose any new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.
JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201-a (2) (a) of the State Administration Procedure Act (SAPA). It is apparent, from the nature of the proposed amendment, that it will have no impact on jobs and employment opportunities.
Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 2803, and 4351 of the Public Health Law, Section 405.9 and Section 405.25 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Paragraph (9) of subdivision (f) of Section 405.9 is amended to read as follows:

(9) A dead body, including a stillborn infant or fetus estimated by an attending physician to have completed 20 weeks of gestation, shall be [delivered] released only to a licensed funeral director or undertaker or his/her agent[, and only after all donor and recovery responsibilities have been met by the hospital and the existing networks for the recovery of organs and tissues. If, at the time of death, the patient was diagnosed as having a specific communicable or infectious disease, including but not limited to those diseases designated in Part 2 of this Title, a written report of such disease shall accompany the body when it is released to the funeral director or his/her agent.

Subdivision (a) of Section 405.25 is amended to add new paragraphs (5) and (6) to read as follows:
(5) *reasonably available* shall mean that a person to be contacted can be contacted without undue effort and is willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(6) *domestic partner* shall mean a person who, with respect to another person:

(i) is formally a party in a domestic partnership or similar relationship with the other person, entered into pursuant to the laws of the United States or any state, local or foreign jurisdiction, or registered as the domestic partner of the person with any registry maintained by the employer of either party or any state, municipality, or foreign jurisdiction; or

(ii) is formally recognized as a beneficiary or covered person under the other person’s employment benefits or health insurance; or

(iii) is dependent or mutually interdependent on the other person for support, as evidenced by the totality of the circumstances indicating a mutual intent to be domestic partners including but not limited to: common ownership or joint leasing of real or personal property; common householding, shared income or shared
expenses; children in common; signs of intent to marry or become
domestic partners under subparagraph (i) or (ii) of this paragraph;
or the length of the personal relationship of the persons.

Each party to a domestic partnership shall be considered to be the domestic partner of
the other party. “Domestic partner” shall not include a person who is related to the
other person by blood in a manner that would bar marriage to the other person in
New York state. “Domestic partner” shall also not include any person who is less
than eighteen years of age or who is the adopted child of the other person or who is
related by blood in a manner that would bar marriage in New York state to a person
who is the lawful spouse of the other person.

Paragraph (1) of subdivision (b) of Section 405.25 is amended to read as follows:

(1) protocol for timely notification of the organ procurement organization, eye
bank or other tissue bank upon the death or imminent death of every patient, including
provisions specifying that for ventilator patients declared brain dead, the organ
procurement provider must be notified and be able to determine suitability for donation
prior to removal of such patients from the ventilator;
(i) when recovery responsibilities will be met by an organ procurement
organization (OPO), eye bank or other tissue bank, the hospital shall make available to
such OPO, eye bank or other tissue bank information regarding the choice of funeral
firm, name and phone number of funeral firm, contact information and other pertinent
information, to the extent available, to assure that the decedent is handled in a prompt and
sensitive manner appropriate to the wishes of the patient, family or other responsible
party.

Paragraph (3) of subdivision (b) of Section 405.25 is amended to read as follows:

(3) [a procedures for documenting in the patient’s medical record;]

(i) notification of the organ procurement organization, eye bank or other
applicable tissue bank(s) upon the death or imminent death of every patient [, and
the results of such notification and requests for consent or absence of a request];

(ii) requests for consent or the absence of a request, and the results of such
notifications and requests; and

(iii) information specific to a decedent’s wishes or the wishes of the
or other responsible party regarding choice of funeral firm, name and
phone number of funeral firm, to the extent available, and documentation that such funeral firm has been notified when recovery activities are expected to be completed to allow for the prompt release of the body.

Paragraph (1) of subdivision (c) of Section 405.25 is amended to read as follows:

( c ) (1) Where a patient is a suitable candidate for organ, eye or other tissue donation and where the patient has not properly executed an organ donor card, or other legally recognized authorization for organ, eye or other tissue donation, or otherwise given written authorization for such donation, the designated requestor shall, [in a timely manner,] at the time of death or imminent death of a hospital patient, [request the persons listed below,] cause a timely request [the persons listed below] to be made to any of the following persons, in the order of priority stated,. When persons in prior classes are not reasonably available, willing and able to act, and in the absence of actual notice of contrary intentions by the decedent, or actual notice of opposition by a person or persons in the highest priority available of the classes specified in this subdivision, or other reason to believe that an anatomic gift is contrary to the decedent’s religious beliefs, to consent to the gift of [all useful organs, tissues and/or other body parts] any part of the decedent's body for any purpose specified in article forty-three of the public health law:
(i) the person designated as the decedent’s health care agent under public health law article twenty-nine-C, subject to any written statement in the health care proxy form;

(ii) the person designated as the decedent’s agent in a written instrument under public health law article forty-two, subject to any written statement in the written instrument;

[(i)] (iii) the spouse, if not legally separated from the patient, or the domestic partner;

[(ii)] (iv) a son or daughter 18 years of age or older;

[(iii)] (v) either parent;

[(iv)] (vi) a brother or sister 18 years of age or older, or;

[(v)](vii) a guardian of the person of the decedent at the time of his[/her] death.
REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of this regulation is contained in Public Health Law (PHL) Sections 2803, and 4351. PHL Section 2803 outlines the powers and duties of the Commissioner. It also authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities. PHL Section 4351 requires hospital administrators to notify organ procurement organizations, eye banks and other tissue banks of all potential organ and tissue donors and requires the Commissioner to establish regulations concerning the procedures to be followed in requesting the donation.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services of the highest quality at a reasonable cost. The legislative objective of Section 4351 is to increase organ and tissue donation by setting forth a process to ensure hospital administrators notify organ procurement organizations, eye banks and other
tissue banks when the death of an individual has occurred or is imminent so that a request for consent to an anatomical gift can be made.

**Needs and Benefits:**

PHL Article 43-A, often referred to as the Routine Referral Law, contains provisions addressing the process for requesting consent to an anatomical gift, providing a list of those who can provide such consent, and providing for determination of suitability for organ and tissue donation, when a death occurs or is imminent in a hospital. Chapter 348 of the Laws of 2009 amended PHL Section 4351 to modify the provisions addressing who can provide consent for organ and tissue donation, and clarifying the meaning of “reasonably available,” making certain changes to the regulations necessary. Changes to the regulations are also being made in response to reports of bodies being removed from a hospital before a determination regarding donation status and arrangements for donation and recovery had been made. Some eye banks and other tissue banks claim that when that happens tissue recovery has occurred in a funeral establishment. The Department has sought, and continues to seek, to curtail any tissue recovery in funeral establishments.

If tissue recovery is prohibited in a funeral establishment and a dead body is removed from a hospital before a determination is made that the deceased is an organ or tissue donor, valuable organs or tissue could be lost that might otherwise be recovered. In order to prevent such loss and to prevent frustration of the wishes of the donor, a
determination should be made before discharge from the hospital that the deceased is an organ or tissue donor and that arrangements have been made for recovery.

Of the 793 tissue banks and nontransplant anatomic banks licensed by the Department, 107 banks recover, from deceased donors, tissue for transplantation, and/or nontransplant anatomic parts for research and education. Currently, no New York State funeral firms are licensed to recover tissue for transplantation from deceased donors. No funeral firms are licensed to recover nontransplant anatomic parts for research and education.

**Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:**

None. Hospitals are already required to make referrals for possible organ and tissue donation and to document the results of such requests in the patient’s medical record. The proposed amendments simply clarify and reflect the statutory requirements.

**Cost to State and Local Government:**

State and local government agencies that operate a general hospital would be affected to the same extent as other regulated parties.
Cost to the Department of Health:

There are no additional costs to the Department as a result of this regulation.

Local Government Mandates:

The regulation imposes no new program, service, duty, or responsibility on any county, city, town, village, school district, fire district, or other special district not already required by statute. A municipal government or district that operates a general hospital would be affected as described herein to the same extent as other regulated parties.

Paperwork:

No additional paperwork is required. PHL Section 4351 already requires the hospital to document determinations that the deceased is not an organ or tissue donor. This regulation only clarifies what information must be recorded in that process.

Duplication:

This regulation does not duplicate any other state or federal law or regulation. It does clarify that before discharging a dead body, a determination regarding donation status and arrangements for recovery must be made.
Alternative Approaches:

There are no other viable alternative approaches, as the regulations simply clarify, or are otherwise being amended to conform to, current statutory requirements. Furthermore, if this regulation is not adopted, dead bodies might still be removed from a hospital before the determination regarding donation status and arrangements for recovery have been made. These provisions reduce that risk by clarifying that the provisions in PHL Section 4351 be followed and documented before releasing the body to a licensed funeral director or undertaker or his/her agent.

Federal Standards:

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

This proposal will be effective upon publication of a Notice of Adoption in the New York State Register.
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Effect of Rule:

This proposal will impact funeral establishments, eye banks, and other tissue banks, organ procurement organizations (OPOs), nontransplant anatomic banks, and general hospitals. There are 1485 funeral establishments in New York State. Multiple funeral firms may be registered from a single establishment. In New York State there are 1870 funeral firms, all of which are small businesses. None of the eye or other tissue banks licensed to recover tissue in New York State are operated by small businesses or local governments. One nontransplant anatomic bank that recovers whole bodies for medical education is operated by a local government. None of the other non-transplant anatomic banks currently licensed to recover tissue in New York are operated by a small business or local government. Of the 234 general hospitals in New York State, 3 are considered small businesses.

Compliance Requirements:

A general hospital shall deliver a dead body, including a stillborn or fetus estimated by an attending physician to have completed 20 weeks of gestation, to a licensed funeral director or undertaker or his/her agent only after a determination has been made regarding donation status and arrangements for recovery as set forth in Public
Health Law Section 4351. In order to make a preliminary determination of the suitability for organ donation, the hospital must already notify the OPO, eye bank or tissue bank of the death or imminent death of every patient, and must document that notification in the patient's medical record, as well as document requests (or absence of requests) for consent to donation, and the results of such notifications and requests**. When recovery responsibilities will be met by an organ procurement organization (OPO), eye bank or other tissue bank, the hospital shall make available to the OPO, eye bank or other tissue bank information regarding the choice of funeral firm, name and phone number of such funeral firm, contact information and other pertinent information, to the extent available, to assure that the decedent is handled in a prompt and sensitive manner appropriate to the wishes of the patient, family or other responsible party. The hospital must also document that the funeral firm has been notified when recovery activities are expected to be completed to allow for the prompt release of the body. Where contact with the OPO, is not required under criteria developed regionally by the OPO subject to the approval of such criteria by the Department, the hospital must contact the appropriate eye bank or other tissue bank. All hospitals shall select at least one eye bank or tissue bank for the recovery of tissue and notify the OPO of its choice of tissue procurement providers. If a hospital selects more than one eye bank or tissue bank as a procurement provider, it may specify a rotation of referrals for purposes of tissue recovery. Where the OPO, eye bank or tissue bank is contacted, it must, in consultation with the hospital, after appropriate medical screening (which may include serological testing if applicable) determine suitability for organ, eye tissue and other tissue donation, as appropriate. When an OPO is contacted, it must contact the appropriate eye bank or tissue bank with respect to
suitability for eye tissue or other tissue donation. If the eye bank or other tissue bank
determines that organ, eye tissue or other tissue donation is not appropriate based on
established medical criteria, this must be noted by hospital personnel on the patient’s
medical record and no further action with respect to organ, eye tissue or other tissue
donation is necessary.

**Professional Services:**

Hospital professional staff will need to consult with the OPO, tissue or eye bank
regarding donation status and arrangements for recovery as set forth in PHL Section 4351
and document that the deceased is not an organ or tissue donor before releasing the body
to a licensed funeral director or undertaker or his/her agent. All responsibilities must be
met by the hospital and the contracted OPO, eye and tissue bank for the recovery of
organs and tissues. Those obligations have already been imposed by Article 43-A. This
revision, while reinforcing existing hospital recovery duties, will support regulatory
revisions proposed for 10 NYCRR Parts 77 (Funeral Directing, Undertaking and
Embalming) and 10 NYCRR 52 (Tissue Banks and Nontransplant Anatomic Banks) to
eliminate the inappropriate recovery of tissue in funeral establishments.

**Compliance Costs:**

Hospitals are already required to make referrals for possible organ and tissue
donation and to document the results of such requests in the patient’s medical record.
State and local government agencies that operate a general hospital would be affected to the same extent as other regulated parties.

**Economic and Technological Feasibility:**

Public Health Law (PHL) Section 4351 already sets forth the process hospital administrators, organ procurement organizations, eye banks and other tissue banks must follow to request consent for an anatomical gift. These provisions simply clarify that process and will not require any additional funding or other resources. There will be no need for any additional technology or technical support. This proposal is economically and technically feasible.

**Minimizing Adverse Impact:**

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included.

Upon review of this proposal it was determined that the Routine Referral Law is already in effect. These provisions merely clarify that provisions in PHL Section 4351 be followed and documented before releasing the body to a licensed funeral director or undertaker or his/her agent and do not fundamentally change obligations under the
existing regulations. As the rule does not involve the establishment or modification of a violation or penalties associated with a violation, a cure period is not required and was not included in this rule.

**Small Business and Local Government Participation:**

Outreach to the affected parties is being conducted. They include general hospitals, funeral directors, and all organ procurement organizations (OPOs), eye banks and other tissue banks doing business in New York State. Also, organizations representing the affected parties are given notice of this proposal by its inclusion on the agenda of the Codes and Regulations Committee of the Public Health and Health Planning Council (PHHPC). The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.
RURAL AREA FLEXIBILITY ANALYSIS

Effect of Rule:

All rural areas in New York State (43 counties with a population of less than 200,000 population and 9 counties with townships with population densities of 150 persons or less per square mile) will be affected by this rule the same as all other areas of the State. This proposal will impact funeral establishments, eye banks, and other tissue banks, nontransplant anatomic banks, organ procurement organizations (OPOs), and general hospitals. There are 1485 funeral establishments in New York State. Multiple funeral firms may be registered from a single establishment. In New York State there are 1870 funeral firms. There are approximately 540 funeral firms in rural areas in New York State. There are 234 general hospitals in New York State, including 47 hospitals that meet the definition of a rural hospital as defined in Section 700.2 of Title 10 of the New York Codes Rules and Regulations (10 NYCRR section 700.2).

Compliance Requirements:

A general hospital shall deliver a dead body, including a stillborn or fetus estimated by an attending physician to have completed 20 weeks of gestation, to a
licensed funeral director or undertaker or his/her agent only after a determination has been made regarding donation status and arrangements for recovery as set forth in Public Health Law Section 4351. In order to make a preliminary determination of the suitability for organ donation, the hospital must notify the OPO, eye bank or tissue bank of the death or imminent death of every patient, and must document that notification in the patient's medical record, as well as document requests (or absence of requests) for consent to donation, and the results of such notifications and requests. When recovery responsibilities will be met by an organ procurement organization (OPO), eye bank or other tissue bank, the hospital shall make available to the OPO, eye bank or other tissue bank information regarding the choice of funeral firm, name and phone number of such funeral firm, contact information and other pertinent information, to the extent available, to assure that the decedent is handled in a prompt and sensitive manner appropriate to the wishes of the patient, family or other responsible party. The hospital must also document that the funeral firm has been notified when recovery activities are expected to be completed to allow for the prompt release of the body. Where contact with the OPO, is not required under criteria developed regionally by the OPO subject to the approval of such criteria by the Department, the hospital must contact the appropriate eye bank or other tissue bank. All hospitals shall select at least one eye bank or tissue bank for the recovery of tissue and notify the OPO of its choice of tissue procurement providers. If a hospital selects more than one eye bank or tissue bank as a procurement provider, it may specify a rotation of referrals for purposes of tissue recovery. Where the OPO, eye bank or tissue bank is contacted, it must, in consultation with the hospital, after appropriate medical screening (which may include serological testing if applicable) determine
suitability for organ, eye tissue and other tissue donation, as appropriate. When an OPO is contacted, it must contact the appropriate eye bank or tissue bank with respect to suitability for eye tissue or other tissue donation. If the eye bank or other tissue bank determines that organ, eye tissue or other tissue donation is not appropriate based on established medical criteria, this must be noted by hospital personnel on the patient’s medical record and no further action with respect to organ, eye tissue or other tissue donation is necessary.

**Professional Services:**

Hospital professional staff must consult with the OPO, tissue or eye bank regarding donation status and arrangements for recovery as set forth in PHL Section 4351 and document that the deceased is not an organ or tissue donor before releasing the body to a licensed funeral director or undertaker or his/her agent. All responsibilities must be met by the hospital and the contracted OPO, eye and tissue bank for the recovery of organs and tissues. The proposed amendments, while reinforcing hospital recovery duties already imposed by statute, will support additional regulatory revisions proposed for 10 NYCRR Parts 77 (Funeral Directing, Undertaking and Embalming) and 10 NYCRR 52 (Tissue Banks and Nontransplant Anatomic Banks) to eliminate the inappropriate recovery of tissue in funeral establishments.
Compliance Costs:

Hospitals are already required to make referrals for possible organ and tissue donation and to document the results of such requests in the patient’s medical record. Rural hospitals would be affected to the same extent as other regulated parties.

Economic and Technological Feasibility:

Public Health Law (PHL) Section 4351 already sets forth the process hospital administrators, organ procurement organizations, eye banks and other tissue banks must follow to request consent for an anatomical gift. These provisions clarify that process and will not require any additional funding or other resources. There will be no need for any additional technology or technical support. This proposal is economically and technically feasible.

Minimizing Adverse Impact:

The Routine Referral Law is already in effect. These provisions merely clarify that provisions in PHL Section 4351 be followed and documented before releasing the body to a licensed funeral director or undertaker or his/her agent, and do not fundamentally change the obligations under the existing regulations.
Rural Area Participation:

Outreach to the affected parties is being conducted. They include general hospitals, funeral directors, and all organ procurement organizations (OPOs), eye banks and other tissue banks doing business in New York State. Also, organizations that represent the affected parties, including those who represent rural areas, are given notice of this proposal by its inclusion on the agenda of the Codes and Regulations Committee of the Public Health and Health Planning Council (PHHPC). The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.
A Job Impact Statement is not included because the Department has concluded that the proposed regulatory amendments will not have a substantial adverse effect on jobs and employment opportunities. The basis for that conclusion is that these amendments merely clarify the obligations set forth in Section 4351 of the Public Health Law and require that they be followed and compliance documented before releasing the body to a licensed funeral director or undertaker and his/her agent. The amendments do not fundamentally change any obligations under the existing regulations.
SUMMARY OF EXPRESS TERMS

This proposal amends Section 405.13, repeals Subdivisions (b) and (j) of Section 405.22 and adds Sections 405.30 and 405.31 to Part 405 (Hospitals – Minimum Standards) of Title 10 of the Official Code of Rules and Regulations of the State of New York (10 NYCRR) particularly as they relate to organ transplant and donor services. Hospitals as referred to in Part 405 are general hospitals.

Section 405.13 of Part 405 pertains to anesthesia services. This amendment specifies that hospitals providing living liver donor transplants must also comply with the provisions contained in the newly added Section 405.31, subdivision (o) paragraph (2). Section 405.31 sets forth the living donor transplantation services provisions. Subdivision (o) of Section 405.31 outlines the living adult donor to adult recipient liver transplantation services provisions and paragraph (2) proposes the anesthesia requirements within Section 405.31.

Section 405.22 contains the critical care and special care services provisions. This measure repeals the organ transplant center and live liver transplantation services contained within Section 405.22 in subdivisions (b) and (j) respectively.
Two new sections are created in this proposal. Section 405.30 sets forth the organ and vascularized composite allograft transplant services/programs provisions. Section 405.31, as stated above, sets forth the living donor transplantation services provisions.

The organ and vascularized composite allograft transplant services/programs provisions in Section 405.30 define the terms “living donor”, “organ”, “organ procurement organization (OPO)”, “organ trafficking”, “patient”, “qualified mental health professional”, “qualified social worker”, “recipient”, “transplant center”, “transplant commercialism”, “transplant program”, “transplant services”, “transplant tourism”, “travel for transplant”, and “vascularized composite allograft”. This section specifies general requirements for hospitals that provide transplant services, and also outlines organization and staffing and quality assessment and performance improvement (QAPI) requirements.

Section 405.31 outlines the living donor transplantation services requirements. It specifies that hospitals performing living donor transplants shall comply with the requirements of this section, section 405.30 (See above) and with subdivision (a) of Section 405.22 of this Part. Section 405.22 subdivision (a) contains the general provisions of the critical care and special care services requirements. Section 405.31 also defines a donor advocate as a person or team responsible for ensuring that the rights and interests of the living donor and the prospective living donor are protected. It sets forth donor advocate responsibilities, donor advocate requirements, education of the donor requirements, informed consent provisions, disclosure requirements, risks, primary
medical evaluation and psychosocial provisions, recipient criteria, donor management, imaging service, discharge planning and post-discharge requirements. This section contains the living adult donor to adult recipient liver transplantation services provisions and outlines the surgical team, anesthesia, postoperative care, and minimum medical and nursing staffing requirements.
EXPRESS TERMS

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to the approval by the Commissioner of Health pursuant to Sections 2800 and 2803 of the Public Health Law, Section 405.13 is amended, Subdivisions (b) and (j) of Section 405.22 are repealed, and new Sections 405.30 and 405.31 are added to Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

The introductory paragraph of section 405.13 of Part 405 is amended to read as follows:

405.13 Anesthesia services.

If anesthesia services are provided within a hospital, the hospital shall develop, implement and keep current effective written policies and procedures regarding staff privileges, the administration of anesthetics, the maintenance of safety controls and the integration of such services with other related services of the hospital to protect the health and safety of the patients in accordance with generally accepted standards of medical practice and patient care. Hospitals providing living liver donor transplants shall also comply with the provisions contained in Section 405.31 (o) (2).
405.22 Critical care and special care services.

Section 405.22 of Part 405 is amended to repeal Subdivisions (b) and (j), of such section. Subdivision (b) shall read as follows:

(b) Reserved.

A new Section 405.30 of Part 405 is added to read as follows:

405.30 Organ and Vascularized Composite Allograft Transplant Services/Programs.

(a) Definitions. For purposes of this section, unless the context indicates otherwise, the following shall have the following meanings:

(1) Living donor is an individual who donates an organ or a vascularized composite allograft while alive.

(2) Organ means a human kidney, heart, liver, lung, pancreas, uterus, stomach, intestine, and/or any other tissue requiring revascularization and/or immunosuppression in the recipient.

(3) Organ procurement organization (OPO) means a facility or institution engaged in procuring organs and/or vascularized composite allografts for transplantation,
and therapy purposes, or as authorized by law for education and research but does not include:

(i) facilities or institutions which permit procurement activities to be conducted on their premises by employees or agents of an approved organ procurement organization; or

(ii) facilities or consortia of facilities which conduct transplantation activities in accordance with article 28 of this chapter when the organ is procured through an approved organ procurement organization, or from a living donor.

(4) *Organ trafficking* is the recruitment, transport, transfer, harboring or receipt of living or deceased persons or their organs by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation.

(5) *Patient* means either the living donor or the recipient:
(i) Adult means a patient 18 years of age or older at the time of the transplant;

(ii) Pediatric patient means a patient who has not reached his or her eighteenth birthday at the time of the transplant.

(6) Qualified mental health professional shall mean a psychiatrist, psychologist, or qualified social worker assigned to evaluate the potential recipient and/or living donor.

(7) Qualified social worker shall mean a person who is licensed and registered by the State Education Department to practice as a licensed master social worker (LMSW) or licensed clinical social worker (LCSW), within the scope of practice defined in Article 154 of the Education Law.

(8) Recipient is an individual who receives transplanted organs, or a vascularized composite allograft.

(9) Transplant center means a unit within a hospital that performs transplants, including but not limited to activities such as qualifying patients for transplant, registering patients on the national wait list, performing transplant surgery and providing care before and after transplant. A transplant center may include one or more transplant programs.
(10)  *Transplant commercialism* is a policy or practice in which an organ is treated as a commodity, including being bought, sold, or used for material gain.

(11)  *Transplant program* means the persons or entity that provides organ specific transplant services within a transplant center.

(12)  *Transplant services* means the provision of organ, living donor and or vascularized composite allograft transplants and other medical and surgical specialty services required for the care of transplant recipients and living donors.

(13)  *Transplant tourism* is travel for transplant that involves organ trafficking and/or transplant commercialism.

(14)  *Travel for transplant* is the movement of organs, vascularized composite allografts, donors, recipients, or transplant professionals who travel across jurisdictional borders for transplant purposes.

(15)  *Vascularized composite allograft* means a contiguous segment of mixed allogeneic tissues whose relationships have been altered only at the segment boundaries and whose transplantation requires revascularization and/or immunosuppression in the recipient. Vascularized composite allografts include, but are not limited to, hand, face, and other such contiguous segments.
(b) **General requirements.** Hospitals shall not admit patients for transplantation services unless the hospital is specifically approved by the Department to provide transplant services. Transplant services for pediatric patients shall only be provided in a hospital approved by the Department to provide transplant services. Hospitals that provide pediatric transplant services must comply with subdivision (a) of Section 405.22 of this Part and must develop and adhere to written policies and procedures specific to pediatric patients.

In addition, the following standards apply to all transplant centers and programs:

1. Transplant services, or any new Institutional Review Board (IRB) approved medical/surgical treatments which require the expertise of transplant medical/surgical care including but not limited to transplant immunology, shall be performed only in hospitals approved by the department to perform such transplant services.

2. The hospital shall be a member of the Organ and Procurement and Transplantation Network (OPTN) approved by the Secretary, U.S. Department of Health and Human Services (HHS) and shall abide by its rules and requirements.

3. When fully operational, to ensure quality of care, the hospital shall perform at least 10 liver transplants per year if an approved liver transplant program, or at least 10 human heart transplants if an approved heart transplant program, or at least 10 kidney
transplants a year if an approved kidney transplant program, or at least 10 lung
transplants per year if an approved lung transplant program. The department will monitor
outcomes for graft and patient survival.

(4) The hospital shall participate in a patient registry program with an organ
procurement organization designated by the Secretary of the U. S. Department of Health
and Human Services. Each facility performing transplant services shall inform a patient
awaiting transplantation of the prohibition against being placed on multiple facility
waiting lists within New York State before arranging for the placement of the patient on
the waiting list.

(5) Every hospital performing transplant services shall maintain written criteria for
the selection of patients for such services which shall be consistent with professional
standards of practice, applied consistently, and made available to the public.

(6) The hospital shall maintain a record of:

(i) all patients who are referred for transplantation and the date of their referral;
(ii) the results of the evaluation of all candidates for transplantation which documents
the reasons a candidate is determined to be either suitable or unsuitable for
transplantation;
(iii) the psychosocial evaluation;
(iv) the date a suitable candidate is selected for transplantation;
(v) the reasons for, and date of, any declination of a matching organ or vascularized composite allograft offered to a potential recipient;

(vi) the date the transplantation surgery occurred;

(vii) documentation of donor and recipient blood type;

(viii) the donor’s United Network for Organ Sharing (UNOS) identification number; and

(ix) the organs or vascularized composite allografts utilized;

(7) The hospital will ensure that appropriate informed consent is obtained from both the recipient and the donor. The process for obtaining such consent shall include the provision of information, at a minimum of the following:

(i) the evaluation process used to determine suitability for transplant;

(ii) the surgical procedure including the post-operative period;

(iii) the availability of alternative treatments;

(iv) organ donor risk factors that could affect the success of the graft or the health of the patient, including, but not limited to, the donor’s history, condition or age of the organs or vascularized composite allografts used, and the recipient’s potential risk of contracting the human immunodeficiency virus (HIV) and other infectious diseases if the disease cannot be detected in an infected donor;

(v) if applicable, providing adequate information to the recipient to ensure his or her understanding regarding the risks to the living donor;

(vi) potential medical and psychosocial risks;
(vii) the national and transplant center outcomes for recipients;

(viii) the patient’s right to refuse transplantation, or to refuse to be a donor; and

(ix) the effect that provision of transplant services provided in a facility not approved as a Medicare-approved transplant center could have on the recipient’s ability to have his or her immunosuppressive drugs paid for under Medicare Part B.

(8) The hospital must utilize an organized system for follow-up of patients after discharge, including maintenance of records on the long-term survival of persons who have received a transplant or who have made a living donation. Transplant centers must follow the health of each donor for at least two years post-donation.

(9) The hospital shall ensure that written procedures are maintained and implemented for the receipt, identification, and verification of all organs and vascularized composite allografts for transplantation.

(10) The hospital shall develop and maintain written infection control policies and procedures specific to the transplant services as an integral part of the hospital’s infection control program.

(11) The hospital shall ensure that the infection control program utilizes sufficient professional and laboratory resources to address transplant-related transmissible infections, including discovery, identification and management of complications from organisms associated with transplants whether commonly or uncommonly encountered.
(12) Each transplant center shall develop and implement a policy that establishes its formalized process of communication with OPOs, center’s clinical staff, the department and as appropriate, local/city departments of health with regard to suspected and confirmed donor disease transmission. This policy shall include:

(i) identification of a patient safety contact, with coverage so that there is a person available on a 24 hour, 7 days a week, 365 days a year basis, to be the primary contact for possible disease transmission events;

(ii) a procedure to promptly contact the OPO that recovered the organ whenever a suspected disease transmission has occurred;

(iii) prompt communication and documentation after awareness of the suspected transmission;

(iv) identification of an infectious disease resource to be available to them to assist in the evaluation of a potential disease transmission; and

(v) notification and documentation to the program director or designee, of the transplant program, and mechanisms to ensure that the information is acted upon in a timely manner.
Every transplant center shall develop and implement a policy on travel for transplant including, transplant tourism, transplant commercialism and organ trafficking. At a minimum, such policy shall include:

(i) a requirement that the transplant team inform all potential donors and recipients of the state and federal laws prohibiting the sale of organs or vascularized composite allografts;

(ii) a requirement that the medical risks of receiving an organ or vascularized composite allografts in a foreign country, in particular, the risk of infectious disease transmission to and from the recipient, are explained to the potential recipient;

(iii) patient education regarding transplant tourism including the ethical and safety concerns, such as poor communication and documentation regarding the transplant from the foreign transplant center, which can contribute to post-operative complications.

(iv) information that participation in transplant commercialism and or organ trafficking may violate the laws of the countries involved as well as international treaties or conventions; and

(v) obtaining a written attestation from the living donor attesting that the donor has not received anything of value in exchange for the donation, aside from reimbursement for expenses associated with the donation to the extent allowed by New York State and
US federal law. The recipient must also attest in writing that he or she has not offered and is not aware of any offers of valuable consideration to the donor for their donation, except as allowed by New York State or US federal law.

(14) Transplant centers that provide liver transplant services must join and be a member in good standing of a recognized consortium organization providing quality assurance, peer review, data sharing, and best practices collaboration activities for liver transplant services. If such a consortium(s) exists for other transplant services, such as heart or kidney, transplant centers must join the appropriate organization relevant to the transplants it performs and be a member in good standing.

(15) Review and Approval. Site visits to and/or data and record reviews from existing and prospective new transplant centers by the department, or other designees of the commissioner shall be made as deemed appropriate by the department, as an adjunct to initial approval and/or for consideration of continued approval. Such site visits and reviews shall include, but not be limited to evaluation of data, review of service-specific quality of care, and compliance with minimum standards as set forth in this section.

(16) Closure.

(i) Failure to meet one or more statutory or regulatory requirements or inactivity in a program for a period of 12 months or approval to serve as a transplant center.

(ii) Voluntary closure. The hospital must give written notification, including a closure plan acceptable to the department at least 60 days prior to planned discontinuance
of transplant services. No transplant service shall discontinue operation without first obtaining written approval from the department.

(17) Notification of significant changes. A hospital must notify the department in writing within 7 days of any significant changes in its transplantation services including, but not limited to: (a) any temporary or permanent suspension of services, (b) departure of or change in the physician program director, (c) unavailability of the transplant surgeon or physician of more than 15 days, if a program is without a physician credentialed to perform one or more of the procedures or services of the transplant service as a result of such unavailability, or (d) inability to meet workload requirements.

(18) Data collection and reporting. Data and other governmental and accrediting body reports shall be maintained and made available to the Department upon request.

(c) Organization and staffing.

(1) The director of the transplant center, in addition to the requirements in paragraph (1) of subdivision (a) of section 405.22 of this Part, shall be a qualified specialist with previous experience and demonstrated competence in the transplant service. The director is responsible for planning, organizing, conducting, and directing the transplant center and must devote sufficient time to carry out these responsibilities including, but not limited to overseeing the transplant center's quality assurance and performance improvement (QAPI) program.
(2) Each transplant center shall have on-site a qualified transplant physician and a qualified transplant surgeon who may also fulfill the requirement as director of the service.

(3) The hospital shall provide a clinical transplant coordinator and sufficient staff to coordinate the activities of the transplant center, including patient follow-up after discharge. The clinical transplant coordinator shall be a registered professional nurse, registered physician assistant, or nurse practitioner, licensed and currently registered or certified to practice in New York State.

(4) The hospital shall ensure that all staff members providing transplant services are prepared for their responsibilities through ongoing education, experience, demonstrated competence and completion of in-service education programs as needed.

(5) From admission to discharge, patient care evaluation, planning and management shall be performed by a multidisciplinary care team involved with the care of the patient; (which includes, at a minimum physicians; both medical and surgical, nursing, social services, the clinical transplant coordinator, nutrition services as needed and pharmacy as needed), and shall include plans for post discharge follow-up of the patient. The patient and, as appropriate, the patient’s family shall be involved and have input into the patient’s care plan.
(6) The transplant center shall make available nutritional assessments and diet counseling services to all transplant recipients and donors.

(7) The transplant center shall make psychiatric and social services available to patients to assist with psychosocial problems of the patients, as it relates to the donation, and to allow them to participate as members of the health care team responsible for the patient’s care. Such professionals shall be skilled in individual and family counseling, shall understand the entire donation and transplantation process, and be able to provide information on financial issues and community resources.

(d) **Quality assessment and performance improvement (QAPI) programs.**

(1) The transplant center must develop, implement and maintain a written, comprehensive, data driven QAPI program to monitor and evaluate performance of all transplantation services, including services provided under contract or arrangement;

(2) The transplant center’s QAPI program must use objective measures to evaluate the center’s performance with regard to transplantation activities and outcomes. Outcome measures may include, but are not limited to: patient and donor selection criteria, accuracy of the waiting list in accordance with the Organ Procurement Transplantation Network (OPTN) waiting list requirements, accuracy of donor and recipient matching, patient and donor management, techniques for organ and vascularized
composite allograft recovery, consent practices, patient education, patient satisfaction, and patient rights;

(3) The transplant center must take actions that result in ongoing performance improvements and track performance to ensure that improvements are sustained;

(4) A transplant center must establish and implement written policies to address and document adverse events that occur during any phase of an organ or vascularized composite allograft transplantation case;

(5) The policies must address, at a minimum, the process for the identification, reporting, analysis, and prevention of adverse events;

(6) The transplant center must conduct a thorough analysis of and document any adverse event and must utilize the analysis to effect changes in the transplant center’s policies and practices to prevent repeat incidents.

(e) *Organ and vascularized composite allograft acceptance criteria.*

(1) In consultation with an organ procurement organization, the hospital shall develop and uniformly apply organ and vascularized composite allograft acceptance criteria and establish written policies and procedures to ensure the medical suitability of organs and vascularized composite allografts to be transplanted. Hospitals shall also develop and
uniformly apply acceptance criteria for living donors. Such acceptance criteria shall be consistent with professional standards of practice, and shall ensure that the living donor is at least eighteen (18) years of age at the time of the initial living donor evaluation. Specific medical conditions of the donor shall be determined by the transplant surgeon through the donor’s medical history, appropriate clinical laboratory testing and other confirmation methods and must be documented in the recipient’s medical record. An emancipated minor as defined in Public Health Law Section 2504 may be considered for a living donation in the case of a living donation from an emancipated minor parent to his or her child.

(2) Written organ and vascularized composite allograft acceptance criteria shall be specific for each type of organ or vascularized composite allograft and shall describe those medical conditions and circumstances which would make the potential donor ineligible.

(3) Written organ and vascularized composite allograft acceptance criteria shall describe those medical conditions for which medical discretion may be exercised. The potential recipient will be fully informed of the risks and benefits of that the particular solid organ or vascularized composite allograft.

A new Section 405.31 of Part 405 is added to read as follows:

Section 405.31 Living donor transplantation services.
Hospitals performing living donor transplants shall comply with the requirements of this section, section 405.30 and with subdivision (a) of Section 405.22 of this Part. In addition, the following standards apply to all living donor transplant services:

(a) **Definition.**

   (1) *Donor advocate* is a person or a team responsible for ensuring that the rights and interests of the living donor and the prospective living donor are protected.

(b) *Donor advocate responsibilities.* A donor advocate shall be established for any living donor transplantation program. The transplant program shall, as appropriate, consult with an ethicist, and a psychiatrist or other qualified mental health professional, as defined in Section 405.30 (a)(11) of this Part; (Discuss) The donor advocate’s primary responsibility is to support the donor, beginning with the donor evaluation process and continuing through donation, the postoperative period, and discharge, and to ensure that there are appropriate referrals for post discharge care. The advocate shall assist the donor in making informed decisions and balancing external/family pressures to donate. The advocate must evaluate the donor and make a recommendation concerning donor suitability and ensure that the needs of the donor are fulfilled promptly and in accordance with best medical practice. The advocate shall:

   (1) Structure the process of informed consent;
(2) Safeguard the interests and well being of the donor;

(3) Explain the evaluation process, what to expect, what it means to be a donor;

(4) Verify that such living donor is at least 18 years of age at the time of the initial transplant evaluation related to the transplant procedure or is an emancipated minor donating to his or her child;

(5) Ensure all decisions made by the donor are informed and not coerced by:
   (i) evaluating whether there is monetary or property enrichment for the donor, and ensuring the donor signs an attestation as specified in Paragraph (4) of this subdivision;
   (ii) evaluating whether there is overt coercion to donate by family or others;
   (iii) assessing the donor’s intellectual and emotional capability of participating in a balanced discussion of potential risks and benefits;
   (iv) providing information to the donor about the medical, psychosocial, and financial implications of the living donation for the potential donor and about the recipient’s options for deceased donation transplant, including risks and outcomes;
   (v) ensuring the donor understands that he or she may decline to donate at any time prior to his or her surgery; and
   (vi) if requested by the donor, assisting the donor in the preparation of a general statement of unsuitability for donation, which shall not include falsified medical information.

(6) consult with the surgical team regarding donor suitability before issuing a formal recommendation;
transmit donor advocate findings in writing to the surgical team. The transmittal shall include the reasons for the donor advocate’s recommendation. The final determination of donor suitability rests with the attending surgeons of the surgical team;

The potential donor will be advised of the donor advocate’s recommendation. At least one attending surgeon and, the donor advocate shall make themselves available to the potential donor upon his or her request to discuss the donor advocate’s recommendation; and

assure there is continuity of care during hospitalization and assure that there are appropriate referrals for post-discharge care.

(c) Donor Advocate requirements.

Such donor advocate or, in the case of multiple members of a donor advocate team, at least one member of the donor advocate team must not participate in the care of transplant recipients. The advocate’s interests shall be centered on the well being of the living donor.

The donor advocate shall not receive any direct or indirect benefit from recommending continuation of the donor’s participation.
(3) The status of the donor advocate at the transplant center may not be affected by recommending for or against donation.

(4) The donor advocate shall be medically sophisticated in transplantation and aware of relevant statistics such as center volume and outcome data, and be able to explain such information to the potential donor.

(5) The donor advocate shall have sufficient preparation in his or her role to recommend that a specific donor is or is not a candidate for living donation.

(6) The donor advocate shall have a comprehensive working knowledge of living donor transplantation.

(d) Education of the donor.

In order to ensure that the potential donor advocate has the knowledge and capacity to exercise informed consent, the advocate shall do the following:

(1) thoroughly evaluate the intellectual and emotional capacity of the potential donor to exercise legally and ethically adequate informed consent as described in paragraph (c) of this subdivision;
(2) devise a process appropriate for each individual potential donor to inform him or her orally and in writing about the risks and benefits of medical interventions;

(3) evaluate whether there is a thorough understanding of the elements of the decision;

(4) evaluate whether the potential donor’s decision is voluntary;

(5) inform the potential donor that the donor advocate may recommend against donation and that the advocate’s recommendation will be given significant consideration in the surgical team’s decision. The reasons for the advocate’s decision shall be explained to the donor; and

(6) advise the potential donor of the opportunity to discuss donation with others who have donated in the past and assist in making arrangements to do so, if requested by the donor.

(e) Informed Consent. A person who gives consent to be a living donor shall be competent, willing to donate, free from coercion, medically and psychosocially suitable, fully informed of the risks and benefits as a donor, fully informed of the risks, benefits and any alternative treatments available to the recipient, at least eighteen (18) years of age at the time of the initial donor’s evaluation related to the transplant procedure, and be likely to benefit in a way not involving the transfer of money or
property in connection with the donation, other than reimbursement of donation-related expenses as allowed by law. Informed consent shall include:

(1) informed understanding:

(i) all information shall be presented to the potential donor in a language or manner understandable to him or her, consistent with his or her education level;

(ii) The potential donor shall be given the opportunity and adequate time to assimilate the information provided, ask questions and have questions answered;

(iii) The donor shall identify the family and loved ones who shall be given the opportunity to discuss openly with the donor advocate and the surgical team their concerns in a safe and non-threatening environment; and

(iv) The potential donor shall be informed with regard to the need for postoperative, long-term follow-up and testing by the transplant center. The need and importance for long term follow-up and annual primary care shall also be provided to the donor.

(f) Disclosure Requirements.
(1) The donation process shall be explained to the potential donor. This explanation shall address, at a minimum:

(i) donor evaluation procedure;
(ii) surgical procedure;
(iii) recuperative period;
(iv) short and long term follow-up care;
(v) alternative donation and transplant procedures;
(vi) potential psychological benefits and detriments to the donor;
(vii) transplant center and surgeon specific statistics of donor and recipient outcomes;
(viii) confidentiality of the donor’s information and decision;
(ix) donor’s ability to opt out at any point in the process up to the time of surgery; and
(x) information about how the transplant center will follow the health of the donor for at least ten years post donation.

(2) The transplant team and the donor advocate shall disclose their institutional affiliations to the potential donor.

(g) **Risks.** Risks shall be fully explained to the potential donor. The explanation shall include:

(1) Physical;
(i) potential for surgical complications including risk of donor death;
(ii) potential for organ failure and the need for transplantation,

(iii) potential for other medical complications including long-term complications;

(iv) scars;

(v) pain;

(vi) fatigue;

(vii) abdominal and/or bowel symptoms such as bloating and nausea;

2) Psychosocial

(i) potential for problems with body image;

(ii) possibility of recipient death;

(iii) possibility of recipient rejection and need for retransplantation;

(iv) possibility of recurrent disease in the recipient;

(v) possibility of adjustment disorder post surgery;

(vi) possible impact on donor’s family;

(vii) possible impact on recipient’s family; and

(viii) potential impact of donation on the donor’s lifestyle.

3) Financial.

(i) out of pocket expenses;

(ii) possible loss of employment;

(iii) potential impact on ability to obtain future employment;
(iv) potential for disability benefits and need for assistance completing relevant paperwork; and

(v) possible impact on ability to obtain health and life insurance.

(4) Documentation. The entire disclosure and consent process shall be documented in the donor’s medical record, which shall be maintained separate and distinct from the recipient’s medical record. The donor shall sign a document attesting that the donor has not received anything of value in exchange for the donation, aside from reimbursement for expenses associated with the donation to the extent allowed by New York State or federal law. The recipient will also sign a document attesting that he or she has not offered to the donor, nor is aware of any offer or provision to the donor of anything of value in exchange for the donation, aside from reimbursement for expenses associated with the donation to the extent allowed by New York State or federal law.

(h) Primary Medical Evaluation. A medical evaluation of the potential donor shall be made by an appropriate medical physician. Appropriate laboratory and imaging studies shall be done. Additionally, the following shall also be assessed:

(1) compatibility of the potential donor to the recipient;
(2) general health of, and surgical risk for, the potential donor;
(3) co-morbidities and significant medical conditions that impact the potential donor’s suitability;
(4) the potential donor’s vulnerability to infection, blood loss, or delayed wound healing; and the potential donor’s personal and family medical history.

(i) *Psychosocial.*

(1) A psychosocial evaluation of the potential donor shall be made by the qualified mental health professional, as defined in Section 405.30 (a) (11) of this Title. The evaluation shall include, but not be limited to: consideration of the donor’s current and past history of: any psychiatric illness, physical abuse, sexual abuse, alcohol abuse, and substance abuse.

(2) Social work services shall be provided in accordance with Section 405.28 of this Part as well as any additional requirements established in this subdivision.

(j) *Recipient Criteria.* The transplant center must establish written policies and procedures governing recipient eligibility for living donation. At a minimum, such policies and procedures shall:

(1) ensure the patient meets the center’s written eligibility criteria as specified in paragraph (5) of subdivision (b) and subdivision (e) of Section 405.30 of this Part;

(2) ensure the recipient has received information regarding specific risks and benefits, alternative treatments and expected outcome of the transplantation;
(3) establish conditions which require recipient exclusion; and

(4) ensure that the benefits to both the donor and the recipient outweigh the risks before any living transplant is performed.

(k) **Donor Management.**

(1) The donor surgeon shall have the primary responsibility for the donor’s care and welfare throughout his or her hospital stay.

(i) The donor surgeon is responsible for making the final determination regarding a donor’s suitability after reviewing and considering the donor’s medical, psychological, and social history; the donor’s current medical, psychological and social status; the recommendation of the donor advocate, all consultative reports; and the standards set forth in this subdivision.

(ii) If the donor surgeon decides to proceed with a donation after receiving an adverse recommendation from the donor advocate, the surgeon shall document the reasons for doing so in the patient’s medical record.

(l) **Imaging Service Requirements.**
Hospitals performing living donor transplantation shall have adequate imaging services and staff support appropriate to evaluate recipients and living donors. Radiologists with experience in interventional procedures (angiography) and ultrasound imaging studies in the living donor and recipient, must be available at all times including weekends and holidays. If there is an emergent complication requiring imaging services, these patients should be prioritized for access to such imaging services by the hospital.

(m) Discharge Planning Requirements.

The hospital shall comply with the discharge planning requirements contained in Section 405.9 of this Part as well as the following:

(1) The donor advocate shall be available to the donor from pre-admission to post-discharge.

(2) A detailed, written discharge plan shall be developed, given to the donor and provided to all health care professionals involved in the donor’s case, including the donor’s primary care physician.

(3) This plan shall be reviewed with the donor by a health care professional such as a registered professional nurse, Qualified Social Worker or transplant coordinator.

(4) The plan shall include, at a minimum, instructions on:
(i) activities;

(ii) diet;

(iii) medication for pain; and

(iv) wound care.

(5) The patient shall be provided with a 24-hour contact number that he/she can call with questions. The responder shall be available when needed and knowledgeable about living donation.

(6) Information shall include the name, address and telephone number of the surgeon and instructions for the follow-up visit.

(7) Instructions for family members or caregivers shall be provided.

(n) Post-Discharge Requirements.

(1) Medical follow-up shall meet generally accepted standards for someone who has undergone a major transplantation procedure. This follow-up shall include:

(i) postoperative visits with the donor’s surgeon(s);

(ii) follow-up coordinated with the donor’s primary care physician to assess wound healing and to monitor for signs/symptoms of infection;

(iii) laboratory studies as appropriate; and
(iv) a written summary of the donor’s condition, which shall be provided to the donor and his or her primary care physician upon the donor’s discharge from the hospital.

(2) The hospital shall provide or arrange for follow-up social/psychological supports directly related to the donation as needed, which may include measure such as:

(i) visits with a social worker familiar with organ transplantation issues;
(ii) visits with a psychologist or psychiatrist familiar with organ transplantation issues;
(iii) participation in a professionally run support group
(iv) participation in a center sponsored computer donor listserv or bulletin board to share patient concerns; and
(v) invitation to a donor recognition event, such as an annual recognition ceremony or presentation of a donor medal.

(3) Donors shall be informed of the option to discuss financial/insurance concerns with the transplant center’s financial coordinator.

(4) Hospitals shall report to the department such information as the department shall require to assist the department in assessing the quality of care provided; determining routine or unusual complications or outcomes, and identifying potential improvements to donor education, screening, consent, preoperative, surgical and postoperative care and follow-up. Such information shall include, but not be limited to:
(i) donor demographics;

(a) preoperative medical and psychosocial information;

(b) surgical information and complications;

(c) hospital staff training and experience,

(d) recipient outcome; and

(e) immediate and long-term postoperative care, complications, and impact on quality of life.

(5) Hospitals shall track the donor and his or her condition for at least ten years post donation in accordance with the provisions set forth in Section 405.30 (b) (8) of this Part.

o)  *Living Adult Donor to Adult Recipient  Liver Transplantation Services.*

(1) Surgical Team Requirements:

(i) At least two liver transplant attending surgeons with experience as established in subparagraph (v) of this paragraph shall participate in the surgery of the donor. These two surgeons shall be present for the critical parts of the surgery including the live parenchymal transection. They both shall be available and scrubbed if needed for complications, however, only one surgeon need be present for the remainder of the donor operation.
(ii) A third liver transplant attending surgeon shall be present in the recipient operating room. This surgeon must have experience in deceased liver transplantation.

(iii) All three surgeons shall be board certified or board admissible in general surgery or have foreign certification determined to be equivalent by the New York State Department of Health.

(iv) All three surgeons shall have demonstrated experience in liver transplant surgery.

(v) (As per new pending UNOS requirements) Except as provided in clause (f) below, 1 of the 2 surgeons must demonstrate experience as the primary surgeon or first assistant in 20 major hepatic surgeries (to include living donor hepatectomies or major hepatic resections), 7 of which must have been live donor hepatectomies within the prior 5 year period. The other of the 2 surgeons must be either a liver transplant surgeon or hepatobiliary surgeon practicing at a transplant hospital and must have performed at least 20 major liver resections within the prior 5 year period. Both of the surgeons must be available during the donor hepatic resection.

(2) Anesthesia Requirements;

(i) There shall be two separate attending anesthesiologists; one each for the living adult liver transplantation donor and recipient operations. These anesthesiologists
shall be present for the critical anesthetic and surgical portions of the procedures and immediately available at all other times. As one case is completed, either anesthesiologist may take responsibility for the ongoing case. The anesthesiologists shall have experience in liver transplant anesthesia and/or major hepatic resection surgery and/or cardiac surgery anesthesia;

(ii) There shall be two separate anesthesia teams in two operating rooms (one for the donor, one for the recipient); and

(iii) These teams shall each be directed by a separate attending anesthesiologist for the living donor and the recipient procedure. In addition to the attending anesthesiologist who shall be present as specified in clause (a) above, at least one member of the anesthesia team who is an anesthesiologist, chief resident, fellow (postgraduate year 3, 4, or 5), and/or qualified certified registered nurse anesthetist shall be present and responsible, under the direction of the attending anesthesiologist, for the evaluation and care of the patient through all phases of the procedure pertaining to the administration of, and recovery from, anesthesia. All team members shall have ongoing education and training in liver and/or cardiac surgery and have had anesthesia responsibility for major liver resections.

(3) Postoperative Care Requirements. Donors shall receive postoperative care consistent with the following:
(i) Day 0-1: Living adult liver donors shall receive intensive care (ICU or PACU) for at least 24 hours, at a minimum;

(ii) Day 2: If stable and cleared for transfer by the transplant team after the first 24 hour period, donors shall be cared for in a hospital unit that is dedicated to the care of transplant recipients or a hospital unit in which patients who undergo major hepatobiliary resectional surgery are cared for. Living liver donors may be cared for on another unit if a specific medical condition of the donor warrants such a transfer and the transfer is documented in the donor’s medical record;

(iii) The donor shall be evaluated at least daily by one of the qualified liver transplant attending physicians with documentation in the medical record;

(iv) The transplant team shall be responsible for the pain management of the donor. In institutions where a pain management team is available, the transplant team may delegate its responsibility to this team. However, there shall be a written protocol in place for assessment and management of donor pain;

(v) The patient care staff shall be familiar with the common complications associated with the donor and recipient operations and have appropriate monitoring in place to detect these problems should they arise; and
(vi) If there is an emergent complication requiring reoperation, these patients shall be prioritized by the hospital for access to the operating room by the institution.

(4) Minimum Medical Staffing Requirements.

(i) There shall be a 24-hour, seven day-a-week continuous coverage of the transplant service by general surgery residents at the postgraduate year 2 level or higher, transplant fellows, nurse practitioners or physician assistants. Between the hours of 6 p.m. and 8 a.m. on weekdays and at all times on the weekends and holidays, the covering residents, fellows, nurse practitioners, or physician assistants should be dedicated to the transplant service and not covering other surgical or nonsurgical patients. An attending transplant surgeon shall be available immediately as a resource for the residents, fellows, nurse practitioners or physician assistants at all times.

(ii) Any patient with abnormal vital signs or unusual symptoms shall be evaluated immediately. Notification to the appropriate senior medical staff member (fellow, chief resident, attending) shall be made in accordance with written hospital policy and procedures and in no case no more than 30 minutes after abnormal vital signs or unusual symptoms have were first observed.

(5) Nursing Minimum Staffing Requirements.

(i) Nursing staff shall have ongoing education and training in live donor liver transplantation nursing care (donor and recipient). This shall include education in the
pain management issues particular to the donor. The registered professional nursing ratio shall be at least one registered professional nurse for every two patients (1:2) in the ICU/PACU level setting, increased as appropriate for the acuity level of the patients.

(ii) After the donor is transferred from the ICU/PACU, the registered professional nursing ratio shall be at least 1:4 on all shifts, increased as appropriate for the acuity level of the patients.

(iii) The same registered professional nurse shall not take care of both the donor and the recipient.

(iv) The nursing service shall provide the potential donor with pre-surgical information.

(v) The names and contact numbers of the transplant team shall be posted on all units receiving transplant donors.
A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

**CATEGORY 1:** Applications Recommended for Approval – No Issues or Recusals, Abstentions/Interests

**CON Applications**

Diagnostic and Treatment Center – Construction          Exhibit #3

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 121076 C</td>
<td>Institute for Urban Family Health/Sidney Hillman Center (New York County)</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>
Public Health and Health Planning Council

Project # 121076-C
Institute for Urban Family Health/Sidney Hillman Center

County: New York (New York)  Program: Diagnostic and Treatment Center
Purpose: Construction  Submitted: February 9, 2012

Executive Summary

Description
The Institute for Family Health (IFH), an existing not-for-profit corporation and federally-qualified health center (FQHC) network founded in 1983, requests approval to relocate its existing health center known as The Family Health Center at North General. The center will be moved from 1879 Madison Avenue, Harlem, to 1824 Madison Avenue, Harlem.

This CON amends and supersedes CON #111539-C, which was contingently approved on October 27, 2011 as an administrative review. The original project cost under CON #111539-C was $14,726,223. As the cost has risen to $25,729,905, it is above the threshold for an administrative review and must be processed as a full review before the Public Health and Health Planning Council. The applicant has already begun construction on the facility, per the construction start letter issued in January 2012 for CON #111539-C.

The building was purchased on June 30, 2011 by IFH Properties, LLC, a Delaware-based not-for-profit, and will be leased back to IFH. IFH Properties, LLC is a subsidiary entity whose sole member is IFH. The Department of Health and the Federal Bureau of Primary Care, along with IFH, agreed that the facility would have to be moved within a two-year period from the original opening date in July 2010 and at such time as the facility was able to obtain significant financial support from a HEAL 19 grant in order to facilitate the process. As the facility has been awarded the HEAL 19 grant, the facility is now applying to move the current operations.

Total project costs are estimated at $25,729,905.

DOH Recommendation
Contingent approval.

Need Summary
IFH operates 17 full-time health centers and 9 part-time centers, through its Section 330 community health center grant program. Currently, the applicant provides the following services: comprehensive primary care, pediatrics, podiatry, OB/GYN, dental, mental health, HIV clinic, rehabilitation medicine, gastroenterology, cardiology, neurology, urology, dermatology and ophthalmology; it also operates a nearby school-based health center.

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 be met with $380,951 in accumulated funds, a $15,200,000 HEAL 19 grant, a $4,200,000 grant from NYC Economic Development Corp and $5,948,954 from New Market Tax Credits.

Budget:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$ 15,440,000</td>
</tr>
<tr>
<td>Expenses</td>
<td>$ 15,149,000</td>
</tr>
<tr>
<td>Gain/(Loss)</td>
<td>$  295,000</td>
</tr>
</tbody>
</table>

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

Architectural Summary
This project involves the renovation of 28,483 SF of an existing 5-story office building with a cellar. An addition totaling 7,342 SF will be added to the second through fifth floors above the roof of the first floor.
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 forty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease that is acceptable to the Department. [BFA]
3. Submission of an executed New Market Tax Credit financing document that is acceptable to the Department. [BFA]

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 December 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]

State Council Recommendation
April 5, 2012
Need Analysis

Background
The Institute for Family Health, a federally qualified health center (FQHC), requests approval to relocate an extension clinic from 1879 Madison Avenue in Harlem to a new facility that is three blocks away at 1824 Madison Avenue.

The Institute for Family Health operates 17 full-time health centers and 9 part-time centers through its section 330 community health center grant program. It is fully accredited by the Joint Commission on Accreditation of Health Care Organizations and certified as a Level 3 NCQA Patient Centered Medical Home.

The current extension clinic is located at North General Hospital (which closed on June 30, 2010). The services currently provided at 1879 Madison Avenue will be moved to the new site at 1824 Madison Avenue. The Institute received a HEAL 19 grant to facilitate the proposed relocation on June 30, 2011.

The majority of patients currently served by the North General extension clinic are from Central and East Harlem. Both of these areas are designated as medically underserved areas and health professional shortage areas.

The services currently provided at 1879 Madison Avenue will be moved to the new site at 1824 Madison Avenue.

The Institute accepts all patients regardless of income, age, sex, or race.

Analysis

<table>
<thead>
<tr>
<th>Description</th>
<th>Current Year</th>
<th>1st Full Year of Project</th>
<th>3rd Full Year of Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary Care</td>
<td>12,527</td>
<td>23,919</td>
<td>28,714</td>
</tr>
<tr>
<td>Pediatrics</td>
<td>2,530</td>
<td>4,830</td>
<td>5,798</td>
</tr>
<tr>
<td>Podiatry</td>
<td>880</td>
<td>1,680</td>
<td>2,017</td>
</tr>
<tr>
<td>Gynecology/Prenatal</td>
<td>3,960</td>
<td>7,560</td>
<td>9,075</td>
</tr>
<tr>
<td>Dental</td>
<td>2,374</td>
<td>4,533</td>
<td>5,442</td>
</tr>
<tr>
<td>Mental Health Clinic</td>
<td>6,809</td>
<td>13,000</td>
<td>15,606</td>
</tr>
<tr>
<td>HIV Clinic</td>
<td>3,630</td>
<td>6,930</td>
<td>8,319</td>
</tr>
<tr>
<td>Rehab Medicine</td>
<td>314</td>
<td>600</td>
<td>720</td>
</tr>
<tr>
<td>Gastroenterology</td>
<td>367</td>
<td>700</td>
<td>840</td>
</tr>
<tr>
<td>Cardiology</td>
<td>314</td>
<td>600</td>
<td>720</td>
</tr>
<tr>
<td>Neurology</td>
<td>157</td>
<td>300</td>
<td>360</td>
</tr>
<tr>
<td>Urology</td>
<td>210</td>
<td>400</td>
<td>480</td>
</tr>
<tr>
<td>Dermatology</td>
<td>157</td>
<td>300</td>
<td>360</td>
</tr>
<tr>
<td>Ophthalmology</td>
<td>262</td>
<td>500</td>
<td>600</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>34,491</strong></td>
<td><strong>65,852</strong></td>
<td><strong>79,051</strong></td>
</tr>
</tbody>
</table>

The Institute for Family Health at North General offers primary care, mental health, and dental services for adults and children, as well as a number of specialties mentioned above. Since the Institute assumed operation of the clinic at the North General site, in 2010, it has provided 34,491 visits in total, including primary care, dental, mental health and specialty services. As previously noted, the vast majority of patients served come from the neighborhoods of Central Harlem and East Harlem. Central Harlem comprises 30 census tracts, all of which are Medically Underserved Areas (#02390) and Health Professional Shortage Areas. East Harlem comprises 25 census tracts, 24 of which are Medically Underserved Areas (#02388) and 25 of which are Health Professional Shortages Areas. In addition to North General, three federally qualified health centers provide services in Central and East Harlem: Helen B. Atkinson Health Center, Boriken Neighborhood Health Center, and Settlement Health Center. The community is also served by Mount Sinai, Harlem Hospital Center, and Metropolitan Hospital Center. Despite these resources, more than one quarter of residents in the community – or approximately 65,000 people – report not having a doctor and roughly 13% - or about 38,000 people – reported being in need of care but not receiving it. Further, approximately 10% of residents – nearly 26,000 people – went without health insurance at some time during the past year.
Recommendation
From a need perspective, 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.

This facility has no outstanding Article 28 surveillance or enforcement actions and 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 cost for land and building acquisition, renovation and demolition, and the acquisition of moveable equipment, is estimated at $25,729,905, broken down as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Acquisition</td>
<td>$259,448</td>
</tr>
<tr>
<td>Building Acquisition</td>
<td>3,340,552</td>
</tr>
<tr>
<td>Renovation &amp; Demolition</td>
<td>13,303,529</td>
</tr>
<tr>
<td>Design Contingency</td>
<td>1,368,199</td>
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<tr>
<td>Construction Contingency</td>
<td>1,878,577</td>
</tr>
<tr>
<td>Architect/Engineering Fees</td>
<td>1,000,000</td>
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<tr>
<td>Construction Manager Fees</td>
<td>1,460,957</td>
</tr>
<tr>
<td>Other Fees (consultant)</td>
<td>775,515</td>
</tr>
<tr>
<td>Moveable Equipment</td>
<td>2,071,368</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>155,250</td>
</tr>
<tr>
<td>CON Processing Fees</td>
<td>1,250</td>
</tr>
<tr>
<td>Additional CON Processing Fees</td>
<td>115,260</td>
</tr>
<tr>
<td><strong>Total Project Cost</strong></td>
<td><strong>$25,729,905</strong></td>
</tr>
</tbody>
</table>

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

The applicant’s financing plan appears as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity</td>
<td>$380,951</td>
</tr>
<tr>
<td>HEAL19 Grant</td>
<td>15,200,000</td>
</tr>
<tr>
<td>NYC Economic Development Corp</td>
<td>4,200,000</td>
</tr>
<tr>
<td>New Market Tax credits</td>
<td>5,948,954</td>
</tr>
</tbody>
</table>

Construction on the project has already begun based on the approval of CON 111539, which is amended and superseded by this project. Construction began in January 2012.
**Asset Purchase Agreements**
The change in ownership of real estate will be effectuated in accordance with the terms of the Asset Purchase Agreement, summarized below:

- **Date:** March 2, 2012
- **Seller:** The Institute for Family Health
- **Purchaser:** IFH Properties, LLC
- **Assets Transferred:** Land, Building and Premises known as the annex, located at 1824 Madison Avenue, Harlem, NY
- **Liabilities Assumed:** None
- **Purchase Price:** $3,774,000
- **Payment Of Purchase Price:** In full at closing through wire transfer.

**Lease Agreement and Medicaid Capital Reimbursement**
Facility occupancy is subject to an executed lease agreement, the terms of which are summarized as follows:

- **Date:** March 2, 2012
- **Premises:** 1824 Madison Avenue, New York, NY
- **Lessor:** IFH Properties, LLC
- **Lessee:** The Institute for Family Health
- **Term:** 30 year
- **Annual Rental:** Years 1-2 $355,000, Years 3-5 $356,000, Year 6 $357,000, Year 7 $992,000, Year 8 $1,609,000, Year 9-10 $1,610,000, Years 11-12 $1,611,000, Years 13-15 $1,612,000, Years 16-17 $1,613,000, Years 18-19 $1,614,000, Years 20-21 $1,615,000, Year 22 $1,616,000, Years 23-24 $1,617,000, Year 25 $1,618,000 and Years 26-30 $1,619,000
- **Type:** 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.

**Operating Budget**
The applicant has submitted an operating budget, in 2011 dollars, which is summarized below:

<table>
<thead>
<tr>
<th></th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$13,697,991</td>
<td>$15,444,000</td>
</tr>
<tr>
<td>Expenses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$12,644,000</td>
<td>$14,391,000</td>
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<tr>
<td>Capital</td>
<td>746,000</td>
<td>758,000</td>
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<tr>
<td>Total Expenses</td>
<td>$13,390,000</td>
<td>$15,149,000</td>
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<tr>
<td>Excess of Revenues over Expenses:</td>
<td>$307,991</td>
<td>$295,000</td>
</tr>
<tr>
<td>Utilization: (visits)</td>
<td>65,852</td>
<td>79,051</td>
</tr>
<tr>
<td>Cost Per Visit</td>
<td>$203.33</td>
<td>$191.64</td>
</tr>
</tbody>
</table>

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

- Medicaid Fee-for-Service: 31.80%
- Medicaid Managed Care: 34.90%
- Medicare Fee-For Service: 13.80%
- Medicare Managed Care: 4.80%
- Private Pay: 6.00%
- Commercial Fee-For-Service: 5.90%
- Commercial Managed Care: 2.80%
Expense and utilization assumptions are based on the historical experience of the applicant, adjusted for volume generated by the additional square footage at the new facility.

**Capability and Feasibility**

The issue of capability is centered on the applicant’s ability to meet the total project cost. The applicant will provide $5,948,954 via new market tax credits, $15,200,000 via HEAL19 grant funds, $4,200,000 from NYC Economic Development Corp. grant, with the remainder of $380,951 provided via equity from accumulated funds. Presented as BFA Attachment A, is a financial summary of The Institute for Family Health (IFH), which indicates the availability of sufficient funds for the equity contribution.

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 projects an excess of revenues over expenses of $307,991, and $295,000 during the first and third years, respectively. The budget appears reasonable.

As shown on Attachment A, the applicant has maintained positive working capital and net asset positions, and achieved excess revenues of $697,153 for 2009, the most current certified financial statement. BFA Attachment B shows the interim balance sheet for 2010 and 2011, indicating that the facility has maintained both positive working capital and net asset positions. The interim income statement for 2011 shows that the facility has maintained positive excess revenues of $12,803,384.

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

**Recommendation**

From a financial perspective, contingent approval is recommended.

---

**Architectural Analysis**

**Background**

This project involves the renovation of 28,483 SF of an existing 5-story office building with a cellar. An addition totaling 7,342 SF will be added to the second through fifth floors above the roof of the first floor. The construction classification is type II (222). The building is fully sprinklered.

- **CELLAR (6,069 SF renovation)**
  
  The cellar will include a waiting room with a reception area, clerical office space, 15 dental operatories, charting, clean holding, sterilization prep, autoclave, lab and storage. There will also be toilet rooms, a janitor’s closet, electrical, plumbing and pump rooms.

- **FIRST FLOOR (6,069 SF renovation)**
  
  The first floor will include the main lobby for the building with a reception area that will have a self-check-in area and a registration area. An immediate care center will be located on this level and will include 3 point of care (exam) rooms, an x-ray room, lab and medication room, so this area can serve as a self-supporting clinic. There will also be offices, toilet rooms, a janitor’s closet, building maintenance, storage and a receiving/mail room.

- **SECOND FLOOR (3,966 SF renovation, 1,513 SF new construction)**
  
  The second floor will include a mental health practice, the compass program and W.I.C. Mental health will have a waiting and reception area, 8 counseling rooms, 1 family counseling room, a large group room, plus supporting office space and storage.

  The compass program will have 2 counseling rooms, a manager’s and a director’s office as well as space for support staff. Toilet rooms and a janitor’s closet will also be provided on this floor.
The W.I.C. program, not included in this certificate of need project, will be located on this floor.

- **THIRD AND FOURTH FLOORS (4,126 SF renovation, 1,943 SF new construction each floor)**

  The third and fourth floors are the main clinic areas for family practice. Each floor will include a waiting room, 15 point of care (exam) rooms, 1 treatment room, offices, lab, medication, clean, soiled and storage. In addition, there will be toilet rooms and a janitor’s closet. A precepting room for the residency program will also be included.

- **FIFTH FLOOR (4,126 SF renovation, 1,943 SF new construction)**

  The fifth floor will be a non-clinical floor. The residency program will be located on this floor along with the outreach program. The residency program will have 5 shared faculty offices and administrative offices. Also, the residents will have a workroom. Outreach will have 2 offices, space for 5 facilitators and storage.

  There will also be 2 large conference rooms, a lounge and lunch room. These rooms will be versatile and will be able to be opened into one large meeting space for the Institute or for community events. In addition, there will be toilet rooms on this floor.

**Environmental Review**

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

This review is based on drawings dated October 11, 2011 submitted under certificate of need project # 111539.

**Recommendation**

From an architectural perspective, approval is recommended.

---

**Attachments**

<table>
<thead>
<tr>
<th>BFA Attachment A</th>
<th>Financial Summary of the Institute for Family Health 2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment B</td>
<td>Interim Financial Summary of the Institute for Family Health 2010-2011</td>
</tr>
</tbody>
</table>
A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

- PHHPC Member Recusals
- Without Dissent by HSA
- Without Dissent by Establishment and Project Review Committee

CON Applications

Residential Health Care Facility – Construction  Exhibit #4

<table>
<thead>
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<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
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<tr>
<td>1. 121079 C</td>
<td>Boro Park Operating Co., LLC d/b/a Boro Park Center for Rehabilitation and Healthcare (Kings County) Mr. Fassler - Recusal</td>
<td>Contingent Approval</td>
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</table>
Description
Boro Park Operating Co., LLC, the existing operator of the 354-bed Boro Park Center for Rehabilitation and Healthcare (Boro Park) located at 4915 10th Avenue, Brooklyn, requests approval to acquire 156 residential health care facility (RHCF) beds from Cabrini Center for Nursing and Rehabilitation, a 240-bed RHCF located less than 11 miles away in Manhattan which is slated for closure.

While the applicant is currently licensed for 354 beds, it has the capacity to house 510 licensed beds, which was the number of RHCF beds licensed at one time when the facility was operated by MJG Nursing Home Company, Inc. as Metropolitan Jewish Geriatric Center. After the completion of this application, the nursing home will be certified for 510 beds.

The current members of Boro Park Operating Co., LLC are as follows:

Jeremy Strauss 2.00%
Boro Park KR Holding, LLC 98.00%

The members of Boro Park KR Holding, LLC are Kenneth Rozenberg (98.98%) and Jeffrey Sicklick (1.02%). The current members commenced operating the facility on May 1, 2011.

Total project costs are estimated at $4,814,353.

DOH Recommendation
Contingent approval

Need Summary
The closure of Cabrini Center for Nursing and Rehabilitation will result in the discharge of 234 patients.

Through this CON, Boro Park will transfer 156 patients from Cabrini. Boro Park will have a total of 510 RHCF beds following the completion of this project.

The projected 2016 bed need for the New York City region is 6,982. Occupancy at Boro Park was 97.5% in 2010, 93.1% in Kings County, and 94.8% in the New York City region.

Program Summary
Boro Park Center for Rehabilitation and Healthcare is currently in substantial compliance with all applicable codes, rules and regulations. Subject to the noted contingencies for acceptable floor plans, approval is recommended.

Financial Summary
The acquisition price for the 156 beds is $3,600,000, which will be met via bank loan of $3,600,000 (10 yrs. @ 6.00%). Total project costs will be met with $1,214,353 equity and a $3,600,000 bank loan (10 yrs. @ 6.00%).

Budget:
Revenues $58,239,528
Expenses 50,259,340
Net Income $7,980,188

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

Architectural Summary
The space for the additional beds currently exists. Only minor renovations will be required to recondition the space on the second and third floors of the existing facility for the incoming population.
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. Section 2802.7 states that all sponsors whose applications require 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 and programmatic review and approval of the final floor plans. [LTC]
3. Submission of a bank loan for the construction portion that is acceptable to the Department of Health. [BFA]
4. Submission of a bank loan for the purchase of the beds that is acceptable to the Department of Health. [BFA]
5. Submission of a working capital loan that is acceptable to the Department of Health. [BFA]
6. The submission of an architect’s letter of certification confirming the newly acquired beds will be compliant with the 2010 FGI, Facility Guidelines Institute for new residential health care facility beds. [AER]

Council Action Date
April 5, 2012.
Need Analysis

Background
Boro Park Center for Rehabilitation and Healthcare, a 354-bed residential health care facility (RHCF) located at 4915 10th Avenue, Brooklyn (Kings County), seeks approval to acquire 156 RHCF beds from Cabrini Center for Nursing and Rehabilitation, which is slated for closure.

Analysis
Staff will be retained during expansion and a family setting for patients will be set up. Boro Park Center currently has 354 beds and will have a total bed count of 510 with the addition of 156 beds from Cabrini.

<table>
<thead>
<tr>
<th>Boro Park Center</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Beds</td>
<td>354</td>
</tr>
<tr>
<td>Change Upon Project Completion</td>
<td>156</td>
</tr>
<tr>
<td>Final Bed Count</td>
<td>510</td>
</tr>
</tbody>
</table>

Boro Park Center has had consistent occupancy from 2008 to 2010 of approximately 98%. Cabrini’s occupancy has been approximately 97% for the same time period.

<table>
<thead>
<tr>
<th>RHCF Bed Need</th>
<th>New York City</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016 Projected Need</td>
<td>51,071</td>
</tr>
<tr>
<td>Current Beds</td>
<td>43,454</td>
</tr>
<tr>
<td>Beds Under Construction</td>
<td>635</td>
</tr>
<tr>
<td>Total Resources</td>
<td>44,089</td>
</tr>
<tr>
<td>Unmet Need</td>
<td>6,982</td>
</tr>
</tbody>
</table>

Notwithstanding that there is an indication of need in a planning area for additional residential health care facility beds as determined in accordance with subdivisions (d) or (e) of 10 NYCRR 709.3, there shall be a rebuttable presumption that there is no need for any additional residential health care facility beds in such planning area if the overall occupancy rate for existing residential health care facility beds in such planning area is less than 97% based on the most recently available data. It shall be the responsibility of the applicant in such instances to demonstrate that there is a need for additional RHCF beds despite the less than 97% occupancy rate in the applicant’s planning area utilizing the factors set forth in subdivision (h) of 10 NYCRR 709.3.

The applicant addressed the above regulation to the Department’s satisfaction. Some local factor arguments addressed the closure of Cabrini Center for Nursing and Rehabilitation. The loss of the 240 beds would put a strain on the local long-term care system. With Boro Park absorbing some of the beds and discharged patients they will help relieve some of this strain in the area. In addition it will also allow for area jobs to be retained.

<table>
<thead>
<tr>
<th>RHCF Occupancy</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boro Park Center</td>
<td>98.0%</td>
<td>97.7%</td>
<td>97.5%</td>
</tr>
<tr>
<td>Cabrini Center for Rehab</td>
<td>97.4%</td>
<td>97.2%</td>
<td>97.2%</td>
</tr>
<tr>
<td>Kings County</td>
<td>92.1%</td>
<td>93.7%</td>
<td>93.1%</td>
</tr>
<tr>
<td>New York City</td>
<td>94.5%</td>
<td>95.0%</td>
<td>94.8%</td>
</tr>
</tbody>
</table>

Both Boro Park Center for Rehabilitation and Healthcare and Cabrini Center are operating over the 97% planning optimum for all years in question and both facilities are also over the county and regional averages for 2008 to 2010. The New York City region has a projected 2016 bed need of 6,982.
Conclusion
Upon completion of this project Boro Park Center will acquire 156 beds, and accept transfer of the same number of patients from Cabrini, which is closing. Boro Park Center will have a total of 510 beds.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

<table>
<thead>
<tr>
<th>Existing</th>
<th>Proposed</th>
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<tbody>
<tr>
<td><strong>Facility Name</strong></td>
<td>Boro Park Center for Rehabilitation and Healthcare</td>
</tr>
<tr>
<td><strong>Address</strong></td>
<td>4915 Tenth Avenue Brooklyn, New York 11219</td>
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<tr>
<td><strong>RHCF Capacity</strong></td>
<td>354</td>
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<tr>
<td><strong>ADHCP Capacity</strong></td>
<td>N/A</td>
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<tr>
<td><strong>Type Of Operator</strong></td>
<td>Limited Liability Company</td>
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<tr>
<td><strong>Class Of Operator</strong></td>
<td>Proprietary</td>
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<tr>
<td><strong>Operator</strong></td>
<td>Boro Park Operating Company, LLC</td>
</tr>
</tbody>
</table>

Program
Boro Park Center for Rehabilitation and Health Care (Boro Park) is a 354 bed proprietary nursing home located in Brooklyn. Boro Park is proposing to certify 156 additional beds to be located in vacant space on the second and third floors. The proposed project would essentially restore the bed configuration in place when the facility was operated by MJG Nursing Home Company, Inc., a voluntary nursing home operator. In 2009, Metropolitan Jewish Geriatric Center had decertified the 156 beds as part of a Rightsizing application. Boro Park acquired the nursing home from MJG on May 1, 2011. The applicant has agreed to accept up to 156 residents of Cabrini Center.

The programs and services that will be offered to these additional 156 residents will be identical to the programs currently offered at the facility.

Physical Environment
The second and third floors share a very similar floor plan layout and the applicant is proposing to place 78 beds on each of those floors. Each 78 bed nursing unit includes two staff work stations, and three bathing areas. Minor renovation work is being proposed along with cosmetic upgrades.

The applicant is proposing to convert office space to a resident dining room and a smaller resident “private dining room”. The floor plans submitted for review do not illustrate sufficient dining space for all of the residents on each of the floors, even when the “private dining room” is included.

The applicant is proposing to refurbish small open areas next to the nurses stations to be used as resident lounges. There are no other resident activity areas located on the floor and these small open areas appear unsuitable for resident group activities.

All of the other work proposed on these two floors is cosmetic in nature including wall and floor finishes.

Floor plan layouts have been submitted for each typical resident bedroom configuration. The floor plans available for review do not include dressers in the bedrooms. Also, floor plans available for review do not substantiate that the toilet rooms associated with the bedrooms are accessible by residents in wheelchairs.

Compliance
Boro Park Center for Rehabilitation and Healthcare is currently in substantial compliance with all applicable codes, rules and regulations.

**Conclusion**

No changes in program are proposed as part of this application. The floor plans available for review are generally acceptable except for the following items which remain to be resolved.

- Resident dining on the two floors appears to be insufficient for all residents to dine at a single seating.
- Resident lounge/activity areas are not of adequate size or design to allow for resident group activities.
- Bedrooms do not include a dresser for each resident.
- The toilet rooms associated with the resident bedrooms are not wheelchair accessible as currently configured.

**Recommendation**

From a programmatic perspective, contingent approval is recommended.

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**Financial Analysis**

**Background**

Jeremy Strauss has ownership interests in the following nursing homes: Dutchess Center for Rehabilitation (BFA Attachment D), Queens Center for Rehabilitation (BFA Attachment E), Brooklyn Center for Rehabilitation (BFA Attachment I) and Suffolk Center for Rehabilitation (BFA Attachment H).

Kenneth Rozenberg has ownership interests in the following nursing homes: Williamsbridge Manor Nursing Home (BFA Attachment C), Bronx Center for Rehabilitation & Health (BFA Attachment G), University Nursing Home (BFA Attachment F), Dutchess Center for Rehabilitation (BFA Attachment D), Queens Center for Rehabilitation (BFA Attachment E) and Brooklyn Center for Rehabilitation (BFA Attachment I).

Jeffrey Sicklick has ownership interests in the following nursing homes: Dutchess Center for Rehabilitation (BFA Attachment D) and Queens Center for Rehabilitation (BFA Attachment E). Also, the members of the applicant have ownership interests in Bushwick Center for Rehabilitation, which they acquired the interests in May 20, 2011, and Chittenango Center for Rehabilitation and Health Care, which they acquired interests on May 1, 2011. There is no financial data available for these two facilities.

**Asset Purchase Agreement**

The applicant has submitted an executed asset purchase agreement for the purchase of the 156 beds, which is summarized below:

- **Date:** March 13, 2012
- **Purpose:** Purchaser desires to purchase 156 skilled nursing home beds
- **Seller:** Cabrini Center for Nursing and Rehabilitation
- **Purchaser:** Boro Park Operating Co., LLC
- **Purchase Price:** $3,600,000
- **Payment of Purchase Price:** $500,000 down payment upon the execution of this agreement. $3,100,000 Due at Closing

**Total Project Cost and Financing**

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at $4,814,353, further broken down as follows:

- Renovation and Demolition: $3,400,000
- Design Contingency: 340,000
- Construction Contingency: 340,000
- Architect/Engineering Fees: 272,000
Moveable Equipment 354,510  
Financing Costs 43,520  
Interim Interest Expense 36,000  
CON Fee 2,000  
Additional Processing Fee 26,323  
Total Project Cost $4,814,353

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

The applicant's financing plan appears as follows:

Equity (members) $1,214,353  
Bank Loan (6.00% interest rate for a ten year term) 3,600,000

Operating Budget
The applicant has submitted an operating budget for the 510-bed facility, in 2012 dollars, for the third year after the acquisition of the 156 beds, which is summarized below:

<table>
<thead>
<tr>
<th>Per Diem</th>
<th>Total</th>
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<tbody>
<tr>
<td>Revenues:</td>
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<tr>
<td>Medicaid*</td>
<td>$287.15</td>
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<tr>
<td>Medicaid Managed Care</td>
<td>270.45</td>
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<td>Medicare</td>
<td>468.22</td>
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<tr>
<td>Medicare Managed Care</td>
<td>472.11</td>
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<tr>
<td>Private Pay</td>
<td>411.86</td>
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<tr>
<td>Commercial Managed Care</td>
<td>366.75</td>
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<tr>
<td>Total Revenues</td>
<td>$282.42</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenses:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating</td>
<td>$243.39</td>
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<tr>
<td>Capital</td>
<td>39.03</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>$282.42</td>
</tr>
</tbody>
</table>

Net Income $7,980,188

Utilization: (patient days) 177,960

* Includes Assessment Revenues.

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

- Expenses include lease rental.
- Expenses for the 156 beds during the first and third years are estimated at $13,480,419 and $13,377,133, respectively. Revenues for the 156 beds during the first and third years are estimated at $15,266,665 and $15,226,665, respectively.
- Budgeted case mix of 1.0759 was utilized, which is based on their current experience.
- The capital component of the Medicaid rate is based on the return on and return of equity.
- Private and Medicare rates are consistent with historical experience.
- Medicaid rates are based on actual 2011 rates with no trend to 2012 and adjustment for incremental capital.
- Overall utilization for year three is projected at 95.60%. Utilization by payor source is expected as follows:
Medicaid 71.41%
Medicaid Managed Care 1.91%
Medicare 11.95%
Medicare Managed Care 5.85%
Private Pay 2.00%
Commercial Managed Care 6.88%

- Breakeven occupancy is projected at 80.00%.

**Capability and Feasibility**

The purchase price for the 156 beds is $3,600,000 and will be met as follows: bank loan of $3,600,000 at an interest rate of 6.00% for a ten year term. Also, there is a total project cost of $4,814,353, which will be met as follows: equity of $1,214,353 and a bank loan of $3,600,000 at an interest rate of 6.00% for a ten year term. Bank letter of interests have been provided for the purchase of the beds and financing related to the renovations.

Working capital requirements are estimated at $1,979,522, which is equivalent to two months of incremental third year expenses. The applicant will finance $989,761 at an interest rate of 6.00% for a five year term. The remainder, $989,761, will be met via equity from the members of Boro Park Operating Co., LLC. Presented as BFA Attachment A are the personal net worth statements of the members of Boro Park Operating Co., LLC, which indicates the availability of sufficient funds for the equity portion of the bed purchase, total project cost and the working capital requirement.

The submitted budget indicates a net income of $7,980,188 for the third year after the purchase of the 156 beds. The budget appears reasonable. As shown on Attachment B, the facility achieved a net income of $3,138,263 from May 1, 2011 through September 30, 2011, for the operation of a 354-bed facility. The additional projected net income would result from operating an additional 156 beds and operating during a twelve month period.

Presented as BFA Attachment B is the September 30, 2011 internal financial statements of Boro Park Center for Rehabilitation and Healthcare. As shown on Attachment B, the facility had a negative working capital position and a positive net asset position through September 30, 2011. Also, the facility achieved a net income of $3,138,263 through September 30, 2011.

Presented as BFA Attachment C is a financial summary of Williamsbridge Manor Nursing Home, indicates that the facility has maintained a negative working capital position and a positive equity position and experienced an average net income of $376,218.

Presented as BFA Attachment D is a financial summary of Dutchess Center for Rehabilitation, indicates a negative working capital position and a positive net asset position and experienced an average net income of $440,648. Also, the facility achieved a net income of $1,934,234 through October 31, 2011.

Presented as BFA Attachment E is a financial summary of Queens Center for Rehabilitation, indicates a negative working capital position and a positive net asset position and experienced an average net income of $566,018. Also, the facility achieved a net income of $2,566,361 through October 31, 2011.

Presented as BFA Attachment F is a financial summary of University Nursing Home, indicates a positive working capital position and a positive net asset position and experienced an average net income of $415,645. Also, the facility achieved a net income of $629,913 through September 30, 2011.

Presented as BFA Attachment G is a financial summary of Bronx Center for Rehabilitation & Health, indicates a positive working capital position and a positive net asset position and experienced an average net income of $1,073,647. Also, the facility achieved a net income of $3,074,725 through October 31, 2011.

Presented as BFA Attachment H is a financial summary of Suffolk Center for Rehabilitation, indicates a negative working capital position and a negative net asset position and experienced an average net income of $122,845. The facility incurred a net loss of $996,608 in 2008. The facility is awaiting its rebased Medicaid rate as a result of the
recent change in ownership. The applicant indicates once the facility reflects the current operator's Medicaid expenses, the operating loss will be eliminated. Also, the facility achieved a net income of $856,820 through June 30, 2011.

Presented as BFA Attachment I is a financial summary for Brooklyn Center for Rehabilitation indicates that the facility has a negative working capital position and a positive net asset position and experienced an average net income of $270,803. This facility was acquired in March 2007, at which the new operator has submitted for rebasing. The applicant indicates that the facility has not been getting the proper reimbursement rate from Medicaid, which would offset the losses. This was not promulgated until 2009. Also, the facility achieved a net income of $3,823,775 through September 30, 2011.

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
This project will include renovations to nurse stations, dining rooms, recreation rooms, resident rooms, tub rooms and resident room toilets. Renovations will expand resident lounge space with the conversion of underutilized office space. Some additional barrier free toilets will be configured adjacent to these new amenity spaces. All existing toilet rooms and tub rooms will be gut renovated.

Additionally, an undefined area near the nursing stations will be configured as a lounge through the installation of new finishes. The existing second and third floors are currently vacant, but are already built to accommodate 78 nursing beds each. The configuration of these vacant floors is consistent with the level of care provided in the rest of the facility.

The cellar level contains the facilities maintenance, mechanical and service areas along with a central kitchen. The first (ground) floor houses the building’s main entry along with central loading and materials handling areas. Central administration and a variety of resident amenity areas are also situated on the first floor. The majority of the proposed work will be cosmetic in nature including furnishings and finishes.

The alterations will be phased in such a manner as to have minimum impact on the facility and to maintain the safety and welfare of the residents. All work will be done in vacant space.

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
BFA Attachment B  September 30, 2011 internal financial statement of Boro Park Center for Rehabilitation
BFA Attachment C  Financial Summary - Williamsbridge Manor Nursing Home
BFA Attachment D  Financial Summary - Dutchess Center for Rehabilitation
BFA Attachment E  Financial Summary - Queens Center for Rehabilitation
BFA Attachment F  Financial Summary - University Nursing Home
BFA Attachment G  Financial Summary - Bronx Center for Rehabilitation & Health
BFA Attachment H  Financial Summary - Suffolk Center for Rehabilitation
BFA Attachment I  Financial Summary - Brooklyn Center for Rehabilitation
### A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

**CATEGORY 6**: Applications for Individual Consideration/Discussion

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
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<tr>
<td>1. 102376 C</td>
<td>Albany County Nursing Home (Albany County)</td>
<td>To be presented at the Special Establishment/Project Review Committee on 4/5/12</td>
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</table>
Executive Summary

Description
Albany County Nursing Home, a 250-bed county-owned residential health care facility (RHCF), requests approval to construct a 200-bed replacement facility and certify a 30-slot adult day health care program (ADHCP). The 200-bed facility will consist of 180 RHCF beds and 20 ventilator-dependent beds. Currently, the facility does not consist of any ventilator-dependent beds.

This new facility will be constructed on land adjacent to the existing facility, which has reached the end of its useful life. The County is proposing that this new facility will address deficiencies in the existing building, including a lack of air conditioning, storage space and sprinkler system.

Construction of this new facility will comply with the recommendations of the Commission on Health Care Facilities in the 21st Century (the “Berger Commission”). The Commission recommended the merger of Ann Lee Infirmary and Albany County Nursing Home, building a modern unified facility, and downsizing the number of nursing home beds. Ann Lee and Albany County Nursing Home have been merged at the recommended number of RHCF beds.

Total project costs are estimated at $70,938,554.

DOH Recommendation
Contingent approval.

Need Summary
Albany County Nursing Home proposes to decertify 50 RHCF beds and certify a 30-slot ADHCP. The decertification of 50 RHCF beds will help Albany County reach an ideal planning optimum as the County exceeds the RHCF bed need by 65 beds. There is no need to review patient displacement due to the number of available beds in the county.

This project is a recommendation of the Commission on Health Care Facilities in the 21st Century to combine Ann Lee Infirmary, reduce RHCF beds in Albany County, and replace an outdated facility.

Albany County is above the established need by 65 RHCF beds.

Program Summary
The replacement of the Albany County Nursing Home with a modern nursing facility will provide a significantly improved residential environment. The facility design is in keeping with contemporary nursing home design concepts; however several noted issues should be addressed and incorporated into the final design.

Financial Summary
Project costs will be met via General Obligation Bonds (30 yrs. @ 4.00%).

Budget:
Revenues: $24,547,018
Expenses: 50,813,787
Gain/(Loss): $ (26,266,769)

The projected operating deficit will be funded by Albany County. The applicant provided a letter from the new Albany County Executive’s Office, dated March 16, 2012, indicating the County’s continued financial support for the project. Also, the applicant provided documentation from the County Legislature, adopted March 12, 2012, supporting the submission of this Certificate of Need application.

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 replacement RHCF includes 200 RHCF beds and new attached ADHCP. The new facility will be a two-story building with a total of 187,590 SF. The existing facility will be decommissioned.
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. Section 2802.7 states that all sponsors whose applications require 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 and acceptable programmatic review and approval of final floor plans.[LTC]
3. Submission of the County Bond and Note Resolution that is acceptable to the Department of Health. Included with the submitted bond and note resolution, must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt.[BFA]

Approval conditional upon:

1. An acceptable plan for reducing census at the existing 250 bed Albany County Nursing Home, which may include the transfer of residents to other facilities, must be submitted to the Capital District Regional Office for review and approval before the transfer of residents from the facility.[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 start construction on or before April 1, 2012 and complete construction by April 1, 2015 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
April 5, 2012.
Need Analysis

Background
Albany County Nursing Home is a 250 bed public residential health care facility located at Albany-Shaker Road, Albany. The facility is seeking approval to construct a 200 bed replacement facility and certify a 30 – slot adult day health care program.

Albany County Nursing Home has utilization above that of Albany County for 2008 and 2010 but was slightly below in 2009 as shown in Table 1.

<table>
<thead>
<tr>
<th>Facility/County/Region</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albany County Nursing Home</td>
<td>102.3%</td>
<td>94.0%</td>
<td>95.25%</td>
</tr>
<tr>
<td>Albany</td>
<td>99.03%</td>
<td>94.6%</td>
<td>94.45%</td>
</tr>
</tbody>
</table>

At the end January 2010, Albany County Nursing Home had a case mix index of .94 with 17 Physical A’s and 10 Physical B’s.

Albany County Nursing Home seeks to build a new facility to improved service for their residents. The new facility will have 50 fewer beds than the current facility.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
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</thead>
<tbody>
<tr>
<td>Facility Name</td>
<td>Albany County Nursing Home</td>
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<tr>
<td>Address</td>
<td>Heritage Lane-County Road 151</td>
<td>Same</td>
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<tr>
<td></td>
<td>Albany, NY 12211</td>
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<tr>
<td>RHCF Capacity</td>
<td>250</td>
<td>200</td>
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<tr>
<td>ADHC Program Capacity</td>
<td>0</td>
<td>30</td>
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<td>Type of Operator</td>
<td>County</td>
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<td>Class of Operator</td>
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<tr>
<td>Operator</td>
<td>Albany County</td>
<td>Same</td>
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</tbody>
</table>

Albany County Nursing Home is a 250 bed nursing home located at 780 Albany Shaker Road, Albany. Consistent with the Berger Commission recommendation of January 1, 2007, Albany County closed the antiquated Ann Lee Home, a sister 175 bed nursing home, and relocated those residents into the Albany County Nursing Home with the total bed complement downsized to 250 beds. In conformance with the second part of the Berger recommendation, Albany County has now submitted a proposal to replace the Albany County Nursing Home building with a new, reduced capacity nursing home of 200 beds, to be located on adjacent County-owned land which was the former Heritage Park baseball field. The state of the art nursing facility will include a 20 bed ventilator dependent bed unit and a 30 slot adult day health care program.

The addition of ventilator dependent beds will offer a significantly needed service to the Capital District, since there is only a single ventilator unit operating in the entire Northeastern New York planning region--an 18 bed unit located at Pathways Nursing and Rehabilitation Center in Schenectady County. The ventilator unit will comply with the code requirements of 10 NYCRR 713-4.5, including piped in oxygen and suction in all 20 rooms, a shower area large enough to accommodate stretchers and an equipment room with a hand washing sink. The single resident rooms will
be generously sized at 220 square feet in order to accommodate bariatric and hospice residents. The rooms will feature wide doors and accommodations and associated lifts for the bariatric residents, and additional space in the rooms for family members of hospice residents.

The new nursing home will also include two specialty units, a secured 30 bed behavioral unit and a 30 bed dementia unit. The applicant is continuing to develop the program for the operation of these units. As an adjunct to the short term rehabilitation program, the proposed facility will offer “home bound training” in two efficiency apartments located adjacent to Nursing Unit “A”. The intention of the program is to ensure that residents discharged back to their homes will be able to resume the tasks of daily living, including cooking, cleaning and personal care activities.

The nursing home will certify outpatient therapy services, which will include a hydrotherapy pool, through its rehabilitation department. Adjacent to the outpatient rehabilitation program the nursing home will operate a 30 slot adult day health care program. The program will operate in full compliance with 10 NYCRR 425.5 and 714.4.

**Physical Environment**

The single story nursing units are all located on the main floor, arranged in three 40-bed conventional SNF units, a 20-bed ventilator/bariatric/hospice unit and twin 30-bed secured units. The three conventional units and ventilator unit will be square buildings with a central hallway with rooms facing the outside or interior courtyard. The two secured units will be triangular shaped and located at the upper end of the site, with rooms facing the outside or center courtyard. All nursing units will contain 100% single bedded rooms with ADA-compliant bathrooms which include individual showers. Each nursing unit will include necessary lounge and dining space, and an adequate number of isolation rooms.

The adult day health care program and outpatient services program will be accessed through a separate entrance on the lower end or rear of the site. The adult day health care program will be constructed as fully compliant with 10 NYCRR 714.4. The lower level will extend below the “A” and “B” Buildings with additional access through elevators in the central connector adjacent to the training apartments. Ancillary services and offices including pharmacy, dental, recreation therapy and optometry are all situated in the lower area, as well as mechanical and support functions including the laundry, medical records and central storage.

**Compliance**

Albany County Nursing Home is in current compliance with all codes, rules and regulations.

**Conclusion**

The replacement of the Albany County Nursing Home with a modern nursing facility will implement the second phase of the Berger recommendation and provide a significantly improved residential environment. The facility design is in keeping with contemporary nursing home design concepts. However several issues should be addressed and incorporated into the final design:

1. Showers in the resident bedrooms must be a minimum dimension of 4’ by 5’ to ensure handicap accessibility.
2. Plans must demonstrate dining space in compliance with 10 NYCRR 713-2.6.
3. Plans must demonstrate lounge space in compliance with 10 NYCRR 713-3.9.
4. A toilet available for resident use must be located adjacent to all dining areas.
5. A toilet available for resident use must be located adjacent to the beauty parlor and lounge areas by the atrium.
6. The applicant may entertain the option of incorporating a few double rooms, or special accommodations such as adjoining rooms, in the design for couples. This would provide an additional home-like enhancement and choice normally provided for residents admitted to a residential health care facility.
7. Programmatic information reflecting the design of the two secure units should be submitted with final design drawings.

**Recommendation**

From a programmatic perspective, contingent approval is recommended.
Financial Analysis

Total Project Cost and Financing
Total project cost, which is for new construction, architect/engineering fees, construction manager fees and the acquisition of moveable equipment, is estimated at $70,938,554, further itemized as follows:

- New Construction $47,745,047
- Site Development 3,979,205
- Design Contingency 4,137,408
- Construction Contingency 2,585,649
- Architect/Engineering Fees 3,674,383
- Construction Manager Fees 2,096,687
- Moveable Equipment 2,921,658
- Telecommunications 15,000
- Financing Costs 925,500
- Interim Interest Expense 2,468,000
- CON Fee 2,000
- Additional Processing Fee 388,017
- Total Project Cost $70,938,554

Project costs are based on an July 1, 2012 construction start date and a 18-month construction period.

The costs for this project, excluding the CON fees and the additional processing fees, are broken down as follows:

- Nursing Facility $69,805,032
- Adult Day Health Care Program 743,505

Based on a mid-point of construction in 2013, the Bureau of Architectural and Engineering Facility Planning has determined that the respective costs exceed the construction cap per bed. As a result, the total allowable reimbursement is limited to $55,805,522.

Reimbursable project cost will be $55,805,522, as shown below:

- Nursing Facility Beds - $268,000 x 180 $48,240,000
- Ventilator Dependent - $268,000 x 1.20% allowance x 20 6,432,000
- ADHCP Costs 743,505
- CON Application Fee 2,000
- Additional Processing Fee 388,017
- Total Reimbursable Project Cost $55,805,522

The applicant’s financing plan appears as follows:

- General Obligation Bonds (4.00% for thirty years) $70,938,554

The Department of Health has determined that reimbursement for interest expenses should be limited to 85% of the allowed reimbursable project cost for reimbursement purposes instead of 75% reimbursement limit due to the applicant decertifying 50 beds and the facility’s financial hardship.

Operating Budget
The applicant has submitted an operating budget for the whole facility, in 2011 dollars, for the third year after the replacement facility. The budget is summarized below:
Nursing Facility & Ventilator Beds

<table>
<thead>
<tr>
<th></th>
<th>Per Diem</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid (Nursing Facility)</td>
<td>$265.31</td>
<td>$12,419,788</td>
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<tr>
<td>Medicaid (Ventilator)</td>
<td>537.47</td>
<td>3,269,482</td>
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<tr>
<td>Medicare (Nursing Facility)</td>
<td>450.01</td>
<td>4,213,013</td>
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<tr>
<td>Medicare (Ventilator)</td>
<td>449.79</td>
<td>252,784</td>
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<tr>
<td>Private Pay (Nursing Facility)</td>
<td>449.96</td>
<td>1,404,338</td>
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<tr>
<td>Private Pay (Ventilator)</td>
<td>600.61</td>
<td>174,178</td>
</tr>
<tr>
<td>Commercial (Nursing Facility)</td>
<td>449.96</td>
<td>1,404,338</td>
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<tr>
<td>Other</td>
<td>659.434</td>
<td></td>
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<tr>
<td><strong>Total Revenues</strong></td>
<td></td>
<td><strong>$23,797,355</strong></td>
</tr>
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</table>

Expenses:

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Operating</td>
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<tr>
<td>Capital</td>
<td>70.87</td>
<td>4,914,926</td>
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<tr>
<td><strong>Total Expenses</strong></td>
<td><strong>$722.62</strong></td>
<td><strong>$50,113,927</strong></td>
</tr>
</tbody>
</table>

Excess of Revenues over Expenses: ($26,316,572)

Utilization: (patient days)

- Nursing Facility Patient Days: 62,416
- Ventilator Dependent: 6,934
- Occupancy Nursing Facility: 95.00%
- Occupancy Ventilator Dependent: 94.98%

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

- The capital component of Medicaid revenues is based on the interest and depreciation reimbursement methodology.
- The case mix index for the nursing facility is .9400 and the case mix index for the ventilator dependent beds is 1.55.

Utilization for the nursing facility beds, broken down by payor source, for the third year after the completion of the replacement facility is as follows:

- Medicaid Fee-For-Service: 75.00%
- Medicare Fee-For-Service: 15.00%
- Commercial Fee-For-Service: 5.00%
- Private Pay: 5.00%

Utilization for the ventilator dependent beds, broken down by payor source, for the third year after the completion of the replacement facility is as follows:

- Medicaid Fee-For-Service: 87.71%
- Medicare Fee-For-Service: 8.10%
- Private Pay: 4.19%

**ADHCP**

- Revenues: $749,663
- Expenses: 699,860
- Excess of Revenues over Expenses: $49,803
- Utilization: (visits) 7,020
- Cost Per Visit: $99.69
The ADHCP will be 100% Medicaid. Also, the applicant has projected additional expenses of $7,417,079 for retiree health care costs, which are included within the budget.

The combined revenues and expenses for the facility for the third year are as follows:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$24,547,018</td>
</tr>
<tr>
<td>Expenses</td>
<td>50,813,787</td>
</tr>
<tr>
<td>Excess of Revenues over Expenses</td>
<td>($26,266,769)</td>
</tr>
</tbody>
</table>

**Capability and Feasibility**

Project costs of $70,938,554 will be met via General Obligation Bonds at an interest rate of approximately 4.00% for thirty years.

The submitted budget indicates an operating loss of $26,266,769 during the third year after project completion. Revenues are based on current reimbursement methodologies, plus incremental capital reimbursement of Medicaid. The losses will be offset by Albany County.

The applicant provided a letter from the new County of Albany Office of The Executive (dated March 16, 2012) indicating the County’s willingness to continue financial support for the nursing home. Also, the applicant provided documentation from the legislature (adopted March 12, 2012) supporting and directing the submission of this certificate of need application. This project is imperative to the facility in that a modern structure will enable the facility to remain competitive with other nursing homes in the geographical area. Also, with this application, the facility is reducing their certified bed capacity. The reduction in Medicaid occupancy for the SNF beds reflects management’s belief that a new facility with single occupancy rooms will increase Private Pay and Medicare sub-acute occupancy and reduce Medicaid occupancy.

The applicant has indicated that incremental expenses will increase by $12,440,967 from the current year (2010) to the third year after project completion. The applicant has indicated that the increases are primarily in the following categories:

- Salaries and wages are increasing by approximately $3,000,000 due to the additional 14.9FTE’s and salary increases.
- Employee Benefits are increasing by approximately $6,000,000 due to the employee benefits for the new hires, trend factor of 1% for employee benefits and retiree health insurance increases by 10% per year.
- Additional accrual of approximately $7,400,000 related to the retiree health care.
- Other direct expenses, which consists of cafeteria and other ancillary expenses, is projected to increase by approximately $700,000.
- Interest expense will increase by approximately $2,400,000 due to the proposed financing.
- Depreciation expense is projected to increase by approximately $1,700,000.

Presented as BFA Attachment A, is a financial summary for Albany County Nursing Home. As shown on Attachment A, the facility had an average positive working capital position and an average negative net asset position from 2008 through 2010. The facility incurred an average operating excess expenses over revenues of $21,919,164 from 2008 through 2010. To offset the average operating losses, the facility received average inter-governmental transfer funds of $5,498,459 and average County subsidies of $14,070,681 from 2008 through 2010. The applicant has indicated that the reasons for the historical losses are as follows: the cost of employee benefits and the State Retirement System for employees. As a public facility, Albany County Nursing Home provides a benefit package that exceeds
those found in the private sector. Since 2008, facility administration and County policymakers have taken a number of proactive steps to either improve revenues or decrease operational deficits. Those include, but are not necessarily limited to: a reduction in staff size of over 100 positions; a reorganization of the therapy department resulting in a nearly 60% increase in Medicare Part A revenues, and more than 100% increase in Medicare Part B revenues; reviewing departmental budgets and adjusting them to be more in line with industry standards; revamping the facility’s purchasing system to ensure better monitoring of costs; implementing regular and periodic budget reviews with facility Department heads to ensure both adequate staffing levels as well as cost control, and a reorganization of the facility’s MDS and resident assessment process to promote and facilitate a maximization of Medicaid revenues. As stated in a previous section, the County of Albany Office of The Executive has provided a letter stating that the County will continue to support this RHCF project. Also, the applicant provided documentation from the legislature supporting and directing the submission of this certificate of need application.

The applicant provided the County’s 2010 certified financial statements, and it appears that the County has sufficient resources to continue to offset the losses.

Subject to the noted contingency, 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**

This project includes 187,590 SF of new construction. The replacement skilled nursing facility is 182,403 SF and will be constructed adjacent to the existing facility. Attached to the skilled nursing facility will be a new 5,187 SF adult day health care facility with its own dedicated entrance. The facility will be of type II (222) construction and will be fully sprinklered.

- **First Floor (119,553 SF of new construction)**

The first floor will consist of 119,553 SF of new construction and will include 3 forty-bed units, 1 thirty-bed secured unit, 1 thirty-bed dementia unit and 1 twenty-bed multi-purpose unit for bariatric, ventilator and hospice residents.

This level will also include an entrance lobby, multi-purpose room, gift shop, café/ice cream parlor, beauty parlor, central dining room, administrative offices and public toilet rooms.

Each nursing unit typically includes a waiting and reception area, private dining, lounge/living, meditation, conference and consultation rooms. Also included are team work stations, dietary/social work stations, charting/nurse’s office, clean workroom/pantry, medication, nourishment, tub, linen, laundry, soiled holding and equipment storage rooms. Each resident room will be single bed occupancy with a handicap accessible bathroom and shower.

- **Ground Floor (68,037 SF of new construction)**

The ground floor will consist of 68,037 SF of new construction and will include a clinical area as well as physical, occupational and hydro-therapy spaces. It will also include the support facilities such as dietary, laundry, maintenance, housekeeping, staff lockers, general storage, mechanical spaces and loading dock.

A 30-registrant adult day health care facility will also be located on the ground floor and will share common facilities such as therapy and food service. The adult day health care facility will have its own dedicated entrance.

There will also be a separate outpatient rehabilitation entrance and waiting area.

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

**Recommendation**
*From an architectural perspective, approval is recommended.*

<table>
<thead>
<tr>
<th>Attachments</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
</tr>
<tr>
<td>Financial Summary for Albany County Nursing Home</td>
</tr>
</tbody>
</table>
New York State Department of Health  
Public Health and Health Planning Council  
April 5, 2012

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

**CATEGORY 1:** Applications Recommended for Approval – No Issues or Recusals, Abstentions/Interests

**CON Applications**

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 112222 B</td>
<td>Brooklyn SC, LLC (Kings County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2. 112287 B</td>
<td>Plastic Surgery Center of Westchester (Westchester County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>3. 112347 E</td>
<td>Executive Woods Ambulatory Surgery Center, LLC (Albany County)</td>
<td>Approval</td>
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</table>

**Diagnostic and Treatment Center – Establish/Construct**

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<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 112261 E</td>
<td>E &amp; A Medical Solutions, LLC d/b/a Forest Hills Health Center (Queens County)</td>
<td>Contingent Approval</td>
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</table>
### Residential Health Care Facility – Establish

<table>
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<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
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<tbody>
<tr>
<td>1.</td>
<td>Hopkins Ventures, LLC d/b/a Hopkins Center for Rehabilitation and Healthcare (Kings County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2.</td>
<td>Rockville Operating, LLC d/b/a Advanced Center for Rehabilitation and Nursing at Rockville (Nassau County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>3.</td>
<td>St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center (Suffolk County)</td>
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### Certificate of Incorporation

<table>
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<tr>
<th>Applicant</th>
<th>E.P.R.C. Recommendation</th>
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<tbody>
<tr>
<td>1. Oswego Health Foundation</td>
<td>Approval</td>
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</table>

### Certificate of Amendment of the Certificate of Incorporation

<table>
<thead>
<tr>
<th>Applicant</th>
<th>E.P.R.C. Recommendation</th>
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</thead>
<tbody>
<tr>
<td>1. United Cerebral Palsy and Handicapped Children’s Association of Chemung County, Inc.</td>
<td>Approval</td>
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### Certificate of Dissolution

<table>
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<th>E.P.R.C. Recommendation</th>
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<tr>
<td>1. Lutheran Center for the Aging, Inc.</td>
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<tr>
<td>Number</td>
<td>Applicant/Facility</td>
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<tr>
<td>----------</td>
<td>------------------------------------------------------------------------------------</td>
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<tr>
<td>2106-L</td>
<td>St. Lawrence County Public Health Department (St. Lawrence County)</td>
</tr>
<tr>
<td>2068-L</td>
<td>Hudson Valley Home Health Care, LLC (Westchester, Putnam, Ulster, Rockland, Dutchess, Orange, and Sullivan Counties)</td>
</tr>
<tr>
<td>2075-L</td>
<td>Golden Acres Home for Adults SP, LLC (Rockland, Putnam, Bronx, Orange, Ulster, Sullivan, Dutchess and Westchester Counties)</td>
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<tr>
<td>2034-L</td>
<td>Robynwood, LLC d/b/a Robynwood Home Care (Chenango, Delaware, Otsego, and Schoharie Counties)</td>
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</table>
Brooklyn SC, LLC

**County:** Kings (Brooklyn)  
**Program:** Ambulatory Surgery Center  
**Purpose:** Establishment and Construction  
**Submitted:** October 14, 2011

### Executive Summary

#### Description

Brooklyn SC, LLC, an existing limited liability company, requests approval to establish and construct a multi-specialty freestanding ambulatory surgery center (FASC), to be located in leased space at 6002 Bay Parkway, Brooklyn. Kings County will be the primary service area for this FASC. The proposed FASC will have two operating rooms and seven procedure rooms and will provide orthopedic surgery, gastroenterology, urology and in-vitro fertilization procedures.

The proposed members of Brooklyn SC, LLC consist of eleven individual physicians who are Class A members (91.65%), Friedlander & Associates, LLC, which are Class B members (3.35%), and MMC Community Horizons, Inc., which are Class C members (5.0%). Maimonides Medical Center is the passive sole member of MMC Community Horizons, Inc. The proposed Class A membership interest is as follows:

<table>
<thead>
<tr>
<th>Proposed Members and Membership Interest</th>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Class A</strong></td>
<td></td>
</tr>
<tr>
<td>Dr. Richard A. Fazio</td>
<td>0.0837%</td>
</tr>
<tr>
<td>Dr. Eliot Fuhrer</td>
<td>0.0586%</td>
</tr>
<tr>
<td>Dr. Richard V. Grazi</td>
<td>0.0355%</td>
</tr>
<tr>
<td>Dr. Kadirawel Iswara</td>
<td>0.1005%</td>
</tr>
<tr>
<td>Dr. Robert E. Kodsi</td>
<td>0.2680%</td>
</tr>
<tr>
<td>Dr. Seth Lapin</td>
<td>0.0335%</td>
</tr>
<tr>
<td>Dr. Jian Jun Li</td>
<td>0.0839%</td>
</tr>
<tr>
<td>Dr. Ira E. Mayer</td>
<td>0.0355%</td>
</tr>
<tr>
<td>Dr. Sam Moskowitz</td>
<td>0.1005%</td>
</tr>
<tr>
<td>Dr. David B. Seifer</td>
<td>0.0355%</td>
</tr>
<tr>
<td>Dr. Eliot H. Zimbalist</td>
<td>0.0833%</td>
</tr>
<tr>
<td><strong>Total Class A Membership Interest</strong></td>
<td>0.9165%</td>
</tr>
</tbody>
</table>

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 $8,453,697.

#### DOH Recommendation

Contingent approval for a 5-year limited life.

#### Need Summary

From 2008 to 2009, the number of ambulatory surgery patients receiving gastroenterology and endoscopy services at free standing ASCs in Kings County increased by 29 percent.

The physician members of Brooklyn SC, LLC and other participating physicians have medical practices within the service area of the proposed FASC and will perform appropriate procedures at the FASC.

#### 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 $845,697 in equity and a bank loan of $7,608,000 @ 5.5% over seven years.

<table>
<thead>
<tr>
<th>Budget:</th>
<th>Revenues:</th>
<th>$11,056,231</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Expenses:</td>
<td>9,819,104</td>
</tr>
<tr>
<td></td>
<td>Gain/(Loss):</td>
<td>$1,237,127</td>
</tr>
</tbody>
</table>

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 FASC will have 2 operating rooms and 7 procedure rooms, and provide orthopedic surgery, gastroenterology, urology and in-vitro fertilization procedures.
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 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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

7. Submission of an assumed name, acceptable to the Department, if applicable. [HSP]

8. Submission of a commitment acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest within 120 days of receipt from the Office of Health Systems Management, Bureau of Architectural and Engineering Facility Planning, of approval of final plans and specifications and before the start of construction. Included in the submitted permanent mortgage commitment, must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]

9. Submission of an executed working capital loan commitment that is acceptable to the Department. [BFA]

10. Submission of an executed Administrative and Consulting Agreement that is acceptable to the Department. [BFA]

11. This project approval is contingent upon written confirmation by CMS that the proposed mixing of functions between the FASC procedure rooms and adjacent private laboratory for the purposes of providing concurrent in-vitro fertilization procedures is permitted. [AER]

12. Submission of an executed lease that is acceptable to the Department. [CSL]

13. Submission of an executed copy of the Amendment to the Articles of Organization of Brooklyn SC, LLC, 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 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 start of construction. [AER]
7. The applicant shall complete construction by January 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
April 5, 2012.
Need Analysis

Background
Brooklyn SC, LLC is requesting approval to establish and construct a multi-specialty freestanding ambulatory surgical center (FASC) to provide orthopedic surgery, gastroenterology, urology, and in-vitro fertilization procedures. It will have two operating rooms and seven procedure rooms and will be located at 6002 Bay Parkway, Brooklyn.

The primary service area for the proposed project is Kings County.

The number of projected procedures is as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Procedures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Year</td>
<td>0</td>
</tr>
<tr>
<td>First Year</td>
<td>16,444</td>
</tr>
<tr>
<td>Third Year</td>
<td>17,445</td>
</tr>
</tbody>
</table>

Brooklyn SC, LLC will address the needs of patients currently served the physician member’s offices and other non-hospital settings. Brooklyn SC will provide services to all persons in need of care without regard to ability to pay or source of payment and two percent of revenues will be dedicated to charity care.

Brooklyn SC will enter into a transfer and affiliation agreement with Maimonides Medical Center for provision of backup and emergency services. The hospital is located approximately 2.19 miles or nine minutes from the proposed ASC.

The proposed center will be open Monday-Friday 7:00 a.m. to 6:00 p.m.

Currently, Kings County has a total of 21 multi-specialty ambulatory surgery centers. Five are freestanding D & TCs, one is a Hospital Extension Clinic, and 15 are hospital-based. None of these are in the zip code 11204 where the proposed facility will be located. The County also has a total of eight freestanding ASCs. Two are single specialty-gastroenterology ASCs; one is in zip code 11204, which is the same zip code as that of the proposed ASC’s location, and the other is in zip code 11214. This information is summarized in the following tables:

<table>
<thead>
<tr>
<th>Kings County Surgical Facility Types</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of Facility</strong></td>
</tr>
<tr>
<td>D &amp; TCs</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>D &amp; TC Extension Clinics</td>
</tr>
<tr>
<td>Hospitals</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

Source: HFIS
### Kings County Facilities

#### Gastroenterology and Endoscopy Ambulatory Surgery Patient Volume

<table>
<thead>
<tr>
<th>Facility</th>
<th>2008</th>
<th>2009</th>
<th>% Change 2008-9</th>
</tr>
</thead>
<tbody>
<tr>
<td>Digestive Disease Center</td>
<td>5,293</td>
<td>7,504</td>
<td></td>
</tr>
<tr>
<td>Endoscopic Ambulatory Specialty Center</td>
<td>675</td>
<td>662</td>
<td></td>
</tr>
<tr>
<td>Endscpc Diagnostic &amp; Treatment Center LLC</td>
<td>2,504</td>
<td>2,762</td>
<td></td>
</tr>
<tr>
<td>Gastroenterology Care, Inc.-opened 3/11</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greater NY Endoscopy Surgical-opened 4/2009</td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>8,472</td>
<td>10,929</td>
<td>29.0%</td>
</tr>
</tbody>
</table>

Source: SPARCS: 2008-09

### Recommendation

From a need perspective, contingent approval is recommended for a limited life of five years.

### Programmatic Analysis

#### Background

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

<table>
<thead>
<tr>
<th>Proposed Operator</th>
<th>Brooklyn SC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operator Type</td>
<td>LLC</td>
</tr>
<tr>
<td>Site Address</td>
<td>6002 Bay Parkway, Brooklyn</td>
</tr>
<tr>
<td>Surgical Specialties</td>
<td>Multispecialty including: Orthopedic Gastroenterology Urology IVF procedures</td>
</tr>
<tr>
<td>Operating Rooms</td>
<td>2</td>
</tr>
<tr>
<td>Procedure Rooms</td>
<td>7</td>
</tr>
<tr>
<td>Hours of Operation</td>
<td>Monday through Friday from 7:00 am to 6:00 pm (Extended as necessary to accommodate patient needs).</td>
</tr>
<tr>
<td>Staffing (1st Year / 3rd Year)</td>
<td>47.70 FTEs / 50.35 FTEs</td>
</tr>
<tr>
<td>Medical Director(s)</td>
<td>Ira E. Mayer</td>
</tr>
<tr>
<td>Support Services Agreement</td>
<td>Expected to be provided by Maimonides Medical Center</td>
</tr>
<tr>
<td>Distance</td>
<td>2.19 miles or 9 minutes</td>
</tr>
<tr>
<td>On-call service</td>
<td>Access to the facility’s on-call physician during hours when the facility is closed.</td>
</tr>
</tbody>
</table>

#### Integration with Community Resources

The center plans to work closely with its patients to educate them regarding the availability of primary care services offered by local providers including providing all patients information concerning such availability upon departure. The center intends to promote the accessibility of its services for all persons in need of such services, with a particular emphasis on improving access for the traditionally under-served populations.

Additionally Maimonides has received recognition as a Level 3 Patient-Centered Medical Home (PCMH) and has recently been conditionally approved by the Department as a Medicaid Health Home. This application has been developed in conjunction with Maimonides, and the applicant believes that this association with Maimonides will enable it to benefit from and participate in the Maimonides PCMH and Medicaid Health Home.
The facility intends to utilize an Electronic Medical Record system and become fully integrated with the Brooklyn Health Information Exchange, an established 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. The Center intends to review the list acceptable procedures annually and as needed to determine the appropriateness of adding new procedures consistent with individual physician expertise.

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:

**Class A (91.65%)**
- Richard A. Fazio, MD 8.37% Manager
- Elliott Fuhrer, MD 5.86% Manager
- Richard V. Grazi, MD 3.55%
- Kadirawel Iswara, MD 10.05%
- Robert E. Kodsi, MD 26.80% Manager
- Seth Lapin, MD 3.35% Manager
- Jian Jun Li, MD 8.39%
- Ira E. Mayer, MD 3.35%
- Sam Moskowitz, MD 10.05%
- David B. Seifer, MD 3.55%
- Eliot H. Zimbalist, MD 8.33%

**Class B (3.35%)**
- Friedlander & Associates, LLC (F&A) 3.35%
  - Class A Members of F&A
    - Charles Friedlander, MD (50%)
    - Giovanna Guerci (15%)
    - Richard Ventimiglia (15%)
  - Class B Members of F&A
    - John Ackert, MD (4%)
    - James Salick, MD (4%)
    - Alex Sherman, MD (4%)
    - Hillel Tobias, MD (4%)
    - Scott Weber, MD (4%)

**Class C (5.00%)**
- MMC Community Horizons, LLC 5.00%
  - Pamela Brier
  - Robert Naldi Manager
  - Martin Payson

Each Class A members is a physician and all intend to perform procedures at the center.
The Class B member, Friedland & Associates, LLC is also a member of an operational licensed ambulatory surgery center in Brooklyn and some of the members of Friedland & Associates are also members of another operational licensed ambulatory surgery center in Manhattan. Additionally, this applicant intends to enter into a consulting services agreement with the Friedlander & Associates.

The Class C member, MMHC Community Horizons, Inc. is a not-for-profit whose sole passive member is Maimonides Medical Center. The initial directors of MMHC Community Horizons are employees of Maimonides.

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.

**Recommendation**

From a programmatic perspective, contingent approval is recommended.

### **Financial Analysis**

#### Administrative and Consulting Services Agreement

The proposed center will enter into an administrative and consulting services agreement with Friedlander & Associates, LLC, which will ensure that the operations and finances of the Center are maintained. Though non-arm’s length, the terms of the administrative and consulting service agreement appear to comply with Department of Health guidelines. The annual fee of $75,000 for a term of ten years appears reasonable for the level of services provided.

#### Lease Agreement

The applicant will lease approximately 15,000 square feet of space on a portion of the fourth and fifth floors of 6002 Bay Parkway, Brooklyn, NY under the terms of the executed lease agreement summarized below:

- **Date:** May 16, 2011
- **Landlord:** Bay Parkway Group, LLC
- **Tenant:** Brooklyn SC, LLC
- **Term:** 15 Years with two five year renewal options
- **Rental:** $540,000 ($36.00 per sq. ft) for the first year with an annual increase of 1% for the second year, 2% for year three through five and 3% for the next ten years compounded annually.
- **Provisions:** Taxes, insurance, utilities and maintenance

The applicant has indicated that the lease will be a non-arm’s length lease arrangement, and has submitted letters of opinion from licensed commercial real estate brokers attesting to the reasonableness of the per square foot rental.
Total Project Cost and Financing
Total project costs for new construction and the acquisition of movable equipment is estimated at $8,453,697, itemized as follows:

- Renovation & Demolition $3,125,720
- Design Contingency $312,572
- Construction Contingency $156,286
- Architect/Engineering Fees $470,400
- Other Fees (Consulting) $47,250
- Movable Equipment $4,163,655
- Telecommunications $34,545
- Financing Costs $30,000
- Interim Interest Expense $65,039
- Application Fee $2,000
- Additional Processing Fee $46,230
- Total Project Cost $8,453,697

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

- Equity $845,697
- Bank Loan @5.5% over seven years $7,608,000

A letter of interest has been submitted by M &T Bank.

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

<table>
<thead>
<tr>
<th></th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues:</td>
<td>$10,421,558</td>
<td>$11,056,231</td>
</tr>
<tr>
<td>Expenses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$7,130,265</td>
<td>$7,480,515</td>
</tr>
<tr>
<td>Interest</td>
<td>459,690</td>
<td>340,484</td>
</tr>
<tr>
<td>Depreciation and Rent</td>
<td>1,977,497</td>
<td>1,998,105</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>$9,567,452</td>
<td>$9,819,104</td>
</tr>
<tr>
<td>Net Income</td>
<td>$854,106</td>
<td>$1,237,127</td>
</tr>
<tr>
<td>Utilization: (procedures)</td>
<td>16,444</td>
<td>17,445</td>
</tr>
<tr>
<td>Cost Per Procedure</td>
<td>$581.82</td>
<td>$562.86</td>
</tr>
</tbody>
</table>

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

- Commercial Insurance-Fee-For-Service 10.0%
- Commercial Insurance-Managed Care 51.0%
- Medicare Fee-For-Service 27.0%
- Medicare Managed Care 2.0%
- Medicaid Fee-For-Service 2.0%
- Medicaid Managed Care 4.0%
- Self Pay 2.0%
- Charity Care 2.0%
Expense and utilization assumptions are based on the combined historical experience of the physician’s private practice and Maimonides Hospital. The Class A members intend to maintain their private practices and upon approval of this project, will move the surgical component of their practices to the Article 28 FASC.

**Capability and Feasibility**

The project cost of $8,453,697 will be satisfied by $845,697 of members equity and a bank loan of $7,608,000 @5.5% over seven years. A letter of interest has been submitted by the applicant from M&T Bank.

Working capital requirements, estimated at $1,636,517, appear reasonable based on two months of third year expenses. The applicant will finance $750,000 via a loan at an interest rate 6.75% for a five year term, for which a letter of interest from M&T Bank has been provided. The remainder, $886,517, will be provided as equity by the proposed members. Presented as BFA Attachment A and B is a summary of net worth statements of Class A and Class B proposed members of Brooklyn SC, LLC, respectively, which indicates the availability of sufficient funds for the stated levels of equity. Presented as BFA Attachment C, is the financial statements of Maimonides Medical Center, Class C, which indicates the availability of sufficient funds for the stated levels of equity. Presented as BFA Attachment D, is the pro-forma balance sheet of Brooklyn SC, LLC as of the first day of operation, which indicates positive member’s equity position of $1,732,214.

The submitted budget indicates a net income of $854,106 and $1,237,127 during the first and third years of operation, respectively. 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.

**Recommendation**

From a financial perspective, contingent approval is recommended.

### Architectural Analysis

**Background**

The proposed facility will be a multi specialty ambulatory surgery and GI endoscopy facility providing GI endoscopy screening and procedures, in addition to general and specialty surgery procedures. The center will be located on the fourth and fifth floors of a medical building and will consist of a total of 19,997 SF.

The fourth floor will consist of a waiting area, toilet rooms, reception, registration, coat closet room, admin office, consultation room, exam room, patient education room, medical records, men and women locker rooms, break room and IT room. The fourth floor clinical space will consist of 3 nurse stations, nourishment area, 2 dressing rooms, 21 pre-op post-op recovery rooms, 4 patient toilets, staff toilet, 5 endoscopy procedure rooms, 2 OR’s, sub-sterile room, clean workroom, soiled workroom, clean scope rooms, soiled scope room and medical storage. Support spaces will include an equipment supply room, crash cart area, 5 storage rooms, receiving room, mechanical room and janitor closet.

The fifth floor will consist of a waiting room, office, locker room, staff toilet, conference room, patient toilet, patient locker room, nurse station, 4 pre-op post op recovery rooms, 2 procedure rooms, clean workroom, soiled workroom, storage rooms and janitor 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.
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: Lutheran Medical Center
150 55th Street
Brooklyn, New York 11220

No response.

Facility: NY Community Hospital of Brooklyn
2525 Kings Highway
Brooklyn, New York 11229

No response.

Facility: Beth Israel Medical Center
3201 Kings Highway
Brooklyn, New York 11239

No response.
Supplemental Information from Applicant

- Need and Sources of Cases

The applicant states that all of the projected caseload will come from office-based procedures currently performed in the private practice of the physicians who have committed to perform cases at the proposed ASC. The applicant also cites data showing a continued growth in Kings County in the number of persons 45 years and older, which is the primary service group for ambulatory surgery.

- Staff Recruitment and Retention

The applicant states that initial recruitment will be of selected staff currently employed by the member physicians in their private practices, 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 applicant states that all of the ASC's projected cases will be drawn from those currently performed in the private office practices of the physicians who have committed to operating at the proposed facility.

OHSM Comment

The absence of any comments in opposition to this application 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.
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a multi-specialty freestanding ambulatory surgery center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

112222-B Brooklyn, SC, LLC
APPROVAL CONTINGENT UPON:

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 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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

7. Submission of an assumed name, acceptable to the Department, if applicable. [HSP]

8. Submission of a commitment acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest within 120 days of receipt from the Office of Health Systems Management, Bureau of Architectural and Engineering Facility Planning, of approval of final plans and specifications and before the start of construction. Included in the submitted permanent mortgage commitment, must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
9. Submission of an executed working capital loan commitment that is acceptable to the Department. [BFA]

10. Submission of an executed Administrative and Consulting Agreement that is acceptable to the Department. [BFA]

11. This project approval is contingent upon written confirmation by CMS that the proposed mixing of functions between the FASC procedure rooms and adjacent private laboratory for the purposes of providing concurrent in-vitro fertilization procedures is permitted. [AER]

12. Submission of an executed lease that is acceptable to the Department. [CSL]

13. Submission of an executed copy of the Amendment to the Articles of Organization of Brooklyn SC, LLC, 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 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 start of construction. [AER]

7. The applicant shall complete construction by January 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]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York  12180-2299
Executive Summary

Description
The Plastic Surgery Center of Westchester, LLC (PSCW), an existing proprietary limited liability corporation, was approved as a single-specialty ambulatory surgery center in the specialty of plastic/reconstructive surgery by the Public Health Council on October 5, 2010, and began operation in July 2011. Via this CON, the applicant seeks approval to add ophthalmology and transfer 43% membership interest from the 2 current members (21.5% each) to six new proposed physician members, each of whom is a board certified ophthalmologist.

Samuel J. Beran, M.D. and Joshua A. Greenwald, M.D., the two existing members of PSCW, will continue to be the Co-Medical Directors. The membership interests before and after the transfer are as follows:

<table>
<thead>
<tr>
<th>Current Interest</th>
<th>Proposed Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Samuel Beran, M.D. 50.00%</td>
<td>Samuel Beran, M.D. 28.50%</td>
</tr>
<tr>
<td>Joshua Greenwald, M.D. 50.00%</td>
<td>Joshua Greenwald, M.D. 28.50%</td>
</tr>
<tr>
<td>Bradley Scharf, M.D. 10.00%</td>
<td>James Gordon, M.D. 10.00%</td>
</tr>
<tr>
<td>Seth Potash, M.D. 6.33%</td>
<td>Seth Potash, M.D. 6.33%</td>
</tr>
<tr>
<td>Allen Greenbaum, M.D. 6.33%</td>
<td>Allen Greenbaum, M.D. 6.33%</td>
</tr>
<tr>
<td>Edmund Farris, M.D. 6.34%</td>
<td>Edmund Farris, M.D. 6.34%</td>
</tr>
<tr>
<td>Neil Katz, M.D. 4.00%</td>
<td>Neil Katz, M.D. 4.00%</td>
</tr>
</tbody>
</table>

Upon approval, the applicant will change its name to The Plastic and Eye Surgery Center of Westchester. The applicant will continue to lease space at 440 Mamaroneck Avenue, Harrison, which includes two operating rooms and two procedures rooms, and enter into an administrative service agreement with DEC Merritt, LLC to provide services including but not limited to staffing, marketing, budgeting, billing and collections, credentialing and insurance planning.

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 equity from The Plastic Surgery Center of Westchester.

Incremental Budget:

| Revenues: | $ 2,267,978 |
| Expenses: | 1,352,686 |
| Gain/(Loss): | $ 915,292 |

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

Architectural Summary
This project action is for addition of service and transfer of ownership only; therefore, no Architectural review is required.

DOH Recommendation
Contingent approval.

Need Summary
In the first year, the six new members propose to perform a total of 2,838 ophthalmology procedures. These procedures are currently performed in a private practice setting in Westchester County. None of the projected cases will migrate to PSCW from local hospitals or other freestanding ambulatory surgery centers.

Total project costs are estimated at $177,761.
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 to expire on July 6, 2016, as issued in the original five-year limited life approval for CON # 072092 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]

Council Action Date
April 5, 2012.
Need Analysis

Background
Plastic Surgery Center of Westchester (PSCW), an existing single-specialty freestanding ambulatory surgery center, seeks approval to add ophthalmology as a specialty service and transfer 43% of the membership interest to six new members. PSCW is located at 440 Mamaroneck Avenue, Harrison. PSCW proposes to change its name to The Plastic and Eye Surgery Center of Westchester.

PSCW was approved under CON #072092-B as an Article 28 diagnostic and treatment center (D&TC). It is certified as a single-specialty freestanding D&TC for a limited life of five years. PSCW became operational on July 6, 2011 for a limited life of five years.

The primary service area is Westchester County.

In the first year, the six new members propose to perform a total of 2,838 ophthalmology procedures. These procedures are currently performed in a private practice setting in Westchester County. None of the projected cases will migrate to PSCW from local hospitals or other FASCs.

The number of projected procedures is as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Plastic/Reconstructive Surgery</th>
<th>Ophthalmology</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Year</td>
<td>1,980</td>
<td>0</td>
<td>1,980</td>
</tr>
<tr>
<td>First Year</td>
<td>1,980</td>
<td>2,838</td>
<td>4,818</td>
</tr>
<tr>
<td>Third Year</td>
<td>1,980</td>
<td>3,010</td>
<td>4,990</td>
</tr>
</tbody>
</table>

PSCW has an existing transfer and affiliation agreement for backup and emergency services with White Plains Hospital Center, which is located 4.8 miles and 13 minutes from PSCW.

PSCW is committed to serving all persons in need without regard to their source of payment or the ability to pay. Their operating budget projects three (3) percent of cases will be for charity care.

There is currently one single specialty-ophthalmology D&TC in Westchester County. The County also has three multi specialty D&TCs.

<table>
<thead>
<tr>
<th>Facility</th>
<th>Single Specialty</th>
<th>Multi Specialty</th>
</tr>
</thead>
<tbody>
<tr>
<td>D&amp;TC</td>
<td>1-Ophthalmology</td>
<td>---</td>
</tr>
<tr>
<td>D&amp;TC</td>
<td>---</td>
<td>3</td>
</tr>
</tbody>
</table>

Source: NYSDOH HFIS

Conclusion
The proposed project will add ophthalmology services to an existing single specialty freestanding ambulatory surgery center and transfer partial ownership to six new members, all of whom are board certified ophthalmologists.
Programmatic Analysis

Background
With the addition of ophthalmological surgery the center will change its name to The Plastic and Eye Surgery Center of Westchester to reflect the expanded scope of service.

Character and Competence
The applicant is requesting to add six additional members to the LLC. Upon approval the members of the LLC will be:

<table>
<thead>
<tr>
<th>Name</th>
<th>Percentage</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bradley H. Scharf, MD</td>
<td>10.0%</td>
<td>(Subject of CON)</td>
</tr>
<tr>
<td>James R. Gordon, MD</td>
<td>10.0%</td>
<td>(Subject of CON)</td>
</tr>
<tr>
<td>Seth D. Potash, MD</td>
<td>6.33%</td>
<td>(Subject of CON)</td>
</tr>
<tr>
<td>Allen S. Greenbaum, MD</td>
<td>6.33%</td>
<td>(Subject of CON)</td>
</tr>
<tr>
<td>Edmund P. Farris, MD</td>
<td>6.33%</td>
<td>(Subject of CON)</td>
</tr>
<tr>
<td>Neil R. Katz, MD</td>
<td>4.0%</td>
<td>(Subject of CON)</td>
</tr>
<tr>
<td>Samuel Beran, MD</td>
<td>28.5%</td>
<td></td>
</tr>
<tr>
<td>Joshua Greenwald, MD</td>
<td>28.5%</td>
<td></td>
</tr>
</tbody>
</table>

The proposed new members are all practicing physicians in private practice.

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.

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Subscription Agreements
The applicant has submitted executed subscription agreements from the proposed members, the terms of which are summarized below:

| Date            | October 31, 2011 |
| Purpose         | Purchase 6.33% of membership interest each |
| Seller          | The Plastic Surgery Center of Westchester, LLC |
| Members         | Seth Potash, M.D., Allen Greenbaum, M.D. and Edmund Farris, M.D. |
**Purchase Price:** $63,333.33 each/payable in full upon submission of the executed subscription agreement.

**Date:** October 31, 2011  
**Purpose:** Purchase 4% of membership interest  
**Seller:** The Plastic Surgery Center of Westchester, LLC  
**Member:** Neil Katz, M.D.

**Purchase Price:** $40,000 payable in full upon submission of the executed subscription agreement.

**Date:** October 31, 2011  
**Purpose:** Purchase 10% of membership interest each  
**Seller:** The Plastic Surgery Center of Westchester, LLC  
**Members:** Bradley Scharf, M.D. and James Gordon, M.D.

**Purchase Price:** $100,000 each/payable in full upon submission of the executed subscription agreement.

The proposed members have been given a promissory note for their payment of the subscription agreement. Upon approval, the promissory note will be converted into membership interests. Presented as Attachment A are the net worth statements of the proposed members showing sufficient funds to cover the individual purchase prices.

**Administrative Services Agreement**

The Plastic Surgery Center of Westchester, LLC will enter into an Administrative Services Agreement with DEC Merritt, LLC. The consultant would provide certain professional business and administrative services to the ambulatory surgery center relating to the operation of the facility.

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

- **Facility:** The Plastic Surgery Center of Westchester, LLC
- **Contractor:** DEC Merritt, LLC
- **Duties of the Contractor:** Coordinate recruitment of additional physicians; oversee process of securing third-party financing; business planning and production of budgets; review of policies and procedures; assist with accreditation and licensure process; provide bookkeeping and accounting functions; billing and collections, materials administration; human resource administration; credentialing; support services and insurance planning.
- **Term:** 30 months, with the option to renew yearly.
- **Compensation:** $225,000 per year

DEC Merritt, LLC is a non-related party. Therefore, the administrative services agreement is an arm’s length agreement.

**Total Project Cost and Financing**

Total project costs are estimated at $177,761, broken down as follows:

- Consultant Fees $50,000
- Movable Equipment 124,800
- Application Fee 2,000
- Additional Processing Fee 961
- **Total Project Cost** $177,761

The applicant will finance total project costs of $177,761 with equity from The Plastic Surgery Center of Westchester.
Operating Budget
The applicant has provided first and third year incremental budgets, in 2012 dollars, summarized below:

<table>
<thead>
<tr>
<th></th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$1,869,608</td>
<td>$2,267,978</td>
</tr>
<tr>
<td>Expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$1,075,330</td>
<td>$1,243,466</td>
</tr>
<tr>
<td>Capital</td>
<td>145,556</td>
<td>109,220</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>$1,220,886</td>
<td>$1,352,686</td>
</tr>
<tr>
<td>Net Income</td>
<td>$648,722</td>
<td>$915,292</td>
</tr>
<tr>
<td>Utilization (procedures)</td>
<td>1,863</td>
<td>2,259</td>
</tr>
<tr>
<td>Cost per procedure</td>
<td>$655.33</td>
<td>$598.80</td>
</tr>
</tbody>
</table>

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

|                                   | Years One and Three |
|                                   | 37.0%               |
| Commercial Fee for Service        | 3.0%                |
| Commercial Managed Care           | 52.0%               |
| Medicare Fee for Service          | 2.0%                |
| Medicare Managed Care             | 0.5%                |
| Medicaid Fee for Service          | 1.5%                |
| Medicaid Managed Care             | 1.0%                |
| Private Pay                       | 3.0%                |
| Charity Care                      |                     |

Expenses and utilization assumptions are based on historical experience of the proposed members providing services through their private practices. Each proposed member has provided a referral letter in support of utilization projections.

Capability and Feasibility
Total project costs of $177,761 will be met with equity from The Plastic Surgery Center of Westchester. Presented as BFA Attachment A, is an internal financial summary of The Plastic Surgery Center of Westchester, LLC as of December 31, 2011, which indicates the availability of sufficient funds.

The submitted budget indicates a net income of $648,722 and $915,292 during the first and third years of operation, respectively. The budget appears reasonable.

As shown on BFA Attachment A, internal financial summary of The Plastic Surgery Center of Westchester as of December 31, 2011, the facility has maintained positive working capital, experienced negative equity and a net loss of $592,904. The negative equity and net loss are based on the first five months of operation in 2011 and were due to start up costs and lag in accounts receivable. Presented as Attachment C, internal financial summary of The Plastic Surgery Center of Westchester as of January 31, 2012, the facility has generated a net income of $54,678.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation
From a financial perspective, approval is recommended.
## Attachments

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>Net worth statements of purchasing members</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Internal financial summary as of December 31, 2011, The Plastic Surgery Center of Westchester, LLC</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Internal Financial Summary as of January 31, 2012, The Plastic Surgery Center of Westchester, LLC</td>
</tr>
<tr>
<td>BHFP Attachment</td>
<td>Map</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to add ophthalmology to an existing single-specialty freestanding ambulatory surgery center and transfer 43 percent of the membership interest to six new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

112287-B Plastic Surgery Center of Westchester, LLC
APPROVAL CONTINGENT UPON:

Approval for limited life of five years to expire on July 6, 2016, as issued in the original five-year limited life approval for CON # 072092 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]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299
Executive Summary

Description
Executive Woods Ambulatory Surgery Center, LLC, an existing Article 28 ambulatory surgery center located at 3 Atrium Drive, Albany, requests approval for a change in 3.333% of the membership ownership. William Montgomery, M.D. will assume the shares currently owned by James Furlong, M.D., who is retiring from the practice. Ownership, before and after the proposed transaction, is as follows:

<table>
<thead>
<tr>
<th>Current Membership</th>
<th>Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leonard Goldstock, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>John Kavanaugh, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>Suheil Khuri, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>John Whalen, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>Joseph Fay, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>Frederick Fletcher, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>J. David Abraham, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>Richard L. Katz, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>Christopher DeCamp, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>James Alfandre, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>David Dixon, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>Luke Rigolisi, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>Kyle Flik, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>Frank Congiusta, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>Charles Buttaci, M.D.</td>
<td>3.333%</td>
</tr>
<tr>
<td>James Furlong, M.D.</td>
<td>3.333%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Proposed Membership</th>
<th>Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leonard Goldstock, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>John Kavanaugh, M.D.</td>
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<td>6.667%</td>
</tr>
<tr>
<td>Richard L. Katz, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>Christopher DeCamp, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>James Alfandre, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>David Dixon, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>Luke Rigolisi, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>Kyle Flik, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>Frank Congiusta, M.D.</td>
<td>6.667%</td>
</tr>
<tr>
<td>Charles Buttaci, M.D.</td>
<td>3.333%</td>
</tr>
<tr>
<td>William Montgomery, M.D.</td>
<td>3.333%</td>
</tr>
</tbody>
</table>

Executive Woods Ambulatory Surgery Center, LLC is certified as a single-specialty freestanding ambulatory surgery center in the discipline of Orthopedics. This transfer would bring the five-year aggregation transfer percentage to more than 25 percent. Per PHL Section 2801-a (4)(b), this requires a full review before the Public Health and Health Planning Council.

DOH Recommendation
Approval.

Need Summary
There will be no change in the current services as a result of the proposed transaction.

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 asset purchase price of $37,500 will be met via equity from the proposed member personal resources. It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Architectural Summary
This project is for Establishment action only; 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.

Council Action Date
April 5, 2012.
**Need Analysis**

**Background**
Executive Woods Ambulatory Surgery Center, LLC (EWASC), located at 3 Atrium Drive, Albany, seeks approval to transfer 3.333% ownership interest to a new member from a retiring member, bringing the 5-year aggregation percentage to more than 25%.

EWASC is owned by surgeons who are partners of Northeast Orthopedics, LLP, an orthopedic surgery practice in Albany. The policy of the practice is to allow new partners the opportunity to become members of the EWASC. In the past, EWASC has issued additional membership interests with prior notice to the Public Health Council.

The ownership changes that EWASC propose result in the transfer of ownership to over 25 percent. EWASC proposes to issue five units of membership interest, representing 3.33 percent ownership interest, to William H. Montgomery, M.D., who is a new partner in the medical practice, and reduce the number of units owned by James P. Furlong, M.D. by five due to his pending retirement from this ASC.

<table>
<thead>
<tr>
<th>Physicians</th>
<th>Current Number of Units</th>
<th>Current Sharing Interest</th>
<th>Proposed Number of Units</th>
<th>Proposed Sharing Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>James Furlong, M.D. (Pending Retirement)</td>
<td>5</td>
<td>3.333%</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>William Montgomery, M.D. (New Partner)</td>
<td>0</td>
<td>0%</td>
<td>5</td>
<td>3.333%</td>
</tr>
<tr>
<td>Remaining 15 M.D.s</td>
<td>145</td>
<td>96.671%</td>
<td>145</td>
<td>96.671%</td>
</tr>
<tr>
<td><strong>Total Above</strong></td>
<td>150</td>
<td>100.004%</td>
<td>150</td>
<td>100.004%</td>
</tr>
</tbody>
</table>

Total M.D.s will be 16 (includes W. Montgomery, excludes J. Furlong)

The number of ambulatory surgery patients at EWASC increased 8.3 percent from 2008 to 2009 and decreased 3.2 percent from 2009 to 2010 as follows:

2008: 4,123
2009: 4,464
2010: 4,320

Source: SPARCS, 2008-10

EWASC is adding a physician partner as another physician retires. EWASC is not planning any changes in its services as a result of this project.

**Recommendation**
From a need perspective, approval is recommended.

---

**Programmatic Analysis**

**Background**
Establish Dr. William Montgomery as a new member of the limited liability company and remove one member who is withdrawing due to retirement.

**Character and Competence**
Upon approval the members of the LLC will be:

- William Montgomery, MD 3.333% (subject of CON)
- Leonard Goldstock, MD 6.667%
- John Kavanaugh, MD 6.667%
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.

Recommendation
From a programmatic perspective, approval is recommended.

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Financial Analysis

Amendment to the Operating Agreement

In accordance with the amendment to the operating agreement among the existing members of Executive Woods Ambulatory Surgery Center, LLC, and William H. Montgomery, M.D., Dr. Montgomery will make a capital contribution of $37,500 for his 3.333% interest. The contribution will be satisfied from personal resources.

Capability and Feasibility

The issue of capability is centered upon the proposed member’s ability to meet his capital contribution, to be derived from personal resources. Presented as BFA Attachment A, is a summary net worth statement for William H. Montgomery, M.D., which indicates the availability of sufficient resources.

There are no significant issues of feasibility associated with this application. Presented as BFA Attachment B, is the audited financial summary of Executive Woods Ambulatory Surgery Center, LLC. As shown on attachment B, the facility achieved net operating income of $1,919,217 and $1,569,046 in 2010 and 2009, respectively. Attachment C, the internal financial summary of the Executive Woods Ambulatory Surgery Center, LLC, shows net operating income of $1,838,154 for 2011. During this period, the applicant has maintained positive working capital and net asset position.

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

Recommendation
From a financial perspective, approval is recommended.
Attachments

BFA Attachment A  Net Worth Statement, William H. Montgomery, M.D.
BFA Attachment B  Financial Summary of Executive Woods Ambulatory Center (2010 and 2009- Audited)
BFA Attachment C  Financial Summary of Executive Woods Ambulatory Center (2011- Internal)
BFA Attachment D  Establishment Checklist for Ambulatory Care
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to change in 3.333% of the membership ownership, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

112347-E Executive Woods Ambulatory Surgery Center, LLC
APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299
**Executive Summary**

**Description**
E & A Medical Solutions, LLC, d/b/a Forest Hills Health Center, a recently formed limited liability company, requests approval to assume ownership of the AllHealth Diagnostic and Treatment Center’s main site, at 68-60 Austin Street, Forest Hills. The other sites will continue to be operated by B & L Health, Inc. d/b/a AllHealth Diagnostic and Treatment Center (AllHealth).

The sole member of E & A Medical Solutions, LLC is Alexi Gevorgyan.

**DOH Recommendation**
Contingent approval.

**Need Summary**
The proposed services to be provided at the Center are the same as those currently reflected on AllHealth’s operating certificate, with the exception of clinic part time services: audiology, dental, health fairs, nutritional, optometry, pediatric, podiatry, prenatal, primary medical services, psychology, occupational therapy, physical therapy and speech language pathology.

**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 purchase price of $250,000 will be met as follows: $15,000 Non-Refundable Deposit transferred to Seller on June 24, 2011; $35,000 Non-Refundable Deposit transferred to Seller on the date of the execution of this agreement; $50,000 transferred to an Escrow Agent on the date of execution of this agreement and $150,000 at closing. The amount due at closing will be paid from the sole members personal resources.

**Budget:**

- **Revenues:** $1,269,777
- **Expenses:** $1,250,662
- **Gain/(Loss):** $19,115

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 a comprehensive plan to achieve the ‘Prevention Agenda’s 2013 Objectives’ in the identified service area. Provide an annual progress report for the first three years after the change in ownership. [RNR]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed lease assignment that is acceptable to the Department. [BFA]
4. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
5. Submission of a Certificate of Assumed Name that is acceptable to the Department. [CSL]
6. Submission of an executed Amended and Restated Articles of Organization that is acceptable to the Department. [CSL]
7. Submission of an Operating Agreement that is acceptable to the Department. [CSL]
8. Submission of evidence of site control 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]

Council Action Date
April 5, 2012.
Need Analysis

Background
E & A Medical Solutions, LLC, d/b/a Forest Hills Health Center, a recently formed limited liability company, seeks approval to assume ownership of an existing Article 28 facility, Allhealth Diagnostic and Treatment Center, located at 68-60 Austin Street, Forest Hills, Queens County. B & L Health, Inc., the current operator of Allhealth Diagnostic and Treatment Center, will retain ownership of the existing three extension clinics in Brooklyn: Allhealth D&TC-Brooklyn, Allhealth D& TC-Brooklyn 2, and Allhealth D&TC-Mobile Van. There will no change in the services provided at the facility following the completion of this project.

Need Summary
Projected utilization is as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Utilization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Year</td>
<td>10,848</td>
</tr>
<tr>
<td>First Year</td>
<td>10,848</td>
</tr>
<tr>
<td>Third Year</td>
<td>11,932</td>
</tr>
</tbody>
</table>

Analysis
The primary service area includes the following:

11375 - Forest Hills
11374 - Rego Park
11367 - Kew Gardens Hills
11365 - Flushing
11366 - Fresh Meadows
11373 - Elmhurst
11368 - Corona
11379 - Middle Village
11378 - Maspeth, and
11385 - Glendale

The following services are currently provided as listed on the facility's operating certificate:

- Audiology O/P
- Dental O/P
- Health Fairs O/P
- Nutritional O/P
- Optometry O/P
- Pediatric O/P
- Podiatry O/P
- Prenatal O/P
- Primary Medical Care O/P
- Psychology O/P
- Therapy Occupational O/P
- Therapy Physical O/P
- Therapy Speech Language Pathology O/P

The applicant plans to continue providing these services and will assume the existing transfer and affiliation agreement between Allhealth and NorthShore University Hospital at Forest Hills, which is 1.01 miles and three minutes' travel time from the Center. The hours of operation will be Monday-Thursday, 9:00 a.m.-8:00 p.m. and Friday-Sunday, 9:00 a.m.-5:00 p.m.

The applicant reports that the Center will serve all patients without regard to their ability to pay or the source of payment; the proposed operating budget provides for charity care, self-pay, and a sliding fee scale.

Conclusion
The new operator will continue providing the same services that are being provided currently.

Recommendation
From a need perspective, contingent approval is recommended.
Programmatic Analysis

Background
Establish a diagnostic and treatment center.

<table>
<thead>
<tr>
<th>Proposed Operator</th>
<th>E &amp; A Medical Solutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operator Type</td>
<td>LLC</td>
</tr>
<tr>
<td>Doing Business As</td>
<td>Forest Hills Health Center</td>
</tr>
<tr>
<td>Site Address</td>
<td>68-60 Austin Street, Forest Hills</td>
</tr>
<tr>
<td>Services</td>
<td>Audiology</td>
</tr>
<tr>
<td></td>
<td>Health Fairs</td>
</tr>
<tr>
<td></td>
<td>Optometry</td>
</tr>
<tr>
<td></td>
<td>Primary Care</td>
</tr>
<tr>
<td></td>
<td>Physical Therapy</td>
</tr>
<tr>
<td></td>
<td>Occupational Therapy</td>
</tr>
<tr>
<td></td>
<td>Speech Therapy</td>
</tr>
<tr>
<td>Hours of Operation</td>
<td>Seven days a week including evening hours.</td>
</tr>
<tr>
<td>Staffing (1st Year / 3rd Year)</td>
<td>11.2 FTEs / 12.5 FTEs</td>
</tr>
<tr>
<td>Medical Director(s)</td>
<td>Lilia Mailian-Oganova</td>
</tr>
<tr>
<td>Emergency, In-Patient and Backup Support Services Agreement and Distance</td>
<td>Expected to be provided by Forest Hills Hospital; 1 mile and 3 minutes in distance</td>
</tr>
</tbody>
</table>

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 sole member of the LLC is:

Name
Araksya Gevorgyan 100%

The proposed member has been the administrator and business manager of several private medical practices for over ten years as well as the owner of a medical practice management and consulting business. The proposed medical director is board certified in internal medicine.

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.

Recommendation
From a programmatic perspective, contingent 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 are summarized as follows:

<table>
<thead>
<tr>
<th>Date:</th>
<th>September 21, 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seller:</td>
<td>B &amp; L Health, Inc. d/b/a AllHealth Diagnostic and Treatment Center</td>
</tr>
<tr>
<td>Buyer:</td>
<td>E &amp; A Medical Solutions, LLC</td>
</tr>
<tr>
<td>Assets Transferred:</td>
<td>Equipment, furniture, furnishings, supplies and similar property, books and records relating to the assets and patients of the Clinic only, telephone and fax numbers, mailing lists, computers, computer software and manufacturers warranties; Seller’s goodwill and business associated with the Clinic, all benefits, proceeds and other amounts payable under any policy of insurance; copies of client lists, patient files and medical records of any and all clients served by the Clinic; if assignable and specifically requested by Buyer, Seller’s rights and corresponding duties under its supplies/vendor agreements regarding the Clinic; all other intangible assets owned by Seller and principally used in the business of the Clinic, including but not limited to trade secrets and intellectual property and all accounts receivable and cash of the Clinic only for services rendered after the Closing Date.</td>
</tr>
<tr>
<td>Asset Excluded and Retained by Seller:</td>
<td>Seller’s accounting records relating to the Clinic that the Seller is required to retain under applicable laws; Seller’s cash, cash equivalents and notes receivable relating to the Clinic prior to the Closing Date; Seller’s financial records, cancelled checks and bank statements relating to the Clinic prior to the Closing Date; any claims, refunds, rights, actions and litigation by Seller relating to the Clinic arising or accruing from operations prior to the Closing Date; Seller’s tax records and tax returns, accounting records and general ledger or other books of account relating to the Clinic that Seller is required to retain under applicable laws; the name “AllHealth”; all contracts and contract rights, obligations and liabilities relating to the Clinic, except as assigned to Buyer by agreement of the parties; insurance policies and prepaid premiums regarding the Clinic and other prepaid expenses; the Seller’s Federal Tax Identification Number, and government and non-government provider agreements and supplier agreements and numbers and all accounts receivable and cash of the Clinic for services rendered before or on the Closing Date.</td>
</tr>
<tr>
<td>Assumed Liabilities:</td>
<td>None</td>
</tr>
<tr>
<td>Purchase Price:</td>
<td>$250,000</td>
</tr>
<tr>
<td>Payment of Purchase Price:</td>
<td>$15,000 Non-Refundable Deposit transferred to Seller on June 24, 2011</td>
</tr>
<tr>
<td></td>
<td>$35,000 Non-Refundable Deposit transferred to Seller on the date of the execution of this agreement</td>
</tr>
<tr>
<td></td>
<td>$50,000 (Escrow Agent) transferred to an Escrow Agent on the date of execution of this agreement.</td>
</tr>
<tr>
<td></td>
<td>$150,000 in cash at Closing</td>
</tr>
</tbody>
</table>
The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, not
withstanding 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.

Lease Rental Agreement
The applicant will have the current lease assigned to them for the site that they will occupy, of which the terms are
summarized below:

Premises: 3,000 square feet located at 68-60 Austin Street, Forest Hills, New York
Lessor: 68-60 Austin Realty Corp.
Lessee: AllHealth Diagnostic and Treatment Center
Term: Expires June 30, 2027
Rental:
7/01/2013-6/30/2014- $132,063.21 ($44.02 per sq. ft.)
7/01/2014-6/30/2015- $138,666.15 ($46.22 per sq. ft.)
7/01/2015-6/30/2016- $145,599.30 ($48.53 per sq. ft.)
7/01/2016-6/30/2017- $152,878.95 ($50.95 per sq. ft.)
7/01/2017-6/30/2018- $160,523.16 ($53.50 per sq. ft.)
After 7/01/2017-6/30/2018, the lease will increase 5% annually.
Provisions: The lessee shall be responsible for real estate taxes and utilities.

The applicant provided a draft lease assignment for the site. As a contingency of approval, the applicant must provide
an executed lease assignment. The applicant has indicated that the lease will be an arm’s length lease arrangement.

Operating Budget
The applicant has submitted an operating budget, in 2012 dollars, for the first year subsequent to the change in
ownership:

Revenues:

<table>
<thead>
<tr>
<th>Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid Fee-For-Service</td>
<td>$253,955</td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>698,377</td>
</tr>
<tr>
<td>Medicare Fee-For-Service</td>
<td>55,870</td>
</tr>
<tr>
<td>Medicare Managed Care</td>
<td>83,805</td>
</tr>
<tr>
<td>Commercial Fee-For-Service</td>
<td>101,582</td>
</tr>
<tr>
<td>Private Pay</td>
<td>76,188</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td><strong>$1,269,777</strong></td>
</tr>
</tbody>
</table>

Expenses:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating</td>
<td>$1,118,542</td>
</tr>
<tr>
<td>Capital</td>
<td>132,120</td>
</tr>
<tr>
<td><strong>Total Expenses</strong></td>
<td><strong>$1,250,662</strong></td>
</tr>
</tbody>
</table>

Net Income: $19,115

Visits: 10,848
Cost Per Visit: $115.28

Utilization by payor source for the first year is broken down as follows:

<table>
<thead>
<tr>
<th>Source</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid Fee-For-Service</td>
<td>20.00%</td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>54.99%</td>
</tr>
<tr>
<td>Medicare Fee-For-Service</td>
<td>4.00%</td>
</tr>
</tbody>
</table>
Expense and utilization assumptions are based on the historical experience of AllHealth Diagnostic and Treatment Center in operating the site located at 68-60 Austin Street, Forest Hills.

**Capability and Feasibility**

The purchase price of $250,000 will be met as follows: $15,000 Non-Refundable Deposit transferred to Seller on June 24, 2011; $35,000 Non-Refundable Deposit transferred to Seller on the date of the execution of this agreement; $50,000 transferred to an Escrow Agent on the date of execution of this agreement and $150,000 at closing. The amount due at closing will be paid from the sole member’s personal resources.

Working capital requirements are estimated at $208,444, based on two months of first year expenses. The applicant will finance $104,222 at an interest rate of 7.56% for a five year term. The remainder, $104,222, will be provided by the sole member.

Presented as BFA Attachment A is the personal net worth statement of the sole member of E & A Medical Solutions, LLC, Alexi Gevorgyan, which indicates the availability of sufficient funds to meet the equity contribution for the purchase price and working capital. Presented as BFA Attachment B is the pro-forma balance sheet of E & A Medical Solutions, LLC, which indicates a positive members equity position of $297,908.

The submitted budget indicates a net income of $19,115 during the first year after the change in ownership. The applicant’s budget appears reasonable. Revenues are based on current reimbursement methodologies for diagnostic and treatment services.

Presented as BFA Attachment C is the 2010 certified financial statements of B & L Health, Inc. As shown on Attachment C, the facility had a positive working capital position and a negative stockholders deficit during 2010. Also, the facility incurred an operating loss of $89,769 during 2010. The applicant has indicated that the reason for the losses is that the facility lost key professional staff during this time period and it resulted in direct revenues losses. The current operator implemented the following steps to improve operations: marketing/advertisement to enhance patient volume through various channels; decrease administrative and overhead costs; emphasis on broadening the range of outpatient services as well as improve service, quality of care offering one-stop solution, where patients can visit any specialists they need; renegotiating contracts with health insurance companies and suppliers; implementation of electronic medical records, which will also help cut costs by reducing the supply volume and conduct patient satisfaction surveys in order to improve the clinic services to suit patient needs. The applicant has indicated that 2011 financial data is not available.

**Recommendation**

From a financial perspective, contingent approval is recommended.

**Attachments**

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>Personal Net Worth Statement of Sole Member</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Pro-forma Balance Sheet</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>2010 certified financial statements of B &amp; L Health, Inc.</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to assume ownership of the AllHealth Diagnostic and Treatment Center’s main site at 68-60 Austin Street, Forest Hills, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

**NUMBER:** 112261-E  
**FACILITY/APPLICANT:** E & A Medical Solutions, LLC d/b/a Forest Hills Health Center
APPROVAL CONTINGENT UPON:

1. Submission of a comprehensive plan to achieve the ‘Prevention Agenda’s 2013 Objectives’ in the identified service area. Provide an annual progress report for the first three years after the change in ownership. [RNR]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed lease assignment that is acceptable to the Department. [BFA]
4. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
5. Submission of a Certificate of Assumed Name that is acceptable to the Department. [CSL]
6. Submission of an executed Amended and Restated Articles of Organization that is acceptable to the Department. [CSL]
7. Submission of an Operating Agreement that is acceptable to the Department. [CSL]
8. Submission of evidence of site control 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]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299
Executive Summary

Description
Hopkins Ventures, LLC, the sole member of KFG Operating I, LLC, doing business as Hopkins Center for Rehabilitation and Healthcare, a 288-bed residential health care facility (RHCF) located at 155 Dean Street, Brooklyn, is proposing to transfer 39% of its membership interests to six new members of the limited liability company.

The transfer of membership interest will increase the number of members of Hopkins Ventures, LLC from four to ten members. The transfer of membership interest will not result in the withdrawal of any current members of Hopkins Ventures, LLC. Operation of the facility will not change as a result of this application. The current members commenced operating the facility on March 24, 2011.

The current and proposed ownership of Hopkins Ventures, LLC are as follows:

<table>
<thead>
<tr>
<th>Current</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Esther Traube</td>
<td>Esther Traube</td>
</tr>
<tr>
<td>40.0</td>
<td>30.0</td>
</tr>
<tr>
<td>Charles-Edouard Gros</td>
<td>Charles-Edouard Gros</td>
</tr>
<tr>
<td>30.0</td>
<td>20.0</td>
</tr>
<tr>
<td>Bernard Fuchs</td>
<td>Bernard Fuchs</td>
</tr>
<tr>
<td>25.0</td>
<td>6.0</td>
</tr>
<tr>
<td>Eli Lieber</td>
<td>Eli Lieber</td>
</tr>
<tr>
<td>5.0</td>
<td>5.0</td>
</tr>
<tr>
<td>Marvin Rubin</td>
<td>Marvin Rubin</td>
</tr>
<tr>
<td></td>
<td>30.0</td>
</tr>
<tr>
<td>Tova Fuchs</td>
<td>Tova Fuchs</td>
</tr>
<tr>
<td></td>
<td>1.5</td>
</tr>
<tr>
<td>Deborah Freund</td>
<td>Deborah Freund</td>
</tr>
<tr>
<td></td>
<td>1.5</td>
</tr>
<tr>
<td>Miriam Ostreicher</td>
<td>Miriam Ostreicher</td>
</tr>
<tr>
<td></td>
<td>1.5</td>
</tr>
<tr>
<td>Sandra Edelstein</td>
<td>Sandra Edelstein</td>
</tr>
<tr>
<td></td>
<td>1.5</td>
</tr>
</tbody>
</table>

Healthcare has been consistent from 2008 to 2010, ranging from 98.1 percent to 97%.

<table>
<thead>
<tr>
<th>RHCF Need – NYC Region</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016 Projected Need</td>
</tr>
<tr>
<td>Current Beds</td>
</tr>
<tr>
<td>Beds under Const.</td>
</tr>
<tr>
<td>Total Resources</td>
</tr>
<tr>
<td>Unmet Need</td>
</tr>
</tbody>
</table>

There will be no change in beds or services with approval of this application.

Program Summary
No negative information has been received concerning the character and competence of the above applicants.

Financial Summary
The new members will purchase their membership interests as follows: Marvin Rubin (30%) for $30.00; Tova Fuchs (1.5%) for $10.00; Deborah Freund (1.5%) for $10.00; Miriam Ostreicher (1.5%) for $10.00; Gerald Fuchs (3.0%) for $10.00 and Sandra Edelstein (1.5%) for $10.00

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

Architectural Summary
This project is for establishment action only; therefore, no Architectural review is required.

DOH Recommendation
Contingent approval.

Need Summary
Utilization at Hopkins Center for Rehabilitation and
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 Restated Articles of Organization, as filed with the Secretary of State. [CSL]

Council Action Date
April 5, 2012.
Need Analysis

Background
Hopkins Center for Rehabilitation and Healthcare is a 288 bed Residential Health Care Facility located at 155 Dean St., Brooklyn, Kings County. The facility is requesting approval to transfer 39% of its ownership interest to six new members.

<table>
<thead>
<tr>
<th>RHCF Utilization</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hopkins Center for Rehabilitation</td>
<td>98.1%</td>
<td>98.1%</td>
<td>97.0%</td>
</tr>
<tr>
<td>Kings County</td>
<td>92.1%</td>
<td>93.7%</td>
<td>93.1%</td>
</tr>
</tbody>
</table>

The facility has achieved occupancy rates at or over the planning optimum of 97% for all years under consideration.

Hopkins is a well-utilized facility, and the approval of the requested change in ownership interest will result in no diminution of capacity or services.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

<table>
<thead>
<tr>
<th>Facility Information</th>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Facility Name</strong></td>
<td>Hopkins Center for Rehabilitation and Healthcare</td>
<td>Same</td>
</tr>
<tr>
<td><strong>Address</strong></td>
<td>155 Dean Street, Brooklyn, NY. 11217</td>
<td>Same</td>
</tr>
<tr>
<td><strong>RHCF Capacity</strong></td>
<td>288</td>
<td>Same</td>
</tr>
<tr>
<td><strong>ADHC Program Capacity</strong></td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Type of Operator</strong></td>
<td>LLC</td>
<td>LLC</td>
</tr>
<tr>
<td><strong>Class of Operator</strong></td>
<td>Proprietary</td>
<td>Proprietary</td>
</tr>
<tr>
<td><strong>Operator</strong></td>
<td>Hopkins Ventures, LLC</td>
<td>Hopkins Ventures, LLC</td>
</tr>
<tr>
<td><strong>Members:</strong></td>
<td>Esther Traube………………40.0%</td>
<td>Esther Traube………………30.0%</td>
</tr>
<tr>
<td></td>
<td>Charles-Edouard Gros……30.0%</td>
<td>Charles-Edouard Gros……20.0%</td>
</tr>
<tr>
<td></td>
<td>Bernard Fuchs……………..25.0%</td>
<td>Bernard Fuchs……………..6.0%</td>
</tr>
<tr>
<td></td>
<td>Eli Lieber………………..5.0%</td>
<td>Eli Lieber………………..5.0%</td>
</tr>
<tr>
<td></td>
<td>Marvin Rubin………………30.0%</td>
<td>Marvin Rubin………………30.0%</td>
</tr>
<tr>
<td></td>
<td>Gerald Fuchs……………..3.0%</td>
<td>Gerald Fuchs……………..3.0%</td>
</tr>
<tr>
<td></td>
<td>Tova Fuchs………………..1.5%</td>
<td>Tova Fuchs………………..1.5%</td>
</tr>
<tr>
<td></td>
<td>Deborah Freund…………..1.5%</td>
<td>Deborah Freund…………..1.5%</td>
</tr>
<tr>
<td></td>
<td>Miriam Ostreicher………..1.5%</td>
<td>Miriam Ostreicher………..1.5%</td>
</tr>
<tr>
<td></td>
<td>Sandra Edelstein………..1.5%</td>
<td>Sandra Edelstein………..1.5%</td>
</tr>
</tbody>
</table>
Character and Competence

- INDIVIDUAL BACKGROUND REVIEW:

Marvin Rubin has management experience with the Hamilton Park Nursing and Rehabilitation Center (SNF) in Brooklyn, New York and has accounting experience from Norwood Terrace (SNF) and Queens Nassau Nursing Home (SNF).

Mr. Rubin discloses no ownership interest in health care facilities.

Gerald Fuchs holds a NYS Nursing Home Administrator’s License (#05314) in good standing. He has experience as an assistant administrator at Cold Spring Hills (SNF) in Woodbury, New York (June 2008-July 2009) and at Hopkins Center for Rehabilitation and Healthcare in Brooklyn, New York (April 2011-present).

Mr. Fuchs discloses no ownership interest in health care facilities.

Tova Fuchs discloses no licenses nor has she disclosed any ownership interest in health care facilities.

Deborah Freund discloses no licenses nor has she disclosed any ownership interest in health care facilities.

Sandra Edelstein holds an expired Special Education Certification from the NYS Education Department (106667987). She has disclosed no ownership interest in health care facilities.

Miriam (Michelle) Ostreicher discloses no licenses nor has she disclosed any ownership interest in health care facilities.

The four existing member of Hopkins Ventures, LLC were reviewed as part of the initial facility establishment and were not subject to a character and competence review for this CON.

Conclusion
No negative information has been received concerning the character and competence of the above applicants.

An inquiry to Office of the Attorney General Medicaid Fraud Control Unit yielded no past or current substantiated complaints for the new members as well as for Tiferes Investors, an investment company to which 4 of the 6 proposed new members on this CON were Member Investors.

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

Membership Purchase Agreement
The applicant has provided an executed assignment and assumption agreements, which is summarized below:

- Date: June 15, 2011
- Assignor: Charles-Edouard Gross
- Assignee: Marvin Rubin
- Membership Interest: The assignee will purchase 10% membership interests in the Company.
- Purchase Price: $10.00
- Date: June 15, 2011
Assignor: Bernard Fuchs  
Assignee: Marvin Rubin  
Membership Interest: The assignee will purchase 10% membership interests in the Company.  
Purchase Price: $10.00

Date: June 15, 2011  
Assignor: Esther Traube  
Assignee: Marvin Rubin  
Membership Interest: The assignee will purchase 10% membership interests in the Company.  
Purchase Price: $10.00

Date: June 15, 2011  
Assignor: Bernard Fuchs  
Assignee: Deborah Freund  
Membership Interest: The assignee will purchase 1.5% membership interests in the Company.  
Purchase Price: $10.00

Date: June 15, 2011  
Assignor: Bernard Fuchs  
Assignee: Gerald Fuchs  
Membership Interest: The assignee will purchase 3.0% membership interests in the Company.  
Purchase Price: $10.00

Date: June 15, 2011  
Assignor: Bernard Fuchs  
Assignee: Tova Fuchs  
Membership Interest: The assignee will purchase 1.5% membership interests in the Company.  
Purchase Price: $10.00

Date: June 15, 2011  
Assignor: Bernard Fuchs  
Assignee: Miriam Ostreicher  
Membership Interest: The assignee will purchase 1.5% membership interests in the Company.  
Purchase Price: $10.00

Date: June 15, 2011  
Assignor: Bernard Fuchs  
Assignee: Sandra Edelstein  
Membership Interest: The assignee will purchase 1.5% membership interests in the Company.  
Purchase Price: $10.00

**Capability and Feasibility**

The new members will purchase their membership interests as follows: Marvin Rubin (30%) for $30.00; Tova Fuchs (1.5%) for $10.00; Deborah Freund (1.5%) for $10.00; Miriam Ostreicher (1.5%) for $10.00; Gerald Fuchs (3.00%) for $10.00 and Sandra Edelstein (1.5%) for $10.00. Presented as BFA Attachment A are the net worth statement of the new members, which indicates the availability of sufficient funds to meet their purchase price responsibility.

There are no issues of feasibility associated with this application.

Presented as BFA Attachment B is the November 30, 2011 internal financial statements of Hopkins Center for Rehabilitation and Health Care. As shown on Attachment B, the facility had a negative working capital position and a positive net asset position. Also, the facility achieved a net income of $1,364,194 through November 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.

## Attachments

<table>
<thead>
<tr>
<th>BFA Attachment A</th>
<th>Personal Net Worth Statement of Proposed Members of Hopkins Center for Rehabilitation and Health Care</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment B</td>
<td>November 30, 2011 internal financial statements of Hopkins Center for Rehabilitation and Health Care.</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 39% of its membership interests to six new members of the limited liability company, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

112136-E Hopkins Ventures, LLC d/b/a Hopkins Center for Rehabilitation and Healthcare
APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicant’s Restated Articles of Organization, as filed with the Secretary of State. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299
Executive Summary

Description
Rockville Operating LLC, d/b/a as Advanced Center for Rehabilitation and Nursing at Rockville (the Center), is seeking approval to establish a new operator of Rockville Nursing Center, Inc., an existing 158-bed residential health care facility (RHCF) located at 41 Maine Avenue, Rockville Centre. Ownership of the operation and real estate before and after the requested change is as follows:

<table>
<thead>
<tr>
<th>Operation:</th>
<th>Before</th>
<th>After</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rockville Nursing Center, Inc.</td>
<td>Rockville Operating, LLC</td>
<td></td>
</tr>
<tr>
<td>Members</td>
<td>Int.</td>
<td>Members</td>
</tr>
<tr>
<td>Daniel Putterman</td>
<td>20%</td>
<td>Sharon Einhorn</td>
</tr>
<tr>
<td>Michael Putterman</td>
<td>20%</td>
<td>Devorah Freidman</td>
</tr>
<tr>
<td>Jonathon Lewis</td>
<td>15%</td>
<td>Israel Minzer</td>
</tr>
<tr>
<td>Jordan Lewis</td>
<td>15%</td>
<td>Benjamin Einhorn</td>
</tr>
<tr>
<td>Tobi Putterman</td>
<td>15%</td>
<td>Ernest Schlesinger</td>
</tr>
<tr>
<td>Eric Putterman</td>
<td>15%</td>
<td>Yossie Zucker</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dov Minzer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Naftal Minzer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rivka Sussman</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Real Property:</th>
<th>Before</th>
<th>After</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rockvale Associates, LLC</td>
<td>Rockville Property, LLC</td>
<td></td>
</tr>
<tr>
<td>Member</td>
<td>Int.</td>
<td>Members</td>
</tr>
<tr>
<td>Arnold Putterman</td>
<td>100%</td>
<td>Neil Einhorn</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mark Friedman</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Israel Minzer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Benjamin Einhorn</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ernest Schlesinger</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Yossie Zucker</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dov Minzer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Naftal Minzer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rivka Sussman</td>
</tr>
</tbody>
</table>

The proposed majority members of Rockville Operating, LLC are Sharon Einhorn (35%) and Devorah Freidman (35%) who will be the managing members.

DOH Recommendation
Contingent approval.

Need Summary
Rockville Nursing Center, Inc and Nassau County had decreased utilization from 2008 to 2010. Occupancy at the Rockville Nursing Center decreased from 96% in 2008 to 95.5% in 2010 while overall occupancy in Nassau County decreased from 95.2% to 92.3%.

Program Summary
No changes in the program or physical environment are proposed in this application. No administrative services/consulting agreement is proposed in this application.

Financial Summary
Purchase price is $8,000,000 for operations and $7,800,000 for realty interests. The applicant will pay cash in the amount of $1,600,000 and borrow $6,400,000 for a term of 10 years at a rate of 5.26% for the operating entity. The real estate interests of $7,800,000 will be financed through a bank loan of $5,800,000 (10 yrs. @ 5.26%) and a promissory note of $2,000,000 from the seller (3 yrs. @ 7.0%).

Budget:
Revenues: $16,405,801
Expenses: 15,943,416
Gain/(Loss): $462,385

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.

Architectural Summary
This project is for Establishment action only; 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. Submission of a programmatically acceptable name for the facility. [LTC]
2. Submission of an executed building lease that is acceptable to the Department of Health. [BFA]
3. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]

Council Action Date
April 5, 2012.
**Need Analysis**

**Background**
Rockville Operating LLC, doing business as Advanced Center for Rehabilitation and Nursing Rockville, proposes to be established as the operator of Rockville Nursing Center, Inc., a 158 bed residential health care facility (RHCF), located at 41 Main Ave., Rockville Center, Nassau County.

Rockville Nursing Center’s utilization is higher than Nassau County for 2008, 2009, and 2010 as shown in Table 1 below:

<table>
<thead>
<tr>
<th>RHCF Occupancy</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rockville Nursing Center</td>
<td>96.0%</td>
<td>95.3%</td>
<td>95.5%</td>
</tr>
<tr>
<td>Nassau County</td>
<td>95.2%</td>
<td>94.03%</td>
<td>92.3%</td>
</tr>
</tbody>
</table>

The facility’s occupancy is above the county’s average each year under consideration but did not surpass the 97% planning optimum for 2008, 2009 or 2010. As indicated below in Table 2, the project 2016 bed need for Long Island is 1,353.

<table>
<thead>
<tr>
<th>RHCF Bed Need</th>
<th>Long Island</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016 Projected Need</td>
<td>16,962</td>
</tr>
<tr>
<td>Current Beds</td>
<td>16,000</td>
</tr>
<tr>
<td>Beds Under Construction</td>
<td>-391</td>
</tr>
<tr>
<td>Total Resources</td>
<td>15,609</td>
</tr>
<tr>
<td>Unmet Need</td>
<td>1,353</td>
</tr>
</tbody>
</table>

**Conclusion**
There will be no change in beds or services upon approval. Utilization at Rockville Nursing Center was 95.5% in 2010. The projected 2016 bed need for Long Island is 1,353.

**Recommendation**
From a need perspective, approval is recommended.

**Programmatic Analysis**

**Facility Information**

<table>
<thead>
<tr>
<th>Facility Information</th>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility Name</td>
<td>Rockville Nursing Center, Inc.</td>
<td>Advanced Center for Rehabilitation and Nursing at Rockville</td>
</tr>
<tr>
<td>Address</td>
<td>41 Maine Avenue Rockville Center, NY. 11570</td>
<td>Same</td>
</tr>
<tr>
<td>RHCF Capacity</td>
<td>158</td>
<td>Same</td>
</tr>
<tr>
<td>ADHC Program Capacity</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Type of Operator</td>
<td>LLC</td>
<td>LLC</td>
</tr>
<tr>
<td>Class of Operator</td>
<td>Proprietary</td>
<td>Proprietary</td>
</tr>
</tbody>
</table>
### Operator

<table>
<thead>
<tr>
<th>Rockville Nursing Center, Inc.</th>
<th>Rockville Operating LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Members:</strong></td>
<td></td>
</tr>
<tr>
<td>Neal Einhorn……………………35%</td>
<td>Managing Member:</td>
</tr>
<tr>
<td>Mark Friedman……………………35%</td>
<td>Sharon Einhorn……………35%</td>
</tr>
<tr>
<td>Israel Minzer…………………..10%</td>
<td>Devorah Friedman………...35%</td>
</tr>
<tr>
<td>Benjamin Einhorn………………7%</td>
<td></td>
</tr>
<tr>
<td>Ernest Schlesinger…………..5%</td>
<td>Israel Minzer……………...10%</td>
</tr>
<tr>
<td>Yossie Zucker…………………5%</td>
<td>Benjamin</td>
</tr>
<tr>
<td>Dov Minzer……………………1%</td>
<td>Einhorn…………………7%</td>
</tr>
<tr>
<td>Naftali Minzer……………………1%</td>
<td>Ernest Schlesinger………5%</td>
</tr>
<tr>
<td>Rivka Sussman……………………1%</td>
<td>Yossie Zucker………………5%</td>
</tr>
</tbody>
</table>

### Character and Competence

- **FACILITIES REVIEWED:**

  **Residential Health Care Facilities**

  - Sans Souci Rehabilitation and Nursing Center    October 2009-present
  - Bellhaven Center for Rehabilitation and Nursing  March 2010-present
  - Dumont Center for Rehabilitation and Nursing     August 2010-present

- **INDIVIDUAL BACKGROUND REVIEW:**

  **Sharon Einhorn** has disclosed ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present) and the Dumont Center for Rehabilitation and Nursing (August 2010-present).

  **Devorah Friedman** holds a NYS speech pathologist license and is considered to be in good standing.

  Ms. Friedman has disclosed ownership in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present) and the San Souci Rehabilitation and Nursing Center (October 2009-present).

  **Israel Minzer** has disclosed ownership interest in the Dumont Center for Rehabilitation and Nursing (August 2010-present).

  **Benjamin Einhorn** holds a NYS CPA license and is in good standing. He discloses no ownership interest in health care facilities.

  **Ernest Schlessinger** has disclosed ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present) and the Dumont Center for Rehabilitation and Nursing (August 2010-present).

  **Yossie Zucker** holds a NYS CPA license and is in good standing. He discloses no ownership interest in health care facilities.

  **Dov Minzer** has ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present), the Dumont Center for Rehabilitation and Nursing (August 2010-present), and the San Souci Rehabilitation and Nursing Center (October 2009-present).

  **Naftali Minzer** has ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present), the Dumont Center for Rehabilitation and Nursing (August 2010-present), and the San Souci Rehabilitation and Nursing Center (October 2009-present).
Rivka Sussman has ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present), the Dumont Center for Rehabilitation and Nursing (August 2010-present), and the San Souci Rehabilitation and Nursing Center (October 2009-present).

Character and Competence – Analysis:
No negative information has been received concerning the character and competence of the above applicants. An inquiry to Office of the Attorney General Medicaid Fraud Control Unit yielded no past or current substantiated complaints for the new members.

A review of the Sans Souci Nursing Home for the period reveals the following:

- The facility was fined $10,000 pursuant to a Stipulation and Order for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

A review of operations for the Sans Souci Rehabilitation and Nursing Center for the period results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of Bellhaven Center for Rehabilitation and Nursing and Dumont Center for Rehabilitation and Nursing reveals that a substantially consistent high level of care has been provided since there were no enforcements for the time period reviewed.

The proposed name “Advanced Center” is misleading to the public; accordingly the applicant has been requested to submit a revised name as a contingency of approval.

Recommendation
From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Background
Ernest Schlesinger and Sharon Einhorn both have ownership interests in the following nursing homes: Dumont Center for Rehabilitation and Nursing and Bellhaven Center for Rehabilitation and Nursing. Rivka Sussman has ownership interests in the following nursing homes: Sans Souci Rehabilitation and Nursing and Bellhaven Center for Rehabilitation and Nursing. Dov Minzer, Devorah Freidman and Naftail Minzer have ownership interest the following nursing homes: Bellhaven Center for Rehabilitation and Nursing, Sans Souci Rehabilitation and Nursing, and Dumont Nursing Home. Israel Minzer has ownership interest in Dumont Nursing Home. There are currently no financial statements for Bellhaven Center for Rehabilitation and Nursing or Dumont Nursing Home as they were not acquired until 2010. San Souci Rehabilitation and Nursing Center was acquired in October 2009 at which a financial summary for 2010 is presented in BFA Attachment D.

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:

<table>
<thead>
<tr>
<th>Date</th>
<th>September 28, 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seller:</td>
<td>Rockville Nursing Center, Inc.</td>
</tr>
<tr>
<td>Buyer:</td>
<td>Rockville Operating LLC</td>
</tr>
<tr>
<td>Assets Transferred:</td>
<td>All tangible assets used in the business whether owned or leased; Non-Fixed Equipment; assigned contracts, provided that with respect to the Assigned Contracts, Buyer shall assume only those contractual obligations and liabilities under the assigned contracts arising from and after the Closing Date; all residential records and accounts receivable; Medicare and Medicaid provider numbers; any and all Permits of the Company related solely to Business issued by a Governmental Entity; resident/patient prepayments; security deposits relating solely to the Business and all telephone numbers and facsimile numbers.</td>
</tr>
</tbody>
</table>
**Excluded Assets:**
Cash and cash equivalents, bank accounts, certificates of deposit and investment accounts of the seller; Business Contracts that will not be assumed by the buyer; Corporate Records and personal items; Tax Refunds or obligations; All credits related to NAMI audits of the business prior to closing date and retained accounts receivable.

**Assumed Liabilities:**
All of the claims, liabilities and obligations of any kind or nature incurred in the conduct of the Business or the use of the Purchased Assets, but only to the extent that the same arise from and after the Closing Date; all liabilities and obligations listed of the Company under the assigned contracts only to the extent that the same arises from and after the Closing Date.

**Purchase Price:**
$8,000,000 of which $400,000 is being held in an escrow account with a balance due of $7,600,000

**Payment of Purchase Price:**
On the Closing Date, Buyer shall deliver to the Company by wire transfer to the bank account designated by the Company $1,600,000 at the Closing. The residual $6,400,000 will be paid via loan at closing.

The operational purchase price will be met as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity (Provided by Rockville Operating LLC)</td>
<td>$1,600,000</td>
</tr>
<tr>
<td>Financed by Rockville Operating LLC (5.26 interest rate for 10 years)</td>
<td>$6,400,000</td>
</tr>
</tbody>
</table>

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 prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, there are no outstanding Medicaid liabilities.

**Real Property Purchase Agreement**
The change in real property ownership will be effectuated in accordance with an executed purchase agreement, the terms of which are summarized below:

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Date:</strong></td>
<td>September 28, 2011</td>
</tr>
<tr>
<td><strong>Seller:</strong></td>
<td>Rickvale Associates, LLC</td>
</tr>
<tr>
<td><strong>Buyer:</strong></td>
<td>Rockville Property, LLC</td>
</tr>
<tr>
<td><strong>Purchase Price:</strong></td>
<td>$7,800,000</td>
</tr>
<tr>
<td><strong>Payment of Purchase Price:</strong></td>
<td>Buyer shall sign a promissory note for $2,000,000 at a rate of 7% for three years with the seller. Also, a bank loan for $5,800,000 at an interest rate of 5.26% for 10 years.</td>
</tr>
</tbody>
</table>

The total financing for the operating and the real estate, which also includes financing fees and closing costs, are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity</td>
<td>$1,600,000</td>
</tr>
<tr>
<td>Financed (5.26% interest rate for 10 years)</td>
<td>$12,200,000</td>
</tr>
<tr>
<td>Promissory Note (Real Estate) 7% for 3 years</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>
Lease Rental Agreement
The applicant has submitted an executed lease rental agreement, of which the terms are summarized below:

**Premises:**
1035 East Street, Brooklyn, New York 11210

**Lessor:**
Rockville Property, LLC

**Lessee:**
Rockville Operating, LLC

**Term:**
35 years

**Rental:**
Lessee shall pay to Lessor during the term of this lease a net annual basic rent in the amount equal to the sum of the aggregate debt service payments required to be made by Lessor during such year with mortgages encumbering the Demised Premises or portions thereof, plus insurance, taxes and maintenance fees. The total annual rental payments are estimated at $422,313 annually ($35,192.75 per month).

Currently, Medicaid capital cost reimbursement is based on the return on/return of equity reimbursement.

After the change in ownership, capital reimbursement will continue to be based on the return of and return on equity reimbursement methodology. The estimated useful life of the facility is 10 years.

Operating Budget
The applicant has submitted an operating budget, in 2012 dollars, for the first year subsequent to the change in ownership:

<table>
<thead>
<tr>
<th></th>
<th>Per Diem</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicaid FFS</td>
<td>$227.08</td>
<td>$9,378,177</td>
</tr>
<tr>
<td>Medicare FFS</td>
<td>504.48</td>
<td>3,207,477</td>
</tr>
<tr>
<td>Private</td>
<td>415.50</td>
<td>3,073,072</td>
</tr>
<tr>
<td><strong>Other (Assessment Revenue)</strong></td>
<td>15.34</td>
<td>747,075</td>
</tr>
<tr>
<td>Total Revenues</td>
<td></td>
<td>$16,405,801</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$269.65</td>
</tr>
<tr>
<td>Capital</td>
<td>19.95</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>$289.60</td>
</tr>
</tbody>
</table>

**Net Income**
$462,385

**Utilization:** (patient days)
55,053

**Occupancy**
95.46%

**Assessment revenue represents 6% of gross receipts that the state assesses nursing homes on all non-Medicare revenue.**

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

- Expenses include lease rental.
- Budgeted case mix of 1.035 was utilized by the facility at the time of CON filing for change in ownership which based on historical experience and current reimbursement methodologies.
- The capital component of the Medicaid rate is based on a return on/return of equity reimbursement methodology.
- Overall utilization for year one is projected at 95.46%. The 2010 certified cost report indicates occupancy rate at 95.46%.
Utilization by payor source is expected as follows:

- Medicaid FFS: 75%
- Medicare FFS: 12%
- Private: 13%

*Breakeven occupancy is projected at 92.77%.

**Capability and Feasibility**

The operational purchase price of $8,000,000 will be met from the proposed members’ personal resources of $1,600,000 and a bank loan of $6,400,000 at which a letter of interest has been provided. The real estate purchase price is $7,800,000 and will be met as follows: Rockville Property, LLC will sign a promissory note with the seller for $2,000,000 at a rate of 7% for three years and bank loan for $5,800,000 with a term of 10 years at a rate of 5.26%. A letter of interest has been provided in regard to the financing for the promissory note with the seller and the bank loan.

Working capital requirements are estimated at $2,657,236, which appears reasonable based on two-months of first year expenses. The applicant submitted a letter of interest to finance $1,328,618 at an interest rate of 5.26% for five years. The remainder $1,328,618 will be provided as equity by the proposed members of Rockville Operating, LLC. Presented as BFA Attachment E, presents the pro-forma balance sheet of Rockville Operating, LLC. As shown, the facility will initiate operations with $2,928,618 in member equity. It is noted that assets include goodwill of $4,500,000 which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, excluding goodwill, the net asset position would be a negative $1,571,382.

Total member equity requirements for this application are broken down as follows: Sharon Einhorn, 35% member has an equity requirement of $1,025,501, Devorah Friedman, 35% member equity requirement is $1,025,501, Israel Minzer, 10% member equity requirement is $292,861, Benjamin Einhorn, 7% member equity requirement is $205,003, Ernest Schlesinger, 5% member equity requirement is $146,430, Yossie Zucker, 5% member requirement is $146,430, and Dov Minzer, Naftail Minzer, and Rivka Sussman each have an 1% member equity requirement is $29,286 each. The applicant provided an affidavit indicating that Israel Minzer has agreed to contribute equity disproportionate to any member interest if needed. Presented as BFA Attachment A, is the net worth statements of the proposed members of Rockville Operating, LLC, which reveals the availability of sufficient funds for the equity contribution to meet the purchase price and working capital requirement.

The submitted budget indicates a net income of $462,385. Following is the comparison of the historical and projected revenues and expenses:

<table>
<thead>
<tr>
<th>Year</th>
<th>Historical Revenue</th>
<th>Historical Expense</th>
<th>Net Income</th>
<th>Incremental Income</th>
<th>Incremental Expense</th>
<th>Incremental Net Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>$15,730,480</td>
<td>$15,759,332</td>
<td>($28,852)</td>
<td>$675,321</td>
<td>$184,084</td>
<td>$462,385</td>
</tr>
</tbody>
</table>

Projected income includes revenue at budgeted occupancy and payor source. Projected expenses include acquisition of capital expenses; expenses at budgeted occupancy and the difference between the current year and projected levels. Although utilization remains constant compared to 2010, incremental income increases due to increased Medicare and Private Pay reimbursement rates trended to 2012. Incremental expenses increased slightly by $184,084. This is due to implementing cost controls and reducing expenses in management services by ($162,247) and administrative services by ($405,900). The budget appears reasonable from a financial perspective.

As shown in Attachment B, the facility has maintained an average negative working capital position of $2,328,853 and an average positive equity position of $1,118,955 for the period shown. Also, the facility achieved an average net gain of $144,722 for 2008 through 2010. During 2010 the facility incurred an operating loss of $28,852. The applicant indicates that a decrease in Medicare and Medicaid revenues was the reason for the loss. The applicant is reviewing current administrative expenses to reduce costs which will result in a positive operating margin for 2012. Also, as shown in BFA Attachment C is the un-audited financial statement for dates January 1, 2011 through November 30, 2011, indicating the facility has a positive working capital position and a negative equity position. The facility also incurred a net loss of $21,819 as of November 30, 2011. The loss is attributable to expense variance in dietary...
purchased services over budget by $55,461. The facility instituted inventory controls in the dietary department to
insure excessive inventory is no longer purchased.

Presented as BFA Attachment D, is the 2010 financial summary for Sans Souci Rehabilitation and Nursing Center.
The facility had a negative working capital position of $770,729 and positive equity position of $816,218. The negative
working capital position was due to accounts payable in the amount of $1,056,729. This amount will decrease in the
next fiscal year as it is a short term liability. Decreasing short term payable will have a positive impact on the working
capital position. Also the facility achieved an operating income of $273,738 during 2010.

Subject to the supporting 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.

<table>
<thead>
<tr>
<th>Attachments</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
</tr>
<tr>
<td>BFA Attachment B</td>
</tr>
<tr>
<td>BFA Attachment C</td>
</tr>
<tr>
<td>BFA Attachment D</td>
</tr>
<tr>
<td>BFA Attachment E</td>
</tr>
<tr>
<td>BFA Attachment F</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Rockville Operating, LLC d/b/a Advanced Center for Rehabilitation and Nursing at Rockville as the new operator of Rockville Nursing Center, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

**NUMBER: FACILITY/APPLICANT:**

112275 E Rockville Operating, LLC d/b/a Advanced Center for Rehabilitation and Nursing at Rockville
APPROVAL CONTINGENT UPON:

1. Submission of a programmatically acceptable name for the facility. [LTC]
2. Submission of an executed building lease that is acceptable to the Department of Health. [BFA]
3. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299
Public Health and Health Planning Council

Project # 112348-E
St. James Operating, LLC
d/b/a St. James Rehabilitation and Healthcare Center

County: Suffolk (St. James)  Program: Residential Health Care Facility
Purpose: Establishment  Submitted: December 14, 2011

Executive Summary

Description
St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center, a limited liability company formed in order to pursue this CON, is requesting approval to be established as the new operator of St. James Healthcare Center, LLC, an existing 230-bed for-profit RHCF located at 275 Moriches Road, St. James. Ownership of the operations and real estate before and after the requested change is as follows:

<table>
<thead>
<tr>
<th>Operation:</th>
<th>Before</th>
<th>After</th>
</tr>
</thead>
<tbody>
<tr>
<td>St. James Health Center, LLC</td>
<td>St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Members</th>
<th>Int.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sharon Einhorn</td>
<td>25.000%</td>
</tr>
<tr>
<td>Devorah Friedman</td>
<td>25.000%</td>
</tr>
<tr>
<td>Ernest Schlesinger</td>
<td>10.000%</td>
</tr>
<tr>
<td>Isreal Minzer</td>
<td>8.340%</td>
</tr>
<tr>
<td>Meryl Maybruch</td>
<td>8.330%</td>
</tr>
<tr>
<td>Aaron Schlosser</td>
<td>4.165%</td>
</tr>
<tr>
<td>Harold Weinstein</td>
<td>4.165%</td>
</tr>
<tr>
<td>Joseph Goldberger</td>
<td>4.000%</td>
</tr>
<tr>
<td>Steven Sax</td>
<td>3.000%</td>
</tr>
<tr>
<td>Yossie Zucker</td>
<td>3.000%</td>
</tr>
<tr>
<td>Elliot Goldberger</td>
<td>1.000%</td>
</tr>
<tr>
<td>Dov Minzer</td>
<td>1.000%</td>
</tr>
<tr>
<td>Naftali Minzer</td>
<td>1.000%</td>
</tr>
<tr>
<td>Akiva Rudner</td>
<td>1.000%</td>
</tr>
<tr>
<td>Rivka Sussman</td>
<td>1.000%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Real Property:</th>
<th>Before</th>
<th>After</th>
</tr>
</thead>
<tbody>
<tr>
<td>S.J.N.H. Realty Corporation</td>
<td>St. James Realty NY, LLC</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Members</th>
<th>Int.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sharon Einhorn</td>
<td>25.000%</td>
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<tr>
<td>Joseph Goldberger</td>
<td>4.000%</td>
</tr>
<tr>
<td>Steven Sax</td>
<td>3.000%</td>
</tr>
<tr>
<td>Yossie Zucker</td>
<td>3.000%</td>
</tr>
<tr>
<td>Elliot Goldberger</td>
<td>1.000%</td>
</tr>
<tr>
<td>Dov Minzer</td>
<td>1.000%</td>
</tr>
<tr>
<td>Naftali Minzer</td>
<td>1.000%</td>
</tr>
<tr>
<td>Akiva Rudner</td>
<td>1.000%</td>
</tr>
<tr>
<td>Rivka Sussman</td>
<td>1.000%</td>
</tr>
</tbody>
</table>

DOH Recommendation
Contingent approval.

Need Summary
St. James Rehabilitation and Healthcare Center (Center) had a slight decrease in utilization from 2008 to 2010. Occupancy at the Center decreased from 95.7% in 2008 to 95.1% in 2010 while overall occupancy in Suffolk County decreased from 94.8% to 94.3%.

Program Summary
No changes in the program or physical environment are proposed in this application.

Financial Summary
Operations purchase price of $18,000,000, to be met with $3,603,000 from members’ equity and $14,400,000 mortgage (10 yrs. @ 5.26%, 25 yr. amortization). Real property purchase price of $2,000,000 to be met with member equity of $400,000 in equity and a $1,600,000 mortgage (10 yrs. @ 5.26%, 25 yr. amortization).

Sensitized Budget:
- Revenues: $23,884,491
- Expenses: 22,210,524
- Gain/(Loss): $1,673,967

Subject to the noted contingencies, 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 no HSA recommendation for this application.

**Office of Health Systems Management**

**Approval contingent upon:**

1. Submission of a lease rental agreement that is acceptable to the Department of Health. [BFA]
2. Submission of a mortgage commitment that is acceptable to the Department. [BFA]
3. Submission of a working capital commitment that is acceptable to the Department. [BFA]
4. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
5. Submission of a photocopy of the applicant’s executed proposed articles of organization, acceptable to the Department. [CSL]

**Council Action Date**
April 5, 2012.
Need Analysis

Background
St. James Healthcare Center LLC, doing business as St. James Rehabilitation and Healthcare Center (Center), is proposing to be established as the operator of St. James Healthcare Center, a 230-bed residential health care facility (RHCF), located at 275 Moriches Road, St. James, Suffolk County.

The Center's utilization is higher than Suffolk County for 2008, 2009, and 2010 as shown in Table 1 below:

<table>
<thead>
<tr>
<th>RHCF Occupancy</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>St. James Rehabilitation</td>
<td>95.7%</td>
<td>96.0%</td>
<td>95.1%</td>
</tr>
<tr>
<td>Suffolk County</td>
<td>94.8%</td>
<td>95.4%</td>
<td>94.3%</td>
</tr>
</tbody>
</table>

The facility’s occupancy is above the county’s average for each year under consideration but did not surpass the 97% planning optimum for 2008, 2009 or 2010. As indicated below in Table 2, the project 2016 bed need for Long Island is 1,353.

<table>
<thead>
<tr>
<th>RHCF Bed Need</th>
<th>Long Island</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016 Projected Need</td>
<td>16,962</td>
</tr>
<tr>
<td>Current Beds</td>
<td>16,000</td>
</tr>
<tr>
<td>Beds Under Construction</td>
<td>-391</td>
</tr>
<tr>
<td>Total Resources</td>
<td>15,609</td>
</tr>
<tr>
<td>Unmet Need</td>
<td>1,353</td>
</tr>
</tbody>
</table>

Conclusion
There will be no change in beds or services upon approval. Utilization at St. James Healthcare Center was 95.1% in 2010. The projected 2016 bed need for Long Island is 1,353.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility Name</td>
<td>St. James Healthcare Center</td>
<td>St. James Rehabilitation and Healthcare Center</td>
</tr>
<tr>
<td>Address</td>
<td>275 Moriches Road St. James, NY. 11780</td>
<td>Same</td>
</tr>
<tr>
<td>RHCF Capacity</td>
<td>230</td>
<td>Same</td>
</tr>
<tr>
<td>ADHC Program Capacity</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Type of Operator</td>
<td>LLC</td>
<td>LLC</td>
</tr>
<tr>
<td>Class of Operator</td>
<td>Proprietary</td>
<td>Proprietary</td>
</tr>
<tr>
<td>Operator</td>
<td>St. James Healthcare Center</td>
<td>St. James Operating, LLC</td>
</tr>
</tbody>
</table>
Character and Competence

- **FACILITIES REVIEWED:**
  
  **Residential Health Care Facilities**
  
<table>
<thead>
<tr>
<th>Facility</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>San Souci Rehabilitation and Nursing Center</td>
<td>October 2009-present</td>
</tr>
<tr>
<td>Bellhaven Center for Rehabilitation and Nursing</td>
<td>March 2010-present</td>
</tr>
<tr>
<td>Dumont Center for Rehabilitation and Nursing</td>
<td>August 2010-present</td>
</tr>
<tr>
<td>Franklin Center for Rehabilitation and Nursing</td>
<td>January 2004 - December 2009</td>
</tr>
</tbody>
</table>

- **INDIVIDUAL BACKGROUND REVIEWS:**

  **Sharon Einhorn** discloses ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present) as well as the Dumont Center for Rehabilitation and Nursing (August 2010-present).

  **Devorah Friedman** holds a NYS speech pathologist license and is considered to be in good standing. Devorah is the owner and operator of the Bellhaven Center for Rehabilitation and Nursing (March 2010-present).

  Devorah Friedman also discloses ownership interest in the Dumont Center for Rehabilitation and Nursing (August 2010-present) and the San Souci Rehabilitation and Nursing Center (October 2009-present).

  **Ernest Schlesinger** discloses ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present) as well as the Dumont Center for Rehabilitation and Nursing (August 2010-present).

  **Israel Minzer** has disclosed ownership interest in the Dumont Center for Rehabilitation and Nursing (August 2010-present).

  **Meryl Maybruch** discloses no licenses nor has she disclosed any ownership interest in health care facilities.

  **Aaron Schlosser** discloses no licenses nor has he disclosed any ownership interest in health care facilities.

  **Harold Weinstein** discloses no licenses nor has he disclosed any ownership interest in health care facilities.

  **Joseph Goldberger** was the owner and operator of the Franklin Center for Rehabilitation and Nursing (2004-2009).
Yossie Zucker holds a NYS CPA license and is in good standing. He discloses no ownership interest in health care facilities.

Eliot Goldberger discloses no licenses nor has he disclosed any ownership interest in health care facilities.

Dov Minzer discloses ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present), the Dumont Center for Rehabilitation and Nursing (August 2010-present), and the San Souci Rehabilitation and Nursing Center (October 2009-present).

Nafati Minzer has ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present), the Dumont Center for Rehabilitation and Nursing (August 2010-present), and the San Souci Rehabilitation and Nursing Center (October 2009-present).

Akiva Rudner holds a NYS Nursing Home Administrator’s License (#05314) in good standing. Akiva discloses no ownership interest in health care facilities.

Rivka Sussman has ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present), the Dumont Center for Rehabilitation and Nursing (August 2010-present), and the San Souci Rehabilitation and Nursing Center (October 2009-present).

Steven Sax discloses no licenses nor has he disclosed any ownership interest in health care facilities.

Character and Competence – Analysis:
No negative information has been received concerning the character and competence of the above applicants. An inquiry to Office of the Attorney General Medicaid Fraud Control Unit yielded no past or current substantiated complaints for the new members.

A review of the Sans Souci Nursing Home for the period reveals the following:

- The facility was fined $10,000 pursuant to a Stipulation and Order for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

A review of operations for the Sans Souci Rehabilitation and Nursing Center for the period results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of Bellhaven Center for Rehabilitation and Nursing, Dumont Center for Rehabilitation and Nursing and Franklin Center for Rehabilitation and Nursing reveals that a substantially consistent high level of care has been provided since there were no enforcements for the time period reviewed.

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Background
BFA Attachment B presents a net worth statement of the proposed members. Several of the proposed members have acquired an ownership interest in three other RHCF facilities between September 2009 and July 2010. These facilities are as follows: Westchester Park, LLC d/b/a Sans Souci Rehabilitation and Nursing Center, Bellhaven Management, LLC d/b/a Bellhaven Center for Rehabilitation and Nursing Care, and Dumont Operating, LLC d/b/a Dumont Center for Rehabilitation and Nursing Care. Presented as BFA Attachments D through F, are the financial results for the three RHCFs as reported on their internal financial statements dated October 31, 2011 and/or November 30, 2011.

Operations Purchase/Sale Agreement
The applicant has submitted an executed agreement to purchase the RHCFs operating interest; the terms are summarized below:
Date: November 14, 2011
Seller: St. James Healthcare Center, LLC
Purchaser: St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center

Assets Transferred:
Operations: Rights, title and interest in: equipment, machinery and other tangible personal property; contracts relating to the business; resident deposits; permits; inventory; computer software; building property; business name; provider agreements and provider numbers; procedure manuals, phone numbers, resident and employee records, business records; goodwill; prepaid expenses and security deposits; and domain rights and names.

Excluded Assets: Cash, accounts receivable, third party claims, refunds, and retroactive rate increases.

Assumed Liabilities: Those accruing on or after closing date.
Purchase Price: $18,000,000
Payment of Purchase Price: $750,000 first escrow deposit
$ 600,000 second escrow deposit with the remaining $16,650,000 due at closing.

The purchase price is proposed to be satisfied as follows:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Equity:</td>
<td>St. James Operating, LLC members contribution $3,603,000</td>
</tr>
<tr>
<td>Mortgage:</td>
<td>5.26%, 10-year term with a 25-amortization schedule 14,400,000</td>
</tr>
<tr>
<td>Total</td>
<td>$18,003,000</td>
</tr>
</tbody>
</table>

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.

Real Estate Purchase/Sale Agreement
The applicant has submitted an executed agreement to purchase the real property; the terms are summarized below:

Date: November 14, 2011
Seller: S.J.N.H. Realty Corporation
Purchaser: St. James Realty NY, LLC
Assets: All rights, title and interest in the parcel of land known as 275 Moriches Road, St. James, New York 11780, and the sewage treatment plant (STP) including all fixtures and equipment.
Assumed Agreements: Assumes all Seller’s rights and duties under the STP Agreements.
Purchase Price: $2,000,000
Payment of Purchase Price: $150,000 escrow deposit with the remaining $1,850,000 due at closing.

The purchase price is proposed to be satisfied as follows:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity:</td>
<td>St. James Realty NY, LLC members contribution $400,000</td>
</tr>
<tr>
<td>Mortgage:</td>
<td>5.26%, 10-year term with a 25-amortization schedule 1,600,000</td>
</tr>
<tr>
<td>Total</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>

As shown above, the members and their proposed ownership interest of St. James Realty NY, LLC (the real property owners) are identical to St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center (the nursing home operator).
Lease Agreement and Medicaid Capital Reimbursement

The applicant has submitted an executed real estate lease agreement; the terms are summarized below:

- **Date:** November 29, 2011  
- **Premises:** A 230-bed RHCF located at 275 Moriches Road, St. James, NY 11780  
- **Owner/Landlord:** St. James Realty NY, LLC  
- **Lessee:** St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center  
- **Term:** Thirty-five years  
- **Rent:** $116,500 per year ($9,709 per month)  
- **Provisions:** Triple net lease

The lease arrangement is a non-arm’s length agreement. Currently, Medicaid capital reimbursement is based on the return of/return on equity methodology, which will not be altered upon the change in ownership.

Operating Budget

The applicant has provided an operating budget, in 2012 dollars, for the first year subsequent to change in ownership. We have also provided a sensitized budget. The budgets are summarized below:

<table>
<thead>
<tr>
<th></th>
<th>Per Diem</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicaid*</td>
<td>$243.96</td>
<td>$14,643,810</td>
</tr>
<tr>
<td>Medicare</td>
<td>504.35</td>
<td>5,669,346</td>
</tr>
<tr>
<td>Private Pay*</td>
<td>395.16</td>
<td>3,656,798</td>
</tr>
<tr>
<td><strong>Total Revenues:</strong></td>
<td></td>
<td>$23,969,954</td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$297.69</td>
<td>$21,239,228</td>
</tr>
<tr>
<td>Capital</td>
<td>12.06</td>
<td>971,296</td>
</tr>
<tr>
<td><strong>Total Expenses:</strong></td>
<td></td>
<td>$22,210,524</td>
</tr>
<tr>
<td><strong>Net Income:</strong></td>
<td></td>
<td>$1,759,430</td>
</tr>
</tbody>
</table>

Utilization (resident days)  80,520  
Occupancy 95.91%

*Includes assessment revenue of $905,631, which is included with both Medicaid and Private Pay revenues and has been distributed using the percentage of patient days between them. Therefore, Medicaid was allocated 86.64% of the revenues and Private Pay was allocated 13.36% of the revenues.

Sensitized Budget:

<table>
<thead>
<tr>
<th></th>
<th>Per Diem</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
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<td>Private Pay*</td>
<td>395.16</td>
<td>3,656,798</td>
</tr>
<tr>
<td><strong>Total Revenues:</strong></td>
<td></td>
<td>$23,884,491</td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$297.69</td>
<td>$21,239,228</td>
</tr>
<tr>
<td>Capital</td>
<td>12.06</td>
<td>971,296</td>
</tr>
<tr>
<td><strong>Total Expenses:</strong></td>
<td></td>
<td>$22,210,524</td>
</tr>
<tr>
<td><strong>Net Income:</strong></td>
<td></td>
<td>$1,673,967</td>
</tr>
</tbody>
</table>

Utilization (resident days) 80,520  
Occupancy 95.91%
The following is noted with respect to the submitted operating budget:

- Expenses include lease rental:
- Medicaid revenues are based on actual 2011 rates with no trend factor to 2012. As nursing Home pricing methodology for Medicaid has changed as of January 1, 2012 we have had to sensitize the budget.
- Medicare and private revenues on actual rates trended to 2012.
- Overall utilization is projected at 95.91%. Utilization for the years from 2006 through 2010 averaged 96.27%.
- Utilization by payor source is anticipated as follows:
  - Medicaid Fee-for-Service 74.55%
  - Medicare Fee-for-Service 13.96%
  - Private/Other 11.49%
- Breakeven utilization and sensitized breakeven utilization is projected at approximately 88.98%.

**Capability and Feasibility**

St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center proposes to acquire the operating interest of St. James Healthcare Center, a 230-bed RHCF for $18,000,000 plus $3,000 in CON application fees. The members will contribute $3,603,000 in equity and enter into a proposed mortgage with Capital One Bank for $14,400,000 at the above stated terms concurrently, and through St. James Realty NY, LLC. The proposed members have entered into a Real Estate Purchase Agreement with S.J.N.H. Realty Corporation to acquire their real property interest for $2,000,000. The acquisition price will be satisfied through the members’ equity contribution of $400,000 and entering into a $1,600,000 proposed mortgage with Capital One Bank at the above stated terms. BFA Attachments B is the proposed members’ net worth summaries for St. James Operating, LLC (the operator) and St. James Realty NY, LLC (the Landlord), which reveals sufficient resources to meet all of the equity requirement. It is noted that liquid resources may not be available in proportion to proposed ownership interest. Therefore, Devorah Friedman, Israel Minzer and Joseph Goldberger have provided affidavits stating that they are willing to contribute resources disproportionate to their membership interest.

Working capital is estimated at $3,701,754 and is based on two months of the first year expenses, half of which, or $1,850,877 will be satisfied from members’ equity. The remaining $1,850,877 will be satisfied through a five year loan at 5.26% from Capital One Bank. Review of BFA Attachment B, the summary of net worth reveals sufficient resources for working capital equity.

Presented as BFA Attachment C is a pro-forma balance sheet for St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center, which shows operations will start off with $5,450,877 in member’s equity. It should be noted that the total assets include $17,848,829 in goodwill, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated from the equation, then the total net asset would become a negative $12,397,952.

The submitted budget indicates $1,759,430 in net income would be generated in the first year after the change in ownership. The sensitized budget indicates that $1,673,967 in net income would be generated in the first year after the change in ownership. Therefore in either situation the operations are profitable. The following is a comparison of the 2010 historical revenues and expenses and projected revenues and expenses and also the sensitized information as well:
Projected Income $ 23,969,954  
Projected Expense 22.210,524  
Projected Net Income $1,759,430  

Annual 2010 Income $22,133,285  
Annual 2010 Expense 21,100,949  
Annual 2010 Net Income (Loss) $1,032,336  

Incremental Net Income (Loss) $727,094  

Sensitized Projected Income $ 23,884,491  
Sensitized Projected Expense 22.210,524  
Sensitized Projected Net Income $1,673,967  

Annual 2010 Income $22,133,285  
Annual 2010 Expense 21,100,949  
Annual 2010 Net Income (Loss) $1,032,336  

Sensitized Incremental Net Income (Loss) $641,631  

It is estimated that incremental net revenue for all payors will increase approximately $1,836,669, with an estimated $731,148 coming from Medicaid as the result of changes in rates and $905,631 from assessment revenues. With the sensitized budget, it is estimated that incremental net revenue for all payors will increase approximately $1,751,206, with an estimated 645,685 coming from Medicaid as the result of changes in rates and $905,631 from assessment revenues. According to St. James Healthcare Center, LLC financial statements, the average per day Medicaid revenue increased by $14.11, going from $218.01 in 2010 to $232.12 for the ten months ending October 31, 2012. This increase doesn’t include a positive retroactive adjustment of $13.79 per patient day during these ten months.

The balance or $199,890 in incremental revenues comes from Medicare and private payors and is based upon current experience and trending. Operating and capital expenses are expected to increase in the first year by $910,528 and $199,047, respectively. The budget appears reasonable.

It is estimated that the incremental net revenue for all payors will increase approximately $1,836,669, with an estimated $731,148 coming from Medicaid as the result of changes in rates and $905,631 from assessment revenues. According to St. James Healthcare Center, LLC financial statements, the average per day Medicaid revenue increased by $14.11, going from $218.01 in 2010 to $232.12 for the ten months ending October 31, 2012. This increase does not include a positive retroactive adjustment of $13.79 per patient day during these ten months. The balance or $199,890 in incremental revenues comes from Medicare and private payors and is based upon current experience and trending. Operating and capital expenses are expected to increase in the first year by $910,528 and $199,047, respectively. The budget appears reasonable.

As shown on BFA Attachment D, Westchester Park, LLC d/b/a Sans Souci Rehabilitation and Nursing Center shows the RHCF had both positive working capital and net asset positions, and generated $1,956,887 in excess revenues over expenses for the eleven months ending November 30, 2011. Occupancy during this period was at 95.61%.

As shown on BFA Attachment E, Bellhaven Management, LLC d/b/a Bellhaven Center for Rehabilitation and Nursing Care shows the RHCF had both positive working capital and net asset positions and generated $3,288,997 in excess revenues over expenses for the ten months ending October 31, 2011. Occupancy during this period was 96.10%.

As shown on BFA Attachment F, Dumont Operating, LLC d/b/a Dumont Center for Rehabilitation and Nursing Care shows the RHCF had both negative working capital and net asset positions and generated $3,371,360 in excess revenues over expenses for the eleven months ending November 30, 2011. Occupancy during this period was 94.40%.

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.
**Recommendation**
From a financial perspective, contingent approval is recommended.

### Attachments

<table>
<thead>
<tr>
<th>Attachment A</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>St. James Health Center, LLC and S.J.N.H. Realty Corporation, List of Members and Membership Interest</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Net Worth of Proposed Members, St. James Operating, LLC and St. James Realty NY, LLC</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Pro-forma Balance Sheet, St. James Operating, LLC</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>Financial Summary, Westchester Park, LLC d/b/a Sans Souci Rehabilitation and Nursing Center</td>
</tr>
<tr>
<td>BFA Attachment E</td>
<td>Financial Summary, Bellhaven Management, LLC d/b/a Bellhaven Center for Rehabilitation and Nursing Care</td>
</tr>
<tr>
<td>BFA Attachment F</td>
<td>Financial Summary, Dumont Operating, LLC d/b/a Dumont Center for Rehabilitation and Nursing Care</td>
</tr>
<tr>
<td>BFA Attachment G</td>
<td>Establishment Checklist</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish St. James Operating, LLC as the new operator of St. James Healthcare Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

112348 E St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center
APPROVAL CONTINGENT UPON:

1. Submission of a lease rental agreement that is acceptable to the Department of Health. [BFA]
2. Submission of a mortgage commitment that is acceptable to the Department. [BFA]
3. Submission of a working capital commitment that is acceptable to the Department. [BFA]
4. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
5. Submission of a photocopy of the applicant’s executed proposed articles of organization, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Hedley Building - 6th Floor  
433 River Street  
Troy, New York 12180-2299
New York State Department of Health
Division of Legal Affairs
Memorandum

TO: Public Health and Health Planning Council

FROM: James Dering, General Counsel

DATE: February 14, 2012

SUBJECT: Oswego Health Foundation

Oswego Health Foundation (Corporation) requests Public Health and Health Planning Council approval of the attached proposed Certificate of Incorporation. The Public Health and Health Planning Council’s approval is required by Public Health Law § 2801-a(1) and (6) and Not-For-Profit Corporation Law § 404.

The Corporation is being organized and will be operated for the benefit of its member corporation Oswego Health, Inc. and other not-for-profit organizations affiliated with Oswego Health, Inc. which includes Oswego Hospital, Seneca Hill Manor, Inc., Springside at Seneca Hill, Inc., OH Properties, Inc. and Hospitals Home Health Care, Inc.

Also attached are: a letter from counsel to Oswego Health Foundation requesting approval, letters from Oswego Hospital, The Manor at Seneca Hill, and Hospitals Home Health Care, Inc. acknowledging they will accept funds raised by the Corporation, a description of the proposed fundraising activities and, a list of information regarding the Corporation’s initial Board of Directors.

The proposed Certificate of Incorporation is in legally acceptable form.

Attachments
July 11, 2011

Colleen Frost
Executive Secretary
Public Health & Health Planning Council
New York State Department of Health
Division of Health Facility Planning
Hedley Building
433 River Street
Troy, NY 12180

Re: Oswego Health Foundation, Inc.

Dear Ms. Frost:

The purpose of this letter is to request approval by the New York State Public Health and Health Planning Council (the “Council”) of the proposed Certificate of Incorporation of Oswego Health Foundation, Inc. (the “Foundation”) pursuant to Section 2801-a(1) of the New York Public Health Law and Section 404(o) of the New York Not-for-Profit Corporation Law. A copy of the Certificate of Incorporation is enclosed.

By way of background, the Foundation is being organized for the purposes of soliciting and managing funds for Oswego Hospital, which operates the only general acute care hospital in Oswego County; Seneca Hill Manor, Inc., which operates a related residential health care facility in Oswego County; Hospitals Home Health, Inc., which operates a related certified home health care services agency in Oswego County; and several of their unregulated affiliates, including but not limited to Oswego Health, which is the parent corporation through sole membership of Oswego Hospital and Seneca Hill Manor, Inc. (Oswego Hospital is one of the two members of Hospitals Home Health Care, Inc.) Oswego Health will also be the sole member of the Foundation. All of the entities to be supported by the Foundation are New York not-for-profit corporations that are tax exempt under Section 501(c)(3) of the Internal Revenue Code.

Oswego Hospital and its affiliates have experienced a period of extremely rapid change and development in recent years. Major events have included the renovation and expansion of the Hospital’s main campus in the City of Oswego; the acquisition of the assets of A. L. Lee Memorial Hospital and the development of an urgent care center and ambulatory service facility at Lee’s former site in the City of Fulton; and the acquisition and renovation of the ambulatory facility of Lifetime Health in Central Square, among others. All of these initiatives and other activities of Oswego Hospital and its affiliates require capital beyond the substantial amounts
granted for them by the State of New York. The Boards of Oswego Health, Oswego Hospital, Seneca Hill Manor, Inc., Hospitals Home Health Care, Inc. and the other named beneficiaries in the Certificate have concluded that a dedicated development foundation will more effectively attract philanthropic support on their behalf as an integrated health care system than they can do directly and individually. The Foundation is substantially similar to dozens of like organizations that have previously been approved by the New York Public Health Council throughout the last three decades to support hospitals and their related health care systems in the State of New York.

We would be pleased to discuss this matter further with the Council's legal counsel or other staff and to provide any additional information that they may need.

Sincerely,

HARRIS BEACH PLLC

Eric Sneghii

ES:slc
enclosure
c: Ann Gilpin, President & CEO
CERTIFICATE OF INCORPORATION

OF

OSWEGO HEALTH FOUNDATION

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, for the purpose of forming a not-for-profit corporation pursuant to the Not-for-Profit Corporation Law of New York, hereby certifies:

1. The name of the corporation is: Oswego Health Foundation.

2. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law, in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation shall be distributable to, or inure to the benefit of, its members, directors, officers or any other private person.

3. The corporation is organized and shall be operated exclusively to provide funds to or for the benefit of Oswego Health, Inc., a New York not-for-profit corporation, and its not-for-profit, tax exempt affiliates, currently including, but not limited to, Oswego Hospital, Seneca Hill Manor, Inc., Springside at Seneca Hill, Inc., OH Properties, Inc. and Hospitals Home Health Care, Inc. To this end the corporation shall:

   (a) solicit, accept, acknowledge, hold, invest, reinvest and administer gifts, grants, bequests, contributions, devises, benefits of trusts, endowments and property of any kind, without limitation as to amount or value;

   (b) use, disburse or pay the income or principal thereof exclusively for the foregoing purposes; and

   (c) do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit of any private person.

4. In furtherance of its corporation purposes, the corporation shall have all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law, together with the power to solicit and receive grants, bequests and contributions from private and public sources.

5. Nothing contained herein shall authorize this corporation, directly or indirectly, to engage in, or include among its purposes, any of the activities mentioned in sections 404(a)-(n), (p)-(s) or (u)-(w) of the Not-for-Profit Corporation Law. Furthermore, the only activity mentioned in Sections 404(o) and (t) of the Not-for-Profit Corporation Law in which the corporation may engage will be the solicitation of contributions for the activities described therein. Nothing in this certificate shall authorize the corporation to establish or maintain any hospital or health related facility.
6. Nothing contained in this Certificate of Incorporation shall authorize the corporation to establish, operate, construct, lease or maintain a hospital or to provide hospital service or health related service or to operate a home care services agency, a hospice or a health maintenance organization, or to provide a comprehensive health services plan, as defined in and covered by Articles 28, 36, 40 and 44, respectively, of the Public Health Law. In addition, the corporation’s purposes do not authorize the corporation to establish, operate or maintain an adult home, residence for adults or enriched housing program as provided for by Article 7 of the Social Services Law.

7. Nothing contained in this Certificate of Incorporation shall authorize the corporation to provide Early Intervention services without obtaining all approvals required by Title II-A of Article 25 of the Public Health Law, Title 10 of the Codes, Rules and Regulations of the State of New York or any other applicable law or regulation.

8. In addition to all other rights and powers of membership prescribed by the laws of the State of New York or the Certificate of Incorporation or Bylaws of this corporation, the following governance and management powers shall be reserved to and shall be exercised only by the member(s) of the corporation:

   (a) to elect or appoint, fix the number of, and remove, with or without cause, the directors of the corporation;

   (b) to appoint and remove, with or without cause, the chief executive officer of the corporation (regardless of title);

   (c) to amend or repeal the Certificate of Incorporation and Bylaws, and to adopt any new or restated Certificate of Incorporation or Bylaws, of the corporation;

   (d) to approve any plan of merger, consolidation, dissolution or liquidation of the corporation; and

   (e) to approve any corporate reorganization of the corporation and the establishment, merger, consolidation, reorganization or dissolution of any organizational relationship of the corporation, including but not limited to subsidiary corporations, partnerships or joint ventures of the corporation.

For the purposes of the foregoing, the power of the member(s) to approve includes: (i) the power to initiate and direct action by the corporation without a prior recommendation of the corporation’s Board of Directors or other governing or managing body; and (ii) the power to accept, reject or modify a recommendation of the corporation’s Board of Directors or other governing or managing body and to direct action by the corporation upon such determination or return the matter to the Board or other governing or managing body for reconsideration with reasons for the rejection and/or suggested changes. The Board of Directors and officers of the corporation shall not take any action requiring the approval of the member(s) until the member(s) shall have exercised their reserved powers and communicated their determination in writing to the Board.
9. The corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

10. Notwithstanding any other provision of this Certificate, the corporation is organized and shall be operated exclusively for charitable, religious, scientific and educational purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not carry on any activities not permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or by an organization, contributions to which are deductible under Section 170(c)(2) of such Code.

11. No part of the assets, income, profits or earnings of the corporation shall inure to the benefit of any member, trust, director or officer of the corporation, or any other private person, except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes, and no member, trustee, director or officer of the corporation, or any other private person, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

12. No substantial part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, except as otherwise provided by Section 501(h) of the Internal Revenue Code of 1986, as amended, and the corporation shall not participate in, or intervene in, including the publication or distribution of statements, any political campaign on behalf of any candidate for public office.

13. In the event of dissolution, all the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to one or more of the not-for-profit affiliates of the corporation, provided that the distributee(s) shall then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. If none of the corporation’s not-for-profit affiliates shall so qualify at the time of dissolution, then distribution shall be made to such other organization or organizations that are organized and operated exclusively for religious, charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. For the purpose of this paragraph, an "affiliate" shall mean any of the organizations identified in paragraph 3 above and any other not-for-profit organization which controls, is controlled by, or is under common control with the corporation, and any other not-for-profit organization which expressly and specifically includes among its purposes the benefit or support of the corporation or its affiliates.

14. In any taxable year in which the corporation is a private foundation as defined by Section 509 of the Internal Revenue Code of 1986, as amended, the corporation shall:

(a) not engage in any act of self-dealing that is subject to tax under Section 4941 of the Code;
(b) not distribute its income for each taxable year at such time and in such manner as to subject the corporation to tax on undistributed income under Section 4942 of the Code;

(c) not retain any excess business holdings in such manner as to subject the corporation to tax under Section 4943 of the Code;

(d) not make any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; and

(e) not make any taxable expenditures that are subject to tax under Section 4945 of the Code.

15. The number of directors constituting the entire Board of Directors of the corporation shall not be less than three (3). Subject to such limitation, the number shall be fixed by the bylaws pursuant to Section 702 of the Not-for-Profit Corporation Law. The names and addresses of the initial directors are:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ann C. Gilpin</td>
<td>6 Jordans Way</td>
</tr>
<tr>
<td></td>
<td>Oswego, New York 13126</td>
</tr>
<tr>
<td>Thomas Schneider</td>
<td>10 Margaret Street</td>
</tr>
<tr>
<td></td>
<td>Oswego, New York 13126</td>
</tr>
<tr>
<td>Chris R. Burritt</td>
<td>4077 County Route 57</td>
</tr>
<tr>
<td></td>
<td>Oswego, New York 13126</td>
</tr>
</tbody>
</table>

16. The office of the corporation is to be located in the County of Oswego, State of New York.

17. The Secretary of State is hereby designated as the agent of the corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the corporation that may be served upon him is President, Oswego Health Foundation, 110 West Sixth Street, Oswego, New York 13126.

18. The subscriber is of the age of eighteen years or over.
IN WITNESS WHEREOF, the undersigned has subscribed this Certificate of Incorporation this 26 day of October, 2011.

Ann C. Gilpin
6 Jordans Way
Oswego, New York 13126
Oswego Health Foundation
Description of Fundraising Techniques

Oswego Health Foundation will operate programs that are designed to strengthen the relationship between Oswego Health, Inc. and its tax exempt affiliates, including principally Oswego Hospital, and their various constituencies. These programs are in the areas of communication, volunteer service, and philanthropy. The Foundation is being established to conduct regular fund development efforts as well as provide for specific capital needs.

The Foundation will function through the following types of program activities:

The **ANNUAL SUPPORT** function of the Foundation will develop a broad base of support and generate a large number of gifts. Relevant activities will include campaigns involving mailings, telephone calls, and fundraising events.

The **COMMUNITY RELATIONS** function of the Foundation will not be involved in fund-raising per se, but will publicize and support activities which provide service to the community and promote the not-profit health care delivery mission of Oswego Health and its operating not-for-profit tax exempt affiliates.

The **PLANNED GIVING** function of the Foundation will involve members of the professional community and encourage estate planning that results in end-of-life donations of life insurance, bequests, etc.

The **CORPORATE/FOUNDATION** function of the Foundation will encourage large gifts and grants from local and national corporations and foundations. The Foundation will also look to develop programs for corporations and industry that help to strengthen their relationship with Oswego Health and its affiliates.

The **SPECIAL PROSPECTS** function of the Foundation will be to seek and secure large gifts from individuals. Since this cultivation process is on a personal basis and needs a special person to make such contacts, this activity will require a small, elite volunteer base that is able to identify others with the capability of making large gifts to the institution. Additional activities will include determining capital campaign feasibility and capital campaign implementation.
Oswego Health Foundation, Inc.
Initial Board of Directors

Ann C. Gilpin

Address: 6 Jordans Way
Oswego, New York 13126

Occupation: Healthcare Administrator, President and CEO

Affiliations: Oswego Health, Inc.-President and CEO & Board of Directors
110 W. Sixth Street
Oswego, NY 13126

Oswego Hospital-President and CEO & Board of Directors
110 W. Sixth Street
Oswego, NY 13126

Seneca Hill Manor, Inc.-President and CEO & Board of Directors
20 Manor Drive
Oswego, NY 13126

Springside at Seneca Hill, Inc.-President and CEO & Board of Directors
Co. Route 45A
Oswego, NY 13126

O.H. Services, Inc.-President and CEO & Board of Directors
110 W. Sixth Street
Oswego, NY 13126

Hospitals Home Health Care, Inc. –Board of Directors
113 Schuyler Street
Fulton, NY 13069

OH Properties, Inc.-President & CEO and Board of Directors
110 W. Sixth Street
Oswego, N.Y. 13126

Ontario Medical Practice, P.C.-Secretary, Board of Directors
110 W. Sixth Street
Oswego, NY 13126

Iroquois Healthcare Alliance Association-Board of Directors
17 Executive Park Drive
Clifton Park, NY 12065

United Iroquois Shared Services-Board of Directors
17 Executive Park Drive
Clifton Park, NY 12065

Health Advancement Collaborative of Central New York, Inc. and Central New York Health Systems Agency-Board of Directors
109 S. Warren Street, State Tower Bldg Suite 1011
Syracuse, NY 13202
Ann C. Gilpin cont’d

Operation Oswego County, Inc.-Board of Directors
70 East First Street
Oswego, NY 13126
Thomas Schneider

Address: 10 Margaret Street
          Oswego, New York 13126

Occupation: President & CEO-Bank

Affiliations:

Oswego Health, Inc.-Chairman, Board of Directors
110 W. Sixth Street
Oswego, NY 13126

Oswego Hospital-Chairman, Board of Directors
110 W. Sixth Street
Oswego, NY 13126

Seneca Hill Manor, Inc.-Chairman, Board of Directors
20 Manor Drive
Oswego, NY 13126

Springside at Seneca Hill, Inc.-Chairman, Board of Directors
Co. Route 45A
Oswego, NY 13126

Hospitals Home Health Care, Inc.-Chairman, Board of Directors
113 Schuyler Street
Fulton, NY 13069

OH Properties, Inc.-Chairman, Board of Directors
110 W. Sixth Street
Oswego, N.Y. 13126

FitzGibbons Insurance Agency
44 E. Bridge Street
Oswego, NY 13126

(Pathfinder Bank has executed a Memorandum of Intent and Understanding to acquire
51% of the FitzGibbons Insurance agency. I am President and CEO of Pathfinder Bank
and less than a 1% owner.)
Chris R. Burritt

Address: 4977 County Route 57
Oswego, NY 13126

Occupation: Automotive Dealership-Owner

Affiliations: Oswego Health, Inc.-Vice Chairman, Board of Directors
110 W. Sixth Street
Oswego, NY 13126

Oswego Hospital-Vice Chairman, Board of Directors
110 W. Sixth Street
Oswego, NY 13126

Seneca Hill Manor, Inc.-Vice Chairman, Board of Directors
20 Manor Drive
Oswego, NY 13126

Springside at Seneca Hill, Inc.-Vice Chairman, Board of Directors
Co. Route 45A
Oswego, NY 13126

Hospitals Home Health Care, Inc.-Vice Chairman, Board of Directors
113 Schuyler Street
Fulton, NY 13069

OH Properties, Inc.-Vice Chairman, Board of Directors
110 W. Sixth Street
Oswego, N.Y. 13126
Re: Oswego Health Foundation, Inc.

Dear Ms. Frost:

Pursuant to the request of Mary T. Callahan in the Bureau of Legal Affairs, I am writing in support of the application for approval of the Certificate of Incorporation of Oswego Health Foundation, Inc. (the “Foundation”). The application was initially submitted to you by letter from Eric Stonehill of Harris Beach PLLC dated July 11, 2011.

The Board of Directors of Hospitals Home Health Care, Inc. adopted the attached resolution on July 6, 2011 acknowledging the proposed incorporation of the Foundation and stating the willingness of Hospitals Home Health Care, Inc. to accept funds raised by the Foundation on its behalf.

Sincerely,

Ann C. Gilpin
President and CEO

c: Mary T. Callahan
New York State Department of Health
Bureau of Legal Affairs

Eric Stonehill, Esq.
October 25, 2011

Colleen Frost
Executive Secretary
Public Health & Health Planning Council
New York State Department of Health
Division of Health Facility Planning
Hedley Building
433 River Street
Troy, NY 12180

Re: Oswego Health Foundation, Inc.

Dear Ms. Frost:

Pursuant to the request of Mary T. Callahan in the Bureau of Legal Affairs, I am writing in support of the application for approval of the Certificate of Incorporation of Oswego Health Foundation, Inc. (the “Foundation”). The application was initially submitted to you by letter from Eric Stonehill of Harris Beach PLLC dated July 11, 2011.

The Board of Directors of Seneca Hill Manor, Inc. adopted the attached resolution on July 6, 2011 acknowledging the proposed incorporation of the Foundation and stating the willingness of Seneca Hill Manor, Inc. to accept funds raised by the Foundation on its behalf.

Sincerely,

Ann C. Gilpin
President and CEO

c: Mary T. Callahan
New York State Department of Health
Bureau of Legal Affairs

Eric Stonehill, Esq.
October 25, 2011

Colleen Frost  
Executive Secretary  
Public Health & Health Planning Council  
New York State Department of Health  
Division of Health Facility Planning  
Hedley Building  
433 River Street  
Troy, NY 12180

Re: Oswego Health Foundation, Inc.

Dear Ms. Frost:

Pursuant to the request of Mary T. Callahan in the Bureau of Legal Affairs, I am writing in support of the application for approval of the Certificate of Incorporation of Oswego Health Foundation, Inc. (the “Foundation”). The application was initially submitted to you by letter from Eric Stonehill of Harris Beach PLLC dated July 11, 2011.

The Board of Directors of Hospitals Home Health Care, Inc. adopted the attached resolution on July 6, 2011 acknowledging the proposed incorporation of the Foundation and stating the willingness of Hospitals Home Health Care, Inc. to accept funds raised by the Foundation on its behalf.

Sincerely,

Ann C. Gilpin  
President and CEO

cc: Mary T. Callahan  
New York State Department of Health  
Bureau of Legal Affairs  

Eric Stonehill, Esq.
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 5\textsuperscript{th} day of April, 2012, approves the filing of the Certificate of Incorporation of Oswego Health Foundation, dated October 26, 2011.
TO: Public Health and Health Planning Council (Council)

FROM: James E. Dering, General Counsel

DATE: March 6, 2012

SUBJECT: Proposed Change in Corporate Name of United Cerebral Palsy and Handicapped Children’s Association of Chemung County, Inc. (UCP)

Attached for the Council’s review and approval is a photocopy of a proposed Certificate of Amendment to UCP’s Certificate of Incorporation. UCP is seeking the Council’s approval to change its corporate name to “Able2 Enhancing Potential, Inc.” which it believes is a simpler, more memorable name that better describes the services that UCP provides to handicapped individuals. The Council’s approval for this name change is required pursuant to section 804(a)(i) of the Not-for-Profit Corporation Law and Title 10 (Health) of the Official Compilation of the Codes, Rules and Regulations of the State of New York § 600.11(a)(1).

UCP was originally incorporated on February 27, 1950, pursuant to the Membership Corporation Law. At its meeting on July 23, 2010, the Public Health Council consented to the filing of a Certificate of Amendment to UCP’s Certificate of Incorporation, changing its corporate name to “Able2, Inc.” When UCP attempted to file the Certificate of Amendment with the Department of State, however, the filing was rejected because the proposed name conflicted with the name of an existing New York business entity. UCP now desires to change its corporate name to “Able2 Enhancing Potential, Inc.” which does not conflict with the name of any existing New York business entity.

In addition to the proposed Certificate of Amendment, also attached is a letter from UCP’s attorney explaining this matter in more detail.

The proposed Certificate of Amendment is legally acceptable in form and the Department has no objection to its filing.

Attachments
Certificate of Amendment
of the
Certificate of Incorporation
of
UNITED CEREBRAL PALSY AND HANDICAPPED CHILDREN'S ASSOCIATION OF CHEMUNG COUNTY, INC.

Pursuant to Section 803 of the Not-for-Profit Corporation Law

The undersigned, for the purpose of amending the Certificate of Incorporation of United Cerebral Palsy and Handicapped Children's Association of Chemung County, Inc., pursuant to the provisions of the Not-for-Profit Corporation Law of the State of New York, does hereby make, subscribe and acknowledge this Certificate as follows:

1. The name of the Corporation is UNITED CEREBRAL PALSY AND HANDICAPPED CHILDREN'S ASSOCIATION OF CHEMUNG COUNTY, INC.

2. The name under which the Corporation was formed was CHEMUNG COUNTY CEREBRAL PALSY AND HANDICAPPED CHILDREN'S ASSOCIATION, INC.

3. The Certificate of Incorporation was filed by the Department of State on February 27, 1950, pursuant to the Membership Corporations Law.
9. Prior to the delivery of this Certificate of Amendment to the Secretary of State for filing, all approvals or consents required by law will be endorsed upon or annexed hereto.

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate and affirms the statements herein as true under the penalties of perjury this 26th day of April, 2010.

Mark Peters
Executive Director
Ms. Colleen M. Frost, Executive Secretary  
Public Health Council  
c/o State of New York Department of Health  
Corning Tower Building  
Room 1441  
Albany, NY 12237  

Re: Certificate of Amendment of the Certificate of Incorporation of United Cerebral Palsy and Handicapped Children's Association of Chemung County, Inc.

Dear Ms. Frost:

I am writing on behalf of United Cerebral Palsy and Handicapped Children's Association of Chemung County, Inc. ("Applicant"). On July 23, 2010, the Public Health Council consented to the filing of a Certificate of Amendment of Applicant's Certificate of Incorporation (the "Certificate of Amendment" or "Certificate"). The sole purpose of the Certificate of Amendment was to change Applicant's corporate name to "Able2, Inc."

Upon receipt of your letter announcing the Public Health Council's consent, Applicant submitted the Certificate of Amendment to the Department of State for filing. However, the filing was not completed because the Department of State determined that the proposed name conflicted with the name of an existing New York limited liability company. In order to proceed with changing its corporate name, Applicant revised the Certificate of Amendment to set forth a modified proposed name -- "Able2 Enhancing Potential, Inc." -- that does not conflict with the name of an existing entity. Like the original proposed name, the modified name was selected so that Applicant might operate under a name that is simpler and more memorable, yet still indicative of the services Applicant provides to handicapped individuals.

The purpose of this letter is to inquire as to whether the revised Certificate of Amendment must be approved by the Public Health Council prior to filing, or if the original consent granted in July is sufficient. I contacted Michael Stone at the Division of Legal Affairs to discuss this matter, and he recommended that I submit the revised Certificate to your office for consideration. Enclosed please find an updated copy of the Certificate of Amendment which
July 26, 2010

Aaron Alsheimer
Sayles & Evans
Attorneys at Law
One West Church Street
Elmira, New York 14901

Re: Certificate of Amendment of the Certificate of Incorporation of United Cerebral Palsy and Handicapped Children's Association of Chemung County, Inc.

Dear Mr. Alsheimer:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23rd day of July, 2010, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of United Cerebral Palsy and Handicapped Children's Association of Chemung County, Inc., dated April 26, 2010.

Sincerely,

/)

Colleen M. Frost
Executive Secretary

/cf
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 5th day of April, 2012, approves the filing of the Certificate of Amendment of Certificate of Incorporation of United Cerebral Palsy and Handicapped Children’s Association of Chemung County, Inc., dated April 26, 2010.
TO:                    Public Health and Health Planning Council (Council)
FROM:                  James E. Dering, General Counsel
DATE:                  March 6, 2012
SUBJECT:               Proposed Certificate of Dissolution for
                        Lutheran Center for the Aging, Inc.

Attached for the Council's review and approval is a photocopy of a proposed
Certificate of Dissolution for Lutheran Center for the Aging, Inc. (Corporation). The Council's
approval to file this Certificate of Dissolution is required pursuant to Not-for-Profit Corporation
Law (N-F-PCL) §§ 1002(c) and 1003(b)(1); and Title 10 (Health) of the Official Compilation of
the Codes, Rules and Regulations of the State of New York § 650.1.

The Corporation's Certificate of Incorporation was filed on May 13, 1980 and it
was approved to establish and operate a 353-bed residential health care facility in Smithtown.
The Corporation transferred ownership and operation of the facility, through an asset transfer, to
Avalon Gardens Rehabilitation and Health Care Center, LLC. The Corporation's operating
certificate was surrendered and closed out, effective May 12, 2003. Since the Corporation had no
assets to distribute, pursuant to N-F-PCL §§ 1002(d) and 1003(b)(2), its Plan of Dissolution and
Distribution of Assets (Plan) did not require judicial approval. The Corporation was only
required to file the Plan with the Office of the Attorney General (OAG). Also attached are
photocopies of the cover letter from the Corporation's attorney filing the Plan with the OAG and
the Plan.

The Certificate of Dissolution is in legally acceptable form and the Department
has no objection to its filing.

Attachments
CERTIFICATE OF DISSOLUTION OF
LUTHERAN CENTER FOR THE AGING, INC.
UNDER N.Y. NOT-FOR-PROFIT CORP. LAW §1003

WE THE UNDERSIGNED, the President and Secretary respectively of Lutheran Center for the Aging, Inc. hereby certify:

1. The name of this corporation is Lutheran Center for the Aging, Inc. The name under which the corporation was formed is Lutheran Nursing Home Center for the Aging, Inc.

2. The Certificate of Incorporation of Lutheran Nursing Home Center for the Aging, Inc. was filed in the office of the Secretary of State of New York on December 6, 1977 and a Certificate of Amendment changing the name to Lutheran Center for the Aging Inc. was filed in the office of the Secretary of State of New York on May 13, 1980.

3. The name and address of the directors of the corporation are as follows:

   John F. Ruth          John Mesloh          Thomas Keon
   174 Mariomi Road      6 Andover Court      6 Village Way
   New Canaan, CT 06840  Garden City, NY 11530  Smithtown, NY 11787

4. The names, titles and addressees of the officers of the corporation are as follows:

   Frank Tripodi, President/Chief Executive Officer
   277 North Avenue, Suite 201
   New Rochelle, NY 10801

5. At the time of dissolution Lutheran Center for the Aging, Inc. is a Type B corporation.

6. The corporation holds no assets for distribution which are legally required to be used for a particular purpose.

7. Lutheran Center for the Aging, Inc. elects to dissolve.

8. The dissolution of Lutheran Center for the Aging, Inc. was authorized by unanimous vote of the Board of Directors upon the consent of its sole member in accordance with the provisions of its By-laws.

9. A certified copy of the plan of dissolution of Lutheran Center for the Aging, Inc. which contains the statement that the corporation has no assets to distribute at the time of dissolution has been duly filed with the Attorney General of the State of New York pursuant to the N.Y. Not-for-Profit Corp. Law §1002(d).

IN WITNESS WHEREOF, the undersigned have signed this Certificate this 26th day of November, 2011.

Frank Tripodi, President

Thomas Keon, Secretary
December 6, 2011

Nicholas Garin, Esq.
Office of the Attorney General
Poughkeepsie Regional Office
One Civic Center Plaza, Suite 401
Poughkeepsie, NY 12601

Re: Lutheran Center for Aging, Inc.
Certificate of Dissolution
Our File: 12592+1

Dear Nick:

Enclosed herewith is a certified copy of the Plan of Dissolution in the captioned matter.

If you need anything further please advise.

Very truly yours,

McCabe & Mack LLP

Richard J. Olson

RJO/me
PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS OF LUTHERAN CENTER FOR AGING, INC.

The Board of Directors of Lutheran Center for Aging, Inc. (the "Corporation") at a special meeting duly convened on the 16th day of November, 2011, to consider the advisability of voluntarily dissolving this Corporation and it being the unanimous opinion of the Board that it is advisable and in the best interests of the Corporation to effect such a resolution, and the Board having adopted by unanimous vote a plan for a voluntary dissolution of this Corporation and does hereby recommend to the sole member of the Corporation, The Lutheran Care Network f/k/a Wartburg Lutheran Services, Inc. that this Corporation be dissolved in accordance with the following plan.

PROCEDURE FOR DISSOLUTION

A. The Corporation has no assets to distribute, all assets of the Corporation previously were sold and thereafter distributed pursuant to ARTICLE XIV of the Corporation's By-laws to its sole Member The Lutheran Care Network f/k/a Wartburg Lutheran Services, Inc.

B. Upon resolution of the Board of Directors adopting this Plan of Dissolution the Board must submit it to a vote of its sole member for approval.

C. Within ten (10) days after the adoption of this Plan by the Board of Directors together with the consent of its sole member, a certified copy of such Plan shall be filed with the Attorney General of the State of New York pursuant to the Not-for-Profit Corporation Law of the State of New York.

D. The Board recommends the following plan be approved by the membership:

1. The Corporation shall proceed with obtaining all necessary votes and approves required for the dissolution of the Corporation and thereafter file the Certificate of Dissolution with the Secretary of State.

E. The Corporation shall carry out the plan of dissolution as expeditiously as possible, but in any event within 270 days from the dated of this Plan, or such additional or extended period of time not less than 30 days nor more than one year as the Attorney General of the State of New York may allow upon a showing of good cause by the Corporation that the Plan cannot be carried out within the prescribed time.

F. A certificate of dissolution shall be executed, and all approvals required under the N.Y. Not-for-Profit Corp. Law §1002 shall be obtained prior to the filing the certificate of dissolution with the Department of State of the State of New York as required by law.
G. The approval of the dissolution of the Corporation shall be obtained from the Commissioner of Health of the State of New York.

CERTIFICATION

State of New York  
County of Westchester  

I, Thomas Keon, Secretary of the Lutheran Home for Aging, Inc. hereby certify that a special meeting of the Board of Directors of the Corporation was held at Concordia College on the 8th day of November, 2011 and the within resolution was duly submitted and passed by a unanimous vote of the Directors.

Dated: November 8th, 2011  

Thomas Keon, Secretary  

Sworn to before me this  
28th day of November, 2011  

LARAINA FELLEGARA  
Notary Public, State of New York  
No. 4883762  
Qualified in Westchester County  
Commission Expires January 28, 2015
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 5th day of April, 2012, approves the filing of the Certificate of Dissolution of Lutheran Center for the Aging, Inc., dated November 26, 2011.
Name of Agency: St. Lawrence County Public Health Department
Address: Canton
County: St. Lawrence
Structure: Public
Application Number: 2106-L

Description of Project:

St. Lawrence County Public Health Department, a government subdivision, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant currently operates a certified home health agency (CHHA), a long term home health care program (LTHHCP) and a diagnostic and treatment center. St. Lawrence County is in the process of closing their CHHA and LTHHCP. St. Lawrence County Public Health Department is requesting approval to become licensed as a licensed home care services agency to enable the county to continue to provide essential public health nursing services.

The applicant proposes to serve the residents of St. Lawrence County from an office located at: 80 State Highway 310, Suite 2, Canton, New York 13617.

The applicant proposes to provide the following health care services:

Nursing       Physical Therapy       Occupational Therapy
Speech Language Pathology       Audiology       Medical Social Services
Nutrition

The information provided by the Division of Home and Community Based Services has indicated that the certified home health care agency (CHHA) and long term home health care program (LTHHCP) reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Certification and Surveillance has determined that the Article 28 diagnostic and treatment center reviewed has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

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: March 5, 2012
Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Hudson Valley Home Health Care, LLC
Address: Middletown
County: Orange
Structure: Limited Liability Company
Application Number: 2068-L

Description of Project:

Hudson Valley Home Health 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. Hudson Valley Home Health Care, LLC is the proposed LHCSA associated with The Hamlet at Wallkill, LLC, a proposed new 80-bed assisted living program (ALP).

The members of Hudson Valley Home Health Care, LLC comprise the following individuals:

Michael Benenson, NHA, 33.5%  Richard Filaski, 25%
Manager, Filben Development, LLC  Manager, Lask Building (real estate)
(affiliations: Flushing Manor Nursing Home, Medford Hamlet ALP and ALR)
(2008 – present)
(1992 – present)
(1974 – present)
(2008 – present)
Dr. William O. Benenson Rehabilitation Pavilion
(1996 – present)

David Filaski, 25%  Joshua Benenson, 16.5%
Manager, Filben Development, LLC  Manager, Filben Development, LLC
Project Manager, Lask Building  Affiliations:
(affiliations: Medford Hamlet ALP and ALR)
(1992 – present)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that Michael Benenson, NHA license #00050, holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The applicant proposes to serve the residents of the following counties from an office located at 21 Riverside Drive, Middletown, New York 10940:

Westchester  Rockland  Orange
Putnam  Dutchess  Sullivan
Ulster
The applicant proposes to provide the following health care services:

<table>
<thead>
<tr>
<th>Nursing</th>
<th>Home Health Aide</th>
<th>Personal Care</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Therapy</td>
<td>Occupational Therapy</td>
<td>Respiratory Therapy</td>
</tr>
<tr>
<td>Speech Language Pathology</td>
<td>Audiology</td>
<td>Medical Social Services</td>
</tr>
<tr>
<td>Nutrition</td>
<td>Housekeeper</td>
<td></td>
</tr>
</tbody>
</table>

A ten year review of the following facilities/agencies was performed as part of this review (unless otherwise noted):

- Flushing Manor Nursing Home (2008 – present)
- Flushing Manor Care Center
- Flushing Manor Dialysis Center (2008 – present)
- Dr. William O. Benenson Rehabilitation Pavilion
- Medford Hamlet ALP and ALR

Flushing Manor Care Center was fined one thousand dollars ($1,000) pursuant to a stipulation and order dated May 29, 2007 for surveillance findings of February 26, 2004. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

Flushing Manor Geriatric Center d/b/a Dr. William O. Benenson Rehabilitation Pavilion was fined six thousand dollars ($6,000) pursuant to a stipulation and order dated August 28, 2007 for surveillance findings of June 22, 2006 and July 26, 2006. Deficiencies were found under 10 NYCRR for June 22, 2006: 415.4(b) Resident Behavior and Facility Practices: Staff Treatment of Residents, 415.12(h)(2) Quality of Care: Accidents and for July 26, 2006: 415.12 Quality of Care.

The information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the nursing homes 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 Certification and Surveillance has determined that the diagnostic and treatment center has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Bureau of Adult Care Facility Quality and Surveillance has indicated that the ALP and ALR reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents 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:** February 29, 2012
Description of Project:

Golden Acres Home for Adults SP, LLC, a limited liability company, requests approval for a change in ownership under Article 36 of the Public Health Law. This proposal seeks to transfer ownership of Golden Acres Home for Adults, LLC which is solely owned by Jacob Schonberger, to Golden Acres Home for Adults SP, LLC, controlled by his sons, Philip and Steven Schonberger.

Golden Acres Home for Adults, LLC was previously approved as a home care services agency by the Public Health Council at its January 21, 2005 meeting and subsequently licensed as 1326L001.

The members of Golden Acres Home for Adults SP, LLC comprise the following individuals:

<table>
<thead>
<tr>
<th>Name</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Philip Schonberger, 50%</td>
<td>Adult Home Administrator, Evergreen Court Home for Adults</td>
</tr>
<tr>
<td>Steven Schonberger, 50%</td>
<td>Manager of adult homes and ALPs owned by Jacob Schonberger</td>
</tr>
</tbody>
</table>

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 35 Prospect Street, Spring Valley, New York 10977:

- Rockland
- Putnam
- Bronx
- Orange
- Ulster
- Dutchess
- Sullivan
- Westchester

The applicant proposes to continue to provide the following health care services:

<table>
<thead>
<tr>
<th>Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nursing</td>
</tr>
<tr>
<td>Physical Therapy</td>
</tr>
<tr>
<td>Speech Language Pathology</td>
</tr>
<tr>
<td>Homemaker</td>
</tr>
<tr>
<td>Home Health Aide</td>
</tr>
<tr>
<td>Occupational Therapy</td>
</tr>
<tr>
<td>Medical Social Services</td>
</tr>
<tr>
<td>Housekeeper</td>
</tr>
<tr>
<td>Personal Care</td>
</tr>
<tr>
<td>Respiratory Therapy</td>
</tr>
<tr>
<td>Nutrition</td>
</tr>
</tbody>
</table>

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: February 21, 2012
Name of Agency: Robynwood, LLC d/b/a Robynwood Home Care
Address: Oneonta
County: Otesgo
Structure: Limited Liability Company
Application Number: 2034-L

Description of Project:

Robynwood, LLC dba Robynwood Home Care, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Robynwood, LLC d/b/a Robynwood Home Care was previously approved as a home care services agency by the Public Health Council at its September 24, 1994 meeting and subsequently licensed as 9445L001. At that time it was wholly owned by Jeremy Allen.

The members of Robynwood, LLC dba Robynwood Home Care comprise the following individuals:

Richard R. Thompson – 90%
Managing Member, LanCo Development, LLC

Patricia A. Sowa, RN – 5%
Controller, Jeremy Allen dba Robynwood Home for Adults and LHCSA

Jennifer V. Randall – 5%
Controller, Jeremy Allen dba Robynwood Home for Adults and LHCSA

Affiliations:

- Secretary/Treasurer, Amerisist of Warrenton (2000-2005)
- Secretary/Treasurer, Amerisist of Front Royal (1999-2005)
- Secretary/Treasurer, Amerisist of Culpeper (1999-2005)
- Secretary/Treasurer, Amerisist of Manassas (1999-2005)
- Secretary/Treasurer, Amerisist of Orange (1999-2005)
- Secretary/Treasurer, Amerisist of Stephen City (1999-2005)
- Secretary/Treasurer, Amerisist of Louisa (1999-2005)

The Office of the Professions of the State Education Department, indicate no issues with the licensure of the health professional associated with this application.

A search of the individuals (and entities, where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A review of the operations of the following facilities was performed as part of this review:

Amerisist of Warrenton (2000-2005)
Amerisist of Front Royal (1999-2005)
Amerisist of Culpeper (1999-2005)
Amerisist of Manassas (1999-2005)
Amerisist of Orange (1999-2005)
Amerisist of Stephen City (1999-2005)
Amerisist of Louisa (1999-2005)

The information provided by the State of Virginia regulatory agency has indicated that facilities affiliated with this application have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 43 Walnut Street, Oneonta, New York 13820:

Chenango Delaware Otsego Schoharie

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care

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: March 12, 2012
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

<table>
<thead>
<tr>
<th>NUMBER:</th>
<th>FACILITY:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1691-L</td>
<td>ABC Home Care, Inc.</td>
</tr>
<tr>
<td></td>
<td>(Bronx, Richmond, Kings, New York and Queens Counties)</td>
</tr>
<tr>
<td>1882-L</td>
<td>BaCOR Healthcare Solutions Group, LLC d/b/a BaCOR Care for Life</td>
</tr>
<tr>
<td></td>
<td>(Nassau and Richmond Counties)</td>
</tr>
<tr>
<td>1716-L</td>
<td>Elite Home Care Service Agency, Inc.</td>
</tr>
<tr>
<td></td>
<td>(New York, Nassau, Kings, Queens, Bronx and Richmond Counties)</td>
</tr>
<tr>
<td>1634-L</td>
<td>Healing Touch Home Care, Inc.</td>
</tr>
<tr>
<td></td>
<td>(Bronx, Kings, New York, Queens and Richmond Counties)</td>
</tr>
</tbody>
</table>
1901-L Heritage Christian Services, Inc. (Genesee, Wayne, Livingston, Monroe, Erie, Niagara, and Ontario Counties)

1906-L JS Homecare Agency of NY, Inc. (Bronx, Richmond, Kings, Westchester, New York, Queens, Dutchess, Suffolk, Nassau, Sullivan, Orange, Rockland, Putnam and Ulster Counties)

1962-L Louis Career Development Center, Inc., d/b/a Smart Home Care Agency (New York, Nassau, Kings, Queens, Bronx, and Richmond Counties)

1996-L Steps in Home Care, Inc. (Westchester, Nassau, Bronx, and New York Counties)

2107-L Niagara County Department of Health (Niagara County)

2106-L St. Lawrence County Public Health Department (St. Lawrence County)

2108-L Tompkins County Health Department (Tomkins County)

2096-L Yates County Public Health (Yates County)

2068-L Hudson Valley Home Health Care, LLC (Westchester, Putnam, Ulster, Rockland, Dutchess, Orange, and Sullivan Counties)

2010-L Samaritan Senior Village, Inc. (Jefferson, Lewis, and St. Lawrence Counties)
<table>
<thead>
<tr>
<th>Code</th>
<th>Address</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>2075-L</td>
<td>Golden Acres Home for Adults SP, LLC</td>
<td>Rockland, Putnam, Bronx, Orange, Ulster, Sullivan, Dutchess and Westchester Counties</td>
</tr>
<tr>
<td>2034-L</td>
<td>Robynwood, LLC d/b/a Robynwood Home Care</td>
<td>Chenango, Delaware, Otsego, and Schoharie Counties</td>
</tr>
<tr>
<td>2028-L</td>
<td>229 Bennett Road Operating Company, LLC d/b/a Elderwood Home Care at Cheektowaga</td>
<td>Erie County</td>
</tr>
<tr>
<td>2029-L</td>
<td>580 Orchard Park Road Operating Company, LLC d/b/a Elderwood Home Care at West Seneca</td>
<td>Erie County</td>
</tr>
<tr>
<td>2030-L</td>
<td>76 Buffalo Street Operating Company, LLC d/b/a Elderwood Home Care at Hamburg</td>
<td>Erie County</td>
</tr>
<tr>
<td>2031-L</td>
<td>44 Ball Street Operating Company, LLC d/b/a Elderwood Home Care at Waverly</td>
<td>Tioga County</td>
</tr>
</tbody>
</table>
### B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

**CATEGORY 2:** Applications Recommended for Approval with the Following:

- PHHPC Member Recusals
- Without Dissent by HSA
- Without Dissent by Establishment and Project Review Committee

#### CON Applications

**Acute Care Services – Establish**

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 121051 E</td>
<td>Corning Hospital (Steuben County) Mr. Booth - Interest</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

**Diagnostic and Treatment Centers – Establish/Construct**

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 112184 B</td>
<td>Huther Doyle Memorial Institute, Inc. (Monroe County) Mr. Booth – Interest</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2. 112343 B</td>
<td>Corning Centerway (Steuben County) Mr. Booth - Interest</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>
### Hospice – Establish/Construct

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 102454 E</td>
<td>Compassionate Care Hospice of New York, Inc. (Bronx County) Ms. Regan – Interest</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2. 112211 B</td>
<td>Jacob Perlow Hospice Corporation d/b/a MJHS Hospice and Palliative Care (Kings County) Mr. Fassler – Interest Ms. Regan - Interest</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

### Certified Home Health Agencies – Establish

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 111413 E</td>
<td>Genesee Region Home Care Association, Inc. d/b/a Lifetime Care (Schuyler County) Mr. Booth – Recusal Ms. Hines – Recusal</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

### Residential Health Care Facility – Establish

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 111456 E</td>
<td>4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool (Onondaga County) Mr. Booth - Interest</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>#</td>
<td>Address</td>
<td>Operating Company, LLC</td>
</tr>
<tr>
<td>---</td>
<td>-------------------------</td>
<td>---------------------------------</td>
</tr>
<tr>
<td>2</td>
<td>111462 E 1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster (Erie County)</td>
<td>Mr. Booth - Interest</td>
</tr>
<tr>
<td>3</td>
<td>111463 E 20 Bassett Road Operating Company, LLC d/b/a Elderwood Health Care at Williamsville (Erie County)</td>
<td>Mr. Booth - Interest</td>
</tr>
<tr>
<td>4</td>
<td>111466 E 2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield (Niagara County)</td>
<td>Mr. Booth - Interest</td>
</tr>
<tr>
<td>5</td>
<td>111467 E 4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst (Erie County)</td>
<td>Mr. Booth - Interest</td>
</tr>
<tr>
<td>6</td>
<td>111468 E 2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island (Erie County)</td>
<td>Mr. Booth - Interest</td>
</tr>
<tr>
<td>7</td>
<td>111469 E 225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga (Erie County)</td>
<td>Mr. Booth - Interest</td>
</tr>
</tbody>
</table>
8. 111470 E 5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg (Erie County) Mr. Booth - Interest

9. 111471 E 37 North Chemung Operating Company, LLC d/b/a Elderwood at Waverly (Tioga County) Mr. Booth - Interest

10. 112218 E Waterfront Operations Associations, LLC d/b/a Waterfront Center for Rehabilitation and Healthcare (Erie County) Mr. Fassler – Recusal

**HOME HEALTH AGENCY LICENSURES**

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1691-L</td>
<td>ABC Home Care, Inc. (Bronx, Richmond, Kings, New York and Queens Counties) Ms. Regan - Interest</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>1882-L</td>
<td>BaCOR Healthcare Solutions Group, LLC d/b/a BaCOR Care for Life (Nassau and Richmond Counties) Ms. Regan - Interest</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>1716-L</td>
<td>Elite Home Care Service Agency, Inc. (New York, Nassau, Kings, Queens, Bronx and Richmond Counties) Ms. Regan - Interest</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>L</td>
<td>Organization</td>
<td>Interest</td>
</tr>
<tr>
<td>------</td>
<td>------------------------------------------------------------------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>1634-L</td>
<td>Healing Touch Home Care, Inc. (Bronx, Kings, New York, Queens and Richmond Counties)</td>
<td>Ms. Regan - Interest</td>
</tr>
<tr>
<td>1962-L</td>
<td>Louis Career Development Center, Inc., d/b/a Smart Home Care Agency (New York, Nassau, Kings, Queens, Bronx, and Richmond Counties)</td>
<td>Ms. Regan - Interest</td>
</tr>
<tr>
<td>1996-L</td>
<td>Steps in Home Care, Inc. (Westchester, Nassau, Bronx, and New York Counties)</td>
<td>Ms. Regan - Interest</td>
</tr>
<tr>
<td>1906-L</td>
<td>JS Homecare Agency of NY, Inc. (Bronx, Richmond, Kings, Westchester, New York, Queens, Dutchess, Suffolk, Nassau, Sullivan, Orange, Rockland, Putnam and Ulster Counties)</td>
<td>Ms. Hines – Interest, Ms. Regan - Interest</td>
</tr>
<tr>
<td>1901-L</td>
<td>Heritage Christian Services, Inc. Genesee, Wayne, Livingston, Monroe, Erie, Niagara, and Ontario Counties)</td>
<td>Mr. Booth - Interest</td>
</tr>
<tr>
<td>2107-L</td>
<td>Niagara County Department of Health (Niagara County)</td>
<td>Mr. Booth - Interest</td>
</tr>
<tr>
<td>2108-L</td>
<td>Tompkins County Health Department (Tompkins County)</td>
<td>Mr. Booth - Interest</td>
</tr>
<tr>
<td>No.</td>
<td>Description</td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>-----------------------------------------------------------------------------</td>
<td></td>
</tr>
</tbody>
</table>
| 2096-L | Yates County Public Health  
(Yates County)  
Mr. Booth - Interest |
| 2010-L | Samaritan Senior Village, Inc.  
(Jefferson, Lewis, and St. Lawrence Counties)  
Mr. Booth - Interest |
| 2028-L | 229 Bennett Road Operating Company, LLC  
d/b/a Elderwood Home Care at Cheektowaga  
(Erie County)  
Mr. Booth - Interest |
| 2029-L | 580 Orchard Park Road Operating Company, LLC  
d/b/a Elderwood Home Care at West Seneca  
(Erie County)  
Mr. Booth - Interest |
| 2030-L | 76 Buffalo Street Operating Company, LLC  
d/b/a Elderwood Home Care at Hamburg  
(Erie County)  
Mr. Booth - Interest |
| 2031-L | 44 Ball Street Operating Company, LLC  
d/b/a Elderwood Home Care at Waverly  
(Tioga County)  
Mr. Booth - Interest |
Executive Summary

Description
Guthrie Health, a Pennsylvania-based not-for-profit corporation located at Guthrie Square, Sayre, Pennsylvania, is seeking approval to merge Guthrie Healthcare System and Guthrie Clinic, Ltd. into a corporation known as Guthrie Health. Concurrently, as the surviving entity, Guthrie Health will become the co-operator of Guthrie Same Day Surgery, an existing article 28 ambulatory surgery center. Guthrie Health, the parent organization, will be the Surviving Corporation.

Post-restructuring Guthrie Health will assume all of the assets, liabilities and employees of Guthrie Healthcare System (GHS) and Guthrie Clinic, Ltd. (GC). Concurrently, as the surviving entity, Guthrie Health will become the co-operator of Guthrie Same Day Surgery, an existing article 28 ambulatory surgery center.

As background, in 2001, GHS and GC entered into an alignment agreement (CON #002411-E) that brought the two health care institutions together as sole members of Guthrie Health. Guthrie Health, a not-for-profit organization, has direct oversight for both GC and GHS, and is responsible for the overall strategic, financial and operational direction of the organization.

Guthrie Health and affiliates principally serve residents in Northern Central Pennsylvania and Southern Central New York and provide a broad range of the health care services, which include: inpatient, outpatient and emergency care, home care services, and primary and specialty care services. Guthrie Health and affiliates conduct medical research and provide educational programs.

Guthrie Clinic, Ltd., under a companion CON #112343-B, is seeking approval to convert the 14 New York private practices into ten diagnostic and treatment center clinics.

The providers for the four closing sites (Elmira, Corning First Street, Apalachin and Bath) will be transferred to other nearby Guthrie Clinic locations. The applicant states they will continue to seek a new location in Bath, New York for an Article 28 extension clinic in the future.

DOH Recommendation
Contingent approval.

Need Summary
Guthrie Health is submitting this application to consolidate Corning Hospital and the Guthrie Same Day Surgery Center into a single cohesive organization. Through this structure, the entire organization will be managed under one board with one mission. The reorganization will allow the corporation to achieve economies of scale and to continue to provide, and possibly expand, services.

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 project costs, nor significant issues of capability or feasibility associated with this application.

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 no HSA recommendation for this application.

Office of Health Systems Management
Approval contingent upon:

1. Submission of a photocopy of the executed Certificate of Amendment of the Application for Authority of Guthrie Health, acceptable to the Department. [CSL]
2. Submission of a photocopy of the executed Articles of Merger of Guthrie Healthcare System and Guthrie Clinic, Ltd. into Guthrie Health, acceptable to the Department. [CSL]
3. Submission of a photocopy of the finalized and executed Agreement and Plan of Merger by and among Guthrie Healthcare System, Guthrie Clinic, Ltd. and Guthrie Health, acceptable to the Department. [CSL]
4. Submission of a photocopy of the finalized and executed Plan of Conversion of Guthrie Clinic, Ltd., acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed Articles of Conversion of Guthrie Clinic Ltd., acceptable to the Department. [CSL]

Council Action Date
April 5, 2012.
Need Analysis

Background
Guthrie Health, an existing not-for-profit corporation, requests approval, through the merger of Guthrie Healthcare System and Guthrie Clinic, Ltd into Guthrie Health, to be the surviving entity and thus the operator of Corning Hospital, a 99-bed acute care hospital located at 176 Denison Parkway East, Corning, Steuben County. Concurrently, as the surviving entity, Guthrie Health will become the co-operator of Guthrie Same Day Surgery, Inc., an existing article 28 ambulatory surgery center located at 31 Arnot Road Horseheads, Chemung County.

A companion application, CON #112343-B, was also submitted to reorganize the Guthrie Health clinics into one organization. Upon completion of this project, all services at the hospital and the surgery center will remain the same.

Corning Hospital has the following certified beds and services:

<table>
<thead>
<tr>
<th>Bed Category</th>
<th>Current Beds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical / Surgical</td>
<td>78</td>
</tr>
<tr>
<td>Intensive Care</td>
<td>8</td>
</tr>
<tr>
<td>Maternity</td>
<td>8</td>
</tr>
<tr>
<td>Pediatric</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total Beds</strong></td>
<td><strong>99</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Service</th>
<th>Services Upon Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ambulatory Surgery - Multi Specialty</td>
<td>✓</td>
</tr>
<tr>
<td>Clinical Laboratory Service</td>
<td>✓</td>
</tr>
<tr>
<td>Coronary Care</td>
<td>✓</td>
</tr>
<tr>
<td>CT Scanner</td>
<td>✓</td>
</tr>
<tr>
<td>Emergency Department</td>
<td>✓</td>
</tr>
<tr>
<td>Intensive Care</td>
<td>✓</td>
</tr>
<tr>
<td>Linear Accelerator</td>
<td>✓ (on-site)</td>
</tr>
<tr>
<td>Lithotripsy</td>
<td>✓</td>
</tr>
<tr>
<td>Magnetic Resonance Imaging</td>
<td>✓</td>
</tr>
<tr>
<td>Maternity</td>
<td>✓</td>
</tr>
<tr>
<td>Medical Social Services</td>
<td>✓</td>
</tr>
<tr>
<td>Medical/Surgical</td>
<td>✓</td>
</tr>
<tr>
<td>Nuclear Medicine - Diagnostic</td>
<td>✓</td>
</tr>
<tr>
<td>Outpatient Surgery</td>
<td>✓</td>
</tr>
<tr>
<td>Pharmaceutical Service</td>
<td>✓</td>
</tr>
<tr>
<td>Primary Medical Care O/P</td>
<td>✓</td>
</tr>
<tr>
<td>Radiology – Diagnostic</td>
<td>✓</td>
</tr>
<tr>
<td>Radiology – Therapeutic</td>
<td>✓ (on-site)</td>
</tr>
<tr>
<td>Respiratory Care</td>
<td>✓ (correction)</td>
</tr>
<tr>
<td>Therapy - Occupational</td>
<td>✓ (on-site)</td>
</tr>
<tr>
<td>Therapy - Physical</td>
<td>✓ (on-site)</td>
</tr>
<tr>
<td>Therapy - Respiratory</td>
<td>✓ (correction)</td>
</tr>
<tr>
<td>Therapy – Speech Language Pathology</td>
<td>✓ (on-site)</td>
</tr>
</tbody>
</table>

Corning Hospital is authorized to operate 3 hospital extension clinics, providing services that include Primary Medical Care, Therapeutic Radiology, Occupational Therapy, Physical Therapy, Speech Language Pathology, and Physical Medicine and Rehabilitation.
Table 3: Guthrie Same Day Surgery Center, Inc: Certified Services

| Ambulatory Surgery - Multi Specialty | Radiology - Diagnostic O/P |

Conclusion
The restructuring request will create a comprehensive, fully integrated healthcare system for the residents of the Southern Tier of New York.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Character and Competence
The board members of the Guthrie Health are:

- Joseph A. Scopelliti, MD Co-CEO
- Mark Stensager Co-CEO
- Michael W. Donnelly Chair
- Terence M. Devine, MD Vice-Chair
- William H. Ransom III Secretary
- Edward L. Jones, MD Treasurer
- Ethan Arnold, MPH
- Kyra Bannister, MD
- Kenneth R. Levitzky, Esq
- H. Eugene Lindsey, MD
- A. John Peck, Esq
- David Pfisterer, Esq
- Philip J. Roche, Esq
- Douglas a. Trostle, MD

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 ownership interest in other health care facilities. Licensed individuals were checked against the NYS Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases, as well as the U.S. Department of Health and Human Services Office of the Inspector General database.

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.

- Corning Hospital entered into a corporate integrity agreement with the Office of the Inspector General that covered the timeframe from September 2002 – September 2005 as the result of improper physician level billing. The final report was submitted in January 2006
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.

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Background
The current structure of Guthrie Health integrates a multi-specialty group practice under GC (see companion CON #112343-B) and several hospitals under GHS, through a broad parental powers delegate from GC and GHS. The applicant states that the overall corporate structure is cumbersome, with its duplication of governance and management, along with the current co-CEO (Chief Executive Officer) structure, which may not be sustainable.

Restructuring Guthrie Health will simplify the system-wide governance, management and corporate structure, enhance organizational stability with a single CEO, and achieve greater operating efficiencies, which further reduces the costs and unnecessary duplication of services and equipment. It further strengthens Guthrie’s integrated system to meet the challenges from the changing health care environment.

After the restructuring, Guthrie Health will have no corporate members. Its board of directors will consist of eighteen directors: ten of the directors will be independent individuals who represent the broad interest of the public, and eight of the directors will be medical, administrative and other professionals.

Description of Entities
Guthrie Health System is the sole corporate member of the following:

- Robert Packer Hospital – established in 1885, is a community-based 238-bed tertiary care teaching hospital located in Sayre, Pennsylvania that offers a full complement of medical and surgical services, along with a number of specialized programs.

- Troy Community Hospital – established in 1950, is a community-based 25-bed critical access hospital in Troy, Pennsylvania, approximately 32 miles southwest of Sayre, Pennsylvania. It offers a full range of medical and surgical care, and is a swing-bed facility that specializes in a respiratory therapy/ventilator management program. It is anticipated that a portion of the proceeds of the Guthrie Health Series 2011 Bonds will be used to construct and equip a new 25-bed critical access hospital on a new site in Troy, Pennsylvania.

- Corning Hospital – a 99-bed, full service community hospital in Corning, New York that is a New York State designated Stroke Center, and offers a broad range of inpatient and outpatient services. On December 8, 2011, under CON 112030, the Public Health and Health Planning Council (PHHPC) gave Corning Hospital contingent approval to construct a 270,908 square foot replacement facility at an estimated cost of $149,995,908. The new hospital will be located on approximately 68 acres of vacant land on the north side of State Route 17 at Exit 48 of I-86 in the Town of Corning. The proposed site is approximately 4.1 miles east of the current location. Upon completion of this project, the total certified beds will decrease by 34 beds, bringing the new licensed inpatient capacity to 65-beds.

- Guthrie Same Day Surgery Center Inc. – a not-for-profit multi-specialty freestanding ambulatory surgery center located at 31 Arnot Road, (2nd level) Horseheads, NY.
• **Guthrie Home Care** – provides a broad range of home health services. One of its divisions is a Medicare-certified home health agency that provides skilled home health services, home health aide services, and a number of specialized in-home services for homebound residents of all ages throughout Bradford, Tioga and Sullivan Counties of Pennsylvania. Another division provides hospice services.

• **Guthrie Health System** is the sole corporate member of the following: Donald Guthrie Foundation for Education and Research, Inc. (as part if the restructuring, Guthrie Health Systems will transfer $5 million to the foundation, which will be renamed the Donald Guthrie Foundation); Robert Parker School of Nursing; Sayre House of Hope (housing for family members of patients who travel to Sayre campus) and Twin Management Corporation, a medical supply provider.

Presented as BFA Attachments C & D are Guthrie Health’s current and proposed organizational charts.

**Capability and Feasibility**

There are no project costs, nor significant issues of capability or feasibility associated with this application.

Presented as BFA Attachment A is Guthrie Health and Affiliates certified financial statement for June 30, 2010 and 2011, which shows they generated an average excess of revenues over expenses totaling $79,421,000, and had both a positive average working capital and equity position for the same time period. Presented as BFA Attachment E, is the pro-forma balance sheet, which estimates that Guthrie Health and Affiliates combined net assets will be approximately $543,515,000.

Presented as BFA Attachment B is Guthrie Clinic Ltd’s., June 30, 2011 financial analysis, showing the clinic had $212,369,354 in Net Revenues for all locations, with $53,541,673 coming from New York State (as shown above) and $158,827,682 from locations in Pennsylvania. Also shown on Attachment B, the Clinic’s sites incurred a total loss of $22,051,831 (of which NYS sites loss was $8,673,098, as shown above and the Pennsylvania locations incurred losses were $13,378,733). Please note that these losses have been absorbed by Guthrie Health and Guthrie Health System.

For the fiscal year (FY) ending June 30, 2011, Net Assets totaled $543,895,000, an increase of $111,267,000 from the prior year. At the end of FY 2011, their investment account stood at $388,146,000, an increase of $54,520,000 over the preceding year.

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.

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**Attachments**

- BFA Attachment A: Financial Summary for 2010 and 2011, Guthrie Health and Affiliates
- BFA Attachment C: Current Organizational Chart for Guthrie Health
- BFA Attachment D: Proposed Organizational Chart for Guthrie Health
- BFA Attachment E: Pro-forma Balance Sheet for Guthrie Health and Affiliates
- BHFP Attachment: Map
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to merger Guthrie Healthcare System and Guthrie Clinic, Ltd. into a corporation known as Guthrie Health, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:
121051-E Corning Hospital
APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the executed Certificate of Amendment of the Application for Authority of Guthrie Health, acceptable to the Department. [CSL]
2. Submission of a photocopy of the executed Articles of Merger of Guthrie Healthcare System and Guthrie Clinic, Ltd. into Guthrie Health, acceptable to the Department. [CSL]
3. Submission of a photocopy of the finalized and executed Agreement and Plan of Merger by and among Guthrie Healthcare System, Guthrie Clinic, Ltd. and Guthrie Health, acceptable to the Department. [CSL]
4. Submission of a photocopy of the finalized and executed Plan of Conversion of Guthrie Clinic, Ltd., acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed Articles of Conversion of Guthrie Clinic Ltd., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299
Executive Summary

Description
Huther Doyle Memorial Institute, Inc. (Huther Doyle), a New York not-for-profit corporation, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to provide primary care and specialty services, including gynecology, at 360 East Avenue, Rochester. The first and second floors of 360 East Avenue are utilized by Huther Doyle for its OASAS Part 822 Chemical Dependence Outpatient Services Program.

Total project costs are estimated at $72,184.

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

Need Summary
Huther Doyle is an OASAS 822 licensed provider for chemical dependency outpatient services, including prevention, recovery, psychology, and managed addiction treatment.

Huther Doyle serves approximately 2,000 patients each year, 85% of whom are Medicaid eligible. At this time, the facility wishes to become established as an Article 28 D&TC to expand services to include primary medical care, as almost 50% of their patients have no primary care physician.

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 cash.

Incremental Budget:
- Revenues: $872,811
- Expenses: $573,750
- Gain/(Loss): $299,061

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

Architectural Summary
The 10,000 SF center will be located on the third floor of an existing building with renovations planned to accommodate the proposed facility. It will include seven exam rooms, waiting area, triage/clean utility and soiled utility rooms, administrative offices, and adequate support space to accommodate the current and future needs of the community.
Recommendations

Health Systems Agency
The Finger Lakes HSA recommends approval of this project.

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 written commitment that at least 5 percent of total visits to the approved clinic annually will be uninsured or under-insured patients by the second year of operation upon issuance of the operating certificate. [RNR]
2. Submission of a written commitment that the percentage of total visits annually by Medicaid Managed Care and Fee-for-Service beneficiaries, in the aggregate, to the HDMI will be at least 60 percent. [RNR]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department of Health, with a local acute care hospital. [HSP]
4. Submission of a photocopy of the applicant’s revised Lease, with The Fitch Building, LLC, as landlord, which must be acceptable to the Department. [BFA, CSL]
5. Submission of photocopies of the applicant’s Certificate of Incorporation, and any amendments thereto or restatements thereof, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
6. Submission of a photocopy of revisions to the applicant’s Bylaws, which must be acceptable to the Department. [CSL]
7. Submission of a complete list of the applicant’s officers and directors, clearly indicating each individual’s position as an officer and/or a director, which must be acceptable to the Department. [CSL]
8. Submission of the original of Schedule 13A, “Assurances from Article 28 Applicants” from the Certificate of Need application, which must be acceptable to the Department. [CSL]
9. Submission of the original of an affidavit from the Chair of the applicant’s Board of Directors verifying that the correct name of the applicant is “Huther-Doyle Memorial Institute, Inc.” and not “Huther Doyle Memorial Institute, Inc.”, as it is sometimes referred to in the application, which must be 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 before April 30, 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
April 5, 2012.
**Need Analysis**

**Background**
Huther Doyle Memorial Institute, Inc. (Huther Doyle) is seeking approval to establish and construct a diagnostic and treatment center to provide primary care at 360 East Avenue, Rochester.

**Analysis**
Huther Doyle has been providing OASAS-certified Chemical Dependence O/P services since 1977. It has been providing prevention, treatment and recovery services under an OASAS license to the local community for over 20 years.

Huther Doyle’s primary service area is the Rochester metropolitan area. From January 2010 through September 2010, HDMI served 1,362 patients.

The applicant proposes to offer the following:

- Primary Care and Specialty Program services including medical services 40 hours each week over a minimum of five days, to start.
- Gynecology services offered approximately eight hours per month, over two or three sessions per month.

The projected number of visits for Primary Care is as follows:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Year:</td>
<td>0</td>
</tr>
<tr>
<td>First Year:</td>
<td>4,530</td>
</tr>
<tr>
<td>Third Year:</td>
<td>8,364</td>
</tr>
</tbody>
</table>

The projected number of visits for outpatient chemical dependency is as follows:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Year:</td>
<td>69,862</td>
</tr>
<tr>
<td>First Year:</td>
<td>68,710</td>
</tr>
<tr>
<td>Third Year:</td>
<td>68,710</td>
</tr>
</tbody>
</table>

The service area is in both a primary care and mental health care services Health Professional Shortage Area, (HPSA).

There are a total of ten facilities providing primary care services within a 1.25 mile radius of the proposed clinic site:

<table>
<thead>
<tr>
<th>Type of Facility with Primary Care Services</th>
<th>Number within 1.25 Mile Radius of 14604</th>
</tr>
</thead>
<tbody>
<tr>
<td>D&amp;TC</td>
<td>1</td>
</tr>
<tr>
<td>D&amp;TC Extension Clinic</td>
<td>2</td>
</tr>
<tr>
<td>School-Based Hospital Extension Clinic</td>
<td>2</td>
</tr>
<tr>
<td>Hospital Extension Clinic</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>10</strong></td>
</tr>
</tbody>
</table>

The table below provides information on the number of Medicaid recipients as well as the number of HMO enrollment in the twenty zip codes within a 1.25 mile radius of the proposed location in zip code 14604.

These data indicate the following:

a) The Medicaid population is 40 percent.
b) The primary care utilization is significantly lower at 4.0 average annual primary care visits per Medicaid client than that of the State at 5.77 annual primary care visits. The normative rate is 3.5 to 4 visits per year, used as a standard for managed care planning and federally qualified health centers.

<table>
<thead>
<tr>
<th>Zip Code</th>
<th>Total Medicaid Recipients</th>
<th>HMO Enrollment</th>
<th>MA Fee for Service Recipients</th>
<th>Annual Primary Care Visits</th>
<th>Primary Care Use per eligible Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>14602</td>
<td>31</td>
<td>3</td>
<td>28</td>
<td>98</td>
<td>3.52</td>
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<tr>
<td>14603</td>
<td>138</td>
<td>38</td>
<td>100</td>
<td>274</td>
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<tr>
<td>14604</td>
<td>1,220</td>
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<td>936</td>
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<tr>
<td>14605</td>
<td>7,999</td>
<td>4,840</td>
<td>3,159</td>
<td>10,818</td>
<td>3.42</td>
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<tr>
<td>14607</td>
<td>2,521</td>
<td>945</td>
<td>1,576</td>
<td>6,244</td>
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<tr>
<td>14608</td>
<td>6,216</td>
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</tr>
<tr>
<td>14614</td>
<td>128</td>
<td>34</td>
<td>94</td>
<td>332</td>
<td>3.53</td>
</tr>
<tr>
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<td></td>
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<td>14643</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>14653</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14692</td>
<td>159</td>
<td>9</td>
<td>150</td>
<td>760</td>
<td>5.06</td>
</tr>
<tr>
<td>14694</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>18,413</td>
<td>9,856</td>
<td>8,557</td>
<td>34,230</td>
<td>4</td>
</tr>
<tr>
<td>Statewide</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

M-Caid Recipients as % of Serv Area Pop. 40.3%
HMO Enroll as % of Total M-Caid recipients 53.5%
MA Fee for Service as % of Total M-Caid recipients 46.5%

Prevention Quality Indicators (PQIs):
The rates for the following PQIs in the 20 zip code area are poorer than those for the State:

<table>
<thead>
<tr>
<th>PQI</th>
<th>Description</th>
<th>Adjusted Rate</th>
<th>State-Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Diabetes short-term complication</td>
<td>94.05</td>
<td>37.24</td>
</tr>
<tr>
<td>3</td>
<td>Diabetes long-term complication</td>
<td>166.36</td>
<td>105.85</td>
</tr>
<tr>
<td>5</td>
<td>Chronic obstructive pulmonary disease</td>
<td>227.94</td>
<td>156.96</td>
</tr>
<tr>
<td>7</td>
<td>Hypertension</td>
<td>44.67</td>
<td>40.21</td>
</tr>
<tr>
<td>8</td>
<td>Congestive heart failure</td>
<td>558.73</td>
<td>334.36</td>
</tr>
<tr>
<td>9</td>
<td>Low birth weight (Percentage of Births)</td>
<td>8.82</td>
<td>5.75</td>
</tr>
<tr>
<td>12</td>
<td>Urinary tract infection</td>
<td>192.89</td>
<td>139.25</td>
</tr>
<tr>
<td>15</td>
<td>Adult asthma</td>
<td>242.16</td>
<td>126</td>
</tr>
<tr>
<td>16</td>
<td>Lower-extremity amputation among patients with diabetes</td>
<td>43.27</td>
<td>30.14</td>
</tr>
</tbody>
</table>
Conclusion
Huther Doyle Memorial Institute, Inc. proposed to establish a diagnostic and treatment center to provide primary care services to patients currently receiving chemical dependency outpatient services. Eighty-five percent of HDMI’s patients are Medicaid eligible, and approximately 50% do not have a primary care provider.

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

Programmatic Analysis

Program Proposal

<table>
<thead>
<tr>
<th>Proposed Operator</th>
<th>Huther Doyle Memorial Institute</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operator Type</td>
<td>Not-for-Profit Corporation</td>
</tr>
<tr>
<td>Site Address</td>
<td>360 East Avenue, Rochester</td>
</tr>
<tr>
<td>Services</td>
<td>Primary Medical Care</td>
</tr>
<tr>
<td></td>
<td>Chemical Dependency -</td>
</tr>
<tr>
<td></td>
<td>Rehabilitation</td>
</tr>
<tr>
<td>Hours of Operation</td>
<td>A minimum of forty hours and</td>
</tr>
<tr>
<td></td>
<td>five days per week. Hours and</td>
</tr>
<tr>
<td></td>
<td>days will expand if needed.</td>
</tr>
<tr>
<td>Staffing (1st Year / 3rd Year)</td>
<td>77.1 FTEs / 79.2 FTEs</td>
</tr>
<tr>
<td>Medical Director(s)</td>
<td>Clifford J. Hurley</td>
</tr>
<tr>
<td>Emergency, In-Patient and Backup Support Services Agreement</td>
<td>Expected to be provided by Rochester General Hospital</td>
</tr>
<tr>
<td>Distance</td>
<td>4.5 miles and 8 minutes</td>
</tr>
</tbody>
</table>

Character and Competence
The board members are:

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brett Sobieraski</td>
<td>Chair</td>
</tr>
<tr>
<td>Shelly Marketell</td>
<td>Vice Chair</td>
</tr>
<tr>
<td>Eugene O’Connor</td>
<td>Secretary</td>
</tr>
<tr>
<td>Louis Nau</td>
<td>Treasurer</td>
</tr>
<tr>
<td>Wanda Acevedo</td>
<td></td>
</tr>
<tr>
<td>Malcolm Boyd</td>
<td></td>
</tr>
<tr>
<td>Norene Cenette Burdine</td>
<td></td>
</tr>
<tr>
<td>Zetta Denno</td>
<td></td>
</tr>
<tr>
<td>Kim Dyce Faucette</td>
<td></td>
</tr>
<tr>
<td>Hilda Escher Rosario</td>
<td></td>
</tr>
<tr>
<td>Michael Green</td>
<td></td>
</tr>
<tr>
<td>Brian Logan</td>
<td></td>
</tr>
<tr>
<td>Vi Luong</td>
<td></td>
</tr>
<tr>
<td>Douglas Lustic</td>
<td></td>
</tr>
<tr>
<td>Patrick O’Flynn</td>
<td></td>
</tr>
<tr>
<td>Peter Pecor</td>
<td></td>
</tr>
<tr>
<td>Christopher Wilkins</td>
<td></td>
</tr>
<tr>
<td>Roger Zaenglein</td>
<td></td>
</tr>
</tbody>
</table>
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, contingent is recommended.

---

### Financial Analysis

**Lease Agreement**
The applicant has submitted a draft lease for approximately 10,000 square feet of space on the third floor at 360 East Avenue in Rochester, New York, under the terms of the lease agreement summarized below:

- **Lessor:** The Fitch Building, LLC
- **Lessee:** Huther Doyle Memorial Institute, Inc.
- **Term:** Nine years and six months with a ten year renewal term
- **Rental:** $169,500/year (16.95/ sq. ft.)
- **Provisions:** Tenant shall be responsible for utilities and insurance costs.

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

**Total Project Cost and Financing**
Total project costs for the renovations and acquisition of movable equipment is estimated at $72,184, itemized as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Fees</td>
<td>20,000</td>
</tr>
<tr>
<td>Movable Equipment</td>
<td>49,800</td>
</tr>
<tr>
<td>Application Fee</td>
<td>2,000</td>
</tr>
<tr>
<td>Additional Processing Fee</td>
<td>384</td>
</tr>
<tr>
<td><strong>Total Project Cost</strong></td>
<td><strong>$72,184</strong></td>
</tr>
</tbody>
</table>

The applicant will finance the total project costs through equity. Presented as BFA Attachment A, is the financial statement of Huther Doyle Memorial Institute, Inc., which shows sufficient equity.

**Operating Budget**
The applicant has submitted an incremental operating budget in 2012 dollars under the Article 28 program, for the first and third years of operation, summarized below:
Utilization by payor source for the first and third years is as follows:

- Medicaid-Managed Care: 8.0%
- Medicaid Fee-For-Service: 82.4%
- Commercial-Managed Care: 5.7%
- Charity Care: 3.9%

Expense and utilization assumptions are based on the historical experience of the current outpatient services under the Part 822 Chemical Dependence Outpatient Services Program, whose patients are mainly Medicaid Fee-for-Service.

**Capability and Feasibility**

Total project costs of $72,184 will be financed through equity of Huther Doyle Memorial Institute, Inc. BFA Attachment A is the financial summary of Huther Doyle Memorial Institute, Inc., which shows there are sufficient funds available.

Working capital requirements, estimated at $95,625 appear reasonable based on two months of third year incremental expenses and will be provided through the current operation. Huther Doyle is an existing operation for Chemical Dependence outpatient services. As shown on BFA Attachments A and B, Huther Doyle maintained positive working capital, net assets and a net profit of $2,947 in 2011 and an average net profit of $129,300 in 2009-2010. Presented as BFA Attachment C, is the pro-forma balance sheet of Huther Doyle Memorial Institute, Inc., based on the first day of operation, which indicates a positive net asset position of $1,037,332.

The submitted budget indicates a net profit of $77,114 and $299,061 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for diagnostic & treatment center’s services. The budget appears reasonable.

Based on the preceding, and subject to noted contingency, 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**

This proposed facility will consist of 4,880 SF and will include a waiting area with public toilet, telephone and drinking fountain. The new facility will include seven examination rooms, a dictation/workroom, administrative offices, staff
lounge and lockers, conference room, ADA compliant patient toilet, staff toilet room, housekeeping closet, utility room, 2 soiled utility room and 3 storage rooms.

Parking will be available on street level with 37 patient parking spaces located in a shared parking lot with an additional 24 spaces to be added as part of the lease and renovations.

**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.

<table>
<thead>
<tr>
<th><strong>Attachments</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
</tr>
<tr>
<td>BFA Attachment B</td>
</tr>
<tr>
<td>BFA Attachment C</td>
</tr>
<tr>
<td>BFA Attachment D</td>
</tr>
</tbody>
</table>

Project # 112184-B Exhibit Page 8
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct an Article 28 diagnostic and treatment center to provide primary care and specialty services, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

112184-B Huther Doyle Memorial Institute, Inc.
APPROVAL CONTINGENT UPON:

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 written commitment that at least 5 percent of total visits to the approved clinic annually will be uninsured or under-insured patients by the second year of operation upon issuance of the operating certificate. [RNR]
2. Submission of a written commitment that the percentage of total visits annually by Medicaid Managed Care and Fee-for-Service beneficiaries, in the aggregate, to the HDMI will be at least 60 percent. [RNR]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department of Health, with a local acute care hospital. [HSP]
4. Submission of a photocopy of the applicant’s revised Lease, with The Fitch Building, LLC, as landlord, which must be acceptable to the Department. [BFA, CSL]
5. Submission of photocopies of the applicant’s Certificate of Incorporation, and any amendments thereto or restatements thereof, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
6. Submission of a photocopy of revisions to the applicant’s Bylaws, which must be acceptable to the Department. [CSL]
7. Submission of a complete list of the applicant’s officers and directors, clearly indicating each individual’s position as an officer and/or a director, which must be acceptable to the Department. [CSL]
8. Submission of the original of Schedule 13A, “Assurances from Article 28 Applicants” from the Certificate of Need application, which must be acceptable to the Department. [CSL]
9. Submission of the original of an affidavit from the Chair of the applicant’s Board of Directors verifying that the correct name of the applicant is “Huther-Doyle Memorial Institute, Inc.” and not “Huther Doyle Memorial Institute, Inc.”, as it is sometimes referred to in the application, which must be 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 before April 30, 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]
Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Hedley Building - 6th Floor  
433 River Street  
Troy, New York  12180-2299
Executive Summary

Description
Guthrie Health, a Pennsylvania-based not-for-profit corporation, is seeking approval to convert 14 private practice clinic sites operated in New York State by Guthrie Clinic, Ltd. into 10 diagnostic and treatment centers (D&TCs). Guthrie Clinic, Ltd. is a not-for-profit corporation organized as a professional corporation under Pennsylvania law, with the authority to conduct business in New York State.

In a companion application (CON #121051-E), Guthrie Health requests permission to reorganize at the corporate level. The reorganization will merge Guthrie Healthcare System (GHS) and Guthrie Clinic, Ltd. (GC) into the parent organization, Guthrie Health, who will be the survivor and assume all GHS and GC assets, liabilities and employees. The purpose of the merger is to simplify the corporate structure, eliminate duplications of governance and management, and achieve greater operating efficiencies.

GC currently operates 26 private practice sites with 265 physicians – 14 sites are in New York’s Southern Tier and 12 sites are in Pennsylvania’s Northern Tier. The proposed ten New York D&TC sites to result from this CON are as follows:

<table>
<thead>
<tr>
<th>Site</th>
<th>Address</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Big Flats</td>
<td>31 Amot Road, Horseheads</td>
<td>Chemung</td>
</tr>
<tr>
<td>Vestal</td>
<td>2517 Vestal Parkway, Vestal</td>
<td>Broome</td>
</tr>
<tr>
<td>Centerway</td>
<td>130 Center Way, Corning</td>
<td>Steuben</td>
</tr>
<tr>
<td>Steuben</td>
<td>123 Conhocton Street, Corning</td>
<td>Steuben</td>
</tr>
<tr>
<td>Erwin</td>
<td>9768 Liberty Drive, Painted Post</td>
<td>Steuben</td>
</tr>
<tr>
<td>Watkins Glen</td>
<td>One First Street, Watkins Glen</td>
<td>Schuyler</td>
</tr>
<tr>
<td>Ithaca</td>
<td>1780 Hanshaw Road, Ithaca</td>
<td>Tompkins</td>
</tr>
<tr>
<td>Waverly</td>
<td>29 N. Chemung Street, Waverly</td>
<td>Tioga</td>
</tr>
<tr>
<td>Owego</td>
<td>1246 State Route 38, Owego</td>
<td>Tioga</td>
</tr>
<tr>
<td>Pine City</td>
<td>1001 Carl Street, Southport</td>
<td>Chemung</td>
</tr>
</tbody>
</table>

Total project costs are estimated at $11,757,842.

DOH Recommendation
Contingent approval.

Need Summary
As with the overall Guthrie Health restructuring, the conversion of these private practice clinic sites will allow the D&TCs to operate more efficiently, thereby benefitting the communities they serve.

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
Guthrie Health will satisfy the costs by contributing $8,957,842 in equity and use a portion its September 8, 2011 bond issuance to fund 68% of Owego sub-project 9; this amount totals $2,800,000.

Budget:

| Revenues: | $62,754,019 |
| Expenses: | $71,422,103 |
| Gain/(Loss): | $(8,668,084) |

Once the Guthrie Health reorganization takes place, GC will cease to exist as a separate entity. All the components of Guthrie Health, taken together, will be profitable. As with any large, multi-faceted healthcare operation, certain program areas, when viewed on a stand-alone basis, generate a surplus, while others operate at a loss.

Subject to the noted contingencies and the above noted prior practice, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary
Eight of the ten sites will require moderate renovations to meet Article 28 standards, while the remaining two (Owego and Pine City) will require new construction.
Recommendations

Health Systems Agency
The Finger Lakes HSA recommends approval of this project.

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 executed transfer and affiliation agreements, acceptable to the Department, with local acute care hospitals. [HSP]
3. Submission of an executed purchase and sale agreement conveying 20.22 acres of real property, that is acceptable to the Department. [BFA]
4. This project is approved contingent upon submission of an architectural/engineering letter of certification for Subproject 10, Pine City Clinic for either the existing site at 1243 Pennsylvania Avenue in Pine City or for the new proposed building on land that has not yet been confirmed. [AER]
5. Exceptions to code compliance have been noted at 8 of the 10 proposed sites within the architectural narratives and referenced on the architectural certification letters. These items include shared space in a proposed Ambulatory Surgery Center, non-compliant ADA maneuvering clearances at door locations, and egress corridors with non-compliant minimum width. A submitted plan of correction is required for each noted deficiency or the submission of a waiver request with appropriate justification submitted for review and approval. This project approval is contingent upon the completion of corrective work or waiver approval for each deficiency noted. [AER]
6. Submission of evidence of site control, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Certificate of Amendment of the Application for Authority of Guthrie Health, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Articles of Merger of Guthrie Healthcare System and Guthrie Clinic, Ltd. into Guthrie Health, acceptable to the Department. [CSL]
9. Submission of a photocopy of the finalized and executed Agreement and Plan of Merger by and among Guthrie Healthcare System, Guthrie Clinic, Ltd. and Guthrie Health, acceptable to the Department. [CSL]
10. Submission of a photocopy of the finalized and executed Plan of Conversion of Guthrie Clinic, Ltd., acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed Articles of Conversion of Guthrie Clinic, Ltd., 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 October 30, 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]
Need Analysis

Background
Guthrie Health is seeking approval to operate 10 Guthrie Clinic, Ltd. (GC) sites in New York State as diagnostic and treatment centers (D&TCs). In addition, Guthrie Health will close 4 other clinic sites that are located in older buildings. The providers currently working at those sites will be transferred to nearby clinic locations and the patients at those sites will be offered the opportunity to continue to see their providers at the nearby locations. Upon project completion, the services at the remaining clinics will remain the same.

The following GC clinics in New York's Southern Tier will be certified as diagnostic and treatment centers:

1. Vestal 2517 Vestal Parkway, Vestal, Broome County
   
   Certified Services:
   - Clinical Laboratory Services (Phlebotomy)
   - Ophthalmology O/P
   - Optometry O/P
   - Pediatrics O/P (family medicine)
   - Primary Medical Care O/P
   - Radiology – Diagnostic
   - Well Child (family medicine)

   Visits for 2011 exceeded 18,000.

2. Pine City 1001 Carl Street, Southport, Chemung County
   
   This facility will be relocated from its current address at 1243 Pennsylvania Avenue, Pine City.
   
   Certified Services:
   - Clinical Laboratory Services (Phlebotomy)
   - Primary Medical Care O/P
   - Radiology – Diagnostic

   Visits for 2011 exceeded 18,100.

3. Big Flats 31 Arnot Road, Horseheads, Chemung County
   
   Certified Services:
   - Clinical Laboratory Services (Phlebotomy)
   - CT Scanner (Mobile Unit)
   - Magnetic Resonance Imaging (MRI) (Mobile Unit)
   - Primary Medical Care O/P
   - Radiology – Diagnostic
   - Therapy – Physical

   Visits for 2011 exceeded 24,000. The transfer of the Elmira staff will also increase utilization at the site.

4. Watkins Glen  One First Street, Watkins Glen, Schuyler County
   
   Certified Services:
   - Clinical Laboratory Services (Phlebotomy)
   - Pediatrics O/P (family medicine)
• Primary Medical Care O/P
• Radiology – Diagnostic
• Well – Child (family medicine)

Visits for 2011 totaled 5,810.

5. Steuben 123 Conhocton Street, Corning, Steuben County

Certified Services:
• Clinical Laboratory Services (Phlebotomy)
• Pediatrics O/P (family medicine)
• Prenatal O/P
• Primary Medical Care O/P
• Radiology – Diagnostic
• Well – Child (family medicine)

Visits for 2011 totaled 47,683.

6. Centerway 130 Center Way, Corning, NY 14830 – Steuben County

Certified Services:
• Audiology O/P
• Chemical Dependency – Rehabilitation O/P
• Clinical Laboratory Services (Phlebotomy)
• Dental O/P (Orthodontics)
• Ophthalmology O/P
• Optometry
• Pediatrics O/P
• Prenatal O/P
• Primary Medical Care O/P
• Radiology – Diagnostic
• Well – Child

The Centerway site will be designated as Guthrie Health’s main diagnostic and treatment center and the other 10 sites will be extension clinics. Visits for 2011 totaled 172,016.

7. Erwin 9768 Liberty Drive, Painted Post, NY 14870 – Steuben County

Certified Services:
• Clinical Laboratory Services (Phlebotomy)
• Pediatrics O/P (family medicine)
• Physical Medicine and Rehabilitation O/P (Physiatry)
• Primary Medical Care O/P
• Well – Child

Visits for 2011 exceeded 11,400.

8. Waverly 29 N. Chemung Street, Waverly, NY 14892 – Tioga County

Certified Services:
• Clinical Laboratory Services (Phlebotomy)
• Prenatal O/P (family medicine)
- Primary Medical Care O/P
- Well – Child (family medicine)

Visits for 2011 totaled 7,661.

9. Owego 1246 State Route 38, Owego, NY 13827 – Tioga County

Certified Services:
- Clinical Laboratory Services (Phlebotomy)
- Prenatal O/P
- Primary Medical Care O/P
- Radiology – Diagnostic

Visits for 2011 totaled 11,183. It is expected that the visits from the Apalachin site (slated for closure) of more that 7,000 will increase the primary care visits at the Owego site to more than 18,600.

10. Ithaca 1780 Hanshaw Road, Ithaca, NY 14850 – Tompkins County

Certified Services:
- Ambulatory Surgery - Gastroenterology
- Clinical Laboratory Services (Phlebotomy)
- CT Scanner (mobile unit)
- Magnetic Resonance Imaging (MRI) (mobile unit)
- Nutritional O/P
- Pediatrics O/P (family medicine and peds)
- Primary Medical Care O/P
- Radiology – Diagnostic
- Therapy – Physical
- Well – Child (family medicine)

Visits for 2011 totaled 58,917.

The applicant states that the above mentioned facilities are not accredited, but following CON approval, they will initiate the Article 28 accreditation process so the facilities may be in compliance at the time of inspections.

The purpose of the consolidation is to simplify the corporate structure and eliminate duplications of governance and management.

Apart from enabling Guthrie Health restructuring to occur, the conversion of private practice sites will allow the D&TCs to operate more efficiently and benefit the communities they serve by:

- Enhancing the continuity and quality of clinical services provided;
- Assuring that financial resources are available to make the necessary investments in infrastructure, equipment, technology and services to meet the current and future needs of the community for high quality care;
- Assuring the financial resources to support the recruitment of needed physicians to serve the residents;
- Insuring continued local availability of highly effective and broadly specialized health care facilities, health care providers and charity care;
- Improving patient access to necessary health care services; and
- Enhancing the system’s ability to respond to the requests of payers, purchasers and patients for participation in a broader range of health delivery programs like the accountable care organizations.
Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Background
Guthrie Health, an existing not-for-profit corporation, requests approval to establish a diagnostic and treatment center (D&TC), with a total of ten locations. The locations are in Chemung, Broome, Corning, Steuben, Schuyler, Tompkins, and Tioga counties. The D&TCs will be known as Corning Centerway.

Character and Competence
The board members of the Guthrie Health are:

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joseph A. Scopelliti, MD</td>
<td>Co-CEO</td>
</tr>
<tr>
<td>Mark Stensager</td>
<td>Co-CEO</td>
</tr>
<tr>
<td>Michael W. Donnelly</td>
<td>Chair</td>
</tr>
<tr>
<td>Terence M. Devine, MD</td>
<td>Vice-Chair</td>
</tr>
<tr>
<td>William H. Ransom III</td>
<td>Secretary</td>
</tr>
<tr>
<td>Edward L. Jones, MD</td>
<td>Treasurer</td>
</tr>
<tr>
<td>Ethan Arnold, MPH</td>
<td></td>
</tr>
<tr>
<td>Kyra Bannister, MD</td>
<td></td>
</tr>
<tr>
<td>Kenneth R. Levitzky, Esq</td>
<td></td>
</tr>
<tr>
<td>H. Eugene Lindsey, MD</td>
<td></td>
</tr>
<tr>
<td>A. John Peck, Esq</td>
<td></td>
</tr>
<tr>
<td>David Pfisterer, Esq</td>
<td></td>
</tr>
<tr>
<td>Philip J. Roche, Esq</td>
<td></td>
</tr>
<tr>
<td>Douglas a. Trostle, MD</td>
<td></td>
</tr>
</tbody>
</table>

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 ownership interest in other health care facilities. Licensed individuals were checked against the NYS Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the U.S. Department of Health and Human Services Office of the Inspector General database.

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.

- Corning Hospital entered into a corporate integrity agreement with the Office of the Inspector General that covered the timeframe from September 2002 – September 2005 as the result of improper physician level billing. The final report was submitted in January 2006

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.

**Recommendation**
From a programmatic perspective, contingent approval is recommended.

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### Financial Analysis

#### Description of Entities

Guthrie Health System is the sole corporate member of the following:

- **Robert Packer Hospital** – established in 1885, is a community-based 238-bed tertiary care teaching hospital located in Sayre, Pennsylvania, that offers a full complement of medical and surgical services along with a number of specialized programs.

- **Troy Community Hospital** – established in 1950, is a community-based 25-bed critical access hospital in Troy, Pennsylvania, approximately 32 miles southwest of Sayre Pennsylvania. It offers a full range of medical and surgical care and is a swing-bed facility that specializes in respiratory therapy/ventilator management program. It is anticipated that a portion of the proceeds of the Guthrie Health Series 2011 Bonds will be used to construct and equip a new 25-bed critical access hospital on a new site in Troy, Pennsylvania.

- **Corning Hospital** – a 99-bed, full service community hospital in Corning, New York that is a New York State designated Stroke Center and offers a broad range of inpatient and outpatient services. On December 8, 2011, under CON 112030, the Public Health and Health Planning Council (PHHPC) gave Corning Hospital contingent approval to construct a 270,908 square foot replacement facility at an estimated cost of $149,995,908. It will be located on approximately 68 acres of vacant land on the north side of State Route 17 at Exit 48 of I-86 in the Town of Corning. The proposed site is approximately 4.1 miles east of the current location. Upon completion of this project, the total certified beds will decrease by 34 beds, bringing the new license inpatient capacity to 65-beds.

- **Guthrie Same Day Surgery Center Inc.** – a not-for-profit multi-specialty freestanding ambulatory surgery center located at 31 Arnot Road (2nd level) Horseheads, NY.

- **Guthrie Home Care** – provides a broad range of home health services. One of its divisions is a Medicare-certified home health agency that provides skilled home health services, home health aid services and a number of specialized in-home services for homebound residents of all ages throughout Bradford, Tioga, and Sullivan Counties of Pennsylvania. Another division provides hospice services.

- **Guthrie Health System** – the sole corporate member of the following: Donald Guthrie Foundation for Education and Research, Inc. (as part of the restructuring, Guthrie Health Systems will transfer $5 million to the foundation, which will be renamed the Donald Guthrie Foundation); Robert Parker School of Nursing; Sayre House of Hope – housing for family members of patients who travel to Sayre campus, and Twin Management Corporation, a medical supply provider.

Presented as BFA Attachments C & D are Guthrie Health’s current and proposed organizational charts.

### Lease Rental Agreement

The applicant has submitted executed, amended and restated leases for the following sites, the terms are summarized below:

- **Dated:** October 7, 2011 (original agreement dated 10/1/10)
- **Premises:** 17,500 gross square feet on the first floor of a building located at 31 Arnot Road, Horsehead, New York (Big Flats)
- **Landlord:** David Lubin, individually and David Lubin and Mark Weiermiller, as Trustees of
Barbara Carkeet Irrevocable Trust and as Trustees of Enid Lubin Littman Irrevocable Trust

Lessee: Guthrie Clinic, Ltd.
Term: Lease ends on 9/30/19 -10 years from the original date - $323,750 per year at ($18.50 per sq. ft) 5% increase on 10/1/13 and 10/1/16
Provisions: Taxes, Utilities, Maintenance & Insurance

Dated: October 7, 2011 (original agreement dated 2/25/99)
Premises: 8,851 gross square feet on the second floor of a building located at 31 Amot Road, Horsehead, New York (Big Flats)
Landlord: David Lubin, individually and David Lubin and Mark Weiermiller, as Trustees of Barbara Carkeet Irrevocable Trust and as Trustees of Enid Lubin Littman Irrevocable Trust
Lessee: Guthrie Clinic, Ltd.
Term: Lease ends on 1/31/19 -20 years from the original date - $130,198.20 per year at ($14.71 per sq. ft) 8.5% increase on 2/1/14
Provisions: Taxes, Utilities, Maintenance & Insurance

Dated: July 1, 2011 (original agreement dated 11/1/05)
Premises: 13,740 gross square at 123 Conhocton Street, Corning, New York
Landlord: Mark Mauer, M.D. & Nadia Mauer d/b/a Camelot Development Corp.
Lessee: Guthrie Clinic, Ltd.
Term: Lease ends on 10/31/15 –renewal Three (3) 5-year terms - $238,389 per year at ($17.35 per sq. ft)
Provisions: Triple Net

Dated: October 17, 2011 (original agreement dated 1/19/10)
Premises: Ground Lease at 29 N. Chemung Street, Waverly, New York (for the land only)
Landlord: Tioga Property Company South, LLC.
Lessee: Guthrie Clinic, Ltd.
Term: Lease ends on 1/31/40 –renewal One (1) 5-year terms - $1,000 per year
Provisions: Triple Net

Of the ten clinic sites, three are leased from non-Guthrie entities: Waverly (Guthrie owns the building but leases the land), Big Flats and Steuben. Documentation for rent reasonableness has been submitted.

A companion CON #121051-E is being processed concurrently, which will merge Guthrie Health System and Guthrie Clinic, Ltd. into Guthrie Health. This reorganization will take the entities, facilities, and staff, and move them under one umbrella, with Guthrie Health being the surviving corporation. At the conclusion of the reorganization, all properties will be either owned or leased by Guthrie Health.

Assignment and Assumption of Option to Purchase Land
The applicant has submitted an executed assignment and assumption of option agreement to effectuate the purchase of 20.22 acres of real property; the terms are summarized below:

Date: May 1, 2009
Description: 1246 State Route 38 Owego, NY (20.22 acres parcel # 116.00-03-23)
Seller: Frank Vultaggio, Mark D. Vultaggio, Richard Vultaggio, and Mary Rose Jaszczynske
Assignor: Balen, LLC
Assignee: Guthrie Health System
Assignment of Project # 112343-B Exhibit Page 8
Buyer’s Interest: Assignor assigns, transfers, and conveys to Assignee all Assignor’s right, title, interest, as Buyer in the Contact.

Assumption of Buyer’s Interest in Contract: Assignee accepts assignment and acknowledges receipt of Contract and related documents and agrees to perform as if the Assignee had been an original party thereto.

Purchase Price: $400,000

Purchase and Sale Agreement
The applicant has submitted an executed purchase and sale agreement to acquire 3.67 acres of real property, the terms are summarized below:

Dated: December 8, 2011
Description: 1001 Carl Street, Southport, NY (3.67 acres parcel # 109.11-1-34)
Seller: Southport Volunteer Fire Department, Inc
Buyer: Guthrie Healthcare System
Purchase Price: $400,000

Total Project Cost and Financing
The project costs are estimated at $11,757,842 in order to make the ten sites code compliant – eight sites are in need of moderate renovations totaling $2,375,188, and two sites (Owego and Pine City) will require new construction totaling $9,316,351 plus $66,303 in total CON processing fees for all projects. Total project cost for new construction, renovation, and equipment is broken down as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Acquisition</td>
<td>$825,037</td>
</tr>
<tr>
<td>New Construction</td>
<td>4,490,423</td>
</tr>
<tr>
<td>Renovation &amp; Demolition</td>
<td>1,280,684</td>
</tr>
<tr>
<td>Site Development</td>
<td>1,789,786</td>
</tr>
<tr>
<td>Design Contingency</td>
<td>499,878</td>
</tr>
<tr>
<td>Construction Contingency</td>
<td>450,456</td>
</tr>
<tr>
<td>Planning Consultant Fees</td>
<td>104,030</td>
</tr>
<tr>
<td>Architect/Engineering Fees</td>
<td>618,674</td>
</tr>
<tr>
<td>Construction Manager Fees</td>
<td>937,919</td>
</tr>
<tr>
<td>Other Fees (Consultant)</td>
<td>165,626</td>
</tr>
<tr>
<td>Movable Equipment</td>
<td>416,795</td>
</tr>
<tr>
<td>Interim Interest Expense</td>
<td>112,231</td>
</tr>
<tr>
<td>Con Application Fee</td>
<td>2,000</td>
</tr>
<tr>
<td>Additional CON Processing Fee</td>
<td>64,303</td>
</tr>
<tr>
<td>Total Project Cost</td>
<td>$11,757,842</td>
</tr>
</tbody>
</table>

Total costs are based on an April 2012 start date, with a seven month construction period.

The applicant’s financing plan is as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity</td>
<td>$8,957,842</td>
</tr>
<tr>
<td>Central Bradford Progress Authority (Pennsylvania) Revenue Bonds Series 2011 – Part of Guthrie Health Issue dated September 8, 2011 (30 year term @ 5.7%)</td>
<td>2,800,000</td>
</tr>
<tr>
<td>Total</td>
<td>$11,757,842</td>
</tr>
</tbody>
</table>

On September 8, 2011, Guthrie Health issued $102,370,000 in bonds through the Central Bradford Progress Authority (Series 2011). The proceeds of the Series 2011 Bonds, together with other trustee-held funds, refunded a portion of
the Series 2002A Bonds, refinanced a portion of the Series 2007 Bonds, and provided financing for various equipment and facility projects (including the $2,800,000 as shown above).

Operating Budget
The applicant has submitted the Outpatient operating budget, in 2012 dollars as summarized below:

<table>
<thead>
<tr>
<th></th>
<th>First Year</th>
<th>Third Year</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>New York Impacted Sites</strong></td>
<td><strong>Cumulative</strong></td>
<td><strong>Cumulative</strong></td>
</tr>
<tr>
<td><strong>Revenues: Outpatient</strong></td>
<td>$53,541,673</td>
<td>$62,754,019</td>
</tr>
<tr>
<td><strong>Expenses: Operating</strong></td>
<td>$58,344,458</td>
<td>$66,716,577</td>
</tr>
<tr>
<td><strong>Capital</strong></td>
<td>3,870,313</td>
<td>4,705,526</td>
</tr>
<tr>
<td><strong>Total Expenses</strong></td>
<td>$62,214,771</td>
<td>$71,422,103</td>
</tr>
<tr>
<td><strong>Excess Expenses over Revenues</strong></td>
<td>$(8,673,098)</td>
<td>$(8,668,084)</td>
</tr>
<tr>
<td><strong>Visits</strong></td>
<td>421,256</td>
<td>486,253</td>
</tr>
<tr>
<td><strong>Cost per Visit</strong></td>
<td>$147.69</td>
<td>$146.88</td>
</tr>
</tbody>
</table>

*Note the “Current Year” Column contains historical data for the twelve months ending June 30, 2011, for Guthrie Clinic’s private practice in New York State. It is being shown for comparison purposes.

The applicant states that Guthrie Clinic has historically operated at a loss, which has been subsidized by Guthrie Health and Guthrie Health Systems. Presented as BFA Attachment B is Guthrie Clinic Ltd’s., June 30, 2011 financial analysis, showing the clinic had $212,369,354 in Net Revenues for all locations, with $53,541,673 coming from New York State (as shown above) and $158,827,682 from locations in Pennsylvania. Also shown on Attachment B, the Clinic’s sites incurred a total loss of $22,051,831 (of which NYS sites loss was $8,673,098 as shown above, and the Pennsylvania locations incurred losses were $13,378,733). Please note, as stated above, these losses have been absorbed by Guthrie Health and Guthrie Health System. Presented as BFA Attachment A is Guthrie Health and Affiliates certified consolidated financial statements for June 30, 2010 and 2011, which shows an average positive working capital and equity position for the period June 30, 2010 and 2011, and a positive average Net Income position of $79,421,000 for the period June 30, 2010 and 2011.

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

<table>
<thead>
<tr>
<th>Payor</th>
<th>Outpatient</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid Fee-for-Service</td>
<td>8.60%</td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>1.67%</td>
</tr>
<tr>
<td>Medicare Fee-for-Service</td>
<td>34.75%</td>
</tr>
<tr>
<td>Medicare Managed Care</td>
<td>3.47%</td>
</tr>
<tr>
<td>Commercial Fee-for-Service</td>
<td>43.73%</td>
</tr>
<tr>
<td>Commercial Managed Care</td>
<td>2.08%</td>
</tr>
<tr>
<td>Private &amp; All Other</td>
<td>5.30%</td>
</tr>
<tr>
<td>Charity Care</td>
<td>.40%</td>
</tr>
</tbody>
</table>

Utilization is based on historical site data, with some projected growth coming over three years from the recruitment of 12 full time equivalent (FTE) primary care providers. In support of this projection, the applicant states over the past five years they have added 10 FTE primary care physicians.

Capability and Feasibility
Total project costs for the ten sub-projects are estimated at $11,757,842, which will be funded by Guthrie Health as follows: $8,957,842 in equity and $2,800,000 in proceeds from Guthrie Health’s issuance of $102,370,000 in bonds on September 8, 2011, through the Central Bradford Progress Authority (Series 2011), as previously described. Review of BFA Attachment A, Guthrie Health and Affiliates June 30, 2011 certified financial statements, indicates sufficient resources are available to meet the equity requirement.
Working capital should be minimal, as services are being converted from the Guthrie Health Clinic Ltd’s private practices into the proposed D&TCs.

The applicant projects the proposed D&TC will encounter losses, which will be subsidized from Guthrie Health’s profitable operations, as they have in the past. The Clinic estimates that by the third year, incremental revenues and expenses will be about equal, at approximately $9,200,000 each. Revenue assumptions were developed through the combined efforts from a health care consulting firm and the applicant, using current reimbursement methodologies. The budget appears to be reasonable.

Presented as BFA Attachment A is Guthrie Health and Affiliates certified financial statement for June 30, 2010 and 2011, which shows they generated an average excess of revenues over expenses totaling $79,421,000, and had both a positive average working capital and equity position for the same time period. Presented as BFA Attachment E, is the pro-forma balance sheet, which estimates that Guthrie Health and Affiliates combined net assets will be approximately $543,515,000.

For the fiscal year (FY) ending June 30, 2011, Net Assets totaled $543,895,000, an increase of $111,267,000 from the prior year. At the end of FY 2011, their investment account stood at $388,146,000, an increase of $54,520,000 over the preceding year.

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

Recommendation
From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background
This project consists of the acquisition of multiple sites located in Big Flats, Vestal, Centerway, Steuben, Erwin, Watkins Glen, Ithaca, Waverly, Owego and Pine City with minor renovations to the clinics located in Big Flats, Vestal, Centerway, Steuben, Erwin, Watkins Glen, Ithaca and Waverly, NY. The renovation work will primarily consist of upgrades for ADA compliance, separation of waiting rooms, addition of exit signage, and correction of exiting deficiencies. Subproject 10 located in Bath, NY has been removed from the project. New Subproject 10, new construction for the Pine City clinic, did not include an architectural submission.

Subproject No.1
Big Flats Clinic at 31 Arnot Road, Horseheads, NY will consist of 2 stories with a total of 26,595 SF and includes;

- First Floor-18,262 SF

The first floor consists of a waiting room, 8 toilet rooms, reception, 14 offices, staff lounge, 5 nurse stations, 1 procedure room, optical room, work area, scan room, diagnostic testing room, patient education room, contact lenses rooms, laser room and 31 exam rooms. The first floor also includes a laboratory, coumadin clinic, mammography room, x-ray room, film file room, tech work area, dressing area, dark room, medical supplies and drug room. First floor support spaces include a supply room, storage room, machine room, electrical room, utility room, and 2 janitor closets.

- Second floor-8,333 SF

The second floor will consist of a waiting room, reception business office, medical records, admin office, 7 toilet rooms, 3 nurse stations, 3 procedure rooms, patient education room, scheduling room, 13 exam rooms, hot lab, scan room, assessment room and ultrasound room. Second floor support spaces include 3 supply rooms, soiled utility room, clean supply room, med supply, 2 storage rooms, date rooms, electrical room and janitor closet.
Subproject No. 2
Vestal Clinic at 2517 Vestal Parkway, Vestal, NY will consist of 1 story with a total of 9,994 SF and includes:

• First Floor-9,994 SF

The first floor will consist of a waiting room, 7 toilet rooms, 5 offices, admin office lounge, 19 exam rooms, 2 treatment rooms, 4 nurse stations, consult room, eye test room, 2 EKG rooms, ED room, stress room, laboratory with specimen room, x-ray with control room, and darkroom. Support spaces will include 2 med storage rooms, supply room, storage room, mail room, greenhouse, mechanical room, utility room and janitor closet.

Subproject No.3
Centerway Clinic at 130 Centerway, Corning NY will consist of 4 stories with a total of 79,732 SF and includes;

• First Floor-19,000 SF

The first floor will consist of a lobby, waiting room, well baby waiting, reception, clerks office with records, 7 toilet rooms, 12 primary care offices, file room, 18 exam rooms, laboratory, 3 dressing rooms, 4 x-ray rooms with control rooms, mammography room, 2 dark rooms, ultrasound room and work room. Support spaces for the first floor include mechanical rooms, electrical room, medical supply storage and janitor’s closet.

• Second Floor-20,244 SF

The second floor will consist of a waiting room, reception, clerks office, nurse file room, admin office, 26 primary care offices, 37 exam rooms, 4 nurse’s stations, 17 toilet rooms, procedure room, allergy room, stress testing room, echo lab, treatment room, EMG room, chemotherapy room, prep room, nourishment room, infusion room, GI room and coumadin clinic. Support spaces for the second floor include medical supplies storage, electrical closet and janitor’s closet.

• Third Floor-20,244 SF

The third floor will consist of 2 waiting rooms, reception, clerks office, admin office, medical records, 36 exam rooms, 14 toilet rooms, 19 primary care offices, 2 nurse stations, 3 secretary areas, procedure room, treatment room, cast room, ENT room, fields room, fitting instruction room, showroom, work room and an x-ray room. Support spaces for the third floor include medical supply storage, 3 storage rooms and electrical closet.

• Fourth Floor-20,244 SF

The fourth floor will include 3 waiting rooms, reception, business office, admin office, 6 primary care offices, library, conference room, staff lounge and kitchen, IT room, orthodontics room, 15 exam rooms, 2 consultation rooms, 3 nurse stations, procedure room, laboratory, dental lab, work room, drug screening prep area, tech area and dental procedure area.

Support spaces for the fourth floor will include a medical records room, 3 file rooms, medical supplies and workroom, soiled work room, clean laundry storage, medical waste storage room, supply room, mechanical room, electrical closet and janitor closet.

Subproject No. 4
Corning-Steuben Clinic at 123 Conhocton Street, Corning, NY will consist of 2 stories with a total of 14,803 SF and includes;

• First Floor-13,889 SF

The first floor will include 3 waiting rooms, children waiting room, reception, 4 admin offices, admin records room, 28 exam rooms, 8 toilets, 4 nurse stations, 4 procedure rooms, stress testing room, 14 primary care offices, diagnostic radiology office, mammography room, x-ray with control room, film file room and laboratory.

Support spaces for the first floor will include 3 medical supply rooms, storage room, electrical room and janitor’s closet.
• Second Floor-914 SF

The second floor will consist of general administration space.

**Subproject No. 5**

Erwin Clinic at 9768 Liberty Drive, Painted Post, NY will consist of 1 story with a total of 5,093 SF and includes:

• First Floor-5,093 SF

The first floor will include 2 waiting rooms, reception, files/workroom, office conference room, 11 exam rooms, 3 toilets, admin office, 3 consultation offices, 2 nurse’s stations, 1 procedure room, clean utility room and soiled utility room.

Support spaces for the first floor will include 2 storage rooms and a janitor’s closet.

**Subproject No. 6**

Watkins Glen Clinic at One First Street, Watkins Glen, NY will consist of 1 story with a total of 3,901 SF and includes;

• First Floor- 3,901 SF

The first floor will consist of a lobby, waiting room, 6 toilet rooms, 6 offices, staff lounge, business office, 1 nurse's station, 1 treatment room and 6 exam rooms. The first floor also includes a laboratory, medical supply storage and storage room.

**Subproject No. 7**

Ithaca Clinic at 1780 Hanshaw Road, Ithaca, NY will consist of 1 story with a total of 24,921 SF and includes;

• First Floor-24,921 SF

The first floor consists of a waiting room, vestibule, 18 toilet rooms, reception, 22 offices, 5 nurse’s stations, 3 procedure rooms, allergy testing room, audiology room, chiropractor, work area/room, dexta scan room, reading room, 2 changing rooms, physical therapy, pulmonary function test and 45 exam rooms. The first floor also includes a laboratory, training room, lunch area, shower, mammography room, x-ray and radiology alcove, ultrasound, and infusion. First floor support spaces include 2 mechanical rooms, 9 storage rooms, bio-hazard storage, 3 closets, scope cleaning room, ship/receiving room and 2 janitor closets.

**Subproject No. 8**

Waverly Clinic at 29 North Chemung Street, Waverly, NY will consist of 1 story with a total of 2,699 SF and includes;

• First Floor- 2,699 SF

The first floor will consist of a waiting room, vestibule, 2 toilet rooms, reception, 2 offices, staff lounge, 1 nurse’s station, 6 exam rooms and a laboratory. First floor support spaces include a storage room, mechanical room and janitor’s closet.

**Subproject No. 9**

Proposed Owego Clinic at 1246 State Route 38, Owego, NY will consist of 1 story with a total of 11,969 SF and includes;

• First Floor-11,969 SF

The first floor will consist of 2 waiting rooms and 1 parent/children waiting room, 7 toilet rooms, vestibule, 5 offices, 18 exam rooms, staff lounge, 2 nurse’s stations, business office, 2 check out areas, storage/work area, manager’s office, doctor’s reading room, data closet, vitals room, treatment room, chemo/treatment-1 room, ante room and chemical prep room. The first floor will also include a laboratory, radiology, mammography, tech work room, and a drug room.
First floor support spaces will include a clean supply room, 2 storage rooms, mechanical room, electrical room, trash room and janitor’s closet.

**Subproject No. 10**
Proposed Pine City Clinic at 1001 Carl Street, Elmira, NY will consist of 1 story with a total of 13,150 SF and includes;

- First Floor-13,150 SF

The first floor will consist of a waiting room, 7 toilet rooms, business office, 8 offices, staff lounge, 2 nurse’s stations, 2 check out rooms, clinic manager room, conference room, records room, 24 exam rooms and vending room. The first floor will also include a laboratory, radiology room, mammography room, tech work room, vitals room and data closet. First floor support spaces will include a clean supply room, copy/supply room, soiled room, supply equipment room, trash room, general storage room, mechanical/electrical room and janitor’s closet.

**Environmental Review**
The Department has deemed the Owego subproject 9 to be a TYPE I Action and the lead agency shall be the county of Tioga or the authority having jurisdiction.

The Department has deemed the Pine City subproject 10 to be a TYPE I Action and the lead agency shall be the county of Chemung or the authority having jurisdiction.

The Department has deemed the remaining subprojects 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

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>Financial Summary for June 30, 2010 and 2011, Guthrie Health and Affiliates</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>New York and Pennsylvania June 30, 2011 financial results for Guthrie Clinic, Ltd.</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Current Organizational Chart for Guthrie Health</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>Proposed Organizational Chart for Guthrie Health</td>
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<tr>
<td>BFA-Attachment E</td>
<td>Pro-forma Balance Sheet for Guthrie Health and Affiliates</td>
</tr>
<tr>
<td>BFA-Attachment F</td>
<td>Establishment checklist for Diagnostic and Treatment Center.</td>
</tr>
<tr>
<td>BHFP Attachment</td>
<td>Map</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to convert private practice clinic sites operated in New York State by Guthrie Clinic, Ltd. into 10 diagnostic and treatment centers, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: 112343-B

FACILITY/APPLICANT: Corning Centerway
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 executed transfer and affiliation agreements, acceptable to the Department, with local acute care hospitals. [HSP]
3. Submission of an executed purchase and sale agreement conveying 20.22 acres of real property, that is acceptable to the Department. [BFA]
4. This project is approved contingent upon submission of an architectural/engineering letter of certification for Subproject 10, Pine City Clinic for either the existing site at 1243 Pennsylvania Avenue in Pine City or for the new proposed building on land that has not yet been confirmed. [AER]
5. Exceptions to code compliance have been noted at 8 of the 10 proposed sites within the architectural narratives and referenced on the architectural certification letters. These items include shared space in a proposed Ambulatory Surgery Center, non-compliant ADA maneuvering clearances at door locations, and egress corridors with non-compliant minimum width. A submitted plan of correction is required for each noted deficiency or the submission of a waiver request with appropriate justification submitted for review and approval. This project approval is contingent upon the completion of corrective work or waiver approval for each deficiency noted. [AER]
6. Submission of evidence of site control, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Certificate of Amendment of the Application for Authority of Guthrie Health, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Articles of Merger of Guthrie Healthcare System and Guthrie Clinic, Ltd. into Guthrie Health, acceptable to the Department. [CSL]
9. Submission of a photocopy of the finalized and executed Agreement and Plan of Merger by and among Guthrie Healthcare System, Guthrie Clinic, Ltd. and Guthrie Health, acceptable to the Department. [CSL]
10. Submission of a photocopy of the finalized and executed Plan of Conversion of Guthrie Clinic, Ltd., acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed Articles of Conversion of Guthrie Clinic, Ltd., 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 BAEBFP 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 October 30, 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]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299
TO: Establishment and Project Review Committee  
Public Health and Health Planning Council  

FROM: Rebecca Fuller Gray, Director  
Division of Home and Community Based Services  

SUBJECT: Compassionate Care Hospice of New York, LLC  
CON # 102454E  

DATE: March 8, 2012  

Compassionate Care Hospice of New York, LLC was established in 2004 to operate an Article 40 hospice serving Bronx and Kings County. The current sole member of the limited liability company is Ms. Judith Grey. Compassionate Care Hospice of New York, LLC submitted a CON application in December 2010 requesting approval to transfer 90% of the membership of the LLC to Ms. Bella Heching.

This project was presented to the Establishment and Project Review Committee of the PHHPC on July 21, 2011 which resulted in a recommendation for approval. The project was then presented to the PHHPC on August 4, 2011 and council voted to defer the project to allow the Department time to respond to questions raised by members of the council.

The questions raised by the council members at the aforementioned meeting were:

1. How can Ms. Grey effectively be Chief Operating Officer (COO) of this hospice as well as COO of 26 other home care and hospice agencies located in 14 other states?
2. How will decisions concerning clinical matters be made? Who will make the clinical decisions?

To address these concerns, the Department referred these questions to the applicant and the Department’s analysis of the applicant’s response is described below.

Ms. Grey has been COO of the New York hospice operations since the hospice was initially established. Despite Ms. Grey’s responsibilities as COO of home care and hospice agencies located in other states, she has been able to effectively carry out her responsibilities as COO for the New York hospice. Ms. Grey does not have sole responsibility for clinical oversight in New York or for the agencies located in other states. Ms. Grey has management assistance in all locations from individuals who report to her.

In New York, Compassionate Care has a Clinical Coordinator in both its Bronx and Brooklyn offices. The Clinical Coordinators report directly to a Program Director who in turn reports to Ms. Grey. The Job Description for the Program Director requires that the individual serving in this position be a Registered Nurse. The Program Director is responsible for overall management and direction of the hospice operations. The Bronx and Brooklyn offices each have a Clinical Coordinator who reports to the Program Director, and who is responsible for coordinating and managing the interdisciplinary team and the activities of the clinical program. The management structure of
Compassionate Care Hospice of New York, LLC is shown in the organizational chart attached to the Programmatic Analysis.

Upon approval of this CON application, Ms. Heching will hold the position of Chief Financial Officer (CFO). As CFO, Ms. Heching will have primary responsibility for planning, implementing, managing and controlling the financial-related activities of the LLC. The applicant asserts that having Ms. Heching as a co-owner of the New York operations will allow Ms. Grey to spend more time on clinical matters, as Ms. Grey will be relieved of some of her current responsibilities for the hospice’s finances, contract negotiations, employee relations, etc. These matters will be overseen by Ms. Heching.

The applicant confirmed that they will amend the LLC Operating Agreement to provide that unanimous member consent is required for: (a) modification of policies and procedures concerning clinical care; and (b) hiring of all executive-level clinical personnel. In addition, the applicant has assured the Department that neither Ms. Grey nor Ms. Heching has any intention of altering the management structure or membership structure of the applicant in the foreseeable future.

Based on our review of the supplemental information supplied by the applicant, the Department continues to recommend that the Certificate of Need application submitted by Compassionate Care Hospice of New York, LLC for a change in the membership of the Limited Liability Company be contingently approved.

Attachment
Description
Compassionate Care Hospice of New York, LLC (Compassionate Care), an existing Article 40 Hospice program serving Bronx and Kings Counties, requests approval for a change of ownership of 90% membership. Compassionate Care’s operations will not change as a result of this application. Judith I. Grey is currently the sole member of Compassionate Care Hospice of New York, LLC. By this application Ms. Grey will transfer 90% of the Compassionate Care membership interests to Ms. Bella Heching through an assignment and assumption agreement. Ms. Grey will continue to be the Chief Operating Officer. There will be no programmatic changes made as a result of the change of ownership.

Ownership of the operation of Compassionate Care before and after the requested change is as follows:

<table>
<thead>
<tr>
<th>Current</th>
<th>Proposed</th>
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</thead>
<tbody>
<tr>
<td>Judith I. Grey – 100%</td>
<td>Judith I. Grey – 10%</td>
</tr>
<tr>
<td>Bella Heching – 90%</td>
<td></td>
</tr>
</tbody>
</table>

DOH Recommendation
Contingent approval.

Financial Summary
There will be no purchase price for the change in membership interests.

The applicant indicates that the consideration will be the applicant’s financial acumen and capital availability to Compassionate Care, as well as the assumption of ongoing liabilities.

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

Need Summary
As this project involves only a change in the ownership composition of a hospice, no Need review is required.

Program Summary
A review of all personal qualifying information indicates there is nothing in the background of the two members / managers of the LLC to adversely effect their positions in the organization. The applicant has the appropriate character and competence under Article 40 of the Public Health Law.
Recommendations

Health Systems Agency
There will be no HSA recommendation for this application.

Office of Health Systems Management
Approval contingent upon:

1. Submission to the Department of Health of an amended LLC Operating Agreement to add a provision that unanimous member consent is required for: (a) modification of policies and procedures concerning clinical care; and (b) hiring of all executive-level clinical personnel. [CHA]
2. Submission of an amended Operating Agreement, acceptable to the Department. [CHA, CSL]
3. Submission of evidence of site control, acceptable to the Department. [CSL]
4. Submission of an amended Assignment and Assumption Agreement, acceptable to the Department. [CSL]
5. Submission of a completed Schedule 22, acceptable to the Department. [CSL]

Council Action Date
April 5, 2012.
Programmatic Analysis

Background
Compassionate Care Hospice of New York, LLC, a for-profit limited liability company, was established in 2004 to operate an Article 40 hospice in New York State, serving Bronx and Kings Counties. The hospice operates from its main parent office location at 6661-6663 Broadway, Bronx, New York 10471, and its approved satellite office location at 174 Highlawn Avenue, Suite 1-A, Brooklyn, New York 11223. The LLC corporate office is located at 600 Highland Drive, Suite 624, Westhampton, New Jersey 08060. The current proposal seeks approval for the transfer of 90% of the ownership from Judith Grey to Bella Heching. Ms. Grey will retain 10% of the ownership and the title of Chief Operating Officer. No programmatic changes affecting the hospice will occur as a result of this transaction.

The current sole member of the LLC, with 100% ownership, is Judith Grey. Pursuant to an Assignment and Assumption Agreement signed by both Ms. Grey and Bella Heching, Ms. Grey will assign, and Ms. Heching will assume, 90% of the membership interest in the LLC. Following the transaction, the membership, managers, and officers of the LLC will be as follows:

**Judith I. Grey, RN (NYS and NJ), Licensed Assisted Living Administrator (NJ)**
- Managing Member – 10%
- Owner and Chief Operating Officer
- Compassionate Care Hospice of New York, LLC
- Affiliations: None

**Bella Heching**
- Managing Member – 90%
- Owner and Manager
- Lincolnwood Fund / Lincolnwood Advisors (Hedge Fund / Investment Portfolios)
- Affiliations: None

Although neither Ms. Grey nor Ms. Heching have any ownership interest, LLC membership, partnership, managing membership, stock ownership, board membership, corporate officer, voting rights, or any controlling interest in any other health care facilities, Ms. Grey and Ms. Heching disclose that Ms. Grey is also employed (as a paid employee only) as the Chief Operating Officer in 26 other home care and hospice agencies, located in 14 other states, that are owned solely by Ms. Heching’s husband.

Although Ms. Grey holds the position of COO for these agencies, she does not have sole responsibility for clinical oversight. Ms. Grey has management assistance in all locations from individuals who report to her. In New York, Compassionate Care has a Clinical Coordinator in each of its Bronx and Brooklyn offices. The Clinical Coordinators report directly to a Program Director, who is the Director of Patient Services and who must be a registered nurse. The Program Director in turn reports to Ms. Grey, the Hospice Administrator and COO. The Program Director / Director of Patient Services is responsible for overall management and direction of the hospice operations. The Bronx and Brooklyn offices each have a Clinical Coordinator, who reports to the Program Director, and who is responsible for coordinating and managing the practice location’s interdisciplinary team and the activities of the clinical program. The management structure of Compassionate Care Hospice of New York, LLC is shown in the attached organizational chart.

Upon approval of this CON application, Ms. Heching will hold the position of Chief Financial Officer (CFO). As CFO, Ms. Heching will have primary responsibility for planning, implementing, managing and controlling the financial-related activities of the LLC. The applicant asserts that having Ms. Heching as a co-owner of the New York operations will allow Ms. Grey to spend more time on clinical matters, as Ms. Grey will be relieved of some of her current responsibilities for the hospice’s finances, contract negotiations, employee relations, etc. These matters will be overseen by Ms. Heching.

A search of the above named members, managers, 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 NYS Education Department, and the New Jersey Attorney General Division of Consumer Affairs indicate no issues with the professional licenses held by Ms. Grey.

The Division of Home and Community Based Services reviewed the compliance history of Compassionate Care Hospice of New York, LLC. It has been determined that the hospice has exercised sufficient supervisory responsibility to protect the health, safety, and welfare of patients and to prevent the recurrence of code violations. When code violations did occur, it was determined that the operator investigated the circumstances surrounding the violation, and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

A review of all personal qualifying information indicates there is nothing in the background of the two members / managers of the LLC to adversely effect their positions in the organization. The applicant has the appropriate character and competence under Article 40 of the Public Health Law.

**Recommendation**
From a programmatic perspective, contingent approval is recommended.

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**Financial Analysis**

**Assignment and Assumption Agreement**
The applicant provided an executed Assignment and Assumption Agreement (agreement) dated November 29, 2010. The agreement assigns 90% membership interest from Ms. Judith I. Grey to Ms. Bella Heching. As previously noted, no monetary consideration is involved. As stated within the agreement the consideration is that the assignee shall contribute personal assets as needed, to help assume any ongoing liabilities of Compassionate Care.

**Capability and Feasibility**
There is no purchase price associated with this application and as a result there are no issues of capability. There are no issues of feasibility associated with this application as only membership interests for Compassionate Care are changing.

Presented as BFA Attachment A, is the 2008, 2009 and 2010 internal financial statements of Compassionate Care Hospice of New York, LLC. As shown on Attachment A, the facility had an average negative working capital position and an average positive net asset position during 2008 through 2010. Also, the facility achieved an average operating income of $725,462 during 2008 through 2010. To reverse the 2008 loss of $179,395, Compassionate Care took a number of initiatives, including the appointment of a program director for each of its two New York City locations, appointment of a regional manager, and increased marketing efforts and hiring of marketing staff. These changes helped result in an increase in overall census, and improved cost controls. In 2009 and 2010 the facility returned to profitability averaging net income of $1,268,891 for 2009 and 2010. Attachment B, the 2011 internal financial statement shows positive working capital and net asset position. Also, during 2011, Compassionate Care achieved positive operating income of $3,212,845.

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**

CHA Attachment A Organizational Structure

BFA Attachment B  Financial Summary – Compassionate Care Hospice of New York, LLC (2011 Internal Financial Statement)

BFA Attachment C  Net Worth Statement – Proposed Members

BFA Attachment D  Organizational Chart – Before and After Membership Change
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application change of ownership of 90% membership, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

102454-E Compassionate Care Hospice of New York, Inc.
APPROVAL CONTINGENT UPON:

1. Submission to the Department of Health of an amended LLC Operating Agreement to add a provision that unanimous member consent is required for: (a) modification of policies and procedures concerning clinical care; and (b) hiring of all executive-level clinical personnel. [CHA]
2. Submission of an amended Operating Agreement, acceptable to the Department. [CHA, CSL]
3. Submission of evidence of site control, acceptable to the Department. [CSL]
4. Submission of an amended Assignment and Assumption Agreement, acceptable to the Department. [CSL]
5. Submission of a completed Schedule 22, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Hedley Building - 6th Floor  
433 River Street  
Troy, New York 12180-2299
Executive Summary

Description
Jacob Perlow Hospice Corporation (JPH) d/b/a MJHS Hospice and Palliative Care, a not-for-profit Article 40 hospice, requests approval to acquire the Article 40 hospice license of Metropolitan Jewish Home Care, Inc. (MJHC) d/b/a MJHS Hospice and Palliative Care of Greater New York. Both JPH and MJHC are participating agencies in Metropolitan Jewish Health System (MJHS), and share MJHS, Inc. as their sole corporate member. The resulting agency will be referred to as MJHS Hospice and Palliative Care, and serve a five county area (Brooklyn, Bronx, Manhattan, Queens and Nassau).

In addition to the proposed acquisition and corporate name change, this CON will allow the resulting agency to complete two hospice construction projects approved by the former State Hospital Review and Planning Council in 2008 and 2010 (CON # 082022-C and # 101040-C, respectively).

MJHS is a multi-faceted health system that serves over 40,000 residents in all five boroughs of New York City, as well as in Nassau and Westchester Counties. The system provides three main lines of business (long term care, home care and managed care) via a number of different corporations. The 13 corporations that make up the participating agencies and programs of MJHS are linked in a variety of ways, including management, overlapping boards, corporate membership and/or outright ownership.

Need Summary
As this project involves only a change in the ownership of a hospice, no Need recommendation is required.

Program Summary
A review of all personal qualifying information indicates there is nothing in the background of the board members of Jacob Perlow Hospice Corporation to adversely affect their positions on the board. The applicant has the appropriate character and competence under Article 40 of the Public Health Law.

Financial Summary
There is no purchase price associated with this application because the exchange is within entities with the same corporate members.

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<th></th>
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<tr>
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<tr>
<td>Expenses</td>
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<td>Gain/(Loss)</td>
<td>$789,910</td>
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</table>

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

Architectural Summary
The only Construction component of this project relates to completion of the two aforementioned CONs, for which Architectural review was already performed and approval recommended. Therefore, no Architectural review is required for this CON.

DOH Recommendation
Contingent approval.
Recommendations

**Health Systems Agency**
There will be no HSA recommendation for this application.

**Office of Health Systems Management**
**Approval contingent upon:**

1. Submission to the NYS Department of Health of a NYS Department of State filed, stamped, receipted, state-sealed, and dated copy of the Certificate of Amendment to the Certificate of Incorporation for Jacob Perlow Hospital Corporation, to officially change its name to MJHS Hospice and Palliative Care, Inc. [LTC]
2. Submission of an executed asset purchase agreement that is acceptable to the Department of Health. [BFA, CSL]
3. Submission of the names of the officers and directors of the applicant corporation and indicate the position held by each that is acceptable to the Department. [CSL]
4. Submission of a completed Schedule 3B(III) that is acceptable to the Department. [CSL]
5. Submission of a completed and executed Schedule 22(C) that is acceptable to the Department. [CSL]
6. Submission of evidence of site control that is acceptable to the Department. [CSL]
7. Submission of a Certificate of Amendment to the Certificate of Incorporation in compliance with Section 803 of the Not for Profit Law that is acceptable to the Department. [CSL]
8. Submission of Bylaws that are acceptable to the Department. [CSL]

**Council Action Date**
April 5, 2012.
Programmatic Analysis

Background
Jacob Perlow Hospice Corporation, d/b/a MJHS Hospice and Palliative Care, a not-for-profit Article 40 hospice serving Bronx, Kings, New York, and Queens Counties, is requesting PHHPC approval for the acquisition and merger of Metropolitan Jewish Home Care, Inc., d/b/a MJHS Hospice and Palliative Care of Greater New York, a not-for-profit Article 40 hospice serving Bronx, Kings, Nassau, New York, and Queens Counties, which is operated by Metropolitan Jewish Home Care, Inc., a not-for-profit Article 36 CHHA and LTHHCP. Jacob Perlow Hospice Corporation, d/b/a MJHS Hospice and Palliative Care, will merge all the operations of, and approvals for, the hospice operated by Metropolitan Jewish Home Care, Inc., d/b/a MJHS Hospice and Palliative Care of Greater New York, into its existing Jacob Perlow Hospice Corporation, d/b/a MJHS Hospice and Palliative Care operations, resulting in the addition of Nassau County to the approved geographic service area of Jacob Perlow Hospice Corporation, d/b/a MJHS Hospice and Palliative Care, and the ultimate closure of the former Article 40 hospice operated by Metropolitan Jewish Home Care, Inc., d/b/a MJHS Hospice and Palliative Care of Greater New York.

Metropolitan Jewish Health System, Inc. is the passive member (parent) corporation of both Jacob Perlow Hospice Corporation, d/b/a MJHS Hospice and Palliative Care (“the buyer”), and Metropolitan Jewish Home Care, Inc., d/b/a MJHS Hospice and Palliative Care of Greater New York (“the seller”). The proposal serves to merge the two separate hospice agencies within the Metropolitan Jewish Health System family of providers into one hospice agency. Metropolitan Jewish Health System, Inc. would remain the passive member corporation of the surviving Jacob Perlow Hospice Corporation, d/b/a MJHS Hospice and Palliative Care.

The proposal also seeks PHHPC approval for the submission to the NYS Department of State of a Certificate of Amendment to the Certificate of Incorporation for the current Jacob Perlow Hospice Corporation to change its legal corporate name of the surviving hospice agency from Jacob Perlow Hospice Corporation to MJHS Hospice and Palliative Care, Inc., eliminating the need for any assumed name (d/b/a) for the surviving hospice agency.

In addition, the proposal seeks PHHPC approval for the Metropolitan Jewish Health System’s surviving hospice agency Jacob Perlow Hospice Corporation (proposed MJHS Hospice and Palliative Care, Inc.) to assume the two current CON construction projects that were SHRPC-approved for Metropolitan Jewish Health System’s closing hospice agency Metropolitan Jewish Home Care, Inc., d/b/a MJHS Hospice and Palliative Care of Greater New York (formerly d/b/a Metropolitan Jewish Hospice). Metropolitan Jewish Hospice CON project 082022-C was contingently approved by SHRPC on December 29, 2008, modified and contingently approved on December 27, 2010, and all contingencies satisfied on February 8, 2011, for the construction of a 16-bed hospice residence in Bronx County, pursuant to the 2007-2008 Hospice Residence Pilot Program Demonstration Project RFA. That project has a condition that the new hospice residence must pass the state pre-opening survey and become operational no later than May 1, 2012. Metropolitan Jewish Hospice CON project 101040-C was contingently approved by SHRPC on September 2, 2010, with all contingencies satisfied on December 30, 2011, for the construction of a 16-bed hospice inpatient unit in Kings County. That project has a condition for completion of construction by December 1, 2013. Metropolitan Jewish Health System’s surviving hospice agency (“the buyer”) Jacob Perlow Hospice Corporation (proposed MJHS Hospice and Palliative Care, Inc.) requests PHHPC approval to assume these two current CON construction projects from Metropolitan Jewish Health System’s closing hospice agency (“the seller”) Metropolitan Jewish Home Care, Inc., d/b/a MJHS Hospice and Palliative Care of Greater New York (formerly d/b/a Metropolitan Jewish Hospice), and to have both CON projects convert to Jacob Perlow Hospice Corporation (proposed MJHS Hospice and Palliative Care, Inc.) as part of the proposed acquisition and merger.

The governing body of Jacob Perlow Hospice Corporation (proposed MJHS Hospice and Palliative Care, Inc.) is as follows:

<table>
<thead>
<tr>
<th>Irving Dayan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vice President, Maurice Max, Inc, (Costume Jewelry Manufacturing)</td>
</tr>
<tr>
<td>Affiliations: None</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estere M. DuBolay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner, Chez Soi (Estate and Asset Management)</td>
</tr>
<tr>
<td>Affiliations: None</td>
</tr>
<tr>
<td>Name</td>
</tr>
<tr>
<td>-----------------------------</td>
</tr>
<tr>
<td><strong>Burton J. Esring</strong></td>
</tr>
<tr>
<td><strong>Eli S. Feldman, NHA</strong></td>
</tr>
<tr>
<td><strong>Shmuel Lefkowitz</strong></td>
</tr>
<tr>
<td><strong>Robert Milch, NHA</strong></td>
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<tr>
<td><strong>Suzanne Cutler</strong></td>
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<tr>
<td><strong>Martin S. Marcus</strong></td>
</tr>
<tr>
<td><strong>Steven J. Rotter, CPA</strong></td>
</tr>
<tr>
<td><strong>David C. Weiner, CPA (NY and NJ)</strong></td>
</tr>
<tr>
<td><strong>Justin Yu</strong></td>
</tr>
</tbody>
</table>

**Affiliations:**

- Metropolitan Jewish Health System, Inc.
- MJG Nursing Home Company, Inc.
- Metropolitan Jewish Hospice
- Shorefront Jewish Geriatric Center, Inc.
- MJGC Home Care
- Home First, Inc. (MLTCP)
- HomeFirst LHSCA, Inc.
- Metropolitan Jewish Home Care, Inc.
- First to Care Home Care, Inc.
- Elder Plan (HMO)
- Menorah Home and Hospital
- MJHS Foundation
- Menorah Home and Hospital Foundation
- Shoefront Towers (HUD Housing)
- MJGC Corporation
- PHCG, Inc. (DME Provider-closed)
- Institute for Applied Gerontology (Public Health Research Corp-closed)
- Bensonhurst Housing for the Elderly.
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 Division of Residential Services indicates no issues with the licensure of the Nursing Home Administrators associated with this application. The Office of the Professions of the NYS Education Department, and the New Jersey Attorney General Division of Consumer Affairs indicate no issues with the licensure of the Certified Public Accountants associated with this application.

The Division of Hospital Certification and Surveillance reviewed the compliance history of the affiliated hospital for the time period 2002 to 2012. It has been determined that the hospital had provided a substantially consistent high level of care.

The Division of Residential Services reviewed the compliance history of all affiliated nursing homes for the time period 2002 to 2012, or for the time periods specified as the affiliations, whichever applied.

An enforcement action was taken in September, 2002, against MJG Nursing Home Company, Inc. based on the findings of an August, 2001, survey. Deficiencies were cited in Quality of Care - Pressure Sores, and Quality of Care - Range of Motion. A $4,000 civil penalty was assessed.

An enforcement action was taken in October, 2004, against Shorefront Jewish Geriatric Center, based on findings of a September, 2002, survey. Deficiencies were cited in Quality of Care - Pressure Sores. A $1000 civil penalty was assessed.

It has been determined that the affiliated nursing homes have all provided a substantially consistent high level of care. The Division of Home and Community Based Services reviewed the compliance history of the affiliated certified home health agencies, long term home health care programs, licensed home care service agencies, and hospice for the time period 2002 to 2012, or for the time periods specified as the affiliations, whichever applied.

An enforcement action was taken in October, 2007, against Jacob Perlow Hospice Corporation based on the findings of a November, 2006, survey. Deficiencies were cited in Governing Authority; Contracts; Administration; Staff and Services; Personnel; Patient / Family Rights; Plan of Care; and Medical Records Systems / Charts. A $24,000 civil penalty was assessed.

An enforcement action was taken in May, 2007, against Metropolitan Jewish Home Care, Inc., based on the findings of a November, 2006, survey. Deficiencies were cited in Patient’s Rights; Policies and Procedures of Service Delivery; Patient Referral, Acceptance, and Discharge; Patient Assessment and Plan of Care; and Governing Authority. A $10,500 civil penalty was assessed.

An administrative hearing was conducted in 2003 and 2004 with First to Care Home Care, Inc., for Medicaid overpayment identified by NYSDOH during an audit the Department conducted for the period October 27, 1997 through April 30, 1999. In November, 2004, the Administrative Law Judge determined that First to Care Home Care, Inc., received a Medicaid overpayment of $420,017 which was repaid to the NYSDOH.

It has been determined that the certified home health agencies, long term home health care programs, licensed home care service agencies, and hospice have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients to prevent the recurrence of any code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation, and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

The Office of Managed Care reviewed the compliance history of the affiliated managed long term care program and health maintenance organization for the time period 2002 to 2012, or for the time periods specified as the affiliations, whichever applied.

An administrative hearing was conducted in 2003 with Elder Plan for Medicaid overpayment identified by NYSDOH during an audit the Department conducted in February, 2001. In April, 2004, the Administrative Law Judge determined that Elder Plan received a Medicaid overpayment of $1,000,000 which was repaid to the NYSDOH.
It has been determined that the affiliated managed long term care program and health maintenance organization have operated in substantial compliance with all applicable codes, rules and regulations.

Recommendation
From a programmatic perspective, contingent approval is recommended.

**Financial Analysis**

**Asset Purchase Agreement**
The applicant submitted a draft asset purchase agreement, which is summarized below:

- **Seller:** Metropolitan Jewish Home Care, Inc.
- **Buyer:** Jacob Perlow Hospice Corporation
- **Assets Transferred:** All of the records, books, files, invoices, flow sheets, and other technical and non-technical data and information exclusively relating to or otherwise necessary for the operations and services being provided and the patients being served by the Hospice at the time of the Closing; all rights of MJHC relating to the operation of the Hospice arising from and after the Closing, including vendor agreements, managed care provider contracts and hospital transfer agreements; all credentials of need, licenses, operating certificates, permits, approvals, variances, waivers and consents, upon the request of JPH, the Hospice of Medicare and Medicaid provider agreements and related provider numbers, in each case relating exclusively to or otherwise required for the operation of the Hospice and all cash, accounts receivable and other assets relating to the Hospice.
- **Assumed Liabilities:** None
- **Purchase Price:** $0

The applicant has provided an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 36 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 operating budget for the hospice, in 2012 dollars, for the first year subsequent to the change in operator, summarized below:

- **Revenues:**
  - Inpatient $35,409,159
  - Outpatient 22,983,632
  - Non-Operating Revenues 850,000
  - Total Revenues $59,242,791

- **Expenses:**
  - Operating $56,704,581
  - Capital 1,748,300
  - Total Expenses $58,452,881

- **Excess of Revenues over Expenses:** $789,910

- **Utilization:**
  - Patient Days 126,811
  - Visits 184,822
Utilization by payor source for inpatient services for the first year subsequent to the change in operator is as follows:

<table>
<thead>
<tr>
<th>Payor Source</th>
<th>Utilization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid Fee-For-Service</td>
<td>47.71%</td>
</tr>
<tr>
<td>Medicare Fee-For-Service</td>
<td>51.69%</td>
</tr>
<tr>
<td>Private Insurance</td>
<td>.60%</td>
</tr>
</tbody>
</table>

Utilization by payor source for outpatient services for the first year subsequent to the change in operator is as follows:

<table>
<thead>
<tr>
<th>Payor Source</th>
<th>Utilization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid Fee-For-Service</td>
<td>10.24%</td>
</tr>
<tr>
<td>Medicare Fee-For-Service</td>
<td>76.83%</td>
</tr>
<tr>
<td>Private Insurance</td>
<td>12.93%</td>
</tr>
</tbody>
</table>

Expense and utilization assumptions are based on the historical experience of JPH and MJHC, increased for inflation when appropriate, and modified when appropriate to their ability to achieve economies of scale when operating as one program.

**Capability and Feasibility**

There is no purchase price associated with this application.

Working capital requirements are estimated at $9,742,146, which appears reasonable based on two months of first year expenses. The working capital requirement will be met via equity from Metropolitan Jewish Health System Foundation. Presented as BFA Attachment A are the November 30, 2011 internal financial statements of Metropolitan Jewish Health System Foundation, which indicates the availability of sufficient funds for the equity contribution. Also, the Foundation continues to have sufficient funds to provide the equity for CON # 082022-C and CON# 101040-C, which are construction projects for hospice residence and hospice inpatient beds that the applicant will be assuming.

The submitted budget indicates an excess of revenues over expenses of $789,910 during the first year subsequent to the change in operator. Revenues are based on current Medicare and Medicaid reimbursement rates.

Presented as BFA Attachment B are the 2010 certified financial statements of Jacob Perlow Hospice Corporation d/b/a MJHS Hospice & Palliative Care. As shown on Attachment B, the facility had a negative working capital position and a negative net asset position during 2010. Also, the facility incurred an operating loss of $3,619,635. Also, presented as BFA Attachment E are the November 30, 2011 internal financial statements of Jacob Perlow Hospice Corporation d/b/a MJHS Hospice & Palliative Care. As shown on Attachment E, the entity had a negative working capital position and a negative net asset position through November 30, 2011. Also, the entity incurred an operating loss before branding of $1,536,658 through November 30, 2011. The applicant has indicated that the losses were primarily due to Medicaid reimbursement reductions, including the elimination of trend factors and reduced caps on allowable administrative and general costs. The applicant has indicated that the branding expense is associated with marketing costs to get the community aware of MJHS’s unique and compelling services that they provide. The objective of the branding initiative is to leverage the history of MJHS to create a single unified brand that transcends all of their service offerings.

The facility in June 2010, became a participating agency of Metropolitan Jewish Home Care, Inc. d/b/a MJHS Hospice and Palliative Care of Greater New York and has collaborated to streamline operations, eliminate duplication, increase volume and achieve economies of scale.

Presented as BFA Attachment C are the 2009 and the 2010 certified financial statements of Metropolitan Jewish Home Care, Inc. As shown on Attachment C, the facility had an average negative working capital position and an average positive net asset position. Also, the facility incurred an average negative operating loss of $1,502,187 during 2009 through 2010. Also, the entity incurred an operating loss before branding of $992,693. Presented as BFA Attachment F are the November 30, 2011 internal financial statements of Metropolitan Jewish Home Care, Inc. As shown on Attachment G, the entity had a negative working capital position and a negative net asset position through November 30, 2011. Also, the applicant has indicated that the losses were primarily due to Medicaid reductions, including the eliminations of trend factors and reduced caps on allowable administrative and general costs. MJHS Long Term Home Care and MJHS Hospice and Palliative Care of Greater New York were moved under Metropolitan Jewish Home Care, in order that Lombardi and certified home health care operations could be consolidated and
improved. All three programs now do business under Metropolitan Jewish in order to optimize patient service utilization and reduce operational losses.

Presented as BFA Attachment D are the 2010 certified financial statements and the November 30, 2011 internal financial statements of Metropolitan Jewish Health System. As shown on Attachment D, the entity had an average positive working capital position and an average positive net asset position. Also, the entity incurred an average loss of $2,483,041 from 2010 through November 30, 2011. The applicant has indicated that the losses were primarily due to Medicaid reimbursement reductions, including the eliminations of trend factors and reduced caps on allowable administrative and general costs.

In June 2010, Jacob Perlow became a participating agency in Metropolitan Jewish Home Care, Inc. d/b/a MJHS Hospice and Palliative Care of Greater of New York and has collaborated to streamline operations, eliminate duplication, increased volume and achieve overall economies of scale.

As shown on BFA Attachment A is the November 30, 2011 internal financial statements and the 2010 certified financial statements of Metropolitan Jewish Health System Foundation. As shown on Attachment A, the entity had an average positive working capital position and an average positive net asset position through November 30, 2011. The entity achieved an average excess of revenues over expenses of $501,642 through November 30, 2011.

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

Recommendation
From a financial perspective, contingent approval is recommended.

### Attachments

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>November 30, 2011 internal financial statements of Metropolitan Jewish Health System Foundation</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>2010 certified financial statements of Jacob Perlow Hospice Corporation d/b/a MJHS Hospice &amp; Palliative Care</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>2009 and 2010 certified financial statements of Metropolitan Jewish Home Care, Inc.</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>2010 certified financial statements and the November 30, 2011 internal financial statements of Metropolitan Jewish Health System</td>
</tr>
<tr>
<td>BFA Attachment E</td>
<td>November 30, 2011 internal financial statements of Jacob Perlow Hospice Corporation d/b/a MJHS Hospice &amp; Palliative Care</td>
</tr>
<tr>
<td>BFA Attachment F</td>
<td>November 30, 2011 internal financial statements of Metropolitan Jewish Home Care, Inc.</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for Jacob Perlow Hospice Corporation (JPH) d/b/a MJHS Hospice and Palliative Care to acquire the Article 40 hospice of Metropolitan Jewish Home Care d/b/a MJHS Hospice and Palliative Care of Greater New York, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

112211-B Jacob Perlow Hospice Corporation
d/b/a MJHS Hospice and Palliative Care
APPROVAL CONTINGENT UPON:

1. Submission to the NYS Department of Health of a NYS Department of State filed, stamped, receipted, state-sealed, and dated copy of the Certificate of Amendment to the Certificate of Incorporation for Jacob Perlow Hospital Corporation, to officially change its name to MJHS Hospice and Palliative Care, Inc.  [LTC]
2. Submission of an executed asset purchase agreement that is acceptable to the Department of Health.  [BFA, CSL]
3. Submission of the names of the officers and directors of the applicant corporation and indicate the position held by each that is acceptable to the Department.  [CSL]
4. Submission of a completed Schedule 3B(III) that is acceptable to the Department.  [CSL]
5. Submission of a completed and executed Schedule 22(C) that is acceptable to the Department.  [CSL]
6. Submission of evidence of site control that is acceptable to the Department.  [CSL]
7. Submission of a Certificate of Amendment to the Certificate of Incorporation in compliance with Section 803 of the Not for Profit Law that is acceptable to the Department.  [CSL]
8. Submission of Bylaws that are acceptable to the Department.  [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Hedley Building - 6th Floor  
433 River Street  
Troy, New York  12180-2299
Public Health and Health Planning Council

Project # 111413-E
Genesee Region Home Care Association, Inc.
d/b/a Lifetime Care

County: Schuyler (Watkins Glen)  Program: Certified Home Health Agency
Purpose: Establishment  Submitted: May 11, 2011

Executive Summary

Description
Genesee Region Home Care Association, Inc. d/b/a Lifetime Care, an existing not-for-profit corporation, located at 3111 South Winton Rd., Rochester, seeks approval to purchase and become operator of the Schuyler County Certified Home Health Agency, located at 106 South Perry Street, Watkins Glen.

Lifetime Care currently operates an Article 36 Certified Home Healthcare Agency (CHHA) servicing Livingston, Monroe, Seneca, Ontario, Wayne and Yates Counties.

The Schuyler County CHHA currently operates under a management and administrative service agreement with Lifetime Care, approved by the Department on April 6, 2011. Lifetime Care plans to maintain all existing CHHA services.

DOH Recommendation
Contingent approval.

Need Summary
As this project involves only a change in the ownership of a CHHA, no Need recommendation is required.

Program Summary
A review of all personal qualifying information indicates there is nothing in the background of the board members of Genesee Region Home Care Association, Inc. d/b/a Lifetime Care, North Star Home Health Management, Inc., Excellus Health Plan, Inc. and Lifetime Healthcare, Inc. to adversely effect their positions on the boards. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Financial Summary
The total purchase price of $500,000 shall be paid via equity from the applicant.

Incremental Budget:
- Revenues: $1,116,400
- Expenses: 952,160
- Gain/(Loss): $164,240

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

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

Health Systems Agency
The Finger Lakes HSA recommends approval of this project.

Office of Health Systems Management
Approval contingent upon:

1. Proper documentation of site control, by submission of a proposed lease agreement identifying the full address of the planned practice location in Schuyler County from which Lifetime will serve the residents of Schuyler County. [LTC]

Council Action Date
April 5, 2012.
Programmatic Analysis

Genesee Region Home Care Association, Inc. d/b/a Lifetime Care is a not-for-profit corporation which operates an Article 36 certified home health agency (CHHA) located in Rochester and approved to serve patients in Cayuga, Livingston, Monroe, Seneca and Wayne Counties. In addition, Lifetime Care also operates a long term home health care program (LTHHCP) approved to serve patients in Seneca, Wayne and Yates Counties, and a freestanding hospice facility. Lifetime Care seeks approval to purchase and become the new operator of the Schuyler County CHHA which is approved to serve patients in Schuyler County.

Genesee Region Home Care Association, Inc. d/b/a Lifetime Care proposes to serve its CHHA patients living in Schuyler County from a new practice location in Schuyler County. The Lifetime Care CHHA/LTHHCP main office will remain in Monroe County at 3111 South Winton Road, Rochester, New York 14623.

The Schuyler County CHHA currently operates under a Management and Administrative Services Agreement with Lifetime Care which was approved by the Department on April 6, 2011.

Lifetime Care, which would now be approved to serve Cayuga, Livingston, Monroe, Schuyler, Seneca and Wayne Counties, will continue to provide the services of home health aide, medical social services, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, personal care, physical therapy, respiratory therapy and speech language pathology.

The sole corporate member of Genesee Region Home Care Association, Inc. d/b/a Lifetime Care, a not-for-profit corporation, is North Star Home Health Management, Inc., a not-for-profit corporation. The sole corporate member of North Star Home Health Management, Inc. is Excellus Health Plan, Inc. The sole corporate member of Excellus Health Plan, Inc. is Lifetime Healthcare, Inc., a not-for-profit holding company.

The Board of Directors of Genesee Region Home Care Association, Inc. d/b/a Lifetime Care consists of the following individuals:

Charles H. Stuart – Acting Chairman
Financial Advisor, Morgan Stanley Smith Barney

Affiliations:
- Director, Genesee Regional Health Care of Ontario County, Inc.

Jordon I. Brown – Treasurer
Executive VP, Lifetime Assistance, Inc.
(Human Services)

Affiliations:
- Director, Genesee Regional Health Care of Ontario County, Inc.

John B. Bielmiller – Director
Senior VP, Whitney & Co. (Investment Management)

Affiliations:
- Director, GRIPA (HMO)
- Director, Genesee Regional Health Care of Ontario County, Inc.

Marilyn Dollinger, RN – Director
Associate Dean, St. John Fisher College

Affiliations:
- Board Member, St. Johns Senior Services
- Board Member, St. John’s Health Care Corporation
- Director, Genesee Regional Health Care of Ontario County, Inc.
William A. Johnson, Jr. – Director
Professor, Rochester Institute of Technology

Affiliations:
• Director, Genesee Regional Health Care of Ontario County, Inc.

David H. Klein – Director President/CEO/COO, Excellus Health Plan, Inc

Affiliations:
• Director, Excellus Health Plan, Inc.
• Director, Genesee Regional Health Care of Ontario County, Inc.
• Director, Sibley Nursing Personnel Services, Inc.
• Director, Genesee Valley Group Health Association (D&T)

Mordecai J. Kolko – Director
Retired

Jagat S. Mehta, M.D. – Director
Physician, Self-employed

Affiliations:
• Director, Genesee Region Home Care of Ontario County, Inc.

John J. Mahoney – Director
Founder/Principal, Summit Business Group, LLC (consulting)

Affiliations:
• Director, Genesee Regional Health Care of Ontario County, Inc.

John J. Mahoney – Director
Founder/Principal, Summit Business Group, LLC (consulting)

Affiliations:
• Director, Genesee Regional Health Care of Ontario County, Inc.

Hilda Rosario-Escher – Director
Vice President, Ibero American Action League

Affiliations:
• Board Member, Huther-Doyle (Substance Abuse)
• Director, Genesee Regional Health Care of Ontario County, Inc.
• Board Member, Rochester Psychiatric Center
• Member, Executive Director’s Committee, Office of Mental Health

Manuel M. Matos, M.D. – Director
Division Chief, Unity Health System

Affiliations:
• Director, Genesee Regional Health Care of Ontario County, Inc.

Seymour M. Zivan – Director
Retired

The Board of Directors of North Star Home Health Management, Inc. consists of the following individuals:

Charles H. Stuart – Vice Chairperson
(Previously Disclosed)

Jordon I. Brown – Treasurer
(Previously Disclosed)

John B. Bielmiller – Director
(Previously Disclosed)

Marilyn Dollinger, RN – Director
(Previously Disclosed)
William A. Johnson, Jr. – Director (Previously Disclosed)
Mordecai J. Kolko – Director (Previously Disclosed)
Jagat S. Mehta, M.D. – Director (Previously Disclosed)
Hilda Rosario-Escher – Director (Previously Disclosed)
Seymour M. Zivan – Director (Previously Disclosed)

The Board of Directors of Excellus Health Plan, Inc. consists of the following individuals:

Randall L. Clark – Chairperson
Chairman, Dunn Tire, LLC

Hermes L. Ames, III – Director
Retired

Affiliations:
• Director, Well Choice, Inc. (Empire BCBS)

Austin T. Hildebrandt – Director
President, Hillside Children’s Foundation

Dennis P. Kessler – Director
Owner, The Kessler Group, Inc.
Owner, The Kessler Family, LLC
Professor, University of Rochester

Affiliations:
• Director, Genesee Regional Health Care of Ontario County, Inc.
• Member, University of Rochester Medical Center (1/04 – 2/12)

David H. Klein – Director (Previously Disclosed)

John G. Doyle, Jr. – Director
President, Doyle Security Systems, Inc.

Natalie L. Brown – Director
Executive Director, YWCA Mohawk Valley

Thomas Y. Hobart, Jr. – Director
Retired

Charles H. Stuart – Director (Previously Disclosed)

Patrick A. Mannion – Director
Chairman, President, CEO, COO, EVP & SVP, Unity Mutual Life Insurance Company

Joseph F. Kurnath, M.D. – Director
Physician/Partner, Partners in Internal Medicine

Affiliations:
• Director, Genesee Region Home Care of Ontario County, Inc.

Alfred D. Matt – Director
President and CEO, F.X. Matt Brewing Company
Colleen E. O’Leary, M.D. – Director
Professor, SUNY Upstate Medical University

Sandra A. Parker – Director
President and CEO, Rochester Business Alliance

Thomas E. Rattmann – Director
Chairman, CEO, President, Columbian Financial Group

George F.T. Yancey, Jr. – Director
Managing Director, Delta Point Capital

William H. Goodrich – Director
Chief Executive Officer/President, LeChase Construction

Affiliations:
- Director, Excellus Health Plan, Inc.

The Board of Directors of Lifetime Healthcare, Inc. consists of the following individuals:

Randall L. Clark – Chairperson (Previously Disclosed)

Dennis P. Kessler – Director (Previously Disclosed)

Hermes L. Ames, III – Director (Previously Disclosed)

Natalie L. Brown – Director (Previously Disclosed)

William H. Goodrich – Director (Previously Disclosed)

John G. Doyle, Jr., – Director (Previously Disclosed)

Austin T. Hildebrandt – Director (Previously Disclosed)

Thomas Y. Hobart, Jr. – Director (Previously Disclosed)

David H. Klein – Director (Previously Disclosed)

Joseph F. Kurnath, M.D. – Director (Previously Disclosed)

Patrick A. Mannion – Director (Previously Disclosed)

Alfred D. Matt – Director (Previously Disclosed)

Colleen E. O’Leary, M.D. – Director (Previously Disclosed)

Sandra A. Parker – Director (Previously Disclosed)

Thomas E. Rattmann – Director (Previously Disclosed)

George F.T. Yancey, Jr. – Director (Previously Disclosed)

Charles H. Stuart – Director (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. In addition, the attorneys have all submitted Certificates of Good Standing.

A ten year review of the operations of the agencies/facilities listed below was performed as part of this review (unless otherwise noted):
Genesee Region Home Care of Ontario County, Inc. d/b/a Home Care Plus (LHCSA)
Genesee Region Home Care Association, Inc. (hospice)
Genesee Region Home Care Association, Inc. d/b/a Lifetime Care (CHHA)
Genesee Region Home Care Association, Inc. d/b/a Lifetime Care (LTHHCP)
Sibley Nursing Personnel Services, Inc. (LHCSA) (2003 – present)
Visiting Nurse Service of New York Home Care (CHHA)
Partners in Care, Inc. (LHCSA)
Genesee Valley Group Health Association, Inc. d/b/a Lifetime Health Medical Group (2003 – present)
Excellus Health Plan, Inc. d/b/a Finger Lakes HMO, Upstate HMO & Univera Health Care (HMO)
Loretto Geriatric Center (2000 – 2001)
Loretto – Oswego Health and Rehabilitation Center (2000 – 2001)
Nottingham RHCF (2000 – 2001)
Loretto Rest, Inc. (ACF) (2000 – 2001)
Loretto Adult Community, Inc. (ACF) (2000 – 2001)
University of Rochester Medical Center (1/04 – 2/12)

The Division of Certification and Surveillance reviewed the compliance histories of the hospitals and diagnostic and treatment center for the time periods specified. It has been determined that these facilities have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

The Division of Residential Services reviewed the compliance history of the affiliated residential health care facilities for the time period specified as the affiliation. It has been determined that the residential health care facilities have been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The information provided by the Bureau of Adult Care Facility Quality 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.

The information provided by the Bureau of Managed Care Certification and Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The Division of Home and Community Based Services reviewed the compliance histories of the certified home health agencies, licensed home care services agencies, long term home health care program and hospice for the time periods specified. It has been determined that these agencies have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

A review of all personal qualifying information indicates there is nothing in the background of the board members of Genesee Region Home Care Association, Inc. d/b/a Lifetime Care, North Star Home Health Management, Inc., Excellus Health Plan, Inc. and Lifetime Healthcare, Inc. to adversely affect their positions on the boards. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

From a programmatic perspective, contingent approval is recommended.
Financial Analysis

Asset Purchase Agreement
The applicant has submitted an executed asset purchase agreement, the terms of which are summarized below:

- **Date:** May 2, 2011
- **Seller:** County of Schuyler
- **Buyer:** Genesee Region Home Care Association, Inc.
- **Assets Transferred:** The home care business consisting of books and records, any permits and similar rights to the extent transferable and related solely to the operation of the home care business, patient medical records, and any contracts, leases or licenses.
- **Assumed Liabilities:** None
- **Purchase Price:** $500,000
- **Payment of Purchase Price:** $500,000 in cash at time of closing.

The applicant submitted an affidavit 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, there are no outstanding Medicaid overpayment liabilities.

Operating Budget
The applicant has provided an incremental operating budget in 2011 dollars, for the first year. The budget is summarized below:

- **Year One**
  - **Revenues:** $1,116,400
  - **Expenses:**
    - Operating: $952,160
    - Capital: 0
  - **Excess Revenues over Expenses:** $164,240

Expenses are broken down as follows:

<table>
<thead>
<tr>
<th>Year One</th>
<th>Total Costs</th>
<th>Visits/Hours</th>
<th>Cost Per Visit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nursing</td>
<td>$578,858</td>
<td>4,363</td>
<td>$132.67</td>
</tr>
<tr>
<td>Physical Therapy</td>
<td>189,495</td>
<td>1,540</td>
<td>$123.05</td>
</tr>
<tr>
<td>Speech Pathology</td>
<td>18,322</td>
<td>144</td>
<td>$127.24</td>
</tr>
<tr>
<td>Occupation Therapy</td>
<td>32,008</td>
<td>260</td>
<td>$123.11</td>
</tr>
<tr>
<td>*Home Health Aide</td>
<td>120,865</td>
<td>4,935</td>
<td>$24.49</td>
</tr>
<tr>
<td>Medical Social Services</td>
<td>7,714</td>
<td>61</td>
<td>$126.46</td>
</tr>
<tr>
<td>*Personal Care</td>
<td>4,898</td>
<td>200</td>
<td>$24.49</td>
</tr>
<tr>
<td><strong>TOTAL:</strong></td>
<td><strong>$952,160</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Reflects hourly data

Utilization by payor source for the first year is as follows:
Expense and utilization assumptions are based on the applicant's experience in managing Schuyler County's CHHA and the applicant’s historical experience in operating CHHA’s.

**Capability and Feasibility**
The operational purchase price of $500,000 will be satisfied with equity from the applicant.

Working capital requirements estimated at $159,694 based on two months’ of first year expenses will be provided by cash equity from the applicant. Presented as BFA Attachment B, is the financial summary of the Genesee Home Care Association, Inc., which indicated the availability of sufficient funds.

The submitted budget projects an excess of revenues over expenses of $164,240 during the first subsequent to the change in operator. The submitted budget, based on Lifetime Care’s experience in the operation of its CHHA and current reimbursement rates, appears reasonable.

As shown on BFA Attachment B, a financial summary of Genesee Region Home Care Association, Inc. indicates that the facility has maintained positive working capital and net assets positions, and generated annual operating revenues of $3,903,000 and $1,827,000 for 2009 and 2010 respectively. Also, as presented on BFA Attachment D, a 2011 unaudited financial statement has been submitted. The statement indicates the facility has maintained a positive working capital and net asset position, and achieved an operating gain of $881,000 for the period shown.

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

**Recommendation**
From a financial perspective, approval is recommended.

**Attachments**

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>Organizational Chart</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Financial Summary, Genesee Region Home Care Association, Inc.</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Combined Balance Sheet</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>Financial Summary unaudited, Genesee Region Home Care Association, Inc.</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to transfer 100% ownership of Schuyler County Home Health Agency to Genesee Region Home Care Association, Inc. d/b/a Lifetime Care, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

<table>
<thead>
<tr>
<th>NUMBER</th>
<th>APPLICANT/FACILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>111413 E</td>
<td>Genesee Region Home Care Association, Inc. d/b/a Lifetime Care</td>
</tr>
</tbody>
</table>
APPROVAL CONTINGENT UPON:

1. Proper documentation of site control, by submission of a proposed lease agreement identifying the full address of the planned practice location in Schuyler County from which Lifetime will serve the residents of Schuyler County. [LTC]

APPROVAL CONDITIONED UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299
Public Health and Health Planning Council

Project # 111456-E
4800 Bear Road Operating Company, LLC
d/b/a Elderwood at Liverpool

County: Onondaga (Liverpool)  Program: Residential Health Care Facility
Purpose: Establishment  Submitted: May 27, 2011

Executive Summary

Description
4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool, is seeking approval to be established as the new operator of Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood, an existing 160-bed residential health care facility (RHCF) located at 4800 Bear Road, Liverpool. Maplewood Property Associates, L.P. is the current realty owner. Ownership of the operation before and after the requested change is as follows:

<table>
<thead>
<tr>
<th>Before</th>
<th>Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood</td>
<td>100.00%</td>
</tr>
<tr>
<td>Member</td>
<td>Robert M. Chur</td>
</tr>
<tr>
<td>After</td>
<td>Interest</td>
</tr>
<tr>
<td>4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool</td>
<td>50.00%</td>
</tr>
<tr>
<td>Members</td>
<td></td>
</tr>
<tr>
<td>-- Warren Cole</td>
<td>50.00%</td>
</tr>
<tr>
<td>-- Dr. Jeffrey Rubin, D.D.S.</td>
<td>50.00%</td>
</tr>
</tbody>
</table>

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for-profit limited liability company, is the parent entity for this ultimate transaction. In this transaction however, the parent entity Post Acute Partners Acquisitions, LLC will not be acquiring the realty from Maplewood Property Associates, L.P., but will be acquiring the current lease and continuing that forward.

DOH Recommendation
Contingent approval

Need Summary
Elderwood Health Care at Birchwood's utilization for 2009 and 2010 was 96.6% and 96.6%, respectively. There will be no change in the beds or services of the Elderwood Health Care at Birchwood facility as a result of this project.

Program Summary
Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

Financial Summary
There are no project costs associated with this proposal.

Budget:  
- Revenues: $ 18,239,577  
- Expenses: 16,733,027  
- Gain/(Loss): $ 1,506,550

Subject to 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 documentation of project completion of CON #111085-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of photocopies of the applicant’s Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant’s Articles of Organization, which must be acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant’s fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant’s fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant’s fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
10. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
12. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in “Whereas Clause D” of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
17. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
19. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

Council Action Date
April 5, 2012.
Need Analysis

Background
4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool, is seeking approval to be established as the new operator of Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood, an existing 160-bed residential health care facility (RHCF) located at 4800 Bear Road, Liverpool, New York (Onondaga County).

There will be no change in the beds or services of the Elderwood Health Care at Birchwood facility as a result of this project.

Analysis

<table>
<thead>
<tr>
<th>RHCF Bed Need – Onondaga County</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016 Projected Need</td>
</tr>
<tr>
<td>Current Beds</td>
</tr>
<tr>
<td>Beds Under Construction</td>
</tr>
<tr>
<td>Total Resources</td>
</tr>
<tr>
<td>Unmet Need</td>
</tr>
</tbody>
</table>

Regional RHCF Occupancy

<table>
<thead>
<tr>
<th>Elderwood Health Care at Birchwood</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jewish Home of Central New York</td>
<td>94.72%</td>
<td>93.95%</td>
<td>96.74%</td>
</tr>
<tr>
<td>Van Duyn Home and Hospital</td>
<td>96.82%</td>
<td>96.19%</td>
<td>95.34%</td>
</tr>
<tr>
<td>St Camillus Residential Health Care Facility</td>
<td>98.19%</td>
<td>97.65%</td>
<td>96.64%</td>
</tr>
<tr>
<td>James Square Health and Rehabilitation Centre</td>
<td>95.62%</td>
<td>94.86%</td>
<td>94.07%</td>
</tr>
<tr>
<td>Rosewood Heights Health Center</td>
<td>97.08%</td>
<td>95.40%</td>
<td>96.15%</td>
</tr>
<tr>
<td>Central Park Rehabilitation and Nursing Center</td>
<td>85.37%</td>
<td>95.11%</td>
<td>97.23%</td>
</tr>
<tr>
<td>Loretto Health and Rehabilitation Center</td>
<td>99.16%</td>
<td>98.79%</td>
<td>98.63%</td>
</tr>
<tr>
<td>Sunnyside Care Center</td>
<td>97.33%</td>
<td>96.63%</td>
<td>96.19%</td>
</tr>
<tr>
<td>Syracuse Home Association</td>
<td>93.46%</td>
<td>94.37%</td>
<td>93.18%</td>
</tr>
<tr>
<td>The Crossings Nursing and Rehabilitation Centre</td>
<td>84.30%</td>
<td>87.29%</td>
<td>90.04%</td>
</tr>
<tr>
<td>Iroquois Nursing Home Inc</td>
<td>98.76%</td>
<td>98.37%</td>
<td>98.46%</td>
</tr>
<tr>
<td>Nottingham RCHF</td>
<td>99.38%</td>
<td>96.16%</td>
<td>97.75%</td>
</tr>
<tr>
<td>Onondaga County</td>
<td>96.20%</td>
<td>96.20%</td>
<td>96.16%</td>
</tr>
</tbody>
</table>

Elderwood Health Care at Birchwood had utilization rates of 96.6% for 2009 and 96.6% 2010.

Conclusion
The acquisition of Elderwood Health Care at Birchwood by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

Recommendation
From a need perspective, approval is recommended.
Programmatic Analysis

Facility Information

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility Name</td>
<td>Elderwood Health Care at Birchwood</td>
<td>Elderwood at Liverpool</td>
</tr>
<tr>
<td>Address</td>
<td>4800 Bear Road</td>
<td>same</td>
</tr>
<tr>
<td>RHCF Capacity</td>
<td>160</td>
<td>same</td>
</tr>
<tr>
<td>ADHC Program Capacity</td>
<td>0</td>
<td>same</td>
</tr>
<tr>
<td>Type Of Operator</td>
<td>Corporation</td>
<td>Limited Liability Company</td>
</tr>
<tr>
<td>Class Of Operator</td>
<td>Proprietary</td>
<td>same</td>
</tr>
<tr>
<td>Operator</td>
<td>Birchwood Health Care Center, Inc.</td>
<td>4800 Bear Road Operating Company, LLC</td>
</tr>
<tr>
<td>Shareholders</td>
<td>Robert M. Chur</td>
<td></td>
</tr>
<tr>
<td>Members</td>
<td>Warren Cole 50%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Jeffrey Rubin 50%</td>
<td></td>
</tr>
</tbody>
</table>

Character and Competence

- FACILITIES REVIEWED:

<table>
<thead>
<tr>
<th>State</th>
<th>Facility Name</th>
<th>Type</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Laurelton Rehabilitation and Nursing Center*</td>
<td>SNF</td>
<td>10/2006 to 5/2008</td>
</tr>
<tr>
<td>California</td>
<td>San Joaquin Valley Rehabilitation Hospital</td>
<td>Hospital</td>
<td>7/2004-7/2004</td>
</tr>
<tr>
<td></td>
<td>Kenfield Rehabilitation Hospital</td>
<td>Hospital</td>
<td>8/2003-7/2004</td>
</tr>
<tr>
<td></td>
<td>Care Alternatives of California*</td>
<td>Hospice</td>
<td>2003-10/2009</td>
</tr>
<tr>
<td>Colorado</td>
<td>North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)</td>
<td>ACU-PSYCH</td>
<td>7/2003-8/2004</td>
</tr>
<tr>
<td></td>
<td>North Valley Rehabilitation Hospital (Vibra LTACH)</td>
<td>LTA</td>
<td>7/2003-8/2004</td>
</tr>
<tr>
<td></td>
<td>North Valley Rehabilitation Hospital (Vista View Care Center)</td>
<td>SNF</td>
<td>7/2003-8/2004</td>
</tr>
<tr>
<td>Connecticut</td>
<td>Danbury Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Darien Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Golden Hill Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Newington Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Partners Pharmacy of Connecticut*</td>
<td>RX</td>
<td>2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>River Glen Health Care Center (a/k/a Southbury HCC)*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>The Highlands Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>West River Health Care Center (a/k/a Milford North HCC)*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td>State</td>
<td>Organization</td>
<td>Type</td>
<td>Date</td>
</tr>
<tr>
<td>------------------</td>
<td>---------------------------------------------------</td>
<td>------</td>
<td>------------</td>
</tr>
<tr>
<td>Kansas</td>
<td>Care Alternatives of Kansas</td>
<td>HOS</td>
<td>2004-10/2009</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Southern Kentucky Rehabilitation Hospital</td>
<td>IRF</td>
<td>5/2003-7/2004</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>Brookline Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Calvin Coolidge Nursing &amp; Rehab Center for Northampton*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Care Alternatives of Massachusetts*</td>
<td>HOS</td>
<td>2005-10/2009</td>
</tr>
<tr>
<td></td>
<td>Concord Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Holyoke Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Lexington Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Lowell Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Millbury Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>New Bedford Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>New Bedford Rehabilitation Hospital*</td>
<td>IRF</td>
<td>7/2003-8/2004</td>
</tr>
<tr>
<td></td>
<td>Newton Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>North Shore Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Partners Pharmacy of Massachusetts*</td>
<td>RX</td>
<td>2004-10/2009</td>
</tr>
<tr>
<td></td>
<td>Peabody Glen Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Redstone Health Care Center (a/k/a East Longmeadow HCC)*</td>
<td>SNF</td>
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<td>Care One at East Brunswick</td>
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<td>Westport Health Care Center*</td>
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</table>
Individual Background Review

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millenium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

Character and Competence – Analysis:
No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator’s track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

During the applicable period identified..., the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period..., the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the Alabama facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the California facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the Colorado facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.
A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

  Danbury Health Care Center  
  Darien Health Care Center  
  Long Ridge of Stamford  
  Newington Health Care Center  
  West River Health Care Center  
  Westport Health Care Center  
  Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the **New Jersey** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **North Carolina** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Ohio** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Pennsylvania** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the **Puerto Rico** health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Rhode Island** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Virginia** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department’s standards for analysis, of the applicants’ operation of 35 facilities in five different states. However, it should be made clear that while these five states could not
provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

**Project Review**

There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

**Recommendation**

*From a programmatic perspective, approval is recommended.*

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### Financial Analysis

#### Background

The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies, and related real property companies, acquisition involving Birchwood Health Care Center, Inc., the operator and Maplewood Property Associates, L.P, the owner of the realty and the proposed new owner/operator Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company that is the parent entity for this ultimate transaction. In this transaction however, the parent entity Post Acute Partners Acquisitions, LLC will not be acquiring the realty from Maplewood Property Associates, L.P., but will be acquiring the current lease and continuing that forward.

The five adult care facilities will be reviewed by the Division of Long Term Care and therefore, are being reviewed separately from the nursing home application. The independent housing companies as well, are not being addressed in these reviews. The information provided regarding the independent housing companies, is to delineate them from the total project cost for the overall application.

The proposed members are also seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition, through the applications listed below:

<table>
<thead>
<tr>
<th>CON</th>
<th>Applicant</th>
<th>Facility</th>
<th>Beds</th>
</tr>
</thead>
<tbody>
<tr>
<td>111467-E</td>
<td>4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst</td>
<td>Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood</td>
<td>92</td>
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<tr>
<td>111468-E</td>
<td>2850 Grand island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island</td>
<td>Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood</td>
<td>90</td>
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<tr>
<td>111470-E</td>
<td>5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg</td>
<td>Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood</td>
<td>166</td>
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<tr>
<td>111462-E</td>
<td>1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster</td>
<td>Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood</td>
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<tr>
<td>111469-E</td>
<td>225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga</td>
<td>Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood</td>
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<td>111471-E</td>
<td>37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly</td>
<td>Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga</td>
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<td>111466-E</td>
<td>2600 Niagara Falls Boulevard Operating Company</td>
<td>Crestwood Health Care Center, Inc. d/b/a Crestwood Health Care at Crestwood</td>
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</table>
The applicant has provided an affidavit, which states that 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 the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

All nine applications will be processed concurrently.

**Asset Purchase Agreement**

The change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreements, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company, and related real property companies acquisition.

**Date:** February 25, 2011


**Purchaser:** Post Acute Partners Acquisition, LLC

**Purchased Assets:** All right, title and interest of the above operations and Woodmark Services, Inc. in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically "Elderwood" and "Elderwood Senior Care" and the service mark "Care Without Compromise"; all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller’s financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.

**Excluded Assets:** The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names "Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood" and "Elderwood Assisted Living at Penfield, LLC" and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller’s corporate offices,
located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller’s bank accounts, cash, cash equivalents and securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller’s rights and benefits under this agreement; seller’s organizational documents relating solely to the existence of each of the entities comprising seller as separate legal entity; seller’s right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records’ seller’s general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.

Liabilities Assumed:
The applicable Real liabilities under the mortgages listed on schedule 1.6(a) (the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt”) assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6(a) and obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations of seller other than the assumed liabilities.

Excluded Liabilities:
Seller’s accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3(a)) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the seller’s sole obligation and responsibility.

Purchase Price:
$141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.

Purchase Price for this Operation:
$7,730,857

Payment of Purchase Price:
Through a loan for $7,730,857 at 5 years at 10%

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.
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<th>CON</th>
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<th>Facility</th>
<th>Real Estate Purchase Price</th>
<th>Operations Purchase Price</th>
<th>Total Purchase Price</th>
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<td>4459 Bailey Avenue Operating Company, LLC</td>
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<td>$1,660,484</td>
<td>$9,960,484</td>
</tr>
<tr>
<td>111466-E</td>
<td>2600 Niagara Falls Boulevard Operating Company, LLC</td>
<td>Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood</td>
<td>$9,100,000</td>
<td>$1,182,776</td>
<td>$10,282,776</td>
</tr>
<tr>
<td>111463-E</td>
<td>200 Bassett Road Operating Company, LLC</td>
<td>Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood</td>
<td>$6,800,000</td>
<td>$5,271,383</td>
<td>$12,071,383</td>
</tr>
<tr>
<td>111471-E</td>
<td>37 North Chemung Street Operating</td>
<td>Elderwood Health Care at Tioga, LLC d/b/a Elderwood</td>
<td>$5,400,000</td>
<td>$2,678,288</td>
<td>$8,078,288</td>
</tr>
</tbody>
</table>
Company, LLC  
Health Care at Tioga  
d/b/a Elderwood at 
Waverly

Total Residential Health Care Facilities  
$49,750,000  
$30,376,780  
$80,126,780

Adult Care Facilities

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glenwood</td>
<td>$10,024,265</td>
</tr>
<tr>
<td>Maplewood ALF</td>
<td>$7,028,868</td>
</tr>
<tr>
<td>Rosewood</td>
<td>$8,337,181</td>
</tr>
<tr>
<td>Tioga ALF</td>
<td>$3,904,780</td>
</tr>
<tr>
<td>Westwood</td>
<td>$14,494,740</td>
</tr>
<tr>
<td>Total Adult Care Facilities Purchase Price</td>
<td>$43,789,834</td>
</tr>
</tbody>
</table>

Independent Housing Facilities

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crestwood ILF</td>
<td>$12,590,237</td>
</tr>
<tr>
<td>Maplewood ILF</td>
<td>$4,993,149</td>
</tr>
<tr>
<td>Total Independent Housing Facilities Purchase Price</td>
<td>$17,583,386</td>
</tr>
</tbody>
</table>

Total Purchase Price

<table>
<thead>
<tr>
<th>Operations and Real Estate</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Health Care Facilities</td>
<td>$80,126,780</td>
</tr>
<tr>
<td>Adult Care Facilities</td>
<td>$43,789,834</td>
</tr>
<tr>
<td>Independent Housing Facilities</td>
<td>$17,583,386</td>
</tr>
<tr>
<td>Total Purchase Price</td>
<td>$141,500,000</td>
</tr>
</tbody>
</table>

Assignment Agreement

The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

**Effective Date:** Upon CON Approval by DOH  
**Assignor:** Post Acute Partners Acquisition, LLC  
**Assignee:** 4800 Bear Road, LLC  
**Operating Designee:** 4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool  
**Assets Assigned:** Assignor’s right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.  
**Obligations Assigned:** Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed reality entities 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maelou Drive, LLC, 1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, 37 North Chemung Street, LLC, 2600 Niagara falls Boulevard, LLC and 4459 Bailey Avenue, LLC are as follows:

<table>
<thead>
<tr>
<th>Proposed Members</th>
<th>Percentage Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warren Cole</td>
<td>50%</td>
</tr>
<tr>
<td>Dr. Jeffrey Rubin, D.D.S.</td>
<td>50%</td>
</tr>
</tbody>
</table>
Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

**Effective Date:** Upon CON Approval by DOH
**Premises:** A 160-bed RHCF located at 4800 Bear Road, Liverpool, NY (Onondaga County)
**Lessor:** 4800 Bear Road, LLC
**Lessee:** 4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool
**Term:** 10 years commencing on the execution of the lease with four (5 year extensions)
**Annual Rental:** Lease payment is equivalent to the annual mortgage debt service for the facility, which is $1,086,645.
**Type:** 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.

Currently, the facility Medicaid capital reimbursement is based on the return of and return on equity for recent improvements, this methodology will not be altered upon change in ownership.

Operating Budget
Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:

<table>
<thead>
<tr>
<th>Per Diem</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicare Fee For Service</td>
<td>$484.81</td>
</tr>
<tr>
<td>Medicaid Fee For Service</td>
<td>222.13</td>
</tr>
<tr>
<td>Private Pay</td>
<td>312.50</td>
</tr>
<tr>
<td><strong>Total Revenue</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenses:</th>
<th>Per Diem</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating</td>
<td>$14,318,500</td>
<td></td>
</tr>
<tr>
<td>Capital</td>
<td>2,414,527</td>
<td></td>
</tr>
<tr>
<td><strong>Total Expense</strong></td>
<td>$16,733,027</td>
<td></td>
</tr>
</tbody>
</table>

| Net Income | $1,506,550 |

<table>
<thead>
<tr>
<th>Utilization (Patient days)</th>
<th>56,389</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupancy</td>
<td>96.56%</td>
</tr>
</tbody>
</table>

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

- Overall utilization is projected at 96.56%, which is consistent with historical. Utilization by payor source is expected as follows:
  - Medicaid 40.55%
  - Medicare 27.62%
  - Private Pay 31.83%

- Breakeven utilization is projected at 88.59%.

Capability and Feasibility
The purchase price and initiation of operations, as a financially viable entity, will be financed by a loan from Capital Funding, LLC of $7,730,857 at an interest rate of 10% for five years.
Working capital requirements are estimated at $2,788,838, based on two months’ of first year expenses. $1,394,421 will be satisfied from the proposed member’s equity and the remaining $1,394,417 will be satisfied through a loan from Capital Funding, LLC at 5.00% over 5 years.

A letter of interest has been supplied by Capital Funding, LLC. An affidavit from each member, which states that he or she is willing to contribute resources disproportionate to ownership percentages, has been provided by both proposed members. Presented as BFA Attachment A, is the Net Worth of proposed members.

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 $1,506,550 would be maintained during the first year following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B, is the pro-forma balance sheet of, which indicates positive members’ equity of $1,394,421 as of the first day of operations.

Following is a comparison of 2010 and projected revenue and expense:

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>Projected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual 2010 Income</td>
<td>$17,193,655</td>
<td></td>
</tr>
<tr>
<td>Annual 2010 Expense</td>
<td>15,202,274</td>
<td>$1,045,922</td>
</tr>
<tr>
<td>Annual 2010 Net Income</td>
<td>$1,991,381</td>
<td>1,530,753</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Projected incremental Net Income (Loss) ($484,831)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Incremental Net Income (Loss) $1,506,550</td>
</tr>
</tbody>
</table>

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 expenses, expenses at budgeted occupancy, and the difference between current year and projected levels.

As shown on BFA Attachment C, Elderwood Health Care at Birchwood, had an average positive working capital position and an average positive net asset position, and generated an average net Income of $1,815,752 for the period 2008-2010.

Based on the preceding, and 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, contingent approval is recommended.

Attachments

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>Net Worth of Proposed Members</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Pro-forma Balance Sheet</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Financial Summary Elderwood Health Care at Birchwood</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>Organizational Chart</td>
</tr>
<tr>
<td>BFA Attachment E</td>
<td>Establishment Checklist</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish 4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool as the new operator of Elderwood Health Care at Birchwood, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

111456-E 4800 Bear Road Operating Company, LLC
d/b/a Elderwood at Liverpool
APPROVAL CONTINGENT UPON:

1. Submission of documentation of project completion of CON #111085-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of photocopies of the applicant’s Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant’s Articles of Organization, which must be acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant’s fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant’s fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant’s fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
10. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
12. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in “Whereas Clause D” of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
17. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]

19. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]

20. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Hedley Building - 6th Floor  
433 River Street  
Troy, New York 12180-2299
Project # 111462-E
1818 Como Park Boulevard Operating Company, LLC
d/b/a Elderwood at Lancaster

County: Erie (Lancaster)  Program: Residential Health Care Facility
Purpose: Establishment  Submitted: May 27, 2011

Executive Summary

Description
1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster, is seeking approval to be established as the new operator of Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood, an existing 94-bed residential health care facility (RHCF) located at 1818 Como Park Boulevard, Lancaster. The facility will be 96 beds upon completion of CON #101086-B by the current operator. LPC at Linwood LLC is the current realty owner. Ownership before and after the requested change is as follows:

<table>
<thead>
<tr>
<th>Operations: Before</th>
<th>Operations: After</th>
</tr>
</thead>
<tbody>
<tr>
<td>Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood</td>
<td></td>
</tr>
<tr>
<td>Member</td>
<td>Interest</td>
</tr>
<tr>
<td>-- Robert M. Chur</td>
<td>66.00%</td>
</tr>
<tr>
<td>-- Carol Chur</td>
<td>25.00%</td>
</tr>
<tr>
<td>-- Carla Chur Suero</td>
<td>4.50%</td>
</tr>
<tr>
<td>-- Kelly Chur Henry</td>
<td>4.50%</td>
</tr>
<tr>
<td>1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster</td>
<td></td>
</tr>
<tr>
<td>Members</td>
<td>Interest</td>
</tr>
<tr>
<td>-- Warren Cole</td>
<td>50.00%</td>
</tr>
<tr>
<td>-- Dr. Jeffrey Rubin, D.D.S.</td>
<td>50.00%</td>
</tr>
</tbody>
</table>

Real Estate: Before
LPC at Linwood, LLC

| Member | Interest |
| Robert M. Chur | 100.00% |

After
1818 Como Park Boulevard, LLC

| Members | Interest |
| Warren Cole | 50.00% |
| Dr. Jeffrey Rubin, D.D.S. | 50.00% |

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for-profit limited liability company, will be assigning its right and title to the operations and real estate to 1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster and 1818 Como Park Boulevard, LLC respectively.

DOH Recommendation
Contingent approval.

Need Summary
Elderwood Health Care at Linwood's utilization for 2009 and 2010 was 97.7% and 98.2%, respectively. There will be no change in the beds or services of the Elderwood Health Care at Linwood facility as a result of this project.

Program Summary
Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

Financial Summary
There are no project costs associated with this proposal.

| Budget: Revenues: | $ 7,181,544 |
| Expenses: | 6,830,341 |
| Gain/(Loss): | $ 351,203 |

Subject to 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; Architectural review is not 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 documentation of project completion of CON #101086-B. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant’s Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant’s Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant’s fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant’s fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant’s fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in “Whereas Clause D” of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

Council Action Date
April 5, 2012.
Need Analysis

Background
1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster, is seeking approval to be established as the new operator of Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood, an existing 94-bed residential health care facility (RHCF) located at 1818 Como Park Boulevard, Lancaster (Erie County).

There will be no change in the beds or services of the Elderwood Health Care at Linwood facility as a result of this project.

Analysis

<table>
<thead>
<tr>
<th>RHCF Bed Need – Erie County</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016 Projected Need</td>
</tr>
<tr>
<td>Current Beds</td>
</tr>
<tr>
<td>Beds Under Construction</td>
</tr>
<tr>
<td>Total Resources</td>
</tr>
<tr>
<td>Unmet Need</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>RHCF Occupancy</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elderwood Health Care at Linwood</td>
<td>98.50%</td>
<td>97.70%</td>
<td>98.20%</td>
</tr>
<tr>
<td>Elderwood Health Care at Riverwood</td>
<td>97.50%</td>
<td>98.70%</td>
<td>97.20%</td>
</tr>
<tr>
<td>Elderwood Health Care at Lakewood</td>
<td>97.00%</td>
<td>97.00%</td>
<td>97.00%</td>
</tr>
<tr>
<td>Buffalo General Hospital Deaconess SNF Div</td>
<td>97.70%</td>
<td>98.20%</td>
<td>96.50%</td>
</tr>
<tr>
<td>Erie County Medical Center-SNF</td>
<td>94.50%</td>
<td>94.60%</td>
<td>94.10%</td>
</tr>
<tr>
<td>Mercy Hospital Skilled Nursing Facility</td>
<td>93.70%</td>
<td>99.80%</td>
<td>93.40%</td>
</tr>
<tr>
<td>Millard Fillmore Skilled Nursing Facility</td>
<td>98.00%</td>
<td>97.50%</td>
<td>97.70%</td>
</tr>
<tr>
<td>Niagara Lutheran Home &amp; Rehabilitation Center Inc.</td>
<td>96.30%</td>
<td>96.90%</td>
<td>96.10%</td>
</tr>
<tr>
<td>Hawthorn Health Multicare Center for Living</td>
<td>90.80%</td>
<td>90.70%</td>
<td>90.50%</td>
</tr>
<tr>
<td>St Catherine Laboure Health Care Center</td>
<td>97.70%</td>
<td>99.00%</td>
<td>97.50%</td>
</tr>
<tr>
<td>Delaware Nursing &amp; Rehabilitation Center</td>
<td>88.10%</td>
<td>89.00%</td>
<td>87.80%</td>
</tr>
<tr>
<td>Harbour Health Multicare Center for Living</td>
<td>95.70%</td>
<td>97.70%</td>
<td>95.40%</td>
</tr>
<tr>
<td>Waterfront Health Care Center, Inc</td>
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<td>95.30%</td>
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Elderwood Health Care at Linwood had utilization rates of 97.7% for 2009 and 98.2% 2010.

**Conclusion**
The acquisition of Elderwood Health Care at Linwood by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

**Recommendation**
From a need perspective, approval is recommended.

## Programmatic Analysis

### Facility Information

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<thead>
<tr>
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<td>Elderwood at Lancaster</td>
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<td><strong>Address</strong></td>
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<tr>
<td><strong>Stockholders</strong></td>
<td>Robert M. Chur 66%</td>
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<td></td>
<td>Carol L. Chur 25%</td>
<td>Warren Cole 50%</td>
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<td></td>
<td>Carla Suero 4.5%</td>
<td>Jeffrey Rubin 50%</td>
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<td>Kelly Henry 4.5%</td>
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### Character and Competence

- **FACILITIES REVIEWED:**
  - ACU-acute care/hospital
  - ALF-assisted living facility
  - HHA-home health agency
  - HOM-homecare
  - ICF-intermediate care facility/group home
  - IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
  - LTA-long term acute care hospital (similar to TCU)
  - RX-pharmacy
HOS-hospice     SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)

**Alabama**

_Laurelton Rehabilitation and Nursing Center*  SNF  10/2006 to 5/2008_

**California**

San Joaquin Valley Rehabilitation Hospital  Hospital  7/2004-7/2004
Kenfield Rehabilitation Hospital  Hospital  8/2003-7/2004
Care Alternatives of California*  Hospice  2003-10/2009

**Colorado**

North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)  ACU-PSYCH  7/2003-8/2004
North Valley Rehabilitation Hospital (Vibra LTACH)  LTA  7/2003-8/2004
North Valley Rehabilitation Hospital (Vista View Care Center)  SNF  7/2003-8/2004

**Connecticut**

Danbury Health Care Center*  SNF  8/2003-10/2009
Darien Health Care Center*  SNF  8/2003-10/2009
Golden Hill Health Care Center*  SNF  8/2003-10/2009
Newington Health Care Center*  SNF  8/2003-10/2009
Partners Pharmacy of Connecticut*  RX  2003-10/2009
River Glen Health Care Center (a/k/a Southbury HCC)*  SNF  8/2003-10/2009
The Highlands Health Care Center*  SNF  8/2003-10/2009
West River Health Care Center (a/k/a Milford North HCC)*  SNF  8/2003-10/2009
Westport Health Care Center*  SNF  8/2003-10/2009
Wethersfield Health Care Center*  SNF  8/2003-10/2009

**Kansas**

Care Alternatives of Kansas  HOS  2004-10/2009

**Kentucky**

Southern Kentucky Rehabilitation Hospital  IRF  5/2003-7/2004

**Maryland**

Montgomery Village Health Care Center  SNF  2003-10/2009

**Massachusetts**

Brookline Health Care Center*  SNF  8/2003-10/2009
Calvin Coolidge Nursing & Rehab Center for Northampton*  SNF  8/2003-10/2009
Care Alternatives of Massachusetts*  HOS  2005-10/2009
Concord Health Care Center*  SNF  8/2003-10/2009
Holyoke Health Care Center*  SNF  8/2003-10/2009
Lexington Health Care Center*  SNF  8/2003-10/2009
Lowell Health Care Center*  SNF  8/2003-10/2009
Millbury Health Care Center*  SNF  8/2003-10/2009
New Bedford Health Care Center*  SNF  8/2003-10/2009
New Bedford Rehabilitation Hospital*  IRF  7/2003-8/2004
Newton Health Care Center*  SNF  8/2003-10/2009
North Shore Health Care Center*  SNF  8/2003-10/2009
Partners Pharmacy of Massachusetts*  RX  2004-10/2009
Peabody Glen Health Care Center*  SNF  8/2003-10/2009
Redstone Health Care Center (a/k/a East Longmeadow HCC)*  SNF  8/2003-10/2009
Weymouth Health Care Center*  SNF  8/2003-10/2009
Wilmington Health Care Center*  SNF  8/2003-10/2009
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Pediatric Specialty Care at Point Pleasant    PED ICF  2/2011-present
Pediatric Specialty Care at Quakertown    PED ICF    2/2011-present
Presque Isle Rehabilitation & Nursing Center    SNF    10/2006-10/2009
Senior Living of Lancaster    HOM    2/2011-present
The Rehabilitation & Nursing Center at Greater Pittsburg    SNF    10/2006-10/2009

**Puerto Rico**

**Rhode Island**
Scallop Shell Nursing & Rehabilitation Center    SNF    12/2010-present

**Virginia**
Care Alternatives of Virginia*    HOS    4/2002-10/2009
Colonial Heights Health Care Center*    SNF    4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*    SNF    4/2002-10/2009
Hopewell Health Care Center*    SNF    4/2002/10/2009
Partners Pharmacy of Virginia*    RX    4/2002-10/2009
Valley Health Care Center*    SNF/ALF    4/2002-10/2009
Westport Health Care Center*    SNF    4/2002-10/2009

**Individual Background Review**

**Jeffrey Rubin** is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millennium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

**Warren Cole** is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

**Character and Competence – Analysis:**
No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.
For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator’s track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

During the applicable period identified..., the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period..., the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the Alabama facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the California facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the Colorado facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Connecticut facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

- Danbury Health Care Center
- Darien Health Care Center
- Long Ridge of Stamford
- Newington Health Care Center
- West River Health Care Center
- Westport Health Care Center
- Wethersfield Health Care Center

A review of the Kansas facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Kentucky facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Maryland facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the Massachusetts facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the Missouri facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.
A review of the New Jersey facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the North Carolina facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Ohio facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Pennsylvania facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the Puerto Rico health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the Rhode Island facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Virginia facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department’s standards for analysis, of the applicants’ operation of 35 facilities in five different states. However, it should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

**Project Review**

There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

**Recommendation**

From a programmatic perspective, approval is recommended.

---

**Financial Analysis**

**Background**

The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies, and related real property companies acquisition, involving Linwood Health Care Center, Inc., the operator, and LPC at Linwood LLC, the owner of the realty and the proposed new owner/operator Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company, which will be assigning its right and title to the operations and the real estate to 1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster and 1818 Como Park Boulevard, LLC respectively.

The five adult care facilities will be reviewed by the Division of Long Term Care and therefore, are being reviewed separately from the nursing home application. The independent housing companies as well, are not being addressed in these reviews. The information provided regarding the independent housing companies is to delineate them from the total project cost for the overall application.
The proposed members are also seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition, through the applications listed below:

<table>
<thead>
<tr>
<th>CON</th>
<th>Applicant</th>
<th>Facility</th>
<th>Beds</th>
</tr>
</thead>
<tbody>
<tr>
<td>111456-E</td>
<td>4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool</td>
<td>Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood</td>
<td>160</td>
</tr>
<tr>
<td>111467-E</td>
<td>4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst</td>
<td>Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood</td>
<td>92</td>
</tr>
<tr>
<td>111468-E</td>
<td>2850 Grand island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island</td>
<td>Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood</td>
<td>90</td>
</tr>
<tr>
<td>111470-E</td>
<td>5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg</td>
<td>Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood</td>
<td>166</td>
</tr>
<tr>
<td>111469-E</td>
<td>225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga</td>
<td>Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood</td>
<td>170</td>
</tr>
<tr>
<td>111471-E</td>
<td>37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly</td>
<td>Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga</td>
<td>200</td>
</tr>
<tr>
<td>111466-E</td>
<td>2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield</td>
<td>Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood</td>
<td>160</td>
</tr>
<tr>
<td>111463-E</td>
<td>200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville</td>
<td>Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood</td>
<td>200</td>
</tr>
</tbody>
</table>

The applicant has provided an affidavit, which states that 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 the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

All nine applications will be processed concurrently.

**Asset Purchase Agreement**

The change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreement, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company and related real property companies acquisition.

**Date:** February 25, 2011


**Sellers (Nursing Home Real Estate):** Wedgewood SNF Property Company, LLC, Maplewood Property Associates,
Purchaser: Post Acute Partners Acquisition, LLC

Purchased Assets: All right, title and interest of the above operations and Woodmark Services, Inc. in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically “Elderwood” and “Elderwood Senior Care” and the service mark “Care Without Compromise”; all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller’s financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.

Excluded Assets: The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names “Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood” and “Elderwood Assisted Living at Penfield, LLC” and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller’s corporate offices, located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller’s bank accounts, cash, cash equivalents and securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller’s rights and benefits under this agreement; seller’s organizational documents relating solely to the existence of each of the entities comprising seller as separate legal entity; seller’s right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records’ seller’s general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.

Liabilities Assumed: The applicable Real liabilities under the mortgages listed on schedule 1.6(a)(i) the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt”) assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6 (a) and
obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations of seller other than the assumed liabilities.

**Excluded Liabilities:** Seller’s accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3 (a) ) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the seller’s sole obligation and responsibility.

**Purchase Price:** $141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.

**Purchase Price for this operation and real estate:** $3,673,042 with $1,423,042 allocated to the operations purchase price and $2,250,000 allocated to the real estate purchase price.

**Payment of Purchase Price:** Through three loans one for $2,962,900 at 30 years at 5.5% interest, a subordinated loan for $536,673 at 10% for 7 Years and one for $173,469 for 7 years interest only.

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.

### Residential Health Care Facilities

<table>
<thead>
<tr>
<th>CON</th>
<th>Applicant</th>
<th>Facility</th>
<th>Real Estate Purchase Price</th>
<th>Operations Purchase Price</th>
<th>Total Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>111467-E</td>
<td>4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst</td>
<td>Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood</td>
<td>$6,500,000</td>
<td>$3,383,566</td>
<td>$9,883,566</td>
</tr>
<tr>
<td>111468-E</td>
<td>2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island</td>
<td>Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood</td>
<td>$4,700,000</td>
<td>$2,951,514</td>
<td>$7,651,514</td>
</tr>
<tr>
<td>111470-E</td>
<td>5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg</td>
<td>Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood</td>
<td>$6,700,000</td>
<td>$4,094,870</td>
<td>$10,794,870</td>
</tr>
<tr>
<td>111462-E</td>
<td>1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster</td>
<td>Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood</td>
<td>$2,250,000</td>
<td>$1,423,042</td>
<td>$3,673,042</td>
</tr>
<tr>
<td>Facility Name</td>
<td>Purchase Price</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------</td>
<td>----------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Glenwood</td>
<td>$10,024,265</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maplewood ALF</td>
<td>$7,028,868</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rosewood</td>
<td>$8,337,181</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tioga ALF</td>
<td>$3,904,780</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Westwood</td>
<td>$14,494,740</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Adult Care Facilities Purchase Price</td>
<td>$43,789,834</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Independent Housing Facilities**

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crestwood ILF</td>
<td>$12,590,237</td>
</tr>
<tr>
<td>Maplewood ILF</td>
<td>$4,993,149</td>
</tr>
<tr>
<td>Total Independent Housing Facilities Purchase Price</td>
<td>$17,583,386</td>
</tr>
</tbody>
</table>
Total Purchase Price

<table>
<thead>
<tr>
<th>Operations and Real Estate</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Health Care Facilities</td>
<td>$80,126,780</td>
</tr>
<tr>
<td>Adult Care Facilities</td>
<td>$43,789,834</td>
</tr>
<tr>
<td>Independent Housing Facilities</td>
<td>$17,583,386</td>
</tr>
<tr>
<td><strong>Total Purchase Price</strong></td>
<td><strong>$141,500,000</strong></td>
</tr>
</tbody>
</table>

Assignment Agreement

The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

- **Effective Date:** Upon CON Approval by DOH
- **Assignor:** Post Acute Partner's Acquisition, LLC
- **Assignee:** 1818 Como Park Boulevard, LLC
- **Operating Designee:** 1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster
- **Assets Assigned:** Assignor’s right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.
- **Obligations Assigned:** Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed reality entities 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maelou Drive, LLC, 1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, 37 North Chemung Street, LLC, 2600 Niagara falls Boulevard, LLC and 4459 Bailey Avenue, LLC; are as follows:

<table>
<thead>
<tr>
<th>Proposed Members</th>
<th>Percentage Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warren Cole</td>
<td>50%</td>
</tr>
<tr>
<td>Dr. Jeffrey Rubin, D.D.S.</td>
<td>50%</td>
</tr>
</tbody>
</table>

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

- **Effective Date:** Upon CON Approval by DOH
- **Premises:** A 94-bed RHCF located at 1818 Como Park Boulevard, Lancaster, NY (Erie County)
- **Lessor:** 1818 Como Park Boulevard, LLC
- **Lessee:** 1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster
- **Term:** 10 years commencing on the execution of the lease with four (5 year extensions)
- **Annual Rental:** Lease payment is equivalent to the annual mortgage debt service for the facility, which is $333,181.
- **Type:** 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.

Currently, the facility Medicaid capital reimbursement is based on the return of and return on equity for recent improvements. This methodology will not be altered upon change in ownership.
Operating Budget
Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:

<table>
<thead>
<tr>
<th>Revenues:</th>
<th>Per Diem</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicare Fee For Service</td>
<td>$346.93</td>
<td>$1,394,326</td>
</tr>
<tr>
<td>Medicaid Fee For Service</td>
<td>170.02</td>
<td>$4,151,311</td>
</tr>
<tr>
<td>Private Pay</td>
<td>322.64</td>
<td>$1,635,907</td>
</tr>
<tr>
<td>Total Revenue</td>
<td></td>
<td>$7,181,544</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenses:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating</td>
<td>$6,468,702</td>
<td></td>
</tr>
<tr>
<td>Capital</td>
<td>361,639</td>
<td></td>
</tr>
<tr>
<td>Total Expense</td>
<td>$6,830,341</td>
<td></td>
</tr>
<tr>
<td>Net Income</td>
<td>$351,203</td>
<td></td>
</tr>
</tbody>
</table>

Utilization (Patient days) 33,354
Occupancy 97.21%

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

- Overall utilization is projected at 97.21%, which is consistent with historical. Utilization by payor source is expected as follows:
  - Medicaid 73.21%
  - Medicare 12.05%
  - Private Pay 14.74%
- Breakeven utilization is projected at 93.10%.

Capability and Feasibility
The purchase price and initiation of operations, as a financially viable entity, will be financed by a loan from Capital Funding, LLC of $2,962,900 at an interest rate of 5.50% for 30 years, with the remaining $536,673 from a subordination loan at an interest rate of 10% for 7 years, and $173,469 seller's notes that is interest only.

Working capital requirements are estimated at $1,138,390, based on two months’ of first year expenses. $569,223 will by satisfied from the proposed member’s equity, and the remaining $569,167 will be satisfied through a loan from Capital Funding, LLC at 5.00% over 5 years. A letter of interest has been supplied by Capital Funding, LLC. Presented as BFA Attachment A, is the Net Worth of proposed members.

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 $351,203 would be maintained during the first year following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B, is the pro-forma balance sheet of, which indicates positive members’ equity of $569,223 as of the first day of operations.

Following is a comparison of 2010, and projected revenue and expense:

Annual 2010 Income $7,435,475
Annual 2010 Expense 6,974,316
Annual 2010 Net Income $461,159
Projected incremental Income ($253,931)
Projected incremental Expense ($143,975)
Projected incremental Net Income (Loss) ($109,956)
Incremental Net Income (Loss) $351,203

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 expenses, expenses at budgeted occupancy, and the difference between current year and projected levels.

As shown on BFA Attachment C, Elderwood Health Care at Linwood had an average negative working capital position, an average negative net asset position and generated an average net Income of $94,366 for the period 2008-2010.

The 2009 loss is attributable to an increase in expenses of approximately 11% from 2008 to 2009 with an approximate 4.4% increase in revenues from 2008. To rectify this, the facility instituted controls on its operating budget and decreased its expenses in 2010 by approximately 4.3% compared to 2009, which resulted in a positive net income for 2010.

Based on the proceeding, and 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, contingent approval is recommended.

<table>
<thead>
<tr>
<th>Attachments</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
</tr>
<tr>
<td>BFA Attachment B</td>
</tr>
<tr>
<td>BFA Attachment C</td>
</tr>
<tr>
<td>BFA Attachment D</td>
</tr>
<tr>
<td>BFA Attachment E</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish 1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster as the new operator of Elderwood Health Care at Linwood, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

111462-E 1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster
APPROVAL CONTINGENT UPON:

1. Submission of documentation of project completion of CON #101086-B. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant’s Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant’s Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant’s fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant’s fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant’s fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in “Whereas Clause D” of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]

19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]

20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]

21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299
Public Health and Health Planning Council

Project # 111463-E
20 Bassett Road Operating Company, LLC
d/b/a Elderwood at Williamsville

County: Erie (Williamsville)  Program: Residential Health Care Facility
Purpose: Establishment  Submitted: May 27, 2011

Executive Summary

Description
200 Bassett Road Operating Company, LLC, d/b/a Elderwood at Williamsville, is seeking approval to be established as the new operator of Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood, an existing 200-bed RHCF located at 200 Bassett Road, Williamsville. Oakwood Property Associates, LP is the current realty owner. Ownership before and after the requested change is as follows:

<table>
<thead>
<tr>
<th>Operations: Before</th>
<th>Operations: After</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood</td>
<td>200 Bassett Road Operating Company, LLC. d/b/a Elderwood at Williamsville</td>
</tr>
<tr>
<td>Member</td>
<td>Interest</td>
</tr>
<tr>
<td>-- Robert M. Chur</td>
<td>66.00%</td>
</tr>
<tr>
<td>-- Carol Chur</td>
<td>25.00%</td>
</tr>
<tr>
<td>-- Carla Chur Suero</td>
<td>4.50%</td>
</tr>
</tbody>
</table>

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for-profit limited liability company, will be assigning its right and title to the operations and real estate to 200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville and 200 Bassett Road, LLC, respectively.

DOH Recommendation
Contingent approval

Need Summary
Elderwood Health Care at Oakwood’s utilization for 2009 and 2010 was 96.6% and 96.8%, respectively. There will be no change in the beds or services of the Elderwood Health Care at Oakwood facility as a result of this project.

Program Summary
Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

Financial Summary
There are no project costs associated with this proposal.

<table>
<thead>
<tr>
<th>Budget:</th>
<th>Revenues: $18,197,469</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expenses:</td>
<td>$16,323,319</td>
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<tr>
<td>Gain/(Loss):</td>
<td>$1,874,150</td>
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</table>

Subject to 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 documentation of project completion of CON #111093-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant’s Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant’s Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant’s fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant’s fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant’s fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in “Whereas Clause D” of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

Council Action Date
April 5, 2012.
**Need Analysis**

**Background**
200 Bassett Road Operating Company, LLC, d/b/a Elderwood at Williamsville, is seeking approval to be established as the new operator of Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood, an existing 200-bed RHCF located at 200 Bassett Road, Williamsville (Erie County).

There will be no change in the beds or services of the Elderwood Health Care at Oakwood facility as a result of this project.

**Analysis**

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<th>RHCF Bed Need – Erie County</th>
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<tr>
<td>2016 Projected Need</td>
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<tr>
<td>Current Beds</td>
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<tr>
<td>Beds Under Construction</td>
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<td>Total Resources</td>
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<td>Unmet Need</td>
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<table>
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<th>RHCF Occupancy</th>
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<th>2009</th>
<th>2010</th>
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<tr>
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<td>97.10%</td>
<td>96.60%</td>
<td>96.80%</td>
</tr>
<tr>
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<td>98.50%</td>
<td>97.70%</td>
<td>98.20%</td>
</tr>
<tr>
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<td>98.70%</td>
<td>97.20%</td>
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<td>97.00%</td>
<td>97.00%</td>
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<td>98.20%</td>
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<tr>
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<tr>
<td>St Francis Home of Williamsville</td>
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<td>90.30%</td>
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<tr>
<td>Elderwood Health Care at Oakwood</td>
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<td>96.80%</td>
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<tr>
<td>Canterbury Woods</td>
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<td>Did not report</td>
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<td>Jennie B Richmond Chaffee Nursing Home Company Inc</td>
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<td>91.50%</td>
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<td>Autumn View Health Care Facility, LLC</td>
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<td>Father Baker Manor</td>
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### RHCF Occupancy

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<th>2010</th>
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<tbody>
<tr>
<td>Rosa Coplon Jewish Home and Infirmary</td>
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<td>96.70%</td>
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<td>95.10%</td>
</tr>
<tr>
<td>Beechwood Homes</td>
<td>91.80%</td>
<td>97.60%</td>
<td>91.60%</td>
</tr>
<tr>
<td>Garden Gate Health Care Facility</td>
<td>97.60%</td>
<td>98.20%</td>
<td>97.10%</td>
</tr>
<tr>
<td>Elderwood Health Care at Maplewood</td>
<td>101.10%</td>
<td>102.70%</td>
<td>100.90%</td>
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<tr>
<td>Brothers of Mercy Nursing &amp; Rehabilitation Center</td>
<td>97.20%</td>
<td>95.80%</td>
<td>96.90%</td>
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<tr>
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<td>95.30%</td>
<td>96.00%</td>
<td>94.80%</td>
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</tbody>
</table>

Elderwood Health Care at Oakwood had utilization rates of 96.6% for 2009 and 96.8% 2010.

### Conclusion

The acquisition of Elderwood Health Care at Oakwood by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

### Recommendation

From a need perspective, approval is recommended.

### Programmatic Analysis

#### Facility Information

<table>
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<tr>
<th>Facility Name</th>
<th>Existing</th>
<th>Proposed</th>
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<tbody>
<tr>
<td>Address</td>
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<td>RHCF Capacity</td>
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<td>200</td>
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<tr>
<td>ADHC Program Capacity</td>
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<td>Limited Liability Company</td>
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<td>Class Of Operator</td>
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<tr>
<td>Operator</td>
<td>Oakwood Health Care Center, Inc.</td>
<td>200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville</td>
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<tr>
<td>Stockholders</td>
<td>Robert M. Chur</td>
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<tr>
<td></td>
<td>Carol L. Chur</td>
<td>Warren Cole</td>
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<tr>
<td></td>
<td>Carla Suero</td>
<td>Jeffrey Rubin</td>
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<td></td>
<td>Kelly Henry</td>
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<tr>
<td></td>
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</tbody>
</table>

#### Character and Competence

- **FACILITIES REVIEWED:**
  - ACU-acute care/hospital
  - ALF-assisted living facility
  - HHA-home health agency
  - HOM-homecare
  - HOS-hospice
  - ICF-intermediate care facility/group home
  - IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
  - LTA-long term acute care hospital (similar to TCU)
  - RX-pharmacy
  - SNF-skilled nursing facility/nursing home
(Note: actual dates of ownership may extend prior to 2003)

### Alabama
- **Laurelton Rehabilitation and Nursing Center***
  - **SNF**
  - **10/2006 to 5/2008**

### California
- **San Joaquin Valley Rehabilitation Hospital**
  - Hospital
  - **7/2004-7/2004**
- **Kenfield Rehabilitation Hospital**
  - Hospital
  - **8/2003-7/2004**
- **Care Alternatives of California***
  - Hospice
  - **2003-10/2009**

### Colorado
- **North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)**
  - **ACU-PSYCH**
  - **7/2003-8/2004**
- **North Valley Rehabilitation Hospital (Vibra LTACH)**
  - **LTA**
  - **7/2003-8/2004**
- **North Valley Rehabilitation Hospital (Vista View Care Center)**
  - **SNF**
  - **7/2003-8/2004**

### Connecticut
- **Danbury Health Care Center***
  - **SNF**
  - **8/2003-10/2009**
- **Darien Health Care Center***
  - **SNF**
  - **8/2003-10/2009**
- **Golden Hill Health Care Center***
  - **SNF**
  - **8/2003-10/2009**
- **Long Ridge of Stamford***
  - **SNF**
  - **8/2003-10/2009**
- **Newington Health Care Center***
  - **SNF**
  - **8/2003-10/2009**
- **Partners Pharmacy of Connecticut***
  - **RX**
  - **2003-10/2009**
- **River Glen Health Care Center (a/k/a Southbury HCC)***
  - **SNF**
  - **8/2003-10/2009**
- **The Highlands Health Care Center***
  - **SNF**
  - **8/2003-10/2009**
- **West River Health Care Center (a/k/a Milford North HCC)***
  - **SNF**
  - **8/2003-10/2009**
- **Westport Health Care Center***
  - **SNF**
  - **8/2003-10/2009**
- **Wethersfield Health Care Center***
  - **SNF**
  - **8/2003-10/2009**

### Kansas
- **Care Alternatives of Kansas**
  - **HOS**
  - **2004-10/2009**

### Kentucky
- **Southern Kentucky Rehabilitation Hospital**
  - **IRF**
  - **5/2003-7/2004**

### Maryland
- **Montgomery Village Health Care Center**
  - **SNF**
  - **2003-10/2009**

### Massachusetts
- **Brookline Health Care Center***
  - **SNF**
  - **8/2003-10/2009**
- **Calvin Coolidge Nursing & Rehab Center for Northampton***
  - **SNF**
  - **8/2003-10/2009**
- **Care Alternatives of Massachusetts***
  - **HOS**
  - **2005-10/2009**
- **Concord Health Care Center***
  - **SNF**
  - **8/2003-10/2009**
- **Essex Park Rehabilitation & Nursing Center***
  - **SNF**
  - **3/2005-10/2009**
- **Holyoke Health Care Center***
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  - **8/2003-10/2009**
- **Lexington Health Care Center***
  - **SNF**
  - **8/2003-10/2009**
- **Lowell Health Care Center***
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  - **8/2003-10/2009**
- **Millbury Health Care Center***
  - **SNF**
  - **8/2003-10/2009**
- **New Bedford Health Care Center***
  - **SNF**
  - **8/2003-10/2009**
- **New Bedford Rehabilitation Hospital***
  - **IRF**
  - **7/2003-8/2004**
- **Newton Health Care Center***
  - **SNF**
  - **8/2003-10/2009**
- **North Shore Health Care Center***
  - **SNF**
  - **8/2003-10/2009**
- **Partners Pharmacy of Massachusetts***
  - **RX**
  - **2004-10/2009**
- **Peabody Glen Health Care Center***
  - **SNF**
  - **8/2003-10/2009**
- **Redstone Health Care Center (a/k/a East Longmeadow HCC)***
  - **SNF**
  - **8/2003-10/2009**
- **Weymouth Health Care Center***
  - **SNF**
  - **8/2003-10/2009**
- **Wilmington Health Care Center***
  - **SNF**
  - **8/2003-10/2009**
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<td>Cliffview at Riverside Rehab &amp; Nursing Center</td>
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<td><strong>New Jersey</strong></td>
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<tr>
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<td>Care One at The Cupola</td>
<td>SNF</td>
<td>2001-10/2009</td>
</tr>
<tr>
<td></td>
<td>Care One at The Highlands</td>
<td>SNF</td>
<td>2001-10/2009</td>
</tr>
<tr>
<td></td>
<td>Care One at Valley</td>
<td>SNF</td>
<td>2001-10/2009</td>
</tr>
<tr>
<td></td>
<td>Care One at Wall</td>
<td>SNF</td>
<td>9/2004-10/2009</td>
</tr>
<tr>
<td></td>
<td>Care One at Wayne</td>
<td>SNF/ALF</td>
<td>6/2002-10/2009</td>
</tr>
<tr>
<td></td>
<td>Care One at Wellington</td>
<td>SNF</td>
<td>6/2002-10/2009</td>
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<tr>
<td></td>
<td>Marlton Rehabilitation Hospital</td>
<td>IRF</td>
<td>5/2003-7/2004</td>
</tr>
<tr>
<td></td>
<td>Oradell Health Care Center</td>
<td>SNF</td>
<td>2003-10/2009</td>
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<tr>
<td></td>
<td>Partners Pharmacy of New Jersey</td>
<td>RX</td>
<td>2001-10/2009</td>
</tr>
<tr>
<td></td>
<td>Somerset Valley Rehabilitation &amp; Nursing Center</td>
<td>SNF</td>
<td>10/2009-10/2009</td>
</tr>
<tr>
<td></td>
<td>South Jersey Health Care Center</td>
<td>SNF</td>
<td>2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Woodcrest Health Care Center</td>
<td>SNF</td>
<td>2003-10/2009</td>
</tr>
<tr>
<td><strong>North Carolina</strong></td>
<td>Blue Ridge Health Care Center</td>
<td>SNF</td>
<td>8/2002-10/2009</td>
</tr>
<tr>
<td><strong>Ohio</strong></td>
<td>Bellbrook Health Care Center</td>
<td>SNF</td>
<td>2003-10/2009</td>
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<tr>
<td></td>
<td>The Rehabilitation &amp; Nursing Center at Elm Creek</td>
<td>SNF</td>
<td>10/2006-10/2009</td>
</tr>
<tr>
<td></td>
<td>The Rehabilitation &amp; Nursing Center at Firelands</td>
<td>SNF</td>
<td>10/2006-10/2009</td>
</tr>
<tr>
<td></td>
<td>The Rehabilitation &amp; Nursing Center at Spring Creek</td>
<td>SNF</td>
<td>10/2006-10/2009</td>
</tr>
<tr>
<td><strong>Pennsylvania</strong></td>
<td>Care Alternatives of Pennsylvania</td>
<td>HOS</td>
<td>2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Pediatric Specialty Care at Doylestown</td>
<td>SNF</td>
<td>2/2011-present</td>
</tr>
</tbody>
</table>
Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millenium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

Character and Competence – Analysis:
No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.
For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator's track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

*During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …*

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

- Danbury Health Care Center
- Darien Health Care Center
- Long Ridge of Stamford
- Newington Health Care Center
- West River Health Care Center
- Westport Health Care Center
- Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.
A review of the New Jersey facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the North Carolina facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Ohio facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Pennsylvania facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the Puerto Rico health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the Rhode Island facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Virginia facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department's standards for analysis, of the applicants' operation of 35 facilities in five different states. However, it should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

**Project Review**
There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

**Recommendation**
From a programmatic perspective, approval is recommended.

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**Financial Analysis**

**Background**
The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies, and related real property companies acquisition, involving Oakwood Health Care Center, Inc., the operator and Oakwood Property Associates, L.P, the owner of the realty and the proposed new owner/operator Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company that will be assigning its rights and title of both the operations and the real estate to 200 Bassett Road Operating Company, LLC, d/b/a Elderwood at Williamsville and 200 Bassett Road, LLC, respectively.

The five adult care facilities will be reviewed by the Division of Long Term Care, and therefore are being reviewed separately from the nursing home application. The independent Housing companies as well, are not being addressed in these reviews. The information provided regarding the independent housing companies is to delineate them from the total project cost for the overall application.
The proposed members are also seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition, through the applications listed below:

<table>
<thead>
<tr>
<th>CON</th>
<th>Applicant</th>
<th>Facility</th>
<th>Beds</th>
</tr>
</thead>
<tbody>
<tr>
<td>111456-E</td>
<td>4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool</td>
<td>Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood</td>
<td>160</td>
</tr>
<tr>
<td>111462-E</td>
<td>1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster</td>
<td>Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood</td>
<td>94</td>
</tr>
<tr>
<td>111467-E</td>
<td>4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst</td>
<td>Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood</td>
<td>92</td>
</tr>
<tr>
<td>111468-E</td>
<td>2850 Grand island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island</td>
<td>Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood</td>
<td>90</td>
</tr>
<tr>
<td>111470-E</td>
<td>5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg</td>
<td>Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood</td>
<td>166</td>
</tr>
<tr>
<td>111469-E</td>
<td>225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga</td>
<td>Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood</td>
<td>170</td>
</tr>
<tr>
<td>111471-E</td>
<td>37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly</td>
<td>Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga</td>
<td>200</td>
</tr>
<tr>
<td>111466-E</td>
<td>2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield</td>
<td>Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood</td>
<td>160</td>
</tr>
</tbody>
</table>

The applicant has provided an affidavit, which states that 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 the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

All nine applications will be processed concurrently.

**Asset Purchase Agreement**

The change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreement, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company and related real property companies acquisition.

**Date:** February 25, 2011

Sellers
(Nursing Home Real Estate):

Purchaser:
Post Acute Partners Acquisition, LLC

Purchased Assets:
All right, title and interest of the above operations and Woodmark Services, Inc. in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically “Elderwood” and “Elderwood Senior Care” and the service mark “Care Without Compromise”, all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller’s financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.

Excluded Assets:
The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names “Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood” and “Elderwood Assisted Living at Penfield, LLC” and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller’s corporate offices, located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller’s bank accounts, cash, cash equivalents and securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller’s rights and benefits under this agreement; seller’s organizational documents relating solely to the existence of each of the entities comprising seller as separate legal entity; seller’s right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records’ seller’s general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.

Liabilities Assumed:
The applicable Real liabilities under the mortgages listed on schedule 1.6(a)(the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt”) assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real
estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6 (a) and obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations of seller other than the assumed liabilities.

**Excluded Liabilities:**
Seller’s accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3 (a) ) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the seller’s sole obligation and responsibility.

**Purchase Price:**
$141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.

**Purchase Price for this operation and real estate:**
$12,071,383 with $5,271,383 allocated to the operations purchase price and $6,800,000 allocated to the real estate purchase price.

**Payment of Purchase Price:**
Through three loans; one for $10,074,000 at 30 years at 5.5% interest, a subordinated loan for $1,509,474 at 10% for 7 years, and a loan for $487,909 for 7 years interest only.

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.

### Residential Health Care Facilities

<table>
<thead>
<tr>
<th>CON</th>
<th>Applicant</th>
<th>Facility</th>
<th>Real Estate Purchase Price</th>
<th>Operations Purchase Price</th>
<th>Total Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>111467-E</td>
<td>4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst</td>
<td>Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood</td>
<td>$6,500,000</td>
<td>$3,383,566</td>
<td>$9,883,566</td>
</tr>
<tr>
<td>111468-E</td>
<td>2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island</td>
<td>Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood</td>
<td>$4,700,000</td>
<td>$2,951,514</td>
<td>$7,651,514</td>
</tr>
<tr>
<td>111470-E</td>
<td>5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg</td>
<td>Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood</td>
<td>$6,700,000</td>
<td>$4,094,870</td>
<td>$10,794,870</td>
</tr>
<tr>
<td>111462-E</td>
<td>1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster</td>
<td>Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood</td>
<td>$2,250,000</td>
<td>$1,423,042</td>
<td>$3,673,042</td>
</tr>
<tr>
<td>Facility Name</td>
<td>Purchase Price</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td>---------------</td>
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<td></td>
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<td></td>
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</tr>
<tr>
<td>Glenwood</td>
<td>$10,024,265</td>
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<tr>
<td>Maplewood ALF</td>
<td>$7,028,868</td>
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<tr>
<td>Rosewood</td>
<td>$8,337,181</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Tioga ALF</td>
<td>$3,904,780</td>
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<td></td>
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<tr>
<td>Westwood</td>
<td>$14,494,740</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Total Adult Care Facilities Purchase Price</td>
<td>$43,789,834</td>
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</table>

**Independent Housing Facilities**

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crestwood ILF</td>
<td>$12,590,237</td>
</tr>
<tr>
<td>Maplewood ILF</td>
<td>$4,993,149</td>
</tr>
<tr>
<td>Total Independent Housing Facilities Purchase Price</td>
<td>$17,583,386</td>
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</tbody>
</table>
Total Purchase Price

<table>
<thead>
<tr>
<th>Operations and Real Estate</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Health Care Facilities</td>
<td>$80,126,780</td>
</tr>
<tr>
<td>Adult Care Facilities</td>
<td>$43,789,834</td>
</tr>
<tr>
<td>Independent Housing Facilities</td>
<td>$17,583,386</td>
</tr>
<tr>
<td>Total Purchase Price</td>
<td>$141,500,000</td>
</tr>
</tbody>
</table>

Assignment Agreement
The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

- **Effective Date**: Upon CON Approval by DOH
- **Assignor**: Post Acute Partners Acquisition, LLC
- **Assignee**: 200 Bassett Road, LLC
- **Operating Designee**: 200 Bassett Road Operating Company, LLC, d/b/a Elderwood at Williamsville
- **Assets Assigned**: Assignor’s right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.
- **Obligations Assigned**: Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed reality entities 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maclou Drive, LLC, 1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, LLC, 37 North Chemung Street, LLC, 2600 Niagara falls Boulevard, LLC and 4459 Bailey Avenue, LLC are as follows:

<table>
<thead>
<tr>
<th>Proposed Members</th>
<th>Percentage Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warren Cole</td>
<td>50%</td>
</tr>
<tr>
<td>Dr. Jeffrey Rubin, D.D.S.</td>
<td>50%</td>
</tr>
</tbody>
</table>

Lease Agreement and Medicaid Capital Reimbursement
Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

- **Effective Date**: Upon CON Approval by DOH
- **Premises**: A 200-bed RHCF located at 200 Bassett Road, Williamsville (Erie County)
- **Lessor**: 200 Bassett Road, LLC
- **Lessee**: 200 Bassett Road Operating Company, LLC, d/b/a Elderwood at Williamsville
- **Term**: 10 years commencing on the execution of the lease with four (5 year extensions)
- **Annual Rental**: Lease payment is equivalent to the annual mortgage debt service for the facility, which is $1,056,869.
- **Type**: 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.

Currently, the facility Medicaid capital reimbursement is based on the return of and return on equity for recent improvements. This methodology will not be altered upon change in ownership.

Operating Budget
Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:
Revenues:

<table>
<thead>
<tr>
<th></th>
<th>Per Diem</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicare Fee For Service</td>
<td>$379.38</td>
<td>$5,169,431</td>
</tr>
<tr>
<td>Medicaid Fee For Service</td>
<td>$188.18</td>
<td>$8,195,954</td>
</tr>
<tr>
<td>Private Pay</td>
<td>$357.11</td>
<td>$4,832,085</td>
</tr>
<tr>
<td><strong>Total Revenue</strong></td>
<td></td>
<td><strong>$18,197,469</strong></td>
</tr>
</tbody>
</table>

Expenses:

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating</td>
<td>$15,198,435</td>
<td></td>
</tr>
<tr>
<td>Capital</td>
<td>$1,124,884</td>
<td></td>
</tr>
<tr>
<td><strong>Total Expense</strong></td>
<td></td>
<td><strong>$16,323,319</strong></td>
</tr>
</tbody>
</table>

**Net Income** $1,874,150

Utilization (Patient days) 70,709
Occupancy 96.86%

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

- Overall utilization is projected at 96.86%, which is consistent with historical. Utilization by payor source is expected as follows:
  
  Medicaid 61.59%
  Medicare 19.27%
  Private Pay 19.14%

- Breakeven utilization is projected at 86.89%.

**Capability and Feasibility**

The purchase price and initiation of operations, as a financially viable entity, will be financed by a loan from Capital Funding, LLC of $10,074,000 at an interest rate of 5.50% for 30 years, with the remaining $1,509,474 from a subordination loan at an interest rate of 10% for 7 years, and 487,909 seller’s notes that is interest only.

Working capital requirements are estimated at $2,720,553, based on two months’ of first year expenses. $1,360,261 will by satisfied from the proposed member’s equity, and the remaining $1,360,292 will be satisfied through a loan from Capital Funding, LLC at 5.00% over 5 years. A letter of interest has been supplied by Capital Funding, LLC. Presented as BFA Attachment A, is the Net Worth of proposed members.

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 $1,874,150 would be maintained during the first year following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B, is the pro-forma balance sheet of, which indicates positive members’ equity of $1,360,261 as of the first day of operations.

Following is a comparison of 2010 and projected revenue and expense:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual 2010 Income</td>
<td>$17,990,015</td>
</tr>
<tr>
<td>Annual 2010 Expense</td>
<td>16,194,146</td>
</tr>
<tr>
<td>Annual 2010 Net Income</td>
<td>$1,795,869</td>
</tr>
<tr>
<td>Projected incremental Income</td>
<td>$207,454</td>
</tr>
<tr>
<td>Projected incremental Expense</td>
<td>129,173</td>
</tr>
</tbody>
</table>
Projected incremental Net Income $78,281
Incremental Net Income (Loss) $1,874,150

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 expenses, expenses at budgeted occupancy, and the difference between current year and projected levels.

As shown on BFA Attachment C, Elderwood Health Care at Oakwood, had an average negative working capital position and an average negative net asset position, and generated an average net income of $426,481 for the period 2008-2010. The 2009 loss is attributable to an increase in expenses of approximately 6% from 2008, with an approximate 2% decrease in revenues.

The facility instituted controls on its operating budget and decreased expenses in 2010 by approximately 1%, along with a 10.2% increase in revenue, resulting in a positive net income for 2010.

Based on the preceding, and 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, contingent approval is recommended.

**Attachments**

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>Net Worth of Proposed Members</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Pro-forma Balance Sheet</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Financial Summary - Elderwood Health Care at Oakwood</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>Organizational Chart</td>
</tr>
<tr>
<td>BFA Attachment E</td>
<td>Establishment Checklist</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish 20 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville as the new operator of Elderwood Health Care at Oakwood, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

111463-E 20 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville
APPROVAL CONTINGENT UPON:

1. Submission of documentation of project completion of CON #111093-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant’s Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant’s Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant’s fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant’s fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant’s fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in “Whereas Clause D” of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]

19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]

20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]

21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299
Public Health and Health Planning Council

Project # 111466-E
2600 Niagara Falls Boulevard Operating Company, LLC
d/b/a Elderwood at Wheatfield

County: Niagara (Niagara Falls)  Program: Residential Health Care Facility
Purpose: Establishment  Submitted: May 27, 2011

Executive Summary

Description
2600 Niagara Falls Boulevard Operating Company, LLC, d/b/a Elderwood at Wheatfield, is seeking approval to be established as the new operator of Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood, an existing 160-bed residential health care facility (RHCF) at 2600 Niagara Falls Boulevard, Niagara Falls. Crestwood Development, LLC is the current realty owner. Ownership before and after the requested change is as follows:

**Operations**

**Before**
Crestwood Health Care Center, Inc.
d/b/a Elderwood Health Care at Crestwood.

<table>
<thead>
<tr>
<th>Members</th>
<th>Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>-- Robert M. Chur</td>
<td>66.00%</td>
</tr>
<tr>
<td>-- Carol Chur</td>
<td>25.00%</td>
</tr>
<tr>
<td>-- Carla Chur Suero</td>
<td>4.50%</td>
</tr>
<tr>
<td>-- Kelly Chur Henry</td>
<td>4.50%</td>
</tr>
</tbody>
</table>

**After**
2600 Niagara Falls Boulevard Operating Company, LLC, d/b/a Elderwood at Wheatfield

<table>
<thead>
<tr>
<th>Members</th>
<th>Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>-- Warren Cole</td>
<td>50.00%</td>
</tr>
<tr>
<td>-- Dr. Jeffrey Rubin, D.D.S.</td>
<td>50.00%</td>
</tr>
</tbody>
</table>

**Real Estate**

**Before**
Crestwood Development, LLC

<table>
<thead>
<tr>
<th>Members</th>
<th>Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>-- Robert M. Chur</td>
<td>65.25%</td>
</tr>
<tr>
<td>-- Carol L. Chur</td>
<td>24.75%</td>
</tr>
<tr>
<td>-- Carla Chur Suero</td>
<td>4.50%</td>
</tr>
<tr>
<td>-- Kelly Chur Henry</td>
<td>4.50%</td>
</tr>
<tr>
<td>-- Elderwood Properties, LLC</td>
<td>1.00%</td>
</tr>
</tbody>
</table>

**After**
2600 Niagara Falls Boulevard, LLC

<table>
<thead>
<tr>
<th>Members</th>
<th>Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>-- Warren Cole</td>
<td>50.00%</td>
</tr>
<tr>
<td>-- Dr. Jeffrey Rubin, D.D.S.</td>
<td>50.00%</td>
</tr>
</tbody>
</table>

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for-profit limited liability company, will be assigning its rights and title to both the operations and the real estate to 2600 Niagara Falls Boulevard Operating Company, LLC, d/b/a Elderwood at Wheatfield and 2600 Niagara Falls Boulevard, LLC, respectively.

**DOH Recommendation**
Contingent approval.

**Need Summary**
Elderwood Health Care at Crestwood's utilization for 2009 and 2010 was 95.8% and 95.7%, respectively. There will be no change in the beds or services of the Elderwood Health Care at Crestwood facility as a result of this project.

**Program Summary**
Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

**Financial Summary**
There are no project costs associated with this proposal.

Budget:
- Revenues: $13,598,625
- Expenses: $12,879,081
- Gain/(Loss): $719,544

Subject to 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; Architectural review is not 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 documentation of project completion of CON #111083-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
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Council Action Date
April 5, 2012.
Need Analysis

Background
2600 Niagara Falls Boulevard Operating Company, LLC, d/b/a Elderwood at Wheatfield, is seeking approval to be established as the new operator of Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood, an existing 160-bed residential health care facility (RHCF) at 2600 Niagara Falls Boulevard, Niagara Falls (Niagara County).

There will be no change in the beds or services of the Elderwood Health Care at Crestwood facility as a result of this project.

Analysis

<table>
<thead>
<tr>
<th>RHCF Bed Need – Niagara County</th>
<th>2016 Projected Need</th>
<th>Current Beds</th>
<th>Beds Under Construction</th>
<th>Total Resources</th>
<th>Unmet Need</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,377</td>
<td>1,536</td>
<td>-159</td>
<td>1,536</td>
<td></td>
<td>-159</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>RHCF Occupancy</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elderwood Health Care at Crestwood</td>
<td>96.05%</td>
<td>95.84%</td>
<td>95.68%</td>
</tr>
<tr>
<td>Briody Health Care Facility</td>
<td>95.39%</td>
<td>95.97%</td>
<td>93.90%</td>
</tr>
<tr>
<td>Odd Fellow &amp; Rebekah Rehabilitation&amp;Health Care Center Inc</td>
<td>97.23%</td>
<td>96.56%</td>
<td>97.63%</td>
</tr>
<tr>
<td>Schoellkopf Health Center</td>
<td>97.26%</td>
<td>97.25%</td>
<td>98.10%</td>
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<tr>
<td>Niagara Rehabilitation and Nursing Center</td>
<td>92.50%</td>
<td>85.61%</td>
<td>94.64%</td>
</tr>
<tr>
<td>Deagraff Memorial Hospital-Skilled Nursing Facility</td>
<td>98.94%</td>
<td>97.65%</td>
<td>97.90%</td>
</tr>
<tr>
<td>Our Lady of Peace Nursing Care Residence</td>
<td>99.38%</td>
<td>98.81%</td>
<td>99.17%</td>
</tr>
<tr>
<td>Newfane Rehab &amp; Health Care Center</td>
<td>96.02%</td>
<td>95.30%</td>
<td>95.76%</td>
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<tr>
<td>Absolut Center for Nursing and Rehabilitation at Gasport, LLC</td>
<td>91.70%</td>
<td>93.27%</td>
<td>91.45%</td>
</tr>
<tr>
<td>North Gate Health Care Facility</td>
<td>98.24%</td>
<td>98.21%</td>
<td>97.25%</td>
</tr>
<tr>
<td>Niagara County</td>
<td>96.60%</td>
<td>95.60%</td>
<td>96.52%</td>
</tr>
</tbody>
</table>

Elderwood Health Care at Crestwood had utilization rates of 95.8% for 2009 and 95.7 % 2010.

Conclusion
The acquisition of Elderwood Health Care at Crestwood by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

Recommendation
From a need perspective, approval is recommended.
Programmatic Analysis

Facility Information

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Existing</th>
<th>Proposed</th>
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</thead>
<tbody>
<tr>
<td>Address</td>
<td>2600 Niagara Falls Boulevard</td>
<td>same</td>
</tr>
<tr>
<td>RHCF Capacity</td>
<td>123</td>
<td>123</td>
</tr>
<tr>
<td>ADHC Program Capacity</td>
<td>N/A</td>
<td>same</td>
</tr>
<tr>
<td>Type Of Operator</td>
<td>Corporation</td>
<td>Limited Liability Company</td>
</tr>
<tr>
<td>Class Of Operator</td>
<td>Proprietary</td>
<td>same</td>
</tr>
<tr>
<td>Operator</td>
<td>Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood</td>
<td>2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield</td>
</tr>
<tr>
<td>Stockholders</td>
<td>Robert M. Chur 66%</td>
<td>Members</td>
</tr>
<tr>
<td></td>
<td>Carol L. Chur 25%</td>
<td>Warren Cole 50%</td>
</tr>
<tr>
<td></td>
<td>Carla Suarez 4.5%</td>
<td>Jeffrey Rubin 50%</td>
</tr>
<tr>
<td></td>
<td>Kelly Henry 4.5%</td>
<td></td>
</tr>
</tbody>
</table>

Character and Competence

- FACILITIES REVIEWED:
  - ACU-acute care/hospital
  - ALF-assisted living facility
  - HHA-home health agency
  - HOM-homecare
  - HOS-hospice
  - ICF-intermediate care facility/group home
  - IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
  - LTA-long term acute care hospital (similar to TCU)
  - RX-pharmacy
  - SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)

**Alabama**
- Laurelton Rehabilitation and Nursing Center*
  - SNF
  - 10/2006 to 5/2008

**California**
- San Joaquin Valley Rehabilitation Hospital
  - Hospital
  - 7/2004-7/2004
- Kenfield Rehabilitation Hospital
  - Hospital
  - 8/2003-7/2004
- Care Alternatives of California*
  - Hospice
  - 2003-10/2009

**Colorado**
- North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)
  - ACU-PSYCH
- North Valley Rehabilitation Hospital (Vibra LTACH)
  - LTA
- North Valley Rehabilitation Hospital (Vista View Care Center)
  - SNF

**Connecticut**
- Danbury Health Care Center*
  - SNF
  - 8/2003-10/2009
- Darien Health Care Center*
  - SNF
  - 8/2003-10/2009
- Golden Hill Health Care Center*
  - SNF
  - 8/2003-10/2009
- Long Ridge of Stamford*
  - SNF
  - 8/2003-10/2009
- Newington Health Care Center*
  - SNF
  - 8/2003-10/2009
- Partners Pharmacy of Connecticut*
  - RX
  - 2003-10/2009
River Glen Health Care Center (a/k/a Southbury HCC)*  SNF  8/2003-10/2009
The Highlands Health Care Center*  SNF  8/2003-10/2009
West River Health Care Center (a/k/a Milford North HCC)*  SNF  8/2003-10/2009
Westport Health Care Center*  SNF  8/2003-10/2009
Wethersfield Health Care Center*  SNF  8/2003-10/2009

**Kansas**

Care Alternatives of Kansas  HOS  2004-10/2009

**Kentucky**

Southern Kentucky Rehabilitation Hospital  IRF  5/2003-7/2004

**Maryland**

Montgomery Village Health Care Center  SNF  2003-10/2009

**Massachusetts**

Brookline Health Care Center*  SNF  8/2003-10/2009
Calvin Coolidge Nursing & Rehab Center for Northampton*  SNF  8/2003-10/2009
Care Alternatives of Massachusetts*  HOS  2005-10/2009
Concord Health Care Center*  SNF  8/2003-10/2009
Holyoke Health Care Center*  SNF  8/2003-10/2009
Lexington Health Care Center*  SNF  8/2003-10/2009
Lowell Health Care Center*  SNF  8/2003-10/2009
Millbury Health Care Center*  SNF  8/2003-10/2009
New Bedford Health Care Center*  SNF  8/2003-10/2009
New Bedford Rehabilitation Hospital*  IRF  7/2003-8/2004
Newton Health Care Center*  SNF  8/2003-10/2009
North Shore Health Care Center*  SNF  8/2003-10/2009
Partners Pharmacy of Massachusetts*  RX  2004-10/2009
Peabody Glen Health Care Center*  SNF  8/2003-10/2009
Redstone Health Care Center (a/k/a East Longmeadow HCC)*  SNF  8/2003-10/2009
Weymouth Health Care Center*  SNF  8/2003-10/2009
Wilmington Health Care Center*  SNF  8/2003-10/2009

**Michigan**

Grand Blanc Rehabilitation & Nursing Center  SNF  10/2006-10/2009

**Missouri**

Care Alternatives of Missouri  HOS  2003-10/2009
Cliffview at Riverside Rehab & Nursing Center  SNF  10/2006-5/2008
Partners Pharmacy of Missouri*  RX  2003-10/2009

**New Jersey**

Bergen Care Home Health  HHA  2007-10/2009
Bergen Care Personal Touch  HOM  2007-10/2009
Care Alternatives of New Jersey  HOS  2001-10/2009
Care One at Dunroven  SNF  2001-10/2009
Care One at Evesham  SNF  2001-10/2009
Care One at East Brunswick  SNF  2001-10/2009
Care One at Evesham  SNF  2001-10/2009
Care One at Evesham Assisted Living  ALF  10/2007-10/2009
Care One at Ewing  SNF  11/2004-10/2009
Care One at Hamilton  SNF  5/2002-10/2009
Care One at Holmdel  SNF  8/1997-10/2009
Care One at Jackson (a/k/a Jackson HCC)  SNF  2004-10/2009
Care One at King James  SNF  2003-10/2009
Care One at Livingston  SNF  10/2002-10/2009
Care One at Livingston Assisted Living  ALF  9/2005-10/2009
<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Type</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Care One at Madison Avenue</td>
<td>SNF</td>
<td>1/2005-10/2009</td>
</tr>
<tr>
<td>Care One at Moorestown</td>
<td>SNF</td>
<td>9/2003-10/2009</td>
</tr>
<tr>
<td>Care One at Harmony Village at Moorestown</td>
<td>ALF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td>Care One at Morris</td>
<td>SNF</td>
<td>8/2001-10/2009</td>
</tr>
<tr>
<td>Care One at Morris Assisted Living</td>
<td>ALF</td>
<td>3/2003-10/2009</td>
</tr>
<tr>
<td>Care One at Pine Rest</td>
<td>SNF</td>
<td>2001-10/2009</td>
</tr>
<tr>
<td>Care One at Raritan Bay MC</td>
<td>LTA</td>
<td>3/2004-10/2009</td>
</tr>
<tr>
<td>Care One Harmony Village at Moorestown</td>
<td>SNF</td>
<td>9/2003-10/2009</td>
</tr>
<tr>
<td>Care One at Teaneck</td>
<td>SNF</td>
<td>4/2007-10/2009</td>
</tr>
<tr>
<td>Care One at The Cupola</td>
<td>SNF</td>
<td>2001-10/2009</td>
</tr>
<tr>
<td>Care One at The Highlands</td>
<td>SNF</td>
<td>2001-10/2009</td>
</tr>
<tr>
<td>Care One at Valley</td>
<td>SNF</td>
<td>2001-10/2009</td>
</tr>
<tr>
<td>Care One at Wall</td>
<td>SNF</td>
<td>9/2004-10/2009</td>
</tr>
<tr>
<td>Care One at Wayne</td>
<td>SNF/ALF</td>
<td>6/2002-10/2009</td>
</tr>
<tr>
<td>Care One at Wellington</td>
<td>SNF</td>
<td>6/2002-10/2009</td>
</tr>
<tr>
<td>Marlton Rehabilitation Hospital</td>
<td>IRF</td>
<td>5/2003-7/2004</td>
</tr>
<tr>
<td>Oradell Health Care Center</td>
<td>SNF</td>
<td>2003-10/2009</td>
</tr>
<tr>
<td>Partners Pharmacy of New Jersey</td>
<td>RX</td>
<td>2001-10/2009</td>
</tr>
<tr>
<td>Somerset Valley Rehabilitation &amp; Nursing Center</td>
<td>SNF</td>
<td>10/2009-10/2009</td>
</tr>
<tr>
<td>South Jersey Health Care Center</td>
<td>SNF</td>
<td>2003-10/2009</td>
</tr>
<tr>
<td>Woodcrest Health Care Center</td>
<td>SNF</td>
<td>2003-10/2009</td>
</tr>
<tr>
<td>Blue Ridge Health Care Center</td>
<td>SNF</td>
<td>8/2002-10/2009</td>
</tr>
<tr>
<td>Bellbrook Health Care Center</td>
<td>SNF</td>
<td>2003-10/2009</td>
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<tr>
<td>The Rehabilitation &amp; Nursing Center at Elm Creek</td>
<td>SNF</td>
<td>10/2006-10/2009</td>
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<tr>
<td>The Rehabilitation &amp; Nursing Center at Firelands</td>
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<td>10/2006-10/2009</td>
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<td>The Rehabilitation &amp; Nursing Center at Spring Creek</td>
<td>SNF</td>
<td>10/2006-10/2009</td>
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<td>Care Alternatives of Pennsylvania</td>
<td>HOS</td>
<td>2003-10/2009</td>
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<tr>
<td>Pediatric Specialty Care at Doylestown</td>
<td>SNF</td>
<td>2/2011-present</td>
</tr>
<tr>
<td>Pediatric Specialty Care at Hopewell</td>
<td>PED ICF</td>
<td>2/2011-present</td>
</tr>
<tr>
<td>Pediatric Specialty Care at Lancaster</td>
<td>PED ICF</td>
<td>2/2011-present</td>
</tr>
<tr>
<td>Pediatric Specialty Care at Point Pleasant</td>
<td>PED ICF</td>
<td>2/2011-present</td>
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<td>Pediatric Specialty Care at Quakertown</td>
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<td>Presque Isle Rehabilitation &amp; Nursing Center</td>
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<td>Senior Living of Lancaster</td>
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<td>2/2011-present</td>
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<td>The Rehabilitation &amp; Nursing Center at Greater Pittsburg</td>
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<td>10/2006-10/2009</td>
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<td>Scallop Shell Nursing &amp; Rehabilitation Center</td>
<td>SNF</td>
<td>12/2010-present</td>
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<td>Colonial Heights Health Care Center*</td>
<td>SNF</td>
<td>4/2002-10/2009</td>
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<td>Glenburnie Rehabilitation &amp; Nursing Center*</td>
<td>SNF</td>
<td>4/2002-10/2009</td>
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<tr>
<td>Hopewell Health Care Center*</td>
<td>SNF</td>
<td>4/2002-10/2009</td>
</tr>
<tr>
<td>Partners Pharmacy of Virginia*</td>
<td>RX</td>
<td>4/2002-10/2009</td>
</tr>
<tr>
<td>Valley Health Care Center*</td>
<td>SNF/ALF</td>
<td>4/2002-10/2009</td>
</tr>
<tr>
<td>Westport Health Care Center*</td>
<td>SNF</td>
<td>4/2002-10/2009</td>
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</tbody>
</table>
Individual Background Review

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millenium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

Character and Competence – Analysis:
No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator’s track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

During the applicable period identified..., the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period..., the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities ...

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the Alabama facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the California facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the Colorado facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.
A review of the Connecticut facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

- Danbury Health Care Center
- Darien Health Care Center
- Long Ridge of Stamford
- Newington Health Care Center
- West River Health Care Center
- Westport Health Care Center
- Wethersfield Health Care Center

A review of the Kansas facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Kentucky facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Maryland facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the Massachusetts facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the Missouri facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the New Jersey facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the North Carolina facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Ohio facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Pennsylvania facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the Puerto Rico health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the Rhode Island facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Virginia facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department's standards for analysis, of the applicants' operation of 35 facilities in five different states. However, it should be made clear that while these five states could not
provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

**Project Review**

There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

**Recommendation**

From a programmatic perspective, approval is recommended.

---

**Financial Analysis**

**Background**

The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies and related real property companies acquisition involving Crestwood Health Care Center, Inc., the operator and Crestwood Development, LLC, the owner of the realty and the proposed new owner/operator Post Acute Partners Acquisitions, LLC an existing for profit limited liability company that will be assigning its rights and title to both the operations and the real estate to 2600 Niagara Falls Boulevard Operating Company, LLC, d/b/a Elderwood at Wheatfield and 2600 Niagara Falls Boulevard, LLC, respectively.

The five adult care facilities will be reviewed by the Division of Long Term Care and therefore are being reviewed separately from the nursing home application. The independent Housing companies as well are not being addressed in these reviews. The information provided regarding the independent housing companies is to delineate them from the total project cost for the overall application.

The proposed members are also seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition, through the applications listed below:

<table>
<thead>
<tr>
<th>CON</th>
<th>Applicant</th>
<th>Facility</th>
<th>Beds</th>
</tr>
</thead>
<tbody>
<tr>
<td>111456-E</td>
<td>4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool</td>
<td>Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood</td>
<td>160</td>
</tr>
<tr>
<td>111462-E</td>
<td>1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster</td>
<td>Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood</td>
<td>94</td>
</tr>
<tr>
<td>111468-E</td>
<td>2850 Grand island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island</td>
<td>Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood</td>
<td>90</td>
</tr>
<tr>
<td>111470-E</td>
<td>5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg</td>
<td>Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood</td>
<td>166</td>
</tr>
<tr>
<td>111469-E</td>
<td>225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga</td>
<td>Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood</td>
<td>170</td>
</tr>
<tr>
<td>111471-E</td>
<td>37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly</td>
<td>Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga</td>
<td>200</td>
</tr>
<tr>
<td>111467-E</td>
<td>4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at</td>
<td>Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood</td>
<td>92</td>
</tr>
</tbody>
</table>
The applicant has provided an affidavit, which states that 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 the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

All nine applications will be processed concurrently.

**Asset Purchase Agreement**
The change in ownership will be effected in accordance with the terms of the executed Asset Purchase Agreement, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company and related real property companies acquisition.

- **Date:** February 25, 2011
- **Purchaser:** Post Acute Partners Acquisition, LLC
- **Purchased Assets:** All right, title and interest of the above operations and Woodmark Services, Inc. in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically “Elderwood” and “Elderwood Senior Care” and the service mark “Care Without Compromise”; all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller’s financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.

- **Excluded Assets:** The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names “Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood” and “Elderwood Assisted Living at Penfield, LLC” and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller’s corporate offices, located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller’s bank accounts, cash, cash equivalents and
securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller’s rights and benefits under this agreement; seller’s organizational documents relating solely to the existence of each of the entities comprising seller as separate legal entity; seller’s right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records’ seller’s general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.

**Liabilities Assumed:**

The applicable Real liabilities under the mortgages listed on schedule 1.6(a)(the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt*) assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6 (a) and obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations of seller other than the assumed liabilities.

**Excluded Liabilities:**

Seller’s accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3 (a) ) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the seller’s sole obligation and responsibility.

**Purchase Price:**

$141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.

**Purchase Price for this operation and real estate:**

$10,282,776 with $1,182,776 allocated to the operations purchase price and $9,100,000 allocated to the real estate purchase price.

**Payment of Purchase Price:**

Through three loans, one for $7,111,100 at 30 years at 5.5% interest, a subordinated loan for $2,396,918 at 10% for 7 years, and a loan for $774,758 for 7 years interest only.

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.
<table>
<thead>
<tr>
<th>CON</th>
<th>Applicant</th>
<th>Facility</th>
<th>Real Estate Purchase Price</th>
<th>Operations Purchase Price</th>
<th>Total Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>111467-E</td>
<td>4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst</td>
<td>Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood</td>
<td>$6,500,000</td>
<td>$3,383,566</td>
<td>$9,883,566</td>
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<tr>
<td>111468-E</td>
<td>2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island</td>
<td>Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood</td>
<td>$4,700,000</td>
<td>$2,951,514</td>
<td>$7,651,514</td>
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<tr>
<td>111470-E</td>
<td>5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg</td>
<td>Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood</td>
<td>$6,700,000</td>
<td>$4,094,870</td>
<td>$10,794,870</td>
</tr>
<tr>
<td>111462-E</td>
<td>1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster</td>
<td>Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood</td>
<td>$2,250,000</td>
<td>$1,423,042</td>
<td>$3,673,042</td>
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<tr>
<td>111456-E</td>
<td>4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool</td>
<td>Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood</td>
<td>N/A</td>
<td>$7,730,857</td>
<td>$7,730,857</td>
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<td>111469-E</td>
<td>225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga</td>
<td>Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood</td>
<td>$8,300,000</td>
<td>$1,660,484</td>
<td>$9,960,484</td>
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<tr>
<td>111466-E</td>
<td>2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield</td>
<td>Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood</td>
<td>$9,100,000</td>
<td>$1,182,776</td>
<td>$10,282,776</td>
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<tr>
<td>111463-E</td>
<td>200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville</td>
<td>Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood</td>
<td>$6,800,000</td>
<td>$5,271,383</td>
<td>$12,071,383</td>
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<tr>
<td>Facility Name</td>
<td>Purchase Price</td>
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<td>-----------------------</td>
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<td></td>
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<tr>
<td>Glenwood</td>
<td>$10,024,265</td>
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<td>Maplewood ALF</td>
<td>$7,028,868</td>
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<td>Rosewood</td>
<td>$8,337,181</td>
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<tr>
<td>Tioga ALF</td>
<td>$3,904,780</td>
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<td>Westwood</td>
<td>$14,494,740</td>
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<tr>
<td><strong>Total Adult Care Facilities Purchase Price</strong></td>
<td><strong>$43,789,834</strong></td>
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<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crestwood ILF</td>
<td>$12,590,237</td>
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<tr>
<td>Maplewood ILF</td>
<td>$4,993,149</td>
</tr>
<tr>
<td><strong>Total Independent Housing Facilities Purchase Price</strong></td>
<td><strong>$17,583,386</strong></td>
</tr>
</tbody>
</table>

### Total Purchase Price

- **Operations and Real Estate**
  - **Residential Health Care Facilities**: $80,126,780
  - **Adult Care Facilities**: $43,789,834
  - **Independent Housing Facilities**: $17,583,386
  - **Total Purchase Price**: $141,500,000

### Assignment Agreement

The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

- **Effective Date**: Upon CON Approval by DOH
- **Assignor**: Post Acute Partners Acquisition, LLC
- **Assignee**: 2600 Niagara Falls Boulevard, LLC
- **Operating Designee**: 2600 Niagara Falls Boulevard Operating Company, LLC, d/b/a Elderwood at Wheatfield
- **Assets Assigned**: Assignor’s right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.
- **Obligations Assigned**: Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed realty entities 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maelou Drive, LLC, 1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, 37 North Chemung Street, LLC, 2600 Niagara falls Boulevard, LLC and 4459 Bailey Avenue, LLC are as follows:
Proposed Members

<table>
<thead>
<tr>
<th>Name</th>
<th>Percentage Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warren Cole</td>
<td>50%</td>
</tr>
<tr>
<td>Dr. Jeffrey Rubin, D.D.S.</td>
<td>50%</td>
</tr>
</tbody>
</table>

**Lease Agreement and Medicaid Capital Reimbursement**

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

- **Effective Date:** Upon CON Approval by DOH
- **Premises:** A 160-bed RHCF located at 2600 Niagara Falls Boulevard, Niagara Falls (Niagara County)
- **Lessor:** 2600 Niagara Falls Boulevard, LLC
- **Lessee:** 2600 Niagara Falls Boulevard Operating Company, LLC, d/b/a Elderwood at Wheatfield
- **Term:** 10 years commencing on the execution of the lease with four (5 year extensions)
- **Annual Rental:** Lease payment is equivalent to the annual mortgage debt service for the facility, which is $1,066,845.
- **Type:** 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.

Currently, the facility Medicaid capital reimbursement is based on the return of and return on equity for recent improvements. This methodology will not be altered upon change in ownership.

**Operating Budget**

Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:

<table>
<thead>
<tr>
<th></th>
<th>Per Diem</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicare Fee For Service</td>
<td>$380.04</td>
<td>$2,797,094</td>
</tr>
<tr>
<td>Medicaid Fee For Service</td>
<td>$187.05</td>
<td>$7,393,742</td>
</tr>
<tr>
<td>Private Pay</td>
<td>$379.15</td>
<td>$3,407,790</td>
</tr>
<tr>
<td>Total Revenue</td>
<td></td>
<td>$13,598,625</td>
</tr>
</tbody>
</table>

| Expenses:              |          |             |
| Operating              |          | $11,758,573 |
| Capital                |          | $1,120,508  |
| Total Expense          |          | $12,879,081 |

Net Income $719,544

Utilization (Patient days) 55,877

Occupancy 95.68%

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

- Overall utilization is projected at 95.68%, which is consistent with historical. Utilization by payor source is expected as follows:
Medicaid 13.17%
Medicare 70.74%
Private Pay 16.09%

- Breakeven utilization is projected at 90.61%.

**Capability and Feasibility**

The purchase price and initiation of operations as a financially viable entity will be financed by a loan from Capital Funding, LLC of $7,111,100 at an interest rate of 5.50% for 30 years, with the remaining $2,396,918 from a subordination loan at an interest rate of 10% for 7 years, and $774,758 seller’s notes that is interest only.

Working capital requirements are estimated at $2,146,514, based on two months’ of first year expenses. $1,073,256 will be satisfied from the proposed member’s equity, and the remaining $1,073,256 will be satisfied through a loan from Capital Funding LLC at 5.00% over 5 years. A letter of interest has been supplied by Capital Funding LLC. Presented as BFA Attachment A, is the Net Worth of proposed members.

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 $719,544 would be maintained during the first year following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B, is the pro-forma balance sheet, which indicates positive members’ equity of $1,073,256 as of the first day of operations.

Following is a comparison of 2010 and projected revenue and expense:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual 2010 Income</td>
<td>$13,534,449</td>
</tr>
<tr>
<td>Annual 2010 Expense</td>
<td>13,024,695</td>
</tr>
<tr>
<td>Annual 2010 Net Income</td>
<td>$509,754</td>
</tr>
<tr>
<td>Projected incremental Income</td>
<td>$64,176</td>
</tr>
<tr>
<td>Projected incremental Expense</td>
<td>(145,614)</td>
</tr>
<tr>
<td>Projected incremental Net Income</td>
<td>$209,790</td>
</tr>
<tr>
<td>Incremental Net Income (Loss)</td>
<td>$719,544</td>
</tr>
</tbody>
</table>

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, Elderwood Health Care at Crestwood had an average positive working capital position and an average positive net asset position, and generated an average net income of $83,624 for the period 2008-2010. In 2009, the facility shows a loss; the loss is attributable to a reduction in private pay days from 2008 to 2009, which caused the reduction in revenue. In order to rectify this, the facility increased their admissions of Medicaid patients in order to address the decline in private pay admissions, which resulted in a positive net income for 2010.

Based on the preceding, and 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, contingent approval is recommended.
## Attachments

<table>
<thead>
<tr>
<th>Attachment A</th>
<th>Net Worth of Proposed Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attachment B</td>
<td>Pro-forma Balance Sheet</td>
</tr>
<tr>
<td>Attachment C</td>
<td>Financial Summary - Elderwood Health Care at Crestwood</td>
</tr>
<tr>
<td>Attachment D</td>
<td>Organizational Chart</td>
</tr>
<tr>
<td>Attachment E</td>
<td>Establishment Checklist</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish 2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield as the new operator of Elderwood Health Care at Crestwood, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:   FACILITY/APPLICANT:

111466-E   2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield
APPROVAL CONTINGENT UPON:

1. Submission of documentation of project completion of CON #111083-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant’s Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant’s Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant’s fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant’s fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant’s fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in “Whereas Clause D” of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]

19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]

20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]

21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299
Executive Summary

Description
4459 Bailey Avenue Operating Company, LLC, d/b/a Elderwood at Amherst, is seeking approval to be established as the new operator of Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood, an existing 92-bed residential health care facility (RHCF) located at 4459 Bailey Avenue, Amherst. Wedgewood SNF Property Company, LLC is the current realty owner. Ownership before and after the requested change is as follows:

<table>
<thead>
<tr>
<th>Operations:</th>
<th>Before</th>
<th>4459 Bailey Avenue Operating Company, LLC, d/b/a Elderwood Health Care at Wedgewood</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members</td>
<td>Interest</td>
<td></td>
</tr>
<tr>
<td>-- Robert M. Chur</td>
<td>66.00%</td>
<td></td>
</tr>
<tr>
<td>-- Carol Chur</td>
<td>25.00%</td>
<td></td>
</tr>
<tr>
<td>-- Carla Chur Suero</td>
<td>4.50%</td>
<td></td>
</tr>
<tr>
<td>-- Kelly Chur Henry</td>
<td>4.50%</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>After</th>
</tr>
</thead>
<tbody>
<tr>
<td>4459 Bailey Avenue Operating Company, LLC, d/b/a Elderwood at Wedgewood</td>
</tr>
<tr>
<td>Members</td>
</tr>
<tr>
<td>-- Warren Cole</td>
</tr>
<tr>
<td>-- Dr. Jeffrey Rubin, D.D.S.</td>
</tr>
</tbody>
</table>

Real Estate: Before
Wedgewood SNF Property Company, LLC

| Members     | Interest |
| -- Robert M. Chur | 65.25% |
| -- Carol L. Chur   | 24.75% |
| -- Carla Chur Suero | 4.50% |
| -- Kelly Chur Henry | 4.50% |
| -- Elderwood Properties, LLC | 1.00% |

<table>
<thead>
<tr>
<th>After</th>
</tr>
</thead>
<tbody>
<tr>
<td>4459 Bailey Avenue, LLC</td>
</tr>
<tr>
<td>Members</td>
</tr>
<tr>
<td>-- Warren Cole</td>
</tr>
<tr>
<td>-- Dr. Jeffrey Rubin, D.D.S.</td>
</tr>
</tbody>
</table>

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for-profit limited liability company, will be assigning its rights and title to both the operations and the real estate to 4459 Bailey Avenue Operating Company, LLC, d/b/a Elderwood at Wedgewood and 4459 Bailey Avenue, LLC, respectively.

DOH Recommendation
Contingent approval.

Need Summary
Elderwood Health Care at Wedgewood utilization for 2009 and 2010 was 94.2% and 95.1%, respectively. There will be no change in the beds or services of the Wedgewood Health Care Center facility as a result of this project.

Program Summary
Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

Financial Summary
There are no project costs associated with this proposal.

<table>
<thead>
<tr>
<th>Budget</th>
<th>Revenues: $8,749,674</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expenses: $7,866,882</td>
<td></td>
</tr>
<tr>
<td>Gain/(Loss): $882,792</td>
<td></td>
</tr>
</tbody>
</table>

Subject to 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; Architectural review is not required.
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 commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of an executed building lease that is acceptable to the Department. [BFA]
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15. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
17. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
19. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

Council Action Date
April 5, 2012.
## Need Analysis

### Background
4459 Bailey Avenue Operating Company, LLC, d/b/a Elderwood at Amherst, is seeking approval to be established as the new operator of Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood, an existing 92-bed residential health care facility (RHCF) located at 4459 Bailey Avenue, Amherst (Erie County), New York 14226.

There will be no change in the beds or services of the Elderwood Health Care at Wedgewood facility as a result of this project.

### Analysis

#### RHCF Bed Need – Erie County

<table>
<thead>
<tr>
<th></th>
<th>2016 Projected Need</th>
<th>2017 Projected Needs</th>
</tr>
</thead>
<tbody>
<tr>
<td>RHCF Bed Need</td>
<td>5,291</td>
<td>In▁K</td>
</tr>
<tr>
<td>Current Beds</td>
<td>6,225</td>
<td>6,225</td>
</tr>
<tr>
<td>Beds Under Construction</td>
<td>-332</td>
<td>0</td>
</tr>
<tr>
<td>Total Resources</td>
<td>5,893</td>
<td>5,893</td>
</tr>
<tr>
<td>Unmet Need</td>
<td>-602</td>
<td>-602</td>
</tr>
</tbody>
</table>

#### RHCF Occupancy

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elderwood Health Care at Wedgewood</td>
<td>95.40%</td>
<td>94.20%</td>
<td>95.10%</td>
</tr>
<tr>
<td>Elderwood Health Care at Lakewood</td>
<td>97.00%</td>
<td>97.00%</td>
<td>97.00%</td>
</tr>
<tr>
<td>Buffalo General Hospital Deaconess SNF Div</td>
<td>97.70%</td>
<td>98.20%</td>
<td>96.50%</td>
</tr>
<tr>
<td>Erie County Medical Center-SNF</td>
<td>94.50%</td>
<td>94.60%</td>
<td>94.10%</td>
</tr>
<tr>
<td>Mercy Hospital Skilled Nursing Facility</td>
<td>93.70%</td>
<td>99.80%</td>
<td>93.40%</td>
</tr>
<tr>
<td>Millard Fillmore Skilled Nursing Facility</td>
<td>98.00%</td>
<td>97.50%</td>
<td>97.70%</td>
</tr>
<tr>
<td>Niagara Lutheran Home &amp; Rehabilitation Center Inc</td>
<td>96.30%</td>
<td>96.90%</td>
<td>96.10%</td>
</tr>
<tr>
<td>Hawthorn Health Multicare Center for Living</td>
<td>90.80%</td>
<td>90.70%</td>
<td>90.50%</td>
</tr>
<tr>
<td>St Catherine Laboure Health Care Center</td>
<td>97.70%</td>
<td>99.00%</td>
<td>97.50%</td>
</tr>
<tr>
<td>Delaware Nursing &amp; Rehabilitation Center</td>
<td>88.10%</td>
<td>89.00%</td>
<td>87.80%</td>
</tr>
<tr>
<td>Harbour Health Multicare Center for Living</td>
<td>95.70%</td>
<td>97.70%</td>
<td>95.40%</td>
</tr>
<tr>
<td>Waterfront Health Care Center, Inc</td>
<td>98.90%</td>
<td>98.60%</td>
<td>98.70%</td>
</tr>
<tr>
<td>Ridge View Manor LLC</td>
<td>Did not report</td>
<td>Did not report</td>
<td></td>
</tr>
<tr>
<td>Sheridan Manor LLC</td>
<td>Did not report</td>
<td>Did not report</td>
<td></td>
</tr>
<tr>
<td>Mcauley Residence</td>
<td>95.70%</td>
<td>94.40%</td>
<td>95.40%</td>
</tr>
<tr>
<td>Schofield Residence</td>
<td>99.70%</td>
<td>99.00%</td>
<td>99.30%</td>
</tr>
<tr>
<td>Harris Hill Nursing Facility, LLC</td>
<td>98.50%</td>
<td>98.10%</td>
<td>97.90%</td>
</tr>
<tr>
<td>Elderwood Health Care at Linwood</td>
<td>98.50%</td>
<td>97.70%</td>
<td>98.20%</td>
</tr>
<tr>
<td>Erie County Home</td>
<td>97.60%</td>
<td>96.10%</td>
<td>97.40%</td>
</tr>
<tr>
<td>St Francis Home of Williamsville</td>
<td>90.60%</td>
<td>90.10%</td>
<td>90.30%</td>
</tr>
<tr>
<td>Elderwood Health Care at Oakwood</td>
<td>97.10%</td>
<td>96.60%</td>
<td>96.80%</td>
</tr>
<tr>
<td>Canterbury Woods</td>
<td>95.80%</td>
<td>86.70%</td>
<td>95.50%</td>
</tr>
<tr>
<td>Williamsville Suburban LLC</td>
<td>Did not report</td>
<td>Did not report</td>
<td>Did not report</td>
</tr>
<tr>
<td>Absolut Center for Nursing and Rehabilitation at</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aurora Park, LLC</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jennie B Richmond Chaffee Nursing Home Company Inc</td>
<td>96.00%</td>
<td>95.90%</td>
<td>Did not report</td>
</tr>
<tr>
<td>Fiddlers Green Manor Nursing Home</td>
<td>91.80%</td>
<td>94.30%</td>
<td>91.50%</td>
</tr>
<tr>
<td>Autumn View Health Care Facility, LLC</td>
<td>97.60%</td>
<td>97.20%</td>
<td>97.30%</td>
</tr>
<tr>
<td>Father Baker Manor</td>
<td>93.40%</td>
<td>95.20%</td>
<td>93.20%</td>
</tr>
<tr>
<td>Absolut Center for Nursing and Rehabilitation at</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Orchard Park, LLC</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fox Run at Orchard Park</td>
<td>39.50%</td>
<td>Did not report</td>
<td>39.40%</td>
</tr>
<tr>
<td>Rosa Coplon Jewish Home and Infirmary</td>
<td>96.90%</td>
<td>95.40%</td>
<td>96.70%</td>
</tr>
</tbody>
</table>
Elderwood Health Care Wedgewood did not meet the 97% planning optimum for either year in question 2009 or 2010.

**Conclusion**
The acquisition of Wedgewood Health Care Center by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

**Recommendation**
From a need perspective, approval is recommended.

### Programmatic Analysis

#### Facility Information

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Existing</th>
<th>Proposed</th>
</tr>
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<tbody>
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<td>Carla Suero 4.5%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kelly Henry 4.5%</td>
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#### Character and Competence

- **FACILITIES REVIEWED:**
  - ACU-acute care/hospital
  - ALF-assisted living facility
  - HHA-home health agency
  - HOM-homecare
  - ICF-intermediate care facility/group home
  - IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
  - LTA-long term acute care hospital (similar to TCU)
  - RX-pharmacy
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Pediatric Specialty Care at Lancaster     PED ICF   2/2011-present
Pediatric Specialty Care at Point Pleasant    PED ICF   2/2011-present
Pediatric Specialty Care at Quakertown    PED ICF    2/2011-present
Presque Isle Rehabilitation & Nursing Center    SNF    10/2006-10/2009
Senior Living of Lancaster    HOM    2/2011-present
The Rehabilitation & Nursing Center at Greater Pittsburg    SNF    10/2006-10/2009

Puerto Rico
Medicare Y Mucho Mas*    Medicare

Rhode Island
Scallop Shell Nursing & Rehabilitation Center    SNF    12/2010-present

Virginia
Care Alternatives of Virginia*    HOS    4/2002-10/2009
Colonial Heights Health Care Center*    SNF    4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*    SNF    4/2002-10/2009
Hopewell Health Care Center*    SNF    4/2002/10/2009
Partners Pharmacy of Virginia*    RX    4/2002-10/2009
Valley Health Care Center*    SNF/ALF    4/2002-10/2009
Westport Health Care Center*    SNF    4/2002-10/2009

Individual Background Review

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millenium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

Character and Competence – Analysis:
No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.
For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator’s track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

_During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …_

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

- Danbury Health Care Center
- Darien Health Care Center
- Long Ridge of Stamford
- Newington Health Care Center
- West River Health Care Center
- Westport Health Care Center
- Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.
A review of the **New Jersey** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **North Carolina** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Ohio** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Pennsylvania** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the **Puerto Rico** health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Rhode Island** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Virginia** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department’s standards for analysis, of the applicants’ operation of 35 facilities in five different states. However, it should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

**Project Review**

There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

**Recommendation**

*From a programmatic perspective, approval is recommended.*

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**Financial Analysis**

**Background**

The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies, and related real property companies acquisition, involving Wedgewood Health Care Center, Inc., the operator, and Wedgewood SNF Property Company LLC, the owner of the realty and the proposed new owner/operator Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company, which will be assigning its right and title to the operations and the real estate to 4459 Bailey Avenue Operating Company, LLC, d/b/a Elderwood at Wedgewood and 4459 Bailey Avenue, LLC respectively.

The five adult care facilities will be reviewed by the Division of Long Term Care and therefore, are being reviewed separately from the nursing home application. The independent housing companies as well, are not being addressed in these reviews. The information provided regarding the independent housing companies is to delineate them from the total project cost for the overall application.
The proposed members are also seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition, through the applications listed below:

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<td>111470-E</td>
<td>5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg</td>
<td>Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood</td>
<td>166</td>
</tr>
<tr>
<td>111469-E</td>
<td>225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga</td>
<td>Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood</td>
<td>170</td>
</tr>
<tr>
<td>111471-E</td>
<td>37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly</td>
<td>Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga</td>
<td>200</td>
</tr>
<tr>
<td>111466-E</td>
<td>2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield</td>
<td>Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood</td>
<td>160</td>
</tr>
<tr>
<td>111463-E</td>
<td>200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville</td>
<td>Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood</td>
<td>200</td>
</tr>
</tbody>
</table>

The applicant has provided an affidavit, which states that 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 the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

All nine applications will be processed concurrently.

**Asset Purchase Agreement**

The change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreement, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company and related real property companies acquisition.

**Date:** February 25, 2011


Purchaser: L.P., Tioga Property Company North, LLC
Post Acute Partners Acquisition, LLC

Purchased Assets: All right, title and interest of the above operations and Woodmark Services, Inc. in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically ”Elderwood” and “Elderwood Senior Care” and the service mark “Care Without Compromise”; all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller’s financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.

Excluded Assets: The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names “Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood” and “Elderwood Assisted Living at Penfield, LLC” and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller’s corporate offices, located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller’s bank accounts, cash, cash equivalents and securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller’s rights and benefits under this agreement; seller’s organizational documents relating solely to the existence of each of the entities comprising seller as separate legal entity; seller’s right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records’ seller’s general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.

Liabilities Assumed: The applicable Real liabilities under the mortgages listed on schedule 1.6(a) (the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt”) assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6 (a) and obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations
of seller other than the assumed liabilities.

**Excluded Liabilities:** Seller’s accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3 (a) ) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the seller’s sole obligation and responsibility.

**Purchase Price:** $141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.

**Purchase Price for this operation and real estate:** $9,883,566 with $3,383,566 allocated to the operations purchase price and $6,500,000 allocated to the real estate purchase price.

**Payment of Purchase Price:** Through three loans one for $8,444,400 at 30 years at 5.5% interest, a subordinated loan for $1,087,615 at 10% for 7 years, and a loan for $351,551 for 7 years interest only.

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.

### Residential Health Care Facilities

<table>
<thead>
<tr>
<th>CON</th>
<th>Applicant</th>
<th>Facility</th>
<th>Real Estate Purchase Price</th>
<th>Operations Purchase Price</th>
<th>Total Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>111467-E</td>
<td>4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst</td>
<td>Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood</td>
<td>$6,500,000</td>
<td>$3,383,566</td>
<td>$9,883,566</td>
</tr>
<tr>
<td>111468-E</td>
<td>2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island</td>
<td>Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood</td>
<td>$4,700,000</td>
<td>$2,951,514</td>
<td>$7,651,514</td>
</tr>
<tr>
<td>111470-E</td>
<td>5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg</td>
<td>Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood</td>
<td>$6,700,000</td>
<td>$4,094,870</td>
<td>$10,794,870</td>
</tr>
<tr>
<td>111462-E</td>
<td>1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster</td>
<td>Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood</td>
<td>$2,250,000</td>
<td>$1,423,042</td>
<td>$3,673,042</td>
</tr>
<tr>
<td>Project</td>
<td>Address</td>
<td>Operating Company, LLC d/b/a</td>
<td>Residential Health Care Facilities</td>
<td>Purchase Price</td>
<td>Total Residential Health Care Facilities</td>
</tr>
<tr>
<td>---------</td>
<td>---------------------------------------------</td>
<td>------------------------------</td>
<td>----------------------------------</td>
<td>----------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>111456-E</td>
<td>4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool</td>
<td>Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood</td>
<td>N/A</td>
<td>$7,730,857</td>
<td>$7,730,857</td>
</tr>
<tr>
<td>111469-E</td>
<td>225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga</td>
<td>Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood</td>
<td>$8,300,000</td>
<td>$1,660,484</td>
<td>$9,960,484</td>
</tr>
<tr>
<td>111466-E</td>
<td>2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield</td>
<td>Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood</td>
<td>$9,100,000</td>
<td>$1,182,776</td>
<td>$10,282,776</td>
</tr>
<tr>
<td>111463-E</td>
<td>200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville</td>
<td>Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood</td>
<td>$6,800,000</td>
<td>$5,271,383</td>
<td>$12,071,383</td>
</tr>
<tr>
<td>111471-E</td>
<td>37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly</td>
<td>Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga</td>
<td>$5,400,000</td>
<td>$2,678,288</td>
<td>$8,078,288</td>
</tr>
</tbody>
</table>

**Total Residential Health Care Facilities** | $49,750,000 | $30,376,780 | $80,126,780 |

**Adult Care Facilities**

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glenwood</td>
<td>$10,024,265</td>
</tr>
<tr>
<td>Maplewood ALF</td>
<td>$7,028,868</td>
</tr>
<tr>
<td>Rosewood</td>
<td>$8,337,181</td>
</tr>
<tr>
<td>Tioga ALF</td>
<td>$3,904,780</td>
</tr>
<tr>
<td>Westwood</td>
<td>$14,494,740</td>
</tr>
</tbody>
</table>

**Total Adult Care Facilities Purchase Price** | $43,789,834 |

**Independent Housing Facilities**

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crestwood ILF</td>
<td>$12,590,237</td>
</tr>
<tr>
<td>Maplewood ILF</td>
<td>$4,993,149</td>
</tr>
</tbody>
</table>

**Total Independent Housing Facilities Purchase Price** | $17,583,386 |

**Total Purchase Price**

<table>
<thead>
<tr>
<th>Operations and Real Estate</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Health Care Facilities</td>
<td>$80,126,780</td>
</tr>
</tbody>
</table>
Assignment Agreement

The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

**Effective Date:** Upon CON Approval by DOH

**Assignor:** Post Acute Partners Acquisition, LLC

**Assignee:** 4459 Bailey Avenue, LLC

**Operating Designee:** 4459 Bailey Avenue Operating Company, LLC, d/b/a Elderwood at Wedgewood

**Assets Assigned:** Assignor’s right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.

**Obligations Assigned:** Assumess all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed reality entities 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maelou Drive, LLC, 1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, 37 North Chemung Street, LLC, 2600 Niagara Falls Boulevard, LLC and 4459 Bailey Avenue, LLC are as follows:

<table>
<thead>
<tr>
<th>Proposed Members</th>
<th>Percentage Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warren Cole</td>
<td>50%</td>
</tr>
<tr>
<td>Dr. Jeffrey Rubin, D.D.S.</td>
<td>50%</td>
</tr>
</tbody>
</table>

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

**Date:** Upon CON Approval by DOH

**Premises:** A 92-bed RHCF located at 4459 Bailey Avenue, Amherst, NY (Erie County)

**Lessor:** 4459 Bailey Avenue, LLC

**Lessee:** 4459 Bailey Avenue Operating Company, LLC, d/b/a Elderwood at Wedgewood

**Term:** 10 years commencing on the execution of the lease with 4 additional (5 years extensions)

**Annual Rental:** Lease payment is equivalent to the annual mortgage debt service for the facility, which is $843,093.

**Type:** 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.

Currently, the facility Medicaid capital reimbursement is based on the return of and return on equity for recent improvements. This methodology will not be altered upon change in ownership.

Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:

<table>
<thead>
<tr>
<th>Revenues:</th>
<th>Per Diem</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicare Fee For Service</td>
<td>$370.15</td>
<td>$2,489,614</td>
</tr>
<tr>
<td>Medicaid Fee For Service</td>
<td>$198.22</td>
<td>$2,773,616</td>
</tr>
</tbody>
</table>
Private Pay $320.24 $3,486,444
Total Revenue $8,749,674

Expenses:
Operating $6,991,010
Capital $875,872
Total Expense $7,866,882

Net Income $882,792

Utilization (Patient days) 31,606
Occupancy 94.12%

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

- Overall utilization is projected at 94.12%, which is consistent with historical. Utilization by payor source is expected as follows:
  
  Medicaid 44.27%
  Medicare 21.28%
  Private Pay 34.45%

- Breakeven utilization is projected at 84.63%.

**Capability and Feasibility**

The purchase price and initiation of operations, as a financially viable entity, will be financed by a loan from Capital Funding, LLC of $8,444,400 at an interest rate of 5.50% for 30 years, with the remaining $1,087,615 from a subordination loan at an interest rate of 10% for 7 years and $351,551 seller’s notes that is interest only.

Working capital requirements are estimated at $1,311,147, based on two months’ of first year expenses. $655,564 will by satisfied from the proposed member’s equity and the remaining $655,583 will be satisfied through a loan from Capital Funds, LLC at 5.00% over 5 years. A letter of interest has been supplied by Capital Funds, LLC. Presented as BFA Attachment A, is the Net Worth of proposed members.

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 $882,792 would be maintained during the first year following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B is the pro-forma balance sheet of 4459 Bailey Avenue Operating Company, LLC, d/b/a Elderwood at Wedgewood, which indicates positive members’ equity of $655,564 as of the first day of operations.

Following is a comparison of 2010 and projected revenue and expense:

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>Projected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual 2010 Income</td>
<td>$8,523,084</td>
<td></td>
</tr>
<tr>
<td>Annual 2010 Expense</td>
<td>7,704,367</td>
<td></td>
</tr>
<tr>
<td>Annual 2010 Net Income</td>
<td>818,717</td>
<td></td>
</tr>
<tr>
<td>Projected incremental Income</td>
<td></td>
<td>$226,590</td>
</tr>
<tr>
<td>Projected incremental Expense</td>
<td></td>
<td>162,515</td>
</tr>
<tr>
<td>Projected incremental Net Income</td>
<td></td>
<td>64,075</td>
</tr>
<tr>
<td>Incremental Net Income (Loss)</td>
<td></td>
<td>882,792</td>
</tr>
</tbody>
</table>
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 expenses, expenses at budgeted occupancy, and the difference between current year and projected levels.

As shown on BFA Attachment C Elderwood Health Care at Wedgewood, had an average positive working capital position and an average positive net asset position, and generated an average net Income of $760,381 for the period 2008-2010.

Based on the preceding, and 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, contingent approval is recommended.

### Attachments

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>Net Worth of Proposed Members</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Pro-forma Balance Sheet</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Financial Summary - Elderwood Health Care at Wedgewood</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>Organizational Chart</td>
</tr>
<tr>
<td>BFA Attachment E</td>
<td>Establishment Checklist</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish 4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst as the new operator of Elderwood Health Care at Amherst, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: 111467-E
FACILITY/APPLICANT: 4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst
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 commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of an executed building lease that is acceptable to the Department. [BFA]
4. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
5. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
6. Submission of photocopies of the applicant’s Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant’s Articles of Organization, which must be acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant’s fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant’s fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant’s fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
10. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
12. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in “Whereas Clause D” of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
17. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]

18. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]

19. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]

20. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299
Public Health and Health Planning Council

Project # 111468-E
2850 Grand Island Boulevard Operating Company, LLC
d/b/a Elderwood at Grand Island

County: Erie (Grand Island)  Program: Residential Health Care Facility
Purpose: Establishment  Submitted: May 29, 2011

Executive Summary

Description
2850 Grand Island Boulevard Operating Company, LLC, d/b/a Elderwood at Grand Island, is seeking approval to be established as the new operator of Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood, an existing 90-bed RHCF located at 2850 Grand Island Boulevard, Grand Island. Riverwood Property Associates, LP is the current realty owner. Ownership before and after the requested change is as follows:

<table>
<thead>
<tr>
<th>Operations:</th>
<th>Before</th>
</tr>
</thead>
<tbody>
<tr>
<td>Riverwood Health Care Center, Inc.</td>
<td>d/b/a Elderwood Health Care at Riverwood</td>
</tr>
<tr>
<td>Members</td>
<td>Interest</td>
</tr>
<tr>
<td>-- Robert M. Chur</td>
<td>66.00%</td>
</tr>
<tr>
<td>-- Carol Chur</td>
<td>25.00%</td>
</tr>
<tr>
<td>-- Carla Chur Suero</td>
<td>4.50%</td>
</tr>
<tr>
<td>-- Kelly Chur Henry</td>
<td>4.50%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>After</th>
</tr>
</thead>
<tbody>
<tr>
<td>2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island</td>
</tr>
<tr>
<td>Members</td>
</tr>
<tr>
<td>-- Warren Cole</td>
</tr>
<tr>
<td>-- Dr. Jeffrey Rubin, D.D.S.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Real Estate:</th>
<th>Before</th>
</tr>
</thead>
<tbody>
<tr>
<td>Riverwood Property Associates, L.P.</td>
<td></td>
</tr>
<tr>
<td>Members</td>
<td>Interest</td>
</tr>
<tr>
<td>-- Robert M. Chur</td>
<td>65.25%</td>
</tr>
<tr>
<td>-- Carol L. Chur</td>
<td>24.75%</td>
</tr>
<tr>
<td>-- Carla Chur Suero</td>
<td>4.50%</td>
</tr>
<tr>
<td>-- Kelly Chur Henry</td>
<td>4.50%</td>
</tr>
<tr>
<td>-- Elderwood Properties, LLC</td>
<td>1.00%</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>After</th>
</tr>
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<tbody>
<tr>
<td>Post Acute Partner Acquisition, LLC</td>
</tr>
<tr>
<td>Members</td>
</tr>
<tr>
<td>-- Warren Cole</td>
</tr>
<tr>
<td>-- Dr. Jeffrey Rubin, D.D.S.</td>
</tr>
</tbody>
</table>

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for-profit limited liability company, is the parent entity for this ultimate transaction.

DOH Recommendation
Contingent approval.

Need Summary
Elderwood Health Care at Riverwood's utilization for 2009 and 2010 was 98.7% and 97.2%, respectively. There will be no change in the beds or services of the Elderwood Health Care at Riverwood facility as a result of this project.

Program Summary
Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

Financial Summary
There are no project costs associated with this proposal.

Budget:
Revenues: $ 7,396,826
Expenses: 7,020,333
Gain/(Loss): $ 376,493

Subject to 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; Architectural review is not 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 commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of an executed building lease that is acceptable to the Department. [BFA]
4. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
5. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
6. Submission of photocopies of the applicant’s Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant’s Articles of Organization, which must be acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant’s fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant’s fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant’s fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
10. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
12. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in “Whereas Clause D” of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
17. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
19. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

Council Action Date
April 5, 2012.
Need Analysis

Background
2850 Grand Island Boulevard Operating Company, LLC, d/b/a Elderwood at Grand Island, is seeking approval to be established as the new operator of Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood, an existing 90-bed RHCF located at 2850 Grand Island Boulevard, Grand Island (Erie County).

There will be no change in the beds or services of the Elderwood Health Care at Riverwood facility as a result of this project.

Analysis

### RHCF Bed Need – Erie County

<table>
<thead>
<tr>
<th></th>
<th>2016 Projected Need</th>
<th>Current Beds</th>
<th>Beds Under Construction</th>
<th>Total Resources</th>
<th>Unmet Need</th>
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</thead>
<tbody>
<tr>
<td>Elderwood Health Care at Riverwood</td>
<td>5,291</td>
<td>6,225</td>
<td>- 332</td>
<td>5,893</td>
<td>- 602</td>
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### RHCF Occupancy

<table>
<thead>
<tr>
<th>RHCF Name</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elderwood Health Care at Riverwood</td>
<td>97.50%</td>
<td>98.70%</td>
<td>97.20%</td>
</tr>
<tr>
<td>Elderwood Health Care at Lakewood</td>
<td>97.00%</td>
<td>97.00%</td>
<td>97.00%</td>
</tr>
<tr>
<td>Buffalo General Hospital Deaconess SNF Div</td>
<td>97.70%</td>
<td>98.20%</td>
<td>96.50%</td>
</tr>
<tr>
<td>Erie County Medical Center-SNF</td>
<td>94.50%</td>
<td>94.60%</td>
<td>94.10%</td>
</tr>
<tr>
<td>Mercy Hospital Skilled Nursing Facility</td>
<td>93.70%</td>
<td>99.80%</td>
<td>93.40%</td>
</tr>
<tr>
<td>Millard Fillmore Skilled Nursing Facility</td>
<td>98.00%</td>
<td>97.50%</td>
<td>97.70%</td>
</tr>
<tr>
<td>Niagara Lutheran Home &amp; Rehabilitation Center Inc</td>
<td>96.30%</td>
<td>96.90%</td>
<td>96.10%</td>
</tr>
<tr>
<td>Hawthorn Health Multicare Center for Living</td>
<td>90.80%</td>
<td>90.70%</td>
<td>90.50%</td>
</tr>
<tr>
<td>St Catherine Laboure Health Care Center</td>
<td>97.70%</td>
<td>99.00%</td>
<td>97.50%</td>
</tr>
<tr>
<td>Delaware Nursing &amp; Rehabilitation Center</td>
<td>88.10%</td>
<td>89.00%</td>
<td>87.80%</td>
</tr>
<tr>
<td>Harbour Health Multicare Center for Living</td>
<td>95.70%</td>
<td>97.70%</td>
<td>95.40%</td>
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<tr>
<td>Waterfront Health Care Center, Inc</td>
<td>98.90%</td>
<td>98.60%</td>
<td>98.70%</td>
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<tr>
<td>Ridge View Manor LLC</td>
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<td>Did not report</td>
</tr>
<tr>
<td>Sheridan Manor LLC</td>
<td>Did not report</td>
<td>Did not report</td>
<td>Did not report</td>
</tr>
<tr>
<td>Mcauley Residence</td>
<td>95.70%</td>
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<td>95.40%</td>
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<tr>
<td>Schofield Residence</td>
<td>99.70%</td>
<td>99.00%</td>
<td>99.30%</td>
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<tr>
<td>Harris Hill Nursing Facility, LLC</td>
<td>98.50%</td>
<td>98.10%</td>
<td>97.90%</td>
</tr>
<tr>
<td>Elderwood Health Care at Linwood</td>
<td>98.50%</td>
<td>97.70%</td>
<td>98.20%</td>
</tr>
<tr>
<td>Erie County Home</td>
<td>97.60%</td>
<td>96.10%</td>
<td>97.40%</td>
</tr>
<tr>
<td>St Francis Home of Williamsville</td>
<td>90.60%</td>
<td>90.10%</td>
<td>90.30%</td>
</tr>
<tr>
<td>Elderwood Health Care at Oakwood</td>
<td>97.10%</td>
<td>96.60%</td>
<td>96.80%</td>
</tr>
<tr>
<td>Canterbury Woods</td>
<td>95.80%</td>
<td>86.70%</td>
<td>95.50%</td>
</tr>
<tr>
<td>Williamsville Suburban LLC</td>
<td>Did not report</td>
<td>Did not report</td>
<td>Did not report</td>
</tr>
<tr>
<td>Absolut Center for Nursing and Rehabilitation at Aurora, LLC</td>
<td>92.00%</td>
<td>90.50%</td>
<td>91.70%</td>
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<tr>
<td>Jennie B Richmond Chaffee Nursing Home Company Inc</td>
<td>96.00%</td>
<td>95.90%</td>
<td>Did not report</td>
</tr>
<tr>
<td>Fiddlers Green Manor Nursing Home</td>
<td>91.80%</td>
<td>94.30%</td>
<td>91.50%</td>
</tr>
<tr>
<td>Autumn View Health Care Facility, LLC</td>
<td>97.60%</td>
<td>97.20%</td>
<td>97.30%</td>
</tr>
<tr>
<td>Father Baker Manor</td>
<td>93.40%</td>
<td>95.20%</td>
<td>93.20%</td>
</tr>
<tr>
<td>Absolut Center for Nursing and Rehabilitation at Orchard Park, LLC</td>
<td>94.60%</td>
<td>96.30%</td>
<td>94.30%</td>
</tr>
<tr>
<td>Fox Run at Orchard Park</td>
<td>39.50%</td>
<td>Did not report</td>
<td>39.40%</td>
</tr>
<tr>
<td>Rosa Coplon Jewish Home and Infirmary</td>
<td>96.90%</td>
<td>95.40%</td>
<td>96.70%</td>
</tr>
<tr>
<td>Elderwood Health Care at Wedgewood</td>
<td>95.40%</td>
<td>94.20%</td>
<td>95.10%</td>
</tr>
</tbody>
</table>
Elderwood Health Care at Riverwood exceeded the 97% planning optimum for 2008, 2009, and 2010.

**Conclusion**
The acquisition of Elderwood Health Care at Riverwood by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

**Recommendation**
From a need perspective, approval is recommended.

### Programmatic Analysis

#### Facility Information

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility Name</td>
<td>Elderwood Health Care at Riverwood</td>
<td>Elderwood at Grand Island</td>
</tr>
<tr>
<td>Address</td>
<td>2850 Grand Island Boulevard</td>
<td>same</td>
</tr>
<tr>
<td>RHCF Capacity</td>
<td>90</td>
<td>90</td>
</tr>
<tr>
<td>ADHC Program Capacity</td>
<td>N/A</td>
<td>same</td>
</tr>
<tr>
<td>Type Of Operator</td>
<td>Corporation</td>
<td>Limited Liability Company</td>
</tr>
<tr>
<td>Class Of Operator</td>
<td>Proprietary</td>
<td>same</td>
</tr>
<tr>
<td>Operator</td>
<td>Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood</td>
<td>2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island</td>
</tr>
<tr>
<td>Stockholders</td>
<td>Robert M. Chur 66%</td>
<td>Members</td>
</tr>
<tr>
<td></td>
<td>Carol L. Chur 25%</td>
<td>Warren Cole 50%</td>
</tr>
<tr>
<td></td>
<td>Carla Suero 4.5%</td>
<td>Jeffrey Rubin 50%</td>
</tr>
<tr>
<td></td>
<td>Kelly Henry 4.5%</td>
<td></td>
</tr>
</tbody>
</table>

#### Character and Competence

- **FACILITIES REVIEWED:**
  - ACU-acute care/hospital
  - ALF-assisted living facility
  - HHA-home health agency
  - HOM-homecare
  - HOS-hospice
  - ICF-intermediate care facility/group home
  - IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
  - LTA-long term acute care hospital (similar to TCU)
  - RX-pharmacy
  - SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)
### Alabama

*Laurelton Rehabilitation and Nursing Center*  
**SNF**  
10/2006 to 5/2008

### California

- **San Joaquin Valley Rehabilitation Hospital**  
  Hospital  
  7/2004-7/2004
- **Kenfield Rehabilitation Hospital**  
  Hospital  
  8/2003-7/2004
- **Care Alternatives of California**  
  Hospice  
  2003-10/2009

### Colorado

- **North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)**  
  ACU-PSYCH  
  7/2003-8/2004
- **North Valley Rehabilitation Hospital (Vibra LTACH)**  
  LTA  
  7/2003-8/2004
- **North Valley Rehabilitation Hospital (Vista View Care Center)**  
  SNF  
  7/2003-8/2004

### Connecticut

- **Danbury Health Care Center**  
  SNF  
  8/2003-10/2009
- **Darien Health Care Center**  
  SNF  
  8/2003-10/2009
- **Golden Hill Health Care Center**  
  SNF  
  8/2003-10/2009
- **Long Ridge of Stamford**  
  SNF  
  8/2003-10/2009
- **Newington Health Care Center**  
  SNF  
  8/2003-10/2009
- **Partners Pharmacy of Connecticut**  
  RX  
  2003-10/2009
- **River Glen Health Care Center (a/k/a Southbury HCC)**  
  SNF  
  8/2003-10/2009
- **The Highlands Health Care Center**  
  SNF  
  8/2003-10/2009
- **West River Health Care Center (a/k/a Milford North HCC)**  
  SNF  
  8/2003-10/2009
- **Westport Health Care Center**  
  SNF  
  8/2003-10/2009
- **Wethersfield Health Care Center**  
  SNF  
  8/2003-10/2009

### Kansas

- **Care Alternatives of Kansas**  
  HOS  
  2004-10/2009

### Kentucky

- **Southern Kentucky Rehabilitation Hospital**  
  IRF  

### Maryland

- **Montgomery Village Health Care Center**  
  SNF  
  2003-10/2009

### Massachusetts

- **Brookline Health Care Center**  
  SNF  
  8/2003-10/2009
- **Calvin Coolidge Nursing & Rehab Center for Northampton**  
  SNF  
  8/2003-10/2009
- **Care Alternatives of Massachusetts**  
  HOS  
  2005-10/2009
- **Concord Health Care Center**  
  SNF  
  8/2003-10/2009
- **Essex Park Rehabilitation & Nursing Center**  
  SNF  
- **Holyoke Health Care Center**  
  SNF  
  8/2003-10/2009
- **Lexington Health Care Center**  
  SNF  
  8/2003-10/2009
- **Lowell Health Care Center**  
  SNF  
  8/2003-10/2009
- **Millbury Health Care Center**  
  SNF  
  8/2003-10/2009
- **New Bedford Health Care Center**  
  SNF  
  8/2003-10/2009
- **New Bedford Rehabilitation Hospital**  
  IRF  
  7/2003-8/2004
- **Newton Health Care Center**  
  SNF  
  8/2003-10/2009
- **North Shore Health Care Center**  
  SNF  
  8/2003-10/2009
- **Partners Pharmacy of Massachusetts**  
  RX  
  2004-10/2009
- **Peabody Glen Health Care Center**  
  SNF  
  8/2003-10/2009
- **Redstone Health Care Center (a/k/a East Longmeadow HCC)**  
  SNF  
  8/2003-10/2009
- **Weymouth Health Care Center**  
  SNF  
  8/2003-10/2009
- **Wilmington Health Care Center**  
  SNF  
  8/2003-10/2009

### Michigan

- **Grand Blanc Rehabilitation & Nursing Center**  
  SNF  
  10/2006-10/2009
Missouri
Care Alternatives of Missouri    HOS   2003-10/2009
Cliffview at Riverside Rehab & Nursing Center    SNF   10/2006-5/2008
Partners Pharmacy of Missouri*    RX   2003-10/2009

New Jersey
Bergen Care Home Health    HHA   2007-10/2009
Bergen Care Personal Touch    HOM   2007-10/2009
Care Alternatives of New Jersey    HOS   2001-10/2009
Care One at Dunroven    SNF   2001-10/2009
Care One at East Brunswick    SNF   2/2002-10/2009
Care One at Evesham    SNF   8/2000-10/2009
Care One at Evesham Assisted Living    ALF   10/2007-10/2009
Care One at Ewing    SNF   11/2004-10/2009
Care One at Hamilton    SNF   5/2002-10/2009
Care One at Holmdel    SNF   8/1997-10/2009
Care One at Jackson (a/k/a Jackson HCC)    SNF   2004-10/2009
Care One at King James    SNF   2003-10/2009
Care One at Livingston    SNF   10/2002-10/2009
Care One at Livingston Assisted Living    ALF   9/2005-10/2009
Care One at Madison Avenue    SNF   1/2005-10/2009
Care One at Moorestown    SNF   9/2003-10/2009
Care One at Harmony Village at Moorestown    ALF   8/2003-10/2009
Care One at Morris    SNF   8/2001-10/2009
Care One at Morris Assisted Living    ALF   3/2003-10/2009
Care One at Pine Rest    SNF   2001-10/2009
Care One at Raritan Bay MC    LTA   3/2004-10/2009
Care One Harmony Village at Moorestown    SNF   9/2003-10/2009
Care One at Teaneck    SNF   4/2007-10/2009
Care One at The Cupola    SNF   2001-10/2009
Care One at The Highlands    SNF   2001-10/2009
Care One at Valley    SNF   2001-10/2009
Care One at Wall    SNF   9/2004-10/2009
Care One at Wayne    SNF/ALF   6/2002-10/2009
Care One at Wellington    SNF   6/2002-10/2009
Marlton Rehabilitation Hospital    IRF   5/2003-7/2004
Oradell Health Care Center    SNF   2003-10/2009
Partners Pharmacy of New Jersey    RX   2001-10/2009
Somerset Valley Rehabilitation & Nursing Center    SNF   10/2009-10/2009
South Jersey Health Care Center    SNF   2003-10/2009
Woodcrest Health Care Center    SNF   2003-10/2009

North Carolina
Blue Ridge Health Care Center    SNF   8/2002-10/2009

Ohio
Bellbrook Health Care Center    SNF   2003-10/2009
The Rehabilitation & Nursing Center at Elm Creek    SNF   10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands    SNF   10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek    SNF   10/2006-10/2009

Pennsylvania
Care Alternatives of Pennsylvania    HOS   2003-10/2009
Pediatric Specialty Care at Doylestown    SNF   2/2011-present
Pediatric Specialty Care at Hopewell    PED ICF   2/2011-present
Pediatric Specialty Care at Lancaster    PED ICF   2/2011-present
Pediatric Specialty Care at Point Pleasant    PED ICF   2/2011-present
Pediatric Specialty Care at Quakertown    PED ICF   2/2011-present
Individual Background Review

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millenium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

Character and Competence – Analysis:
No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator’s track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:
During the applicable period identified..., the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period..., the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities...

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the Alabama facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the California facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the Colorado facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Connecticut facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

- Danbury Health Care Center
- Darien Health Care Center
- Long Ridge of Stamford
- Newington Health Care Center
- West River Health Care Center
- Westport Health Care Center
- Wethersfield Health Care Center

A review of the Kansas facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Kentucky facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Maryland facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the Massachusetts facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the Missouri facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the New Jersey facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the North Carolina facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.
A review of the Ohio facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Pennsylvania facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the Puerto Rico health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the Rhode Island facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Virginia facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department’s standards for analysis, of the applicants’ operation of 35 facilities in five different states. However, it should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

Project Review
There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Background
The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies, and related real property companies acquisition, involving Riverwood Health Care Center, Inc., the operator, and Riverwood Property Associates, LP, the owner of the realty and the proposed new owner/operator Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company that is the parent entity for this ultimate transaction.

The five adult care facilities will be reviewed by the Division of Long Term Care and therefore, are being reviewed separately from the nursing home application. The independent housing companies as well, are not being addressed in these reviews. The information provided regarding the independent housing companies is to delineate them from the total project cost for the overall application.
The proposed members are also seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition, through the applications listed below:

<table>
<thead>
<tr>
<th>CON</th>
<th>Applicant</th>
<th>Facility</th>
<th>Beds</th>
</tr>
</thead>
<tbody>
<tr>
<td>111456-E</td>
<td>4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool</td>
<td>Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood</td>
<td>160</td>
</tr>
<tr>
<td>111462-E</td>
<td>1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster</td>
<td>Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood</td>
<td>94</td>
</tr>
<tr>
<td>111467-E</td>
<td>4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst</td>
<td>Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood</td>
<td>92</td>
</tr>
<tr>
<td>111470-E</td>
<td>5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg</td>
<td>Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood</td>
<td>166</td>
</tr>
<tr>
<td>111469-E</td>
<td>225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga</td>
<td>Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood</td>
<td>170</td>
</tr>
<tr>
<td>111471-E</td>
<td>37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly</td>
<td>Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga</td>
<td>200</td>
</tr>
<tr>
<td>111466-E</td>
<td>2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield</td>
<td>Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood</td>
<td>160</td>
</tr>
<tr>
<td>111463-E</td>
<td>200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville</td>
<td>Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood</td>
<td>200</td>
</tr>
</tbody>
</table>

The applicant has provided an affidavit, which states that 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 the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

All nine applications will be processed concurrently.

**Asset Purchase Agreement**

The change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreement, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company and related real property companies acquisition.

**Date:** February 25, 2011


Purchaser: L.P., Tioga Property Company North, LLC
Post Acute Partners Acquisition, LLC

Purchased Assets: All right, title and interest of the above operations and Woodmark Services, Inc. in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically “Elderwood” and “Elderwood Senior Care” and the service mark “Care Without Compromise”; all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller’s financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.

Excluded Assets: The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names “Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood” and “Elderwood Assisted Living at Penfield, LLC” and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller’s corporate offices, located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller’s bank accounts, cash, cash equivalents and securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller’s rights and benefits under this agreement; seller’s organizational documents relating solely to the existence of each of the entities comprising seller as separate legal entity; seller’s right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records’ seller’s general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.

Liabilities Assumed: The applicable Real liabilities under the mortgages listed on schedule 1.6(a)(the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt”) assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6 (a) and obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations
of seller other than the assumed liabilities.

**Excluded Liabilities:** Seller’s accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3 (a) ) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the seller’s sole obligation and responsibility.

**Purchase Price:** $141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.

**Purchase Price for this operation and real estate:** $7,651,514 with $2,951,514 allocated to the operations purchase price and $4,700,000 allocated to the real estate purchase price.

**Payment of Purchase Price:** Through three loans; one for 5,925,900 at 30 years at 5.5% interest, a subordinated loan for 1,304,092 at 10% for 7 years, and a loan for $421,522 for 7 years interest only.

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.

**Residential Health Care Facilities**

<table>
<thead>
<tr>
<th>CON</th>
<th>Applicant</th>
<th>Facility</th>
<th>Real Estate Purchase Price</th>
<th>Operations Purchase Price</th>
<th>Total Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>111467-E</td>
<td>4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst</td>
<td>Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood</td>
<td>$6,500,000</td>
<td>$3,383,566</td>
<td>$9,883,566</td>
</tr>
<tr>
<td>111468-E</td>
<td>2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island</td>
<td>Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood</td>
<td>$4,700,000</td>
<td>$2,951,514</td>
<td>$7,651,514</td>
</tr>
<tr>
<td>111470-E</td>
<td>5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg</td>
<td>Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood</td>
<td>$6,700,000</td>
<td>$4,094,870</td>
<td>$10,794,870</td>
</tr>
<tr>
<td>111462-E</td>
<td>1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster</td>
<td>Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood</td>
<td>$2,250,000</td>
<td>$1,423,042</td>
<td>$3,673,042</td>
</tr>
</tbody>
</table>
 Facility Name | Purchase Price |
--- | --- |
Glenwood | $10,024,265 |
Maplewood ALF | $7,028,868 |
Rosewood | $8,337,181 |
Tioga ALF | $3,904,780 |
Westwood | $14,494,740 |
Total Adult Care Facilities Purchase Price | $43,789,834 |

**Independent Housing Facilities**

 Facility Name | Purchase Price |
--- | --- |
Crestwood ILF | $12,590,237 |
Maplewood ILF | $4,993,149 |
Total Independent Housing Facilities Purchase Price | $17,583,386 |

**Total Purchase Price**

 Operations and Real Estate | Purchase Price |
--- | --- |
Residential Health Care Facilities | $80,126,780 |
Assignment Agreement
The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

Effective Date: Upon CON Approval by DOH
Assignor: Post Acute Partner Acquisition, LLC
Assignee: 2850 Grand Island Boulevard, LLC
Operating Designee: 2850 Grand Island Boulevard Operating Company, LLC, d/b/a Elderwood at Grand Island
Assets Assigned: Assignor’s right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.
Obligations Assigned: Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed realty entities, 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maelou Drive, LLC, 1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, 37 North Chemung Street, LLC, 2600 Niagara Falls Boulevard, LLC and 4459 Bailey Avenue, LLC are as follows:

<table>
<thead>
<tr>
<th>Proposed Members</th>
<th>Percentage Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warren Cole</td>
<td>50.00%</td>
</tr>
<tr>
<td>Dr. Jeffrey Rubin, D.D.S.</td>
<td>50.00%</td>
</tr>
</tbody>
</table>

Lease Agreement and Medicaid Capital Reimbursement
Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Effective Date: Upon CON Approval by DOH
Premises: A 90-bed RHCF located at 2850 Grand Island Boulevard, Grand Island (Erie County)
Lessor: 2850 Grand Island Boulevard, LLC
Lesssee: 2850 Grand Island Boulevard Operating Company, LLC, d/b/a Elderwood at Grand Island
Term: 10 years commencing on the execution of the lease and with four (5 year extensions)
Annual Rental: Lease payment is equivalent to the annual mortgage debt service for the facility, which is $721,969.
Type: 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.

Currently, the facility Medicaid capital reimbursement is based on the return of and return on equity for recent improvements; this methodology will not be altered upon change in ownership.

Operating Budget
Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:
The following is noted with respect to the submitted operating budget:

- Overall utilization is projected at 96.73%, which is consistent with historical. Utilization by payor source is expected as follows:
  - Medicaid 63.24%
  - Medicare 12.62%
  - Private Pay 24.14%

- Breakeven utilization is projected at 92.96%.

**Capability and Feasibility**

The purchase price and initiation of operations as a financially viable entity will be financed by a loan from Capital Funding, LLC of $5,925,900, at an interest rate of 5.50% for 30 years, with the remaining $1,304,092 from a subordination loan at an interest rate of 10% for 7 years, and $421,522 seller’s notes that is interest only.

Working capital requirements are estimated at $1,170,056, based on two months’ of first year expenses. $585,014 will be satisfied from the proposed member’s equity, and the remaining $585,042 will be satisfied through a loan from Capital Funding, LLC at 5.50% over 5 years. A letter of interest has been supplied by Capital Funding, LLC. Presented as BFA Attachment A, is the Net Worth of proposed members.

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 $376,493 would be maintained during the first year following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B, is the pro-forma balance sheet, which indicates positive members’ equity of $585,014 as of the first day of operations.

Following is a comparison of 2010 and projected revenue and expense:

<table>
<thead>
<tr>
<th>Description</th>
<th>2010</th>
<th>Projected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual 2010 Income</td>
<td>$7,162,482</td>
<td></td>
</tr>
<tr>
<td>Annual 2010 Expense</td>
<td>6,726,387</td>
<td></td>
</tr>
<tr>
<td>Annual 2010 Net Income</td>
<td>$436,095</td>
<td></td>
</tr>
<tr>
<td>Projected incremental Income</td>
<td>$234,344</td>
<td></td>
</tr>
<tr>
<td>Projected incremental Expense</td>
<td>293,946</td>
<td></td>
</tr>
</tbody>
</table>
Projected incremental Net Income  ($59,602)
Incremental Net Income (Loss)  $376,493

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 expenses, expenses at budgeted occupancy, and the difference between current year and projected levels.

As shown on BFA Attachment C, Elderwood Health Care at Riverwood, had an average positive working capital position and an average positive net asset position, and generated an average net Income of $435,731 for the period 2008-2010.

Based on the preceding, and 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, contingent approval is recommended.

Attachments

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>Net Worth of Proposed Members</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Pro-forma Balance Sheet</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Financial Summary - Elderwood Health Care at Riverwood</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>Organizational Chart</td>
</tr>
<tr>
<td>BFA Attachment E</td>
<td>Establishment Checklist</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish 2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island as the new operator of Elderwood at Health Care at Riverwood, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

111468 E 2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island
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 commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]

3. Submission of an executed building lease that is acceptable to the Department. [BFA]

4. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]

5. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]

6. Submission of photocopies of the applicant’s Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant’s Articles of Organization, which must be acceptable to the Department. [CSL]

7. Submission of a photocopy of the applicant’s fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]

8. Submission of a photocopy of the applicant’s fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]

9. Submission of a photocopy of the applicant’s fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]

10. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]

11. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]

12. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]

13. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in “Whereas Clause D” of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]

14. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]

15. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]

16. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
17. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]

18. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]

19. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]

20. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299
Executive Summary

Description
225 Bennett Road Operating Company, LLC, d/b/a Elderwood at Cheektowaga, is seeking approval to be established as the new operator of Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood, an existing 170-bed residential health care facility (RHCF) located at 225 Bennett Road, Cheektowaga. The facility will be 172 beds upon completion of CON #101088-B by the current operator. Maplewood Property Associates, LP is the current realty owner. Ownership before and after the requested change is as follows:

<table>
<thead>
<tr>
<th>Operations: Before</th>
<th>Operations: After</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood</td>
<td>225 Bennett Road Operating Company, LLC. d/b/a Elderwood At Cheektowaga</td>
</tr>
<tr>
<td>Members</td>
<td>Interest</td>
</tr>
<tr>
<td>-- Robert M. Chur</td>
<td>75.00%</td>
</tr>
<tr>
<td>-- Carol Chur</td>
<td>25.00%</td>
</tr>
</tbody>
</table>

Real Estate: Before
Maplewood Property Associates, LP

| Members | Interest |
| -- Robert M. Chur | 65.25% |
| -- Carla Chur Suero | 4.50% |
| -- Kelly Chur Henry | 4.50% |
| -- Elderwood Properties, LLC | 1.00% |

Real Estate: After
225 Bennett Road, LLC

| Members | Interest |
| -- Warren Cole | 50.00% |
| -- Dr. Jeffrey Rubin, D.D.S. | 50.00% |

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for-profit limited liability company, will be assigning its rights and title to both the operations and the real estate to 225 Bennett Road Operating Company, LLC, d/b/a Elderwood at Cheektowaga and 225 Bennett Road, LLC, respectively.

DOH Recommendation
Contingent approval

Need Summary
Elderwood Health Care at Maplewood’s utilization for 2009 and 2010 was 102.7% and 100.9%, respectively. There will be no change in the beds or services of the Elderwood Health Care at Maplewood facility as a result of this project.

Program Summary
Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

Financial Summary
There are no project costs associated with this proposal.

Budget:

- Revenues: $14,809,738
- Expenses: $13,971,377
- Gain/(Loss): $838,361

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

Architectural Summary
This project is more Establishment action only; therefore, no Architectural recommendation is required.
Health Systems Agency
There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of documentation of project completion of CON #101088-B.  [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health.  [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt.  [BFA]
4. Submission of an executed building lease that is acceptable to the Department.  [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department.  [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing.  [BFA]
7. Submission of photocopies of the applicant’s Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant’s Articles of Organization, which must be acceptable to the Department.  [CSL]
8. Submission of a photocopy of the applicant’s fully executed and dated Operating Agreement, which must be acceptable to the Department.  [CSL]
9. Submission of a photocopy of the applicant’s fully executed Certificate of Assumed Name, which must be acceptable to the Department.  [CSL]
10. Submission of a photocopy of the applicant’s fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department.  [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department.  [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department.  [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department.  [CSL]
14. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in “Whereas Clause D” of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department.  [CSL]
15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department.  [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department.  [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department.  [CSL]
18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department.  [CSL]
19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department.  [CSL]
20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department.  [CSL]
21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility.  [CSL]

Council Action Date
April 5, 2012.
**Background**

225 Bennett Road Operating Company, LLC, d/b/a Elderwood at Cheektowaga, is seeking approval to be established as the new operator of Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood, an existing 170-bed residential health care facility (RHCF) located at 225 Bennett Road, Cheektowaga (Erie County).

There will be no change in the beds or services of the Elderwood Health Care at Maplewood facility as a result of this project.

**Analysis**

### RHCF Bed Need – Erie County

<table>
<thead>
<tr>
<th></th>
<th>2016 Projected Need</th>
<th>Current Beds</th>
<th>Beds Under Construction</th>
<th>Total Resources</th>
<th>Unmet Need</th>
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<tr>
<td><strong>Elderwood Health Care at Maplewood</strong></td>
<td>5,291</td>
<td>6,225</td>
<td>- 332</td>
<td>5,893</td>
<td>- 602</td>
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### RHCF Occupancy

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<th>2010</th>
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<tr>
<td>Elderwood Health Care at Wedgewood</td>
<td>95.40%</td>
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<td>95.10%</td>
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<tr>
<td>Elderwood Health Care at Lakewood</td>
<td>97.00%</td>
<td>97.00%</td>
<td>97.00%</td>
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<tr>
<td>Buffalo General Hospital Deaconess SNF Div</td>
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<td>98.20%</td>
<td>96.50%</td>
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<tr>
<td>Erie County Medical Center-SNF</td>
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<td>94.60%</td>
<td>94.10%</td>
</tr>
<tr>
<td>Mercy Hospital Skilled Nursing Facility</td>
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<td>99.80%</td>
<td>93.40%</td>
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<td>Millard Fillmore Skilled Nursing Facility</td>
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</tr>
<tr>
<td>Niagara Lutheran Home &amp; Rehabilitation Center Inc</td>
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<td>96.90%</td>
<td>96.10%</td>
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<td>Hawthorn Health Multicare Center for Living</td>
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<td>90.70%</td>
<td>90.50%</td>
</tr>
<tr>
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</tr>
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<td>Did not report</td>
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<tr>
<td>Sheridan Manor LLC</td>
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<td>Mcauley Residence</td>
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<td>Schofield Residence</td>
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<td>Erie County Home</td>
<td>97.60%</td>
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<td>St Francis Home of Williamsville</td>
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<td>Elderwood Health Care at Oakwood</td>
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<tr>
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<td>Autumn View Health Care Facility, LLC</td>
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<td>Father Baker Manor</td>
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<td>Absolut Center for Nursing and Rehabilitation at Orchard Park, LLC</td>
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<tr>
<td>Fox Run at Orchard Park</td>
<td>39.50%</td>
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Elderwood Health Care at Maplewood had utilization rates above 100% for 2009 and 2010. This issue was addressed by the addition of 10 RHCF beds.

**Conclusion**
The acquisition of Elderwood Health Care at Maplewood by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

**Recommendation**
From a need perspective, approval is recommended.

## Programmatic Analysis

### Facility Information

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Existing</th>
<th>Proposed</th>
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<tbody>
<tr>
<td>Elderwood Health Care at Maplewood</td>
<td>Elderwood at Cheektowaga</td>
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<table>
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<tr>
<th>Address</th>
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<tr>
<td>RHCF Capacity</td>
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<tr>
<td>ADHC Program Capacity</td>
<td>N/A</td>
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<tr>
<td>Type Of Operator</td>
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<tr>
<td>Class Of Operator</td>
<td>Proprietary</td>
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<tr>
<td>Operator</td>
<td>Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood</td>
</tr>
<tr>
<td>Stockholders</td>
<td>Robert M. Chur 75% Carol L. Chur 25%</td>
</tr>
<tr>
<td>Stockholders</td>
<td>Warren Cole 50% Jeffrey Rubin 50%</td>
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</table>

### Character and Competence

- FACILITIES REVIEWED:
  - ACU-acute care/hospital
  - ALF-assisted living facility
  - HHA-home health agency
  - HOM-homecare
  - ICF-intermediate care facility/group home
  - IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
  - LTA-long term acute care hospital (similar to TCU)
  - RX-pharmacy
HOS-hospice  SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)

**Alabama**

*Laurielton Rehabilitation and Nursing Center*  
SNF  10/2006 to 5/2008

**California**

San Joaquin Valley Rehabilitation Hospital  
Hospital  7/2004-7/2004

Kenfield Rehabilitation Hospital  
Hospital  8/2003-7/2004

Care Alternatives of California*  
Hospice  2003-10/2009

**Colorado**

North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)  

North Valley Rehabilitation Hospital (Vibra LTACH)  

North Valley Rehabilitation Hospital (Vista View Care Center)  

**Connecticut**

Danbury Health Care Center*  
SNF  8/2003-10/2009

Darien Health Care Center*  
SNF  8/2003-10/2009

Golden Hill Health Care Center*  
SNF  8/2003-10/2009

Long Ridge of Stamford*  
SNF  8/2003-10/2009

Newington Health Care Center*  
SNF  8/2003-10/2009

Partners Pharmacy of Connecticut*  
RX  2003-10/2009

River Glen Health Care Center (a/k/a Southbury HCC)*  
SNF  8/2003-10/2009

The Highlands Health Care Center*  
SNF  8/2003-10/2009

West River Health Care Center (a/k/a Milford North HCC)*  
SNF  8/2003-10/2009

Westport Health Care Center*  
SNF  8/2003-10/2009

Wethersfield Health Care Center*  
SNF  8/2003-10/2009

**Kansas**

Care Alternatives of Kansas  
HOS  2004-10/2009

**Kentucky**

Southern Kentucky Rehabilitation Hospital  
IRF  5/2003-7/2004

**Maryland**

Montgomery Village Health Care Center  
SNF  2003-10/2009

**Massachusetts**

Brookline Health Care Center*  
SNF  8/2003-10/2009

Calvin Coolidge Nursing & Rehab Center for Northampton*  
SNF  8/2003-10/2009

Care Alternatives of Massachusetts*  
HOS  2005-10/2009

Concord Health Care Center*  
SNF  8/2003-10/2009

Essex Park Rehabilitation & Nursing Center*  

Holyoke Health Care Center*  
SNF  8/2003-10/2009

Lexington Health Care Center*  
SNF  8/2003-10/2009

Lowell Health Care Center*  
SNF  8/2003-10/2009

Millbury Health Care Center*  
SNF  8/2003-10/2009

New Bedford Health Care Center*  
SNF  8/2003-10/2009

New Bedford Rehabilitation Hospital*  
IRF  7/2003-8/2004

Newton Health Care Center*  
SNF  8/2003-10/2009

North Shore Health Care Center*  
SNF  8/2003-10/2009

Partners Pharmacy of Massachusetts*  
RX  2004-10/2009

Peabody Glen Health Care Center*  
SNF  8/2003-10/2009

Redstone Health Care Center (a/k/a East Longmeadow HCC)*  
SNF  8/2003-10/2009

Weymouth Health Care Center*  
SNF  8/2003-10/2009

Wilmington Health Care Center*  
SNF  8/2003-10/2009
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<td>Pediatric Specialty Care at Hopewell</td>
<td>PED ICF</td>
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Pediatric Specialty Care at Lancaster    PED ICF    2/2011-present
Pediatric Specialty Care at Point Pleasant    PED ICF 2/2011-present
Pediatric Specialty Care at Quakertown    PED ICF 2/2011-present
Presque Isle Rehabilitation & Nursing Center    SNF 10/2006-10/2009
Senior Living of Lancaster    HOM 2/2011-present
The Rehabilitation & Nursing Center at Greater Pittsburg    SNF 10/2006-10/2009

Puerto Rico

Rhode Island
Scallop Shell Nursing & Rehabilitation Center    SNF 12/2010-present

Virginia
Care Alternatives of Virginia*    HOS 4/2002-10/2009
Colonial Heights Health Care Center*    SNF 4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*    SNF 4/2002-10/2009
Hopewell Health Care Center*    SNF 4/2002/10/2009
Partners Pharmacy of Virginia*    RX 4/2002-10/2009
Valley Health Care Center*    SNF/ALF 4/2002-10/2009
Westport Health Care Center*    SNF 4/2002-10/2009

Individual Background Review

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millenium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

Character and Competence – Analysis:
No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.
For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator’s track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

_During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …_

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the Alabama facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the California facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the Colorado facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Connecticut facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

- Danbury Health Care Center
- Darien Health Care Center
- Long Ridge of Stamford
- Newington Health Care Center
- West River Health Care Center
- Westport Health Care Center
- Wethersfield Health Care Center

A review of the Kansas facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Kentucky facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Maryland facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the Massachusetts facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the Missouri facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.
A review of the New Jersey facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the North Carolina facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Ohio facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Pennsylvania facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the Puerto Rico health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the Rhode Island facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Virginia facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department’s standards for analysis, of the applicants’ operation of 35 facilities in five different states. However, it should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

Project Review
There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Background
The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies, and related real property companies. Acquisition involving Maplewood Health Care Center, Inc., the operator and Maplewood Property Associates, L.P, the owner of the realty and the proposed new owner/operator Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company, will be assigning its rights and title to both the operations and the real estate to 225 Bennett Road Operating Company, LLC, d/b/a Elderwood at Cheektowaga and 225 Bennett Road, LLC, respectively.

The five adult care facilities will be reviewed by the Division of Long Term Care and therefore are being reviewed separately from the nursing home application. The independent Housing companies as well are not being addressed in these reviews. The information provided regarding the independent housing companies is to delineate them from the total project cost for the overall application.
The proposed members are also seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition, through the applications listed below:

<table>
<thead>
<tr>
<th>CON</th>
<th>Applicant</th>
<th>Facility</th>
<th>Beds</th>
</tr>
</thead>
<tbody>
<tr>
<td>111456-E</td>
<td>4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool</td>
<td>Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood</td>
<td>160</td>
</tr>
<tr>
<td>111462-E</td>
<td>1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster</td>
<td>Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood</td>
<td>94</td>
</tr>
<tr>
<td>111467-E</td>
<td>4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst</td>
<td>Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood</td>
<td>92</td>
</tr>
<tr>
<td>111468-E</td>
<td>2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island</td>
<td>Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood</td>
<td>90</td>
</tr>
<tr>
<td>111470-E</td>
<td>5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg</td>
<td>Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood</td>
<td>166</td>
</tr>
<tr>
<td>111471-E</td>
<td>37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly</td>
<td>Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga</td>
<td>200</td>
</tr>
<tr>
<td>111466-E</td>
<td>2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield</td>
<td>Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood</td>
<td>160</td>
</tr>
<tr>
<td>111463-E</td>
<td>200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville</td>
<td>Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood</td>
<td>200</td>
</tr>
</tbody>
</table>

The applicant has provided an affidavit, which states that 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 the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

All nine applications will be processed concurrently.

**Asset Purchase Agreement**

The change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreement, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company and related real property companies acquisition.


**Sellers (Nursing Home Real Estate):** Wedgewood SNF Property Company, LLC, Maplewood Property Associates,

**Purchaser:** Post Acute Partners Acquisition, LLC

**Purchased Assets:**

All right, title and interest of the above operations and Woodmark Services, Inc. in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically “Elderwood” and “Elderwood Senior Care” and the service mark “Care Without Compromise”; all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller’s financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.

**Excluded Assets:**

The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names “Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood” and “Elderwood Assisted Living at Penfield, LLC” and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller’s corporate offices, located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller’s bank accounts, cash, cash equivalents and securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller’s rights and benefits under this agreement; seller’s organizational documents relating solely to the existence of each of the entities comprising seller as separate legal entity; seller’s right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records’ seller’s general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.

**Liabilities Assumed:**

The applicable Real liabilities under the mortgages listed on schedule 1.6(a) the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt”) assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6 (a) and
obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations of seller other than the assumed liabilities.

**Excluded Liabilities:**
Seller’s accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3 (a) ) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the seller’s sole obligation and responsibility.

**Purchase Price:**
$141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.

**Purchase Price for this operation and real estate:**
$9,960,484 with 1,660,484 allocated to the operations purchase price and 8,300,000 allocated to the real estate purchase price.

**Payment of Purchase Price:**
Through three loans; one for $8,592,500 at 30 years at 5.5% interest, a subordinated loan for $1,033,821 at 10% for 7 years, and a loan for $334,163 for 7 years interest only.

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.

### Residential Health Care Facilities

<table>
<thead>
<tr>
<th>CON</th>
<th>Applicant</th>
<th>Facility</th>
<th>Real Estate Purchase Price</th>
<th>Operations Purchase Price</th>
<th>Total Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>111467-E</td>
<td>4459 Bailey Avenue Operating Company, LLC</td>
<td>Wedgewood Health Care Center, Inc. d/b/a Elderwood at Amherst</td>
<td>$6,500,000</td>
<td>$3,383,566</td>
<td>$9,883,566</td>
</tr>
<tr>
<td>111468-E</td>
<td>2850 Grand Island Boulevard Operating Company, LLC</td>
<td>Riverwood Health Care Center, Inc. d/b/a Elderwood at Grand Island</td>
<td>$4,700,000</td>
<td>$2,951,514</td>
<td>$7,651,514</td>
</tr>
<tr>
<td>111470-E</td>
<td>5775 Maelou Drive Operating Company, LLC</td>
<td>Lakewood Health Care Center, Inc. d/b/a Elderwood at Hamburg</td>
<td>$6,700,000</td>
<td>$4,094,870</td>
<td>$10,794,870</td>
</tr>
<tr>
<td>111462-E</td>
<td>1818 Como Park Boulevard Operating Company, LLC</td>
<td>Linwood Health Care Center, Inc. d/b/a Elderwood at Lancaster</td>
<td>$2,250,000</td>
<td>$1,423,042</td>
<td>$3,673,042</td>
</tr>
</tbody>
</table>
### Residential Health Care Facilities

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Purchase Price</th>
<th>Operating Company, LLC</th>
<th>Operating Company, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Birchwood Health Care Center, Inc.</td>
<td>N/A</td>
<td>d/b/a Elderwood Health Care at Liverpool</td>
<td>d/b/a Elderwood Health Care at Birchwood</td>
</tr>
<tr>
<td>Maplewood Health Care Center, Inc.</td>
<td>$8,300,000</td>
<td>d/b/a Elderwood Health Care at Cheektowaga</td>
<td>d/b/a Elderwood Health Care at Maplewood</td>
</tr>
<tr>
<td>Crestwood Health Care Center, Inc.</td>
<td>$9,100,000</td>
<td>d/b/a Elderwood Health Care at Wheatfield</td>
<td>d/b/a Elderwood Health Care at Crestwood</td>
</tr>
<tr>
<td>Oakwood Health Care Center, Inc.</td>
<td>$6,800,000</td>
<td>d/b/a Elderwood Health Care at Williamsville</td>
<td>d/b/a Elderwood Health Care at Oakwood</td>
</tr>
<tr>
<td>Elderwood Health Care at Tioga, LLC</td>
<td>$5,400,000</td>
<td>d/b/a Elderwood Health Care at Waverly</td>
<td>d/b/a Elderwood Health Care at Tioga</td>
</tr>
</tbody>
</table>

Total Residential Health Care Facilities: $49,750,000, $30,376,780, $80,126,780

### Adult Care Facilities

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glenwood</td>
<td>$10,024,265</td>
</tr>
<tr>
<td>Maplewood ALF</td>
<td>$7,028,868</td>
</tr>
<tr>
<td>Rosewood</td>
<td>$8,337,181</td>
</tr>
<tr>
<td>Tioga ALF</td>
<td>$3,904,780</td>
</tr>
<tr>
<td>Westwood</td>
<td>$14,494,740</td>
</tr>
</tbody>
</table>

Total Adult Care Facilities Purchase Price: $43,789,834

### Independent Housing Facilities

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crestwood ILF</td>
<td>$12,590,237</td>
</tr>
<tr>
<td>Maplewood ILF</td>
<td>$4,993,149</td>
</tr>
</tbody>
</table>

Total Independent Housing Facilities Purchase Price: $17,583,386
Total Purchase Price

<table>
<thead>
<tr>
<th>Operations and Real Estate</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Health Care Facilities</td>
<td>$80,126,780</td>
</tr>
<tr>
<td>Adult Care Facilities</td>
<td>$43,789,834</td>
</tr>
<tr>
<td>Independent Housing Facilities</td>
<td>$17,583,386</td>
</tr>
<tr>
<td>Total Purchase Price</td>
<td>$141,500,000</td>
</tr>
</tbody>
</table>

Assignment Agreement

The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

- **Effective Date:** Upon CON Approval by DOH
- **Assignor:** Post Acute Partners Acquisition, LLC
- **Assignee:** 225 Bennett Road, LLC
- **Operating Designee:** 225 Bennett Road Operating Company, LLC, d/b/a Elderwood at Cheektowaga
- **Assets Assigned:** Assignor’s right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.
- **Obligations Assigned:** Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed reality entities 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maelou Drive, LLC, 1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, 37 North Chemung Street, LLC, 2600 Niagara Falls Boulevard, LLC and 4459 Bailey Avenue, LLC; are as follows:

<table>
<thead>
<tr>
<th>Proposed Members</th>
<th>Percentage Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warren Cole</td>
<td>50%</td>
</tr>
<tr>
<td>Dr. Jeffrey Rubin, D.D.S.</td>
<td>50%</td>
</tr>
</tbody>
</table>

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

- **Effective Date:** Upon CON Approval by DOH
- **Premises:** A 170-bed RHCF located at 225 Bennett Road, Cheektowaga (Erie County)
- **Lessor:** 225 Bennett Road, LLC
- **Lessees:** 225 Bennett Road Operating Company, LLC, d/b/a Elderwood at Cheektowaga
- **Term:** 10 years commencing on the execution of the lease with four (5 year extensions)
- **Annual Rental:** Lease payment is equivalent to the annual mortgage debt service for the facility, which is $862,773.
- **Type:** 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.

Currently, the facility Medicaid capital reimbursement is based on the return of and return on equity for recent improvements. This methodology will not be altered upon change in ownership.

Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:

<table>
<thead>
<tr>
<th>Revenues:</th>
<th>Per Diem</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicare Fee For Service</td>
<td>$406.39</td>
<td>$4,271,569</td>
</tr>
</tbody>
</table>
Medicaid Fee For Service  179.27  6,820,669
Private Pay  327.74  3,717,500
Total Revenue  $14,809,738

Expenses:
Operating  $13,030,472
Capital  940,905
Total Expense  $13,971,377
Net Income  $838,361
Utilization (Patient days)  59,901
Occupancy  96.54%

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

- Overall utilization is projected at 96.54%, which is consistent with historical. Utilization by payor source is expected as follows:
  
  Medicaid  63.52%
  Medicare  17.55%
  Private Pay  18.93%

- Breakeven utilization is projected at 91.07%.

**Capability and Feasibility**

The purchase price and initiation of operations, as a financially viable entity, will be financed by a loan from Capital Funding, LLC of $8,592,500 at an interest rate of 5.50% for 30 years, with the remaining $1,033,821 from a subordination loan at an interest rate of 10% for 7 years and $334,163 seller's notes that is interest only. Working capital requirements are estimated at $2,328,563, based on two months’ of first year expenses. $1,165,896 will be satisfied from the proposed member’s equity and the remaining $1,162,667 will be satisfied through a loan from Capital Funding, LLC at 5.00% over 5 years. A letter of interest has been supplied by Capital Funding, LLC. Presented as BFA Attachment A, is the Net Worth of proposed members.

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 $838,361 would be maintained during the first year following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B is the pro-forma balance sheet of 225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga, which indicates positive members’ equity of $1,165,896 as of the first day of operations.

Following is a comparison of 2010 and projected revenue and expense:

- Annual 2010 Income  $14,867,082
- Annual 2010 Expense  14,543,478
- Annual 2010 Net Income  $323,604
- Projected incremental Income  ($57,343)
- Projected incremental Expense  (572,100)
- Projected incremental Net Income  $514,757
- Incremental Net Income (Loss)  $838,361
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 expenses; expenses at budgeted occupancy and the difference between current year and projected levels.

As shown on BFA Attachment C Elderwood Health Care at Maplewood, had an average positive working capital position and an average positive net asset position, and generated an average net Income of $568,685 for the period 2008-2010.

**Recommendation**
From a financial perspective, contingent approval is recommended.

**Attachments**

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA A</td>
<td>Net Worth of Proposed Members</td>
</tr>
<tr>
<td>BFA B</td>
<td>Pro-forma Balance Sheet</td>
</tr>
<tr>
<td>BFA C</td>
<td>Financial Summary - Elderwood Health Care at Maplewood</td>
</tr>
<tr>
<td>BFA D</td>
<td>Organizational Chart</td>
</tr>
<tr>
<td>BFA E</td>
<td>Establishment Checklist</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish 225 Bennett Road Operating Company d/b/a Elderwood at Cheektowaga as the new operator of Elderwood Health Care at Maplewood, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

111469 E 225 Bennett Road Operating Company, LLC
d/b/a Elderwood at Cheektowaga
APPROVAL CONTINGENT UPON:

1. Submission of documentation of project completion of CON #101088-B. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant’s Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant’s Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant’s fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant’s fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant’s fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in “Whereas Clause D” of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]

19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]

20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]

21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299
Project # 111470-E
5775 Maelou Drive Operating Company, LLC
d/b/a Elderwood at Hamburg

County: Erie (Hamburg)  Program: Residential Health Care Facility
Purpose: Establishment  Submitted: May 29, 2011

Executive Summary

Description
5775 Maelou Drive Operating Company, LLC, d/b/a Elderwood at Hamburg, is seeking approval to be established as the new operator of Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood, an existing 166-bed residential health care facility (RHCF) located at 5775 Maelou Drive, Hamburg. Elderwood Affiliates, Inc. is the current realty owner. Ownership before and after the requested change is as follows:

Operations:

<table>
<thead>
<tr>
<th>Before</th>
<th>After</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member</td>
<td>Interest</td>
</tr>
<tr>
<td>-- Robert M. Chur</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

Real Estate:

<table>
<thead>
<tr>
<th>Before</th>
<th>After</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member</td>
<td>Interest</td>
</tr>
<tr>
<td>-- Robert M. Chur</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company, which assigns all rights and title to both the operations and the real estate to 5775 Maelou Drive Operating Company, LLC, d/b/a Elderwood at Hamburg and 5775 Maelou Drive, LLC respectively.

DOH Recommendation
Contingent approval.

Need Summary
Elderwood Health Care at Lakewood's utilization for 2009 and 2010 was 97.0% and 97.0%, respectively. There will be no change in the beds or services of the Elderwood Health Care at Lakewood facility as a result of this project.

Program Summary
Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

Financial Summary
There are no project costs associated with this proposal.

Budget:
Revenues: $15,106,931
Expenses: 13,688,243
Gain/(Loss): $1,418,688

Subject to 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; Architectural review is not 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 documentation of project completion of CON #111091-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant’s Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant’s Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant’s fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant’s fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant’s fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
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18. Submission of a list of all members and managers of Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

Council Action Date
April 5, 2012.
**Need Analysis**

**Background**

5775 Maelou Drive Operating Company, LLC, d/b/a Elderwood at Hamburg, is seeking approval to be established as the new operator of Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood, an existing 166-bed residential health care facility (RHCF) located at 5775 Maelou Drive, Hamburg (Erie County).

There will be no change in the beds or services of the Elderwood Health Care at Lakewood facility as a result of this project.

**Analysis**

<table>
<thead>
<tr>
<th>RHCF Bed Need  -  Erie County</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016 Projected Need</td>
</tr>
<tr>
<td>Current Beds</td>
</tr>
<tr>
<td>Beds Under Construction</td>
</tr>
<tr>
<td>Total Resources</td>
</tr>
<tr>
<td>Unmet Need</td>
</tr>
</tbody>
</table>

**RHCF Occupancy**

<table>
<thead>
<tr>
<th>RHCF Occupancy</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elderwood Health Care at Lakewood</td>
<td>97.0%</td>
<td>97.0%</td>
<td>97.0%</td>
</tr>
<tr>
<td>Buffalo General Hospital Deaconess SNF Div</td>
<td>97.7%</td>
<td>98.2%</td>
<td>96.5%</td>
</tr>
<tr>
<td>Erie County Medical Center-SNF</td>
<td>94.5%</td>
<td>94.6%</td>
<td>94.1%</td>
</tr>
<tr>
<td>Mercy Hospital Skilled Nursing Facility</td>
<td>93.7%</td>
<td>99.8%</td>
<td>93.4%</td>
</tr>
<tr>
<td>Millard Fillmore Skilled Nursing Facility</td>
<td>98.0%</td>
<td>97.5%</td>
<td>97.7%</td>
</tr>
<tr>
<td>Niagara Lutheran Home &amp; Rehabilitation Center Inc</td>
<td>96.3%</td>
<td>96.9%</td>
<td>96.1%</td>
</tr>
<tr>
<td>Hawthorn Health Multicare Center for Living</td>
<td>90.8%</td>
<td>90.7%</td>
<td>90.5%</td>
</tr>
<tr>
<td>St Catherine Laboure Health Care Center</td>
<td>97.7%</td>
<td>99.0%</td>
<td>97.5%</td>
</tr>
<tr>
<td>Delaware Nursing &amp; Rehabilitation Center</td>
<td>88.1%</td>
<td>89.0%</td>
<td>87.8%</td>
</tr>
<tr>
<td>Harbour Health Multicare Center for Living</td>
<td>95.7%</td>
<td>97.7%</td>
<td>95.4%</td>
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<tr>
<td>Waterfront Health Care Center, Inc</td>
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<td>98.6%</td>
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</tr>
<tr>
<td>Ridge View Manor LLC</td>
<td>Did not report</td>
<td>Did not report</td>
<td>Did not report</td>
</tr>
<tr>
<td>Sheridan Manor LLC</td>
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<td>Did not report</td>
<td>Did not report</td>
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<tr>
<td>Mcauley Residence</td>
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<td>95.4%</td>
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<tr>
<td>Schofield Residence</td>
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<td>99.0%</td>
<td>99.3%</td>
</tr>
<tr>
<td>Harris Hill Nursing Facility, LLC</td>
<td>98.5%</td>
<td>98.1%</td>
<td>97.9%</td>
</tr>
<tr>
<td>Elderwood Health Care at Linwood</td>
<td>98.5%</td>
<td>97.7%</td>
<td>98.2%</td>
</tr>
<tr>
<td>Erie County Home</td>
<td>97.6%</td>
<td>96.1%</td>
<td>97.4%</td>
</tr>
<tr>
<td>St Francis Home of Williamsville</td>
<td>90.6%</td>
<td>90.1%</td>
<td>90.3%</td>
</tr>
<tr>
<td>Elderwood Health Care at Oakwood</td>
<td>97.1%</td>
<td>96.6%</td>
<td>96.8%</td>
</tr>
<tr>
<td>Canterbury Woods</td>
<td>95.8%</td>
<td>86.7%</td>
<td>95.5%</td>
</tr>
<tr>
<td>Williamsville Suburban LLC</td>
<td>Did not report</td>
<td>Did not report</td>
<td>Did not report</td>
</tr>
<tr>
<td>Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC</td>
<td>92.0%</td>
<td>90.5%</td>
<td>91.7%</td>
</tr>
<tr>
<td>Jennie B Richmond Chaffee Nursing Home Company Inc</td>
<td>96.0%</td>
<td>95.9%</td>
<td>Did not report</td>
</tr>
<tr>
<td>Fiddlers Green Manor Nursing Home</td>
<td>91.8%</td>
<td>94.3%</td>
<td>91.5%</td>
</tr>
<tr>
<td>Autumn View Health Care Facility, LLC</td>
<td>97.6%</td>
<td>97.2%</td>
<td>97.3%</td>
</tr>
<tr>
<td>Father Baker Manor</td>
<td>93.4%</td>
<td>95.2%</td>
<td>93.2%</td>
</tr>
<tr>
<td>Absolut Center for Nursing and Rehabilitation at Orchard Park, LLC</td>
<td>94.6%</td>
<td>96.3%</td>
<td>94.3%</td>
</tr>
<tr>
<td>Fox Run at Orchard Park</td>
<td>39.5%</td>
<td>Did not report</td>
<td>39.4%</td>
</tr>
<tr>
<td>Rosa Coplon Jewish Home and Infirmary</td>
<td>96.9%</td>
<td>95.4%</td>
<td>96.7%</td>
</tr>
<tr>
<td>Elderwood Health Care at Wedgewood</td>
<td>95.4%</td>
<td>94.2%</td>
<td>95.1%</td>
</tr>
<tr>
<td>Beechwood Homes</td>
<td>91.8%</td>
<td>97.6%</td>
<td>91.6%</td>
</tr>
</tbody>
</table>
### RHCF Occupancy

<table>
<thead>
<tr>
<th></th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garden Gate Health Care Facility</td>
<td>97.6%</td>
<td>98.2%</td>
<td>97.1%</td>
</tr>
<tr>
<td>Elderwood Health Care at Maplewood</td>
<td>101.1%</td>
<td>102.7%</td>
<td>100.9%</td>
</tr>
<tr>
<td>Brothers of Mercy Nursing &amp; Rehabilitation Center</td>
<td>97.2%</td>
<td>95.8%</td>
<td>96.9%</td>
</tr>
<tr>
<td>Absolut Center for Nursing and Rehabilitation at Eden, LLC</td>
<td>91.6%</td>
<td>91.2%</td>
<td>91.4%</td>
</tr>
<tr>
<td>Elderwood Health Care at Riverwood</td>
<td>97.5%</td>
<td>98.7%</td>
<td>97.2%</td>
</tr>
<tr>
<td>Greenfield Health &amp; Rehab Center</td>
<td>93.6%</td>
<td>94.3%</td>
<td>93.4%</td>
</tr>
<tr>
<td>Seneca Health Care Center</td>
<td>97.9%</td>
<td>98.9%</td>
<td>97.7%</td>
</tr>
<tr>
<td>Erie</td>
<td>95.3%</td>
<td>96.0%</td>
<td>94.8%</td>
</tr>
</tbody>
</table>

Elderwood Health Care at Lakewood had utilization rates at or above the 97% planning optimum for 2009 and 2010. They exceeded the county average for both years.

### Conclusion

The acquisition of Elderwood Health Care at Lakewood by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

### Recommendation

From a need perspective, approval is recommended.

### Programmatic Analysis

#### Facility Information

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Facility Name</strong></td>
<td>Elderwood Health Care at Lakewood</td>
<td>Elderwood at Hamburg</td>
</tr>
<tr>
<td><strong>Address</strong></td>
<td>5775 Maelou Drive</td>
<td>same</td>
</tr>
<tr>
<td></td>
<td>Hamburg, NY 14075</td>
<td></td>
</tr>
<tr>
<td><strong>RHCF Capacity</strong></td>
<td>166</td>
<td>166</td>
</tr>
<tr>
<td><strong>ADHC Program Capacity</strong></td>
<td>N/A</td>
<td>same</td>
</tr>
<tr>
<td><strong>Type of Operator</strong></td>
<td>Corporation</td>
<td>Limited Liability Company</td>
</tr>
<tr>
<td><strong>Class of Operator</strong></td>
<td>Proprietary</td>
<td>same</td>
</tr>
<tr>
<td><strong>Operator</strong></td>
<td>Lakewood Health Care Center, Inc.</td>
<td>5775 Maelou Drive Operating</td>
</tr>
<tr>
<td></td>
<td>d/b/a Elderwood Health Care at</td>
<td>Company, LLC d/b/a Elderwood</td>
</tr>
<tr>
<td></td>
<td>Lakewood</td>
<td>at Cheektowaga</td>
</tr>
<tr>
<td></td>
<td>Stockholder</td>
<td>Members</td>
</tr>
<tr>
<td></td>
<td>Robert M. Chur</td>
<td>Warren Cole 50%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Jeffrey Rubin 50%</td>
</tr>
</tbody>
</table>

#### Character and Competence

- **FACILITIES REVIEWED:**
  - ACU-acute care/hospital
  - ALF-assisted living facility
  - HHA-home health agency
  - HOM-homecare
  - HOS-hospice
  - ICF-intermediate care facility/group home
  - IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
  - LTA-long term acute care hospital (similar to TCU)
  - RX-pharmacy
  - SNF-skilled nursing facility/nursing home

  *(Note: actual dates of ownership may extend prior to 2003)*
**Alabama**
*Laurelton Rehabilitation and Nursing Center*  
SNF  
10/2006 to 5/2008

**California**
San Joaquin Valley Rehabilitation Hospital  
Hospital  
7/2004-7/2004
Kenfield Rehabilitation Hospital  
Hospital  
8/2003-7/2004
Care Alternatives of California*  
Hospice  
2003-10/2009

**Colorado**
North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)  
ACU-PSYCH  
7/2003-8/2004
North Valley Rehabilitation Hospital (Vibra LTACH)  
LTA  
7/2003-8/2004
North Valley Rehabilitation Hospital (Vista View Care Center)  
SNF  
7/2003-8/2004

**Connecticut**
Danbury Health Care Center*  
SNF  
8/2003-10/2009
Darien Health Care Center*  
SNF  
8/2003-10/2009
Golden Hill Health Care Center*  
SNF  
8/2003-10/2009
Long Ridge of Stamford*  
SNF  
8/2003-10/2009
Newington Health Care Center*  
SNF  
8/2003-10/2009
Partners Pharmacy of Connecticut*  
RX  
2003-10/2009
River Glen Health Care Center (a/k/a Southbury HCC)*  
SNF  
8/2003-10/2009
The Highlands Health Care Center*  
SNF  
8/2003-10/2009
West River Health Care Center (a/k/a Milford North HCC)*  
SNF  
8/2003-10/2009
Westport Health Care Center*  
SNF  
8/2003-10/2009
Wethersfield Health Care Center*  
SNF  
8/2003-10/2009

**Kansas**
Care Alternatives of Kansas  
HOS  
2004-10/2009

**Kentucky**
Southern Kentucky Rehabilitation Hospital  
IRF  

**Maryland**
Montgomery Village Health Care Center  
SNF  
2003-10/2009

**Massachusetts**
Brookline Health Care Center*  
SNF  
8/2003-10/2009
Calvin Coolidge Nursing & Rehab Center for Northampton*  
SNF  
8/2003-10/2009
Care Alternatives of Massachusetts*  
HOS  
2005-10/2009
Concord Health Care Center*  
SNF  
8/2003-10/2009
Essex Park Rehabilitation & Nursing Center*  
SNF  
Holyoke Health Care Center*  
SNF  
8/2003-10/2009
Lexington Health Care Center*  
SNF  
8/2003-10/2009
Lowell Health Care Center*  
SNF  
8/2003-10/2009
Millbury Health Care Center*  
SNF  
8/2003-10/2009
New Bedford Health Care Center*  
SNF  
8/2003-10/2009
New Bedford Rehabilitation Hospital*  
IRF  
7/2003-8/2004
Newton Health Care Center*  
SNF  
8/2003-10/2009
North Shore Health Care Center*  
SNF  
8/2003-10/2009
Partners Pharmacy of Massachusetts*  
RX  
2004-10/2009
Peabody Glen Health Care Center*  
SNF  
8/2003-10/2009
Redstone Health Care Center (a/k/a East Longmeadow HCC)*  
SNF  
8/2003-10/2009
Weymouth Health Care Center*  
SNF  
8/2003-10/2009
Wilmington Health Care Center*  
SNF  
8/2003-10/2009

**Michigan**
Grand Blanc Rehabilitation & Nursing Center  
SNF  
10/2006-10/2009

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Project # 111470-E Exhibit Page 5
Missouri

Care Alternatives of Missouri HOS 2003-10/2009
Cliffview at Riverside Rehab & Nursing Center SNF 10/2006-5/2008
Partners Pharmacy of Missouri* RX 2003-10/2009

New Jersey

Bergen Care Home Health HHA 2007-10/2009
Bergen Care Personal Touch HOM 2007-10/2009
Care Alternatives of New Jersey HOS 2001-10/2009
Care One at Dunroven SNF 2001-10/2009
Care One at East Brunswick SNF 2/2002-10/2009
Care One at Evesham SNF 8/2000-10/2009
Care One at Evesham Assisted Living ALF 10/2007-10/2009
Care One at Ewing SNF 11/2004-10/2009
Care One at Hamilton SNF 5/2002-10/2009
Care One at Holmdel SNF 8/1997-10/2009
Care One at Jackson (a/k/a Jackson HCC) SNF 2004-10/2009
Care One at King James SNF 2003-10/2009
Care One at Livingston SNF 10/2002-10/2009
Care One at Livingston Assisted Living ALF 9/2005-10/2009
Care One at Madison Avenue SNF 1/2005-10/2009
Care One at Moorestown SNF 9/2003-10/2009
Care One at Harmony Village at Moorestown ALF 8/2003-10/2009
Care One at Morris SNF 8/2001-10/2009
Care One at Morris Assisted Living ALF 3/2003-10/2009
Care One at Pine Rest SNF 2001-10/2009
Care One at Ranitan Bay MC LTA 3/2004-10/2009
Care One Harmony Village at Moorestown SNF 9/2003-10/2009
Care One at Teaneck SNF 4/2007-10/2009
Care One at The Cupola SNF 2001-10/2009
Care One at The Highlands SNF 2001-10/2009
Care One at Valley SNF 2001-10/2009
Care One at Wall SNF 9/2004-10/2009
Care One at Wayne SNF/ALF 6/2002-10/2009
Care One at Wellington SNF 6/2002-10/2009
Marlton Rehabilitation Hospital IRF 5/2003-7/2004
Oradell Health Care Center SNF 2003-10/2009
Partners Pharmacy of New Jersey RX 2001-10/2009
Somerset Valley Rehabilitation & Nursing Center SNF 10/2009-10/2009
South Jersey Health Care Center SNF 2003-10/2009
Woodcrest Health Care Center SNF 2003-10/2009

North Carolina

Blue Ridge Health Care Center SNF 8/2002-10/2009

Ohio

Bellbrook Health Care Center SNF 2003-10/2009
The Rehabilitation & Nursing Center at Elm Creek SNF 10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands SNF 10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek SNF 10/2006-10/2009

Pennsylvania

Care Alternatives of Pennsylvania HOS 2003-10/2009
Pediatric Specialty Care at Doylestown SNF 2/2011-present
Pediatric Specialty Care at Hopewell PED ICF 2/2011-present
Pediatric Specialty Care at Lancaster PED ICF 2/2011-present
Pediatric Specialty Care at Point Pleasant PED ICF 2/2011-present
Pediatric Specialty Care at Quakertown    PED ICF    2/2011-present
Presque Isle Rehabilitation & Nursing Center    SNF    10/2006-10/2009
Senior Living of Lancaster    HOM    2/2011-present
The Rehabilitation & Nursing Center at Greater Pittsburg    SNF    10/2006-10/2009

**Puerto Rico**

**Rhode Island**
Scallop Shell Nursing & Rehabilitation Center    SNF    12/2010-present

**Virginia**
Care Alternatives of Virginia*    HOS    4/2002-10/2009
Colonial Heights Health Care Center*    SNF    4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*    SNF    4/2002-10/2009
Hopewell Health Care Center*    SNF    4/2002-10/2009
Partners Pharmacy of Virginia*    RX    4/2002-10/2009
Valley Health Care Center*    SNF/ALF    4/2002-10/2009
Westport Health Care Center*    SNF    4/2002-10/2009

**Individual Background Review**

**Jeffrey Rubin** is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millenium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

**Warren Cole** is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

**Character and Competence – Analysis:**
No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator’s track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:
During the applicable period identified..., the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period..., the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities ...

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

- Danbury Health Care Center
- Darien Health Care Center
- Long Ridge of Stamford
- Newington Health Care Center
- West River Health Care Center
- Westport Health Care Center
- Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the **New Jersey** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **North Carolina** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.
A review of the Ohio facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Pennsylvania facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the Puerto Rico health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the Rhode Island facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Virginia facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department’s standards for analysis, of the applicants’ operation of 35 facilities in five different states. However, it should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

Project Review
There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Background
The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies, and related real property companies, acquisition involving Lakewood Health Care Center, Inc., the operator and Elderwood Affiliates, Inc., the owner of the realty and the proposed new owner/operator Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company, which assigns all rights and title to both the operations and the real estate to 5775 Maelou Drive Operating Company, LLC, d/b/a Elderwood at Hamburg and 5775 Maelou Drive, LLC respectively.

The five adult care facilities will be reviewed by the Division of Long Term Care and therefore, are being reviewed separately from the nursing home application. The independent Housing companies as well are not being addressed in these reviews. The information provided regarding the independent housing companies is to delineate them from the total project cost for the overall application.

The proposed members are also seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition, through the applications listed below:
### Asset Purchase Agreement

The change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreement, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company and related real property companies acquisition.

#### Date: February 25, 2011

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchaser:</td>
<td>Post Acute Partners Acquisition, LLC</td>
</tr>
<tr>
<td>Purchased Assets:</td>
<td>All right, title and interest of the above operations and Woodmark Services, Inc.</td>
</tr>
</tbody>
</table>
in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically “Elderwood” and “Elderwood Senior Care” and the service mark “Care Without Compromise”; all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller’s financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.

Excluded Assets:
The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names “Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood” and “Elderwood Assisted Living at Penfield, LLC” and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller’s corporate offices, located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller’s bank accounts, cash, cash equivalents and securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller’s rights and benefits under this agreement; seller’s organizational documents relating solely to the existence of each of the entities comprising seller as separate legal entity; seller’s right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records’ seller’s general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.

Liabilities Assumed:
The applicable Real liabilities under the mortgages listed on schedule 1.6(a)(i) the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt*) assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6 (a) and obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations of seller other than the assumed liabilities.
**Excluded Liabilities:** Seller’s accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3(a) ) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the seller’s sole obligation and responsibility.

**Purchase Price:** $141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.

**Purchase Price for this operation and real estate:** $10,794,870 with $4,094,870 allocated to the operations purchase price and $6,700,000 allocated to the real estate purchase price.

**Payment of Purchase Price:** Through three loans; one for $8,888,800 at 30 years at 5.5% interest, a subordinated loan for $1,440,467 at 10% for 7 years, and a loan for $465,603 for 7 years interest only.

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.

### Residential Health Care Facilities

<table>
<thead>
<tr>
<th>CON</th>
<th>Applicant</th>
<th>Facility</th>
<th>Real Estate Purchase Price</th>
<th>Operations Purchase Price</th>
<th>Total Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>111467-E</td>
<td>4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst</td>
<td>Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood</td>
<td>$6,500,000</td>
<td>$3,383,566</td>
<td>$9,883,566</td>
</tr>
<tr>
<td>111468-E</td>
<td>2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island</td>
<td>Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood</td>
<td>$4,700,000</td>
<td>$2,951,514</td>
<td>$7,651,514</td>
</tr>
<tr>
<td>111470-E</td>
<td>5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg</td>
<td>Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood</td>
<td>$6,700,000</td>
<td>$4,094,870</td>
<td>$10,794,870</td>
</tr>
<tr>
<td>111462-E</td>
<td>1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster</td>
<td>Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood</td>
<td>$2,250,000</td>
<td>$1,423,042</td>
<td>$3,673,042</td>
</tr>
<tr>
<td>111456-E</td>
<td>4800 Bear Road Operating Company, LLC d/b/a Elderwood at</td>
<td>Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at</td>
<td>N/A</td>
<td>$7,730,857</td>
<td>$7,730,857</td>
</tr>
</tbody>
</table>
Liverpool Birchwood

111469-E 225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga
Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood
$8,300,000 $1,660,484 $9,960,484

111466-E 2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield
Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood
$9,100,000 $1,182,776 $10,282,776

111463-E 200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville
Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood
$6,800,000 $5,271,383 $12,071,383

111471-E 37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly
Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga
$5,400,000 $2,678,288 $8,078,288

Total Residential Health Care Facilities
$49,750,000 $30,376,780 $80,126,780

Adult Care Facilities

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glenwood</td>
<td>$10,024,265</td>
</tr>
<tr>
<td>Maplewood ALF</td>
<td>$7,028,868</td>
</tr>
<tr>
<td>Rosewood</td>
<td>$8,337,181</td>
</tr>
<tr>
<td>Tioga ALF</td>
<td>$3,904,780</td>
</tr>
<tr>
<td>Westwood</td>
<td>$14,494,740</td>
</tr>
<tr>
<td>Total Adult Care Facilities Purchase Price</td>
<td>$43,789,834</td>
</tr>
</tbody>
</table>

Independent Housing Facilities

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crestwood ILF</td>
<td>$12,590,237</td>
</tr>
<tr>
<td>Maplewood ILF</td>
<td>$4,993,149</td>
</tr>
<tr>
<td>Total Independent Housing Facilities Purchase Price</td>
<td>$17,583,386</td>
</tr>
</tbody>
</table>

Total Purchase Price

<table>
<thead>
<tr>
<th>Operations and Real Estate</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Health Care Facilities</td>
<td>$80,126,780</td>
</tr>
<tr>
<td>Adult Care Facilities</td>
<td>$43,789,834</td>
</tr>
<tr>
<td>Independent Housing Facilities</td>
<td>$17,583,386</td>
</tr>
<tr>
<td>Total Purchase Price</td>
<td>$141,500,000</td>
</tr>
</tbody>
</table>
Assignment Agreement
The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

**Effective Date:** Upon CON Approval by DOH
**Assignor:** Post Acute Partners Acquisition, LLC
**Assignee:** 5775 Maelou Drive, LLC
**Operating Designee:** 5775 Maelou Drive Operating Company, LLC, d/b/a Elderwood at Hamburg
**Assets Assigned:** Assignor’s right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.
**Obligations Assigned:** Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed realty entities, 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maelou Drive, LLC, 1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, 37 North Chemung Street, LLC, 2600 Niagara Falls Boulevard, LLC and 4459 Bailey Avenue, LLC are as follows:

<table>
<thead>
<tr>
<th>Proposed Members</th>
<th>Percentage Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warren Cole</td>
<td>50%</td>
</tr>
<tr>
<td>Dr. Jeffrey Rubin, D.D.S.</td>
<td>50%</td>
</tr>
</tbody>
</table>

Lease Agreement and Medicaid Capital Reimbursement
Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows.

**Date:** Upon CON Approval by DOH
**Premises:** A 166-bed RHCF located at 5775 Maelou Drive, Hamburg, NY (Erie County)
**Lessor:** 5775 Maelou Drive, LLC
**Lessee:** 5775 Maelou Drive Operating Company, LLC, d/b/a Elderwood at Hamburg
**Term:** 10 years commencing on the execution of the lease with 4 additional (5 year extensions)
**Annual Rental:** Lease payment is equivalent to the annual mortgage debt service for the facility, which is $958,693.
**Type:** 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.

Currently, the facility’s Medicaid capital reimbursement is based on the return of and return on equity for recent improvements. This methodology will not be altered upon change in ownership.

Operating Budget
Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:

<table>
<thead>
<tr>
<th></th>
<th>Per Diem</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicare Fee For Service</td>
<td>$368.01</td>
<td>$4,511,490</td>
</tr>
<tr>
<td>Medicaid Fee For Service</td>
<td>$187.75</td>
<td>$5,922,002</td>
</tr>
<tr>
<td>Private Pay</td>
<td>$316.54</td>
<td>$4,673,439</td>
</tr>
<tr>
<td>Total Revenue</td>
<td></td>
<td>$15,106,931</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenses:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating</td>
<td></td>
<td>$12,672,516</td>
</tr>
</tbody>
</table>
Capital $1,015,727
Total Expense $13,688,243
Net Income $1,418,688
Utilization (Patient days) 58,565
Occupancy 96.09%

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

- Overall utilization is projected at 96.09%, which is consistent with historical. Utilization by payor source is expected as follows:
  
  Medicaid 53.86%
  Medicare 20.93%
  Private Pay 25.21%

- Breakeven utilization is projected at 87.59%.

**Capability and Feasibility**

The purchase price and initiation of operations, as a financially viable entity, will be financed by a loan from Capital Funding, LLC of $8,888,800 at an interest rate of 5.50% for 30 years, with the remaining $1,440,467 from a subordination loan at an interest rate of 10% for 7 years, and $465,603 seller's notes that is interest only.

Working capital requirements are estimated at $2,281,374, based on two months’ of first year expenses, which $1,140,686 will by satisfied from the proposed member's equity, and the remaining $1,140,688 will be satisfied through a loan from Capital Funding, LLC at 5.00% over 5 years. A letter of interest has been supplied by Capital Funding LLC. Presented as BFA Attachment A, is the Net Worth of proposed members.

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 $1,418,688 would be maintained during the first year, following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B, is the pro-forma balance sheet of, which indicates positive members’ equity of $1,140,686 as of the first day of operations.

Following is a comparison of 2010 and projected revenue and expense:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annual 2010 Income</strong></td>
<td>$14,323,996</td>
</tr>
<tr>
<td><strong>Annual 2010 Expense</strong></td>
<td>$13,298,541</td>
</tr>
<tr>
<td><strong>Annual 2010 Net Income</strong></td>
<td>$1,025,455</td>
</tr>
<tr>
<td><strong>Projected incremental Income</strong></td>
<td>$782,935</td>
</tr>
<tr>
<td><strong>Projected incremental Expense</strong></td>
<td>$389,702</td>
</tr>
<tr>
<td><strong>Projected incremental Net Income</strong></td>
<td>$393,233</td>
</tr>
<tr>
<td><strong>Incremental Net Income (Loss)</strong></td>
<td>$1,418,688</td>
</tr>
</tbody>
</table>

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 expenses, expenses at budgeted occupancy, and the difference between current year and projected levels.
As shown on BFA Attachment C, Elderwood at Lakewood, had an average positive working capital position and an average positive net asset position, and generated an average net income of $450,752 for the period 2008-2010.

Based on the proceeding, and 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, 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 - Elderwood Health Care at Lakewood |
| BFA Attachment D | Organizational Chart          |
| BFA Attachment E | Establishment Checklist       |
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish 5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg as the new operator of Elderwood Health Care at Lakewood, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

111470 E 5775 Maelou Drive Operating Company, LLC
d/b/a Elderwood at Hamburg
APPROVAL CONTINGENT UPON:

1. Submission of documentation of project completion of CON #111091-L.  [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health.  [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt.  [BFA]
4. Submission of an executed building lease that is acceptable to the Department.  [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing.  [BFA]
7. Submission of photocopies of the applicant’s Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant’s Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant’s fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant’s fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant’s fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in “Whereas Clause D” of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]

19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]

20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]

21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

**APPROVAL CONDITIONAL UPON:**

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Hedley Building - 6th Floor  
433 River Street  
Troy, New York 12180-2299
Executive Summary

Description
37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly, is seeking approval to be established as the new operator of Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga, an existing 200-bed residential health care facility (RHCF) located at 37 Chemung Street, Waverly. Tioga Property Company North, LLC is the current realty owner. Ownership before and after the requested change is as follows:

Operations: Before
Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga

<table>
<thead>
<tr>
<th>Member</th>
<th>Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert M. Chur</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

Operations: After
37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly

<table>
<thead>
<tr>
<th>Members</th>
<th>Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warren Cole</td>
<td>50.00%</td>
</tr>
<tr>
<td>Dr. Jeffrey Rubin, D.D.S.</td>
<td>50.00%</td>
</tr>
</tbody>
</table>

Real Estate: Before
Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga

<table>
<thead>
<tr>
<th>Members</th>
<th>Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert M. Chur</td>
<td>75.00%</td>
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<tr>
<td>Carol L. Chur</td>
<td>25.00%</td>
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Real Estate: After
37 North Chemung Street, LLC

<table>
<thead>
<tr>
<th>Members</th>
<th>Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warren Cole</td>
<td>50.00%</td>
</tr>
<tr>
<td>Dr. Jeffrey Rubin, D.D.S.</td>
<td>50.00%</td>
</tr>
</tbody>
</table>

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company, will be assigning its rights and title to both the operations and the real estate to 37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly, and 37 North Chemung Street, LLC respectively.

DOH Recommendation
Contingent approval.

Need Summary
Elderwood Health Care at Tioga's utilization for 2009 and 2010 was 91.4% and 91.4%, respectively. There will be no change in the beds or services of the Elderwood Health Care at Tioga facility as a result of this project.

Program Summary
Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

Financial Summary
There are no project costs associated with this proposal.

Budget: Revenues: $ 8,749,674
Expenses: $ 7,866,882
Gain/(Loss): $ 882,792

Subject to 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; Architectural review is not 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 documentation of project completion of CON #111100-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant’s Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant’s Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant’s fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant’s fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant’s fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
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**Council Action Date**
April 5, 2012.
Need Analysis

Background
37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly, is seeking approval to be established as the new operator of Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga, an existing 200-bed residential health care facility (RHCF) located at 37 Chemung Street, Waverly (Tioga County).

There will be no change in the beds or services of the Elderwood Health Care at Tioga facility as a result of this project.

Analysis

<table>
<thead>
<tr>
<th>RHCF Bed Need – Tioga County</th>
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</thead>
<tbody>
<tr>
<td>2016 Projected Need</td>
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<tr>
<td>Current Beds</td>
</tr>
<tr>
<td>Beds Under Construction</td>
</tr>
<tr>
<td>Total Resources</td>
</tr>
<tr>
<td>Unmet Need</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>RHCF Occupancy</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
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</thead>
<tbody>
<tr>
<td>Elderwood Health Care Tioga</td>
<td>91.77%</td>
<td>91.38%</td>
<td>91.52%</td>
</tr>
<tr>
<td>Riverview Manor Health Care Center</td>
<td>97.98%</td>
<td>95.44%</td>
<td>97.71%</td>
</tr>
<tr>
<td>Tioga County</td>
<td>93.40%</td>
<td>92.50%</td>
<td>93.18%</td>
</tr>
</tbody>
</table>

Elderwood Health Care at Tioga had utilization rates of 91.4% for 2009 and 91.5% 2010.

Conclusion
The acquisition of Elderwood Health Care at Tioga by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

<table>
<thead>
<tr>
<th>Facility Information</th>
<th>Existing</th>
<th>Proposed</th>
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</thead>
<tbody>
<tr>
<td>Facility Name</td>
<td>Elderwood Health Care at Tioga</td>
<td>Elderwood at Waverly</td>
</tr>
<tr>
<td>Address</td>
<td>37 North Chemung Street Waverly, NY 14892</td>
<td>same</td>
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<tr>
<td>RHCF Capacity</td>
<td>200</td>
<td>200</td>
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<tr>
<td>ADHC Program Capacity</td>
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</tr>
<tr>
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<td>Class of Operator</td>
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</tr>
</tbody>
</table>
### Character and Competence

- **FACILITIES REVIEWED:**

  ACU-acute care/hospital
  ALF-assisted living facility
  HHA-home health agency
  HOM-homecare
  HOS-hospice
  IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
  LTA-long term acute care hospital (similar to TCU)
  RX-pharmacy
  SNF-skilled nursing facility/nursing home

  (Note: actual dates of ownership may extend prior to 2003)

- **Alabama**
  - Laurelton Rehabilitation and Nursing Center*
    - SNF
    - 10/2006 to 5/2008

- **California**
  - San Joaquin Valley Rehabilitation Hospital
    - Hospital
    - 7/2004-7/2004
  - Kenfield Rehabilitation Hospital
    - Hospital
    - 8/2003-7/2004
  - Care Alternatives of California*
    - Hospice
    - 2003-10/2009

- **Colorado**
  - North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)
    - ACU-PSYCH
  - North Valley Rehabilitation Hospital (Vibra LTACH)
    - LTA
  - North Valley Rehabilitation Hospital (Vista View Care Center)
    - SNF

- **Connecticut**
  - Danbury Health Care Center*
    - SNF
    - 8/2003-10/2009
  - Darien Health Care Center*
    - SNF
    - 8/2003-10/2009
  - Golden Hill Health Care Center*
    - SNF
    - 8/2003-10/2009
  - Long Ridge of Stamford*
    - SNF
    - 8/2003-10/2009
  - Newington Health Care Center*
    - SNF
    - 8/2003-10/2009
  - Partners Pharmacy of Connecticut*
    - RX
    - 2003-10/2009
  - River Glen Health Care Center (a/k/a Southbury HCC)*
    - SNF
    - 8/2003-10/2009
  - The Highlands Health Care Center*
    - SNF
    - 8/2003-10/2009
  - West River Health Care Center (a/k/a Milford North HCC)*
    - SNF
    - 8/2003-10/2009
  - Westport Health Care Center*
    - SNF
    - 8/2003-10/2009
  - Wethersfield Health Care Center*
    - SNF
    - 8/2003-10/2009

- **Kansas**
  - Care Alternatives of Kansas
    - HOS
    - 2004-10/2009

- **Kentucky**
  - Southern Kentucky Rehabilitation Hospital
    - IRF

- **Maryland**
  - Montgomery Village Health Care Center
    - SNF
    - 2003-10/2009
<table>
<thead>
<tr>
<th>State</th>
<th>Location</th>
<th>Type</th>
<th>Start Date</th>
<th>End Date</th>
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<tr>
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<td>Calvin Coolidge Nursing &amp; Rehab Center for Northampton*</td>
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<td>10/2009</td>
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<td></td>
<td>Care Alternatives of Massachusetts*</td>
<td>HOS</td>
<td>2005</td>
<td>10/2009</td>
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<td>Concord Health Care Center*</td>
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<td>10/2009</td>
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<tr>
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<td>10/2009</td>
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<tr>
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<td>10/2009</td>
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<tr>
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<td>Millbury Health Care Center*</td>
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<td>10/2009</td>
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<tr>
<td></td>
<td>New Bedford Rehabilitation Hospital*</td>
<td>IRF</td>
<td>7/2003</td>
<td>8/2004</td>
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<td></td>
<td>Newton Health Care Center*</td>
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<td>North Shore Health Care Center*</td>
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<td>Peabody Glen Health Care Center*</td>
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<td>8/2003</td>
<td>10/2009</td>
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<td>Redstone Health Care Center (a/k/a East Longmeadow HCC)*</td>
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<td>8/2003</td>
<td>10/2009</td>
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<tr>
<td></td>
<td>Weymouth Health Care Center*</td>
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<td>10/2009</td>
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<td></td>
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<td>Care Alternatives of New Jersey</td>
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Marlton Rehabilitation Hospital  IRF  5/2003-7/2004
Oradell Health Care Center  SNF  2003-10/2009
Partners Pharmacy of New Jersey  RX  2001-10/2009
Somerset Valley Rehabilitation & Nursing Center  SNF  10/2009-10/2009
South Jersey Health Care Center  SNF  2003-10/2009
Woodcrest Health Care Center  SNF  2003-10/2009

North Carolina
Blue Ridge Health Care Center  SNF  8/2002-10/2009

Ohio
Bellbrook Health Care Center  SNF  2003-10/2009
The Rehabilitation & Nursing Center at Elm Creek  SNF  10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands  SNF  10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek  SNF  10/2006-10/2009

Pennsylvania
Care Alternatives of Pennsylvania  HOS  2003-10/2009
Pediatric Specialty Care at Doylestown  SNF  2/2011-present
Pediatric Specialty Care at Hopewell  PED ICF  2/2011-present
Pediatric Specialty Care at Lancaster  PED ICF  2/2011-present
Pediatric Specialty Care at Point Pleasant  PED ICF  2/2011-present
Pediatric Specialty Care at Quakertown  PED ICF  2/2011-present
Presque Isle Rehabilitation & Nursing Center  SNF  10/2006-10/2009
Senior Living of Lancaster  HOM  2/2011-present
The Rehabilitation & Nursing Center at Greater Pittsburg  SNF  10/2006-10/2009

Puerto Rico

Rhode Island
Scallop Shell Nursing & Rehabilitation Center  SNF  12/2010-present

Virginia
Care Alternatives of Virginia*  HOS  4/2002-10/2009
Colonial Heights Health Care Center*  SNF  4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*  SNF  4/2002-10/2009
Hopewell Health Care Center*  SNF  4/2002/10/2009
Partners Pharmacy of Virginia*  RX  4/2002-10/2009
Valley Health Care Center*  SNF/ALF  4/2002-10/2009
Westport Health Care Center*  SNF  4/2002-10/2009

Individual Background Review

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millenium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric
specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

**Character and Competence – Analysis:**

No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator’s track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

*During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …*

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

- Danbury Health Care Center
- Darien Health Care Center
- Long Ridge of Stamford
- Newington Health Care Center
- West River Health Care Center
- Westport Health Care Center
- Wethersfield Health Care Center
A review of the Kansas facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Kentucky facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Maryland facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the Massachusetts facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the Missouri facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the New Jersey facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the North Carolina facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Ohio facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Pennsylvania facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the Puerto Rico health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the Rhode Island facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Virginia facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department’s standards for analysis, of the applicants’ operation of 35 facilities in five different states. However, it should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

**Project Review**

There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

**Recommendation**

From a programmatic perspective, approval is recommended.
Financial Analysis

Background
The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies, and related realty property companies, acquisition involving Elderwood Health Care at Tioga, LLC, the operator, and Tioga Property Company North, LLC, the owner of the realty, and the proposed new owner/operator Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company, will be assigning its rights and title to both the operations and the real estate to 37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly, and 37 North Chemung Street, LLC respectively.

The five adult care facilities will be reviewed by the Division of Long Term Care and therefore, are being reviewed separately from the nursing home application. The independent housing companies, as well, are not being addressed in these reviews. The information provided regarding the independent housing companies is to delineate them from the total project cost for the overall application.

The proposed members also are seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition; through the applications listed below:

<table>
<thead>
<tr>
<th>CON</th>
<th>Applicant</th>
<th>Facility</th>
<th>Beds</th>
</tr>
</thead>
<tbody>
<tr>
<td>111456-E</td>
<td>4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool</td>
<td>Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood</td>
<td>160</td>
</tr>
<tr>
<td>111462-E</td>
<td>1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster</td>
<td>Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood</td>
<td>94</td>
</tr>
<tr>
<td>111468-E</td>
<td>2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island</td>
<td>Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood</td>
<td>90</td>
</tr>
<tr>
<td>111470-E</td>
<td>5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg</td>
<td>Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood</td>
<td>166</td>
</tr>
<tr>
<td>111469-E</td>
<td>225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga</td>
<td>Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood</td>
<td>170</td>
</tr>
<tr>
<td>111467-E</td>
<td>4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst</td>
<td>Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood</td>
<td>92</td>
</tr>
<tr>
<td>111466-E</td>
<td>2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield</td>
<td>Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood</td>
<td>160</td>
</tr>
<tr>
<td>111463-E</td>
<td>200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville</td>
<td>Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood</td>
<td>200</td>
</tr>
</tbody>
</table>

The applicant has provided an affidavit, which states that 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 the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.
All nine applications will be processed concurrently.

**Asset Purchase Agreement**
The change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreement, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company and related real property companies acquisition.

**Date:** February 25, 2011


**Purchaser:** Post Acute Partners Acquisition, LLC

**Purchased Assets:** All right, title and interest of the above operations and Woodmark Services, Inc. in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically “Elderwood” and “Elderwood Senior Care” and the service mark “Care Without Compromise”; all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller’s financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.

**Excluded Assets:** The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names “Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood” and “Elderwood Assisted Living at Penfield, LLC” and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller’s corporate offices, located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller’s bank accounts, cash, cash equivalents and securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller’s rights and benefits under this agreement; seller’s organizational documents relating solely to the
existence of each of the entities comprising seller as separate legal entity; sellers right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records sellers general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.

Liabilities Assumed:
The applicable Real liabilities under the mortgages listed on schedule 1.6(a)(the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt*) assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6 (a) and obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations of seller other than the assumed liabilities.

Excluded Liabilities:
Seller’s accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3 (a) ) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the sellers sole obligation and responsibility.

Purchase Price:
$141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.

Purchase Price for this operation and real estate: $8,078,288 with $2,678,288 allocated to the operations purchase price and $5,400,000 allocated to the real estate purchase price.

Payment of Purchase Price: Through three loans; one for $3,851,800 at 30 years at 5.5% interest, a subordinated loan for $3,194,067 at 10% for 7 years, and a loan for $1,032,421 for 7 years interest only.

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.

### Residential Health Care Facilities

<table>
<thead>
<tr>
<th>CON</th>
<th>Applicant</th>
<th>Facility</th>
<th>Real Estate Purchase Price</th>
<th>Operations Purchase Price</th>
<th>Total Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>111467-E</td>
<td>4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst</td>
<td>Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood</td>
<td>$6,500,000</td>
<td>$3,383,566</td>
<td>$9,883,566</td>
</tr>
<tr>
<td>111468-E</td>
<td>2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at</td>
<td>Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood</td>
<td>$4,700,000</td>
<td>$2,951,514</td>
<td>$7,651,514</td>
</tr>
<tr>
<td>Facility Name</td>
<td>Purchase Price</td>
<td>Glenwood</td>
<td>Maplewood ALF</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------------------------------------------</td>
<td>----------------------</td>
<td>----------------------------------</td>
<td>--------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Glenwood</td>
<td>$10,024,265</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maplewood ALF</td>
<td>$7,028,868</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Rosewood $8,337,181
Tioga ALF $3,904,780
Westwood $14,494,740
Total Adult Care Facilities Purchase Price $43,789,834

Independent Housing Facilities

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crestwood ILF</td>
<td>$12,590,237</td>
</tr>
<tr>
<td>Maplewood ILF</td>
<td>$4,993,149</td>
</tr>
<tr>
<td>Total Independent Housing Facilities Purchase Price</td>
<td>$17,583,386</td>
</tr>
</tbody>
</table>

Total Purchase Price

<table>
<thead>
<tr>
<th>Operations and Real Estate</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Health Care Facilities</td>
<td>$80,126,780</td>
</tr>
<tr>
<td>Adult Care Facilities</td>
<td>$43,789,834</td>
</tr>
<tr>
<td>Independent Housing Facilities</td>
<td>$17,583,386</td>
</tr>
<tr>
<td>Total Purchase Price</td>
<td>$141,500,000</td>
</tr>
</tbody>
</table>

Assignment Agreement
The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

Effective Date: Upon CON Approval by DOH
Assignor: Post Acute Partners Acquisition, LLC
Assignee: 37 North Chemung Street, LLC
Operating Designee: 37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly
Assets Assigned: Assignor’s right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.
Obligations Assigned: Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed realty entities, 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maelou Drive, LLC, 1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, 37 North Chemung Street, LLC, 2600 Niagara Falls Boulevard, LLC, and 4459 Bailey Avenue, LLC are as follows:

<table>
<thead>
<tr>
<th>Proposed Members</th>
<th>Percentage Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warren Cole</td>
<td>50%</td>
</tr>
<tr>
<td>Dr. Jeffrey Rubin, D.D.S.</td>
<td>50%</td>
</tr>
</tbody>
</table>

Lease Agreement and Medicaid Capital Reimbursement
Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Effective Date: Upon CON Approval by DOH
Premises: A 200-bed RHCF located at 37 North Chemung Street, Waverly, New York (Tioga County)
Lessor: 37 North Chemung Street, LLC
Lessee: 37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly
Term: 10 years commencing on the execution of the lease with 4 additional (5) Year extensions
Annual Rental:  Lease payment is equivalent to the annual mortgage debt service for the facility, which is $1,034,670.

Type:  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.

Currently, the facility Medicaid capital reimbursement is based on the return of and return on equity for recent improvement. This methodology will not be altered upon change in ownership.

Operating Budget
Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:

<table>
<thead>
<tr>
<th>Per Diem/Per Visit</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues:</td>
<td></td>
</tr>
<tr>
<td>Medicare Fee-For-Service</td>
<td>$470.57</td>
</tr>
<tr>
<td>Medicaid Fee-For-Service</td>
<td>165.08</td>
</tr>
<tr>
<td>Private Pay</td>
<td>363.74</td>
</tr>
<tr>
<td>Medicaid Fee-For-Service Ambulatory Service</td>
<td>65.51</td>
</tr>
<tr>
<td>Private Pay Ambulatory Service</td>
<td>125.00</td>
</tr>
<tr>
<td>Total Revenue</td>
<td></td>
</tr>
</tbody>
</table>

Expenses:
- Operating $14,731,399
- Capital 1,100,639
- Total Expense $15,832,038

Net Income 102,691

Utilization (Patient days) 70,471
Utilization (Visits) 2,826
Occupancy 96.54%

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

- Overall utilization is projected at 96.54%, which is consistent with historical. Utilization by payor source is expected as follows:
  - Medicaid 77.91%
  - Medicare 13.51%
  - Private Pay 8.58%

- Breakeven utilization is projected at 97.08%. The reason that it is higher than the overall utilization is due to the fact that without the ambulatory service revenue, the facility would have a loss of $89,047.

Ambulatory Services:
- Medicaid 96.07%
- Private Pay 3.93%
Capability and Feasibility

The purchase price and initiation of operations, as a financially viable entity, will be financed by a loan from Capital Funding, LLC of $3,851,800 at an interest rate of 5.50% for 30 years, with the remaining $3,194,067 from a subordination loan at an interest rate of 10% for 7 years, and $1,032,421 seller’s notes that is interest only.

Working capital requirements are estimated at $2,368,673, based on two months’ of first year expenses. $1,319,298 will by satisfied from the proposed member’s equity and the remaining $1,319,375 will be satisfied through a loan from Capital Funding, LLC at 5.00% over 5 years. A letter of interest has been supplied by Capital Funding, LLC. An affidavit from each member, which states that he or she is willing to contribute resources disproportionate to ownership percentages, has been provided by both proposed members. Presented as BFA Attachment A, is the Net Worth of proposed members.

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 $102,691 would be maintained during the first year following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B, is the pro-forma balance sheet of, which indicates positive members’ equity of $1,319,298 as of the first day of operations.

Following is a comparison of 2010 and projected revenue and expense:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual 2010 Income</td>
<td>$16,365,454</td>
</tr>
<tr>
<td>Annual 2010 Expense</td>
<td>15,602,522</td>
</tr>
<tr>
<td>Annual 2010 Net Income</td>
<td>$762,932</td>
</tr>
<tr>
<td>Projected incremental Income</td>
<td>($430,725)</td>
</tr>
<tr>
<td>Projected incremental Expense</td>
<td>229,516</td>
</tr>
<tr>
<td>Projected incremental Net Income</td>
<td>($660,241)</td>
</tr>
<tr>
<td>Incremental Net Income (Loss)</td>
<td>$102,691</td>
</tr>
</tbody>
</table>

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 expenses; expenses at budgeted occupancy and the difference between current year and projected levels.

As shown on BFA Attachment C, Elderwood at Tioga, LLC, had an average negative working capital position and an average negative net asset position, and generated an average net Income of $88,345 for the period 2008-2010. The 2009 loss is attributable to an increase in expenses of approximately 2% from 2008, with a 1% decrease in revenue. In order to correct this, the facility has instituted control on its operating budget and maintained approximately 1.0% increase in expenses from 2009 to 2010, while also increasing revenue by approximately 7.8%, which resulted in a positive net income for 2010.

Based on the proceeding, and 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, 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 - Elderwood at Tioga, LLC
BFA Attachment D  Organizational Chart
BFA Attachment E  Establishment Checklist
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish 37 North Chemung Operating Company, LLC d/b/a Elderwood at Waverly as the new operator of Elderwood Health Care at Tioga, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

111471 E 37 North Chemung Operating Company, LLC
d/b/a Elderwood at Waverly
APPROVAL CONTINGENT UPON:

1. Submission of documentation of project completion of CON #111100-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant’s Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant’s Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant’s fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant’s fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant’s fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in “Whereas Clause D” of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]

19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]

20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]

21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299
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)  Program: Residential Health Care Facility
Purpose: Establishment  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:

<table>
<thead>
<tr>
<th>Current Owner</th>
<th>Receiver</th>
<th>New Owner/Operator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waterfront Health Care Inc.</td>
<td>Waterfront Operations Associates, LLC d/b/a Waterfront Center for Rehabilitation and Health Care</td>
<td>Waterfront Operations Associates, LLC d/b/a Waterfront Center for Rehabilitation and Health Care</td>
</tr>
</tbody>
</table>
| MEMBER: -- Kaleida Health 100% | MEMBER: -- Kenneth Rozenberg 100% | 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 in 2010, it remains above the occupancy level for Erie County as a whole.

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:

| Revenues: | $10,695,651 |
| Expenses: | $10,489,406 |
| Gain/(Loss): | $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, acceptable to the Department. [CSL]

Council Action Date
April 5, 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 its operating interests to that entity.

<table>
<thead>
<tr>
<th>County RHCF Bed Need</th>
<th>Erie</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016 Projected Need</td>
<td>5,291</td>
</tr>
<tr>
<td>Current Beds</td>
<td>6,340</td>
</tr>
<tr>
<td>Beds under Const.</td>
<td>-332</td>
</tr>
<tr>
<td>Total Resources</td>
<td>6,008</td>
</tr>
<tr>
<td>Unmet Need</td>
<td>-717</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>RHCF Utilization</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waterfront Rehab</td>
<td>98.7%</td>
<td>98.6%</td>
<td>95.8%</td>
</tr>
<tr>
<td>Erie County</td>
<td>94.8%</td>
<td>95.4%</td>
<td>93.9%</td>
</tr>
</tbody>
</table>

*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

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility Name</td>
<td>Waterfront Health Care Center, Inc.</td>
<td>Waterfront Center for Rehabilitation and Healthcare</td>
</tr>
<tr>
<td>Address</td>
<td>200 Seventh Street</td>
<td>Same</td>
</tr>
<tr>
<td></td>
<td>Buffalo, NY 14201</td>
<td></td>
</tr>
<tr>
<td>RHCF Capacity</td>
<td>160</td>
<td>Same</td>
</tr>
<tr>
<td>ADHC Program Capacity</td>
<td>N/A</td>
<td>Same</td>
</tr>
<tr>
<td>Type of Operator</td>
<td>Corporation</td>
<td>Limited Liability Company</td>
</tr>
<tr>
<td>Class of Operator</td>
<td>Voluntary</td>
<td>Proprietary</td>
</tr>
<tr>
<td>Receivership</td>
<td>Kenneth Rozenberg</td>
<td>Membership</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>Kenneth Rozenberg</td>
</tr>
<tr>
<td></td>
<td>Previously</td>
<td>(managing member)</td>
</tr>
<tr>
<td></td>
<td>Kaleida Health and Waterfront Health Care</td>
<td>Jeremy Strauss</td>
</tr>
<tr>
<td></td>
<td>Center, Inc.</td>
<td>30%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Jeffrey Sicklick</td>
</tr>
<tr>
<td></td>
<td></td>
<td>10%</td>
</tr>
</tbody>
</table>

Project # 112218-E Exhibit Page 3
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  7/08 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

Certified Home Health Agency
Alpine Home Health Care  7/08 to present

Ambulance Company
Senior Care Emergency Ambulance Services, Inc.  6/1/05 to present

• 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
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
- Senior Care Emergency Ambulance Services, Inc. 5/1/05 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.

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.
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.

A review of the operations of Chittenango Center for Rehabilitation and Health Care for the period reveals the following:

- The facility was fined $20,000 pursuant to a Stipulation and Order issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) Quality of Care: Catheters

The review of operations for Williamsbridge Manor Nursing Home, Bronx Center for Rehabilitation & Health Care, LLC, Stonehedge Health and Rehabilitation Center-Chittenango and Chittenango Center for Rehabilitation and Health Care for the time periods indicated results in a conclusion of substantially consistent high level of care, since there were no repeat enforcements.

The review of operations for 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.

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:

<table>
<thead>
<tr>
<th><strong>Date:</strong></th>
<th>August 1, 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Seller:</strong></td>
<td>Waterfront Health Care Center, Inc.</td>
</tr>
<tr>
<td><strong>Purchaser:</strong></td>
<td>Waterfront Operations Associates, LLC</td>
</tr>
<tr>
<td><strong>Purchased Assets:</strong></td>
<td>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</td>
</tr>
</tbody>
</table>
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:

<table>
<thead>
<tr>
<th>Proposed Members</th>
<th>Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daryl Hagler</td>
<td>100%</td>
</tr>
</tbody>
</table>

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:

<table>
<thead>
<tr>
<th></th>
<th>Per Diem</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicaid</td>
<td>156.28</td>
<td>$7,523,724</td>
</tr>
<tr>
<td>Medicare</td>
<td>373.80</td>
<td>2,101,146</td>
</tr>
<tr>
<td>Private Pay</td>
<td>355.03</td>
<td>1,070,781</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$10,695,651</td>
</tr>
</tbody>
</table>

|                      |          |             |
| Expenses:            |          |             |
| Operating            |          | $10,110,858 |
| Capital              |          | 378,548     |
| Total                |          | $10,489,406 |

Net Income         $206,245

Utilization: (patient days) 56,780
Occupancy 97.23%

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:

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>Projected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual 2010 Income</td>
<td>$10,552,656</td>
<td>$142,995</td>
</tr>
<tr>
<td>Annual 2010 Expense</td>
<td>12,368,295</td>
<td>(1,878,889)</td>
</tr>
<tr>
<td>Annual 2010 Net Income</td>
<td>($1,815,639)</td>
<td>$2,021,884</td>
</tr>
</tbody>
</table>

Project 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
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Waterfront Operations Associates, LLC d/b/a Waterfront Center for Rehabilitation and Healthcare as the operator of Waterfront Health Care Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

112218 E Waterfront Operations Associations, LLC d/b/a Waterfront Center for Rehabilitation and Healthcare
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, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York  12180-2299
Name of Agency: ABC Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit
Application Number: 1691-L

Description of Project:

ABC Home Care, Inc., a for-profit 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:

Miroslava Kautsis, DDS – 200 Shares
Dentist, EZ Dental Care

The proposed board member of ABC Home Care, Inc. comprises the following individual:

Miroslava Kautsis, DDS – President, Vice President, Secretary and Treasurer

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 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 3865 Surf Avenue, Brooklyn, New York, 11224:

Bronx
Kings
New York
Queens
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: February 28, 2012
Name of Agency: BaCOR Healthcare Solutions Group, LLC DBA BaCOR Care for Life  
Address: Bardonia  
County: Rockland  
Structure: Limited Liability Company  
Application Number: 1822-L

Description of Project:
BaCOR Healthcare Solutions Group, LLC DBA BaCOR Care for Life, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed Members of BaCOR Healthcare Solutions Group, LLC DBA BaCOR Care for Life, comprises the following individuals:

Raul Coronado, MD, MS – President/Chief Executive Officer – 45%  
Retired  

Dov Bash, MD – Chief Operating Officer – 45%  
Director of Medical Management, New Jersey Property-Liability Insurance Guaranty Association (NJPLIGA)

Catherine Lopez, MD – Director of Operations – 5%  
Manager Healthcare Operations, UnitedHealthcare Community Plan  

Ishmael Carter, Director of Marketing – 5%  
Vice President Marketing, Royal Health Care, LLC

The Office of the Professions of the State Education Department and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professional associated with this application.

Dov Bash, MD reports that he has a medical degree from Genova, Italy but has not become licensed in the United States nor does he practice as a physician.

Catherine Lopez, MD reports that she has a medical degree from Quito, Ecuador but has not become licensed in the United States nor does she practice as a physician.

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 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 23 Village Green, Bardonia, New York 10954:

Nassau  
Rockland

The applicant proposes to provide the following health care services:

Nursing  
Home Health Aide  
Personal Care

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 17, 2012
Division of Home & Community Based Services  
Character and Competence Staff Review  

Name of Agency: Elite Home Care Service Agency, Inc.  
Address: Glendale  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 1716-L  

Description of Project:  
Elite Home Care Service Agency, 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: 100 shares owned by Rosemary Bianchi and 100 shares owned by Nancy A. Rahi.  

The Board of Directors of Elite Home Care Service Agency, Inc. comprises the following individuals:  

Rosemary Bianchi, R.N., President, Treasurer  
Nursing Supervisor, Utopia Home Care, Inc.  

Nancy A. Rahi, L.M.S.W., Vice President, Secretary  
Administrator, Utopia Home Care, Inc.  
(resigned January 2011)  

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 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 88-25 81st Avenue, Glendale, New York 11385:  

New York Kings Queens Bronx Richmond  
Nassau  

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: February 28, 2012
Name of Agency: Healing Touch Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 1634-L

Description of Project:
Healing Touch Home Care, Inc., a for-profit 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:
Marina Kaplun – 200 shares

The proposed board members of Healing Touch Home Care, Inc. comprise the following individuals:

- Marina Kaplun, PA – President
  Physician Assistant, Coney Island Hospital
- Izabella Gendelman – Vice President
  Research and Development, Toys-R-Us Corporate
- Renata Trost – Secretary/Treasurer
  Executive Director, Shostakovich School of Music, Art and Dance
- Anastasia Lavitman, RN – Board Member
  Registered Nurse, New York Community Hospital of Brooklyn

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 at 130 Whitman Drive, Brooklyn, New York 11234:

- Bronx
- Kings
- New York
- Queens
- Richmond

The applicant will provide the following health care services:

- Nursing
- Home Health Aide
- Personal Care

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: February 28, 2012
Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Louis Career Development Center, Inc. 
d/b/a Smart Home Care Agency
Address: Flushing
County: Queens
Structure: For-Profit Corporation
Application Number: 1962-L

Description of Project:

Louis Career Development Center, Inc., d/b/a Smart Home Care Agency, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Louis Career Development Center, Inc. d/b/a Smart Home Care Agency is an existing medical and nursing career training school.

The applicant has authorized 200 shares of stock which are owned as follows:

Wenhuan Lu, 180 shares
President/Teacher, Louis Career Development Center, Inc.d/b/a Smart Home Care Agency
Ping Huang, R.N., 20 shares
Homecare Nursing Specialist, Bioscrip Nursing Services
Teacher/Nursing Instructor, Louis Career Development Center, Inc.
RN charge nurse, North Shore University Hospital

The Board of Directors of Louis Career Development Center, Inc. d/b/a Smart Home Care Agency comprises the following individuals:

Wenhuan Lu, President
(disclosed above)

Ping Huang, R.N., Vice President and Treasurer
(disclosed above)

Jiaxuan (Kathy) Liang, R.N., Secretary
Staff Nurse, Summit Home Health Care

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 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 41-61 Kissena Boulevard, Concourse Level, Suite 29, Flushing, New York 11355:

New York          Kings          Queens          Bronx          Richmond
Nassau

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
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: March 6, 2012
Name of Agency: Steps in Home Care, Inc.
Address: Scarsdale
County: Westchester
Structure: For-Profit Corporation
Application Number: 1996-L

Description of Project:
Steps in 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 by Lisa Wade (100 shares) and Mary Martire (100 shares).

The Board of Directors of Steps in Home Care, Inc. comprises the following individuals:

Lisa Wade, President
Executive Director, Steps Therapy, Inc. (CA)
Affiliation: Steps Home Care, LLC d/b/a All Steps Home Care (FL)

Mary Martire, Secretary, Treasurer
Manager, Steps Home Care, LLC d/b/a All Steps Home Care (FL)

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 184 Boulder Ridge Road, Scarsdale, New York 10583:

Westchester Nassau

The applicant proposes to serve the residents of the following counties from an office located in Bronx County:

Bronx New York

The applicant proposes to provide the following health care services:

Nursing Home Health Aide

A review of the following agency was performed as part of this review:

Steps Home Care, LLC d/b/a All Steps Home Care (FL)

The information provided by the Agency for Health Care Administration, Tallahassee, Florida has indicated that the home care agency 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: February 3, 2012
Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: JS Homecare Agency of NY, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 1906-L

Description of Project:

JS Homecare Agency of NY, 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:

Janette Shtaynberg, HHA, PCA – President – 200 Shares
Home Attendant, Helping Hands

The sole board member of JS Homecare Agency of NY, Inc. is Janette Shtaynberg.

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 2268 56 Drive, Brooklyn, New York 11234:

- Bronx
- Richmond
- Kings
- Westchester
- New York
- Queens

The applicant proposes to serve the residents of the following counties from a second office to be located within the New Rochelle region:

- Dutchess
- Suffolk
- Nassau
- Sullivan
- Orange
- Rockland
- Putnam
- Ulster

The applicant proposes to provide the following health care services:

- Nursing
- Occupational Therapy
- Homemaker
- Home Health Aide
- Physical Therapy
- Housekeeper
- Personal Care
- Nutrition
- Audiology
- Medical Social Services
- Speech-Language Pathology
- Respiratory Therapy

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: February 28, 2012
Name of Agency: Heritage Christian Services, Inc  
Address: East Rochester  
County: Monroe  
Structure: Not-For-Profit Corporation  
Application Number: 1901L

Description of Project:
Heritage Christian Services, Inc, a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The Board of Directors of Heritage Christian Services, Inc comprise of the following individuals:

- Peter Sear – Chair  
  Retired  
- George-Ann Schauffele – Vice Chair  
- Julie K. Gerstenberger – Secretary  
  Engineer, Eastman Kodak  
- John (Jack) K. Best – Treasurer  
  Retired  
- Ward C. Donahue –  
  Retired  
- Rev. David L. Donner  
  Retired  
- Leslie A. Hulbert, RN – Vice Chair  
  Unemployed  
- Daniel (Dan) W. Matthaidess  
  Retired  
- Forrestine (Tina) A. McNeary –  
  Retired  
  Partner, Harris, Chesworth, O’Brien, Johnstone, Welch & Leone, LLP  
- Gail B. Otto –  
  Retired  
- Mary Lynn Smart, RN  
  Certified Tumor Registrar, Highland Hospital  
- William (Bill) K. Stanbro  
  Owner/President, Lakeland Supply, Inc.  
- Richard G. Vander Horst – Member at Large  
  IT Manager, Wegman’s Food Markets  
- Joan Van De Wall  
  Associate in Ministry, Reformation Lutheran Church

George Kerson joined Heritage Christian Services Board of Directors as a Board Advisor in 2011. Mr. Kerson is a non-voting member whose role is to represent individuals with developmental disabilities who live within their residential program. As a non-voting member he is exempt from a character and competence review.

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professionals 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.

A Certificate of Good Standing has been received for Edward O’Brien.

The applicant has indicated that they run 68 OPWDD residential programs, 16 OPWDD day habilitation programs and 2 OPWDD respite programs. At this time, OPWDD does not enforce any of these types of programs.
The applicant proposes to serve the residents of the following counties from an office located at, 349 West Commercial Street, Suite 2795, East Rochester, New York 14445:

Genesee  Livingston  Monroe  Ontario
Wayne

The applicant proposes to open a second site to serve the residents of the following counties from an office located at, 3790 Commerce Court, Suite 800, North Tonawanda, New York 14120:

Erie  Niagara

The applicant proposes to provide the following health care services:

Nursing  Personal Care  Speech-Language Pathology

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:  February 28, 2012
Niagara County Department of Health, a government subdivision, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant currently operates a certified home health agency (CHHA), a long term home health care program (LTHHCP) and a diagnostic and treatment center. Niagara County is in the process of selling the CHHA and LTHHCP. Niagara County Department of Health is requesting approval to become licensed as a licensed home care services agency to enable the county to continue to provide essential public health nursing services.

The applicant proposes to serve the residents of Niagara County from an office located at: 1001 11th Street, 3rd Floor, Niagara Falls, New York 14301.

The applicant proposes to provide the following health care services:

Nursing

The information provided by the Division of Home and Community Based Services has indicated that the certified home health care agency (CHHA) and long term home health care program (LTHHCP) reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Certification and Surveillance has determined that the Article 28 diagnostic and treatment center reviewed has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

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: March 5, 2012
Tompkins County Health Department, a government subdivision, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant currently operates a certified home health agency (CHHA) and a diagnostic and treatment center. Tompkins County is in the process of selling the CHHA. Tompkins County Health Department is requesting approval to become licensed as a licensed home care services agency to enable the county to continue to provide essential public health nursing services.

The applicant proposes to serve the residents of Tompkins County from an office located at: 55 Brown Road, Ithaca, New York 14850.

The applicant proposes to provide the following health care services:

<table>
<thead>
<tr>
<th>Nursing</th>
<th>Medical Social Services</th>
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The information provided by the Division of Home and Community Based Services has indicated that the certified home health care agency (CHHA) reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Certification and Surveillance has determined that the Article 28 diagnostic and treatment center reviewed has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

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: March 5, 2012
Name of Agency:  Yates County Public Health
Address:   Penn Yan
County:    Yates
Structure:   Public
Application Number:  2096-L

Description of Project:
Yates County Public Health requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The county currently operates a certified home health agency which they are planning on selling. Yates County is requesting approval to open a licensed home care services agency to enable the county to continue to provide essential public health nursing services.

The applicant proposes to serve the residents of Yates County from an office located at 417 Liberty Street, Suite 2120, Penn Yan, New York 14527.

The applicant proposes to provide the following health care services:
Nursing    Nutrition

Yates County currently operates a Certified Home Health Agency and a Diagnostic and Treatment Center.

The information provided by the Division of Home and Community Based Services has indicated that the certified home health agency reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Certification and Surveillance has indicated that the diagnostic and treatment center reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Since the applicant is a public entity, it is not subject to a character and competence review.

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
Description of Project:

Samaritan Senior Village, Inc., a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This application is to establish a licensed home care service agency associated with a new Assisted Living Program (ALP). This LHCSA will be associated with Glen at Maple Pointe Assisted Living Program.

The Board of Trustees of Samaritan Senior Village comprises the following individuals:

Joan Treadwell-Woods – Chairman
Retired

Affiliations:
• Vice Chairperson, Samaritan Keep Nursing Home, Inc. (2005-Present)

Collene D. Alexander – Trustee
Executive Director, Family Counseling Services of Northern NY, Inc.

Affiliations:

Katherine F. Fenlon – Trustee
Vice President for Academic Affairs, Jefferson Community College

Affiliations:
• Trustee, Samaritan Medical Center (2006 – Present)

Paul A. Kraeger – Treasurer
Senior Vice President, Chief Financial Officer, Samaritan Medical Center

Affiliations:
• Treasurer, Samaritan Keep Nursing Home, Inc. (June 1980 – Present)

Thomas H. Carman, Pharmacist – Trustee
President and Chief Executive Officer, Samaritan Medical Center

Affiliations:
• Member, Groton Community Health Care Center Residential Care Facility (March 1997- February 2004)
• Member, E.J. Noble Hospital of Alexandria Bay (April 2004 – Present)
• Member, Samaritan Keep Nursing Home, Inc. (April 2004 – Present)

Thomas F. Hanley – Trustee
President/General Manager, St. Lawrence Valley Educational TV Council

Affiliations:
• Trustee, Samaritan Medical Center (March 2007 – Present)
• Chairman, Samaritan Keep Nursing Home, Inc. (June 2004 – Present)
The sole member of Samaritan Senior Village is Samaritan Medical Center. The Board of Trustees of Samaritan Medical Center comprises the following individuals:

Thomas Carman – Trustee  
(Previously Disclosed)

Bruce Dines, D.M.D. – Trustee  
Self-employed, North Country Oral Surgery Group

Affiliations:  
• Director, Samaritan Keep Nursing Home, Inc. (2004 – Present)

Elizabeth C. Fipps – Trustee  
Market Manager, Senior Vice President, HSBC

Affiliations:  
• Trustee, Samaritan Medical Center (March 2003 – Present)
• Trustee, Samaritan Keep Nursing Home, Inc. (March 2009 - Present)

Judith J. Foster – Trustee  
No Employment History

Kathleen H. Gebo, RN – Trustee  
Instructor, Jefferson-Lewis BOCES

Thomas Hanley – Trustee  
(Previously Disclosed)

Ronald G. Perciaccante, M.D. – Trustee  
Pediatrician, Child & Adolescent Health Associates

Affiliations:  
• Trustee, Samaritan Keep Nursing Home, Inc.

Melanie A. Parker-Geurtsen, Veterinarian – Trustee  
Owner, Cowcalls Incorporated

Robert O. Kimball, M.D. – Trustee  
Surgeon, Robert O. Kimball, MD PC

Karl J. Komar, M.D. – Trustee  
Neurologist, Upstate Neonatal Care PC

Lu Green – Trustee  
Branch Service Manager, RBC Wealth Management

Frederic G. Garry – Trustee  
Senior Pastor, First Presbyterian Church

Paul G. Carr, Ph.D. – Trustee  
Adjunct Professor, Cornell University

Katherine F. Fenlon – Trustee  
(Previously Disclosed)

David J. Flint, M.D. – Trustee  
Hospitalist/Program Director, Samaritan Medical Center
Jack Rush, M.D. – Trustee
Physician, Samaritan Medical Center

Affiliations:
- Trustee, Samaritan Keep Nursing Home, Inc. (2003 – Present)

Lisa A. Weber – Trustee
Chief Executive Officer & Manager, LCO Destiny, LLC

John J. Wheeler – Trustee
Principal Consultant, JJW Consulting

Affiliations:
- Director, Samaritan Keep Nursing Home, Inc. (April 2003 – April 2010)

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 search of the individuals (and entities, where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

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):

Samaritan Keep Nursing Home, Inc.
Samaritan Medical Center
Groton Community Health Care Center (March 1997- February 2004)
E.J. Noble Hospital of Alexandria Bay (April 2004 – Present)

**Samaritan Keep Nursing Home, Inc.** was fined four thousand dollars ($4,000.00) pursuant to a stipulation and order dated October 10, 2010 for inspection findings of October 29, 2009 for violations 10 NYCRR Sections 415.12 Quality of Care: Nutrition; 415.15(b)(2)(i-iii) Medical Services: Physician Services.

**Groton Community Health Care Center, Inc.** was fined two thousand dollars ($2,000.00) pursuant to a stipulation and order dated August 13, 2002 for inspection findings of June 28, 2001 for violations 10 NYCRR Sections 415.12 Quality of Care.

**Groton Community Health Care Center, Inc.** was fined two thousand dollars ($2,000.00) pursuant to a stipulation and order dated October 28, 2004 for inspection findings of December 10, 2003 for violations 10 NYCRR Sections 415.12 (h) Quality of Care: Accidents.

The Information provided by the Bureau of Quality and Surveillance has indicated that the residential health 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 Bureau of Hospital and Primary Care 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.
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. When code violations have occurred, it was determined that the operators investigated the circumstances surrounding the violation and took steps appropriate to the gravity of the violation which a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

The applicant proposes to serve the residents of the following counties from an office located at 1515 Washington Street, Watertown, New York 13601:

Jefferson       Lewis       St. Lawrence

The applicant proposes to provide the following health care services:

Nursing         Home Health Aide   Personal Care   Physical Therapy
Occupational Therapy  Respiratory Therapy   Audiology     Speech-Language Pathology
Nutrition       Medical Social Services Housekeeper    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: February 29, 2012
Division of Home & Community Based Care
Character and Competence Staff Review

Name of Agency: 229 Bennett Road Operating Company, LLC d/b/a Elderwood Home Care at Cheektowaga
Address: Cheektowaga
County: Erie
Structure: Limited Liability Company
Application Number: 2028-L

Description of Project:

229 Bennett Road Operating Company, LLC d/b/a Elderwood Home Care at Cheektowaga, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Elderwood Village at Maplewood LLC was previously approved as a home care services agency by the Public Health Council at its May 24, 2002 meeting and subsequently licensed as 1117L001. At that time the membership was as follows: Robert Chur, Member – 75% and Carol Chur, Member – 25%.

The members of the 229 Bennett Road Operating Company, LLC d/b/a Elderwood Home Care at Cheektowaga comprises the following individuals:

Warren D. Cole, Member, Co-CEO – 50%
Partner, Post Acute Partners, LLC

Jeffrey Rubin, Member, Co-CEO – 50%
Partner, Post Acute Partners, LLC

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant will continue to serve the residents of the Erie from an office located at 229 Bennett Road, Cheektowaga, New York 14227

The applicant proposes to provide the following health care services:

<table>
<thead>
<tr>
<th>Nursing</th>
<th>Home Health Aide</th>
<th>Physical Therapy</th>
<th>Occupational Therapy</th>
</tr>
</thead>
</table>

A review of the operations of the following facilities was performed as part of this review for the time periods specified:

<table>
<thead>
<tr>
<th>State</th>
<th>Facility/Medical Specialty</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Laurelton Rehabilitation and Nursing Center*</td>
<td>SNF 10/2006 to 5/2008</td>
</tr>
<tr>
<td>California</td>
<td>San Joaquin Valley Rehabilitation Hospital</td>
<td>Hospital 7/2004-7/2004</td>
</tr>
<tr>
<td></td>
<td>Kenfield Rehabilitation Hospital</td>
<td>Hospital 8/2003-7/2004</td>
</tr>
<tr>
<td></td>
<td>Care Alternatives of California*</td>
<td>Hospice 2003-10/2009</td>
</tr>
</tbody>
</table>

(Note: actual dates of ownership may extend prior to 2003)
<table>
<thead>
<tr>
<th>State</th>
<th>Facilities</th>
<th>Type</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Colorado</strong></td>
<td>North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care) ACU-PSYCH</td>
<td></td>
<td>7/2003-8/2004</td>
</tr>
<tr>
<td></td>
<td>North Valley Rehabilitation Hospital (Vibra LTACH)</td>
<td>LTA</td>
<td>7/2003-8/2004</td>
</tr>
<tr>
<td></td>
<td>North Valley Rehabilitation Hospital (Vista View Care Center)</td>
<td>SNF</td>
<td>7/2003-8/2004</td>
</tr>
<tr>
<td><strong>Connecticut</strong></td>
<td>Danbury Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Darien Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Golden Hill Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Newington Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Partners Pharmacy of Connecticut*</td>
<td>RX</td>
<td>2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>River Glen Health Care Center (a/k/a Southbury HCC)*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>The Highlands Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>West River Health Care Center (a/k/a Milford North HCC)*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Westport Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Wethersfield Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td><strong>Kansas</strong></td>
<td>Care Alternatives of Kansas</td>
<td>HOS</td>
<td>2004-10/2009</td>
</tr>
<tr>
<td><strong>Kentucky</strong></td>
<td>Southern Kentucky Rehabilitation Hospital</td>
<td>IRF</td>
<td>5/2003-7/2004</td>
</tr>
<tr>
<td><strong>Maryland</strong></td>
<td>Montgomery Village Health Care Center</td>
<td>SNF</td>
<td>2003-10/2009</td>
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<td><strong>Massachusetts</strong></td>
<td>Brookline Health Care Center*</td>
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<td>8/2003-10/2009</td>
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<td>Calvin Coolidge Nursing &amp; Rehab Center for Northampton*</td>
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<td>8/2003-10/2009</td>
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<td></td>
<td>Care Alternatives of Massachusetts*</td>
<td>HOS</td>
<td>2005-10/2009</td>
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<tr>
<td></td>
<td>Concord Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Holyoke Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Lexington Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
</tr>
<tr>
<td></td>
<td>Lowell Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
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<td>Millbury Health Care Center*</td>
<td>SNF</td>
<td>8/2003-10/2009</td>
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<td>New Bedford Health Care Center*</td>
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<td>8/2003-10/2009</td>
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<td></td>
<td>New Bedford Rehabilitation Hospital*</td>
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<td>7/2003-8/2004</td>
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<td>Newton Health Care Center*</td>
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<td></td>
<td>North Shore Health Care Center*</td>
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<td>8/2003-10/2009</td>
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<td>Partners Pharmacy of Massachusetts*</td>
<td>RX</td>
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<td>Peabody Glen Health Care Center*</td>
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<td></td>
<td>Redstone Health Care Center (a/k/a East Longmeadow HCC)*</td>
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<td>Weymouth Health Care Center*</td>
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<td>8/2003-10/2009</td>
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<td></td>
<td>Wilmington Health Care Center*</td>
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<td>8/2003-10/2009</td>
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<td><strong>Michigan</strong></td>
<td>Grand Blanc Rehabilitation &amp; Nursing Center</td>
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<td>HOS</td>
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<td></td>
<td>Cliffview at Riverside Rehab &amp; Nursing Center</td>
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<tr>
<td></td>
<td>Partners Pharmacy of Missouri*</td>
<td>RX</td>
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### New Jersey

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<tr>
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<tbody>
<tr>
<td>Bergen Care Home Health</td>
<td>HHA</td>
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<td>Bergen Care Personal Touch</td>
<td>HOM</td>
<td>2007-10/2009</td>
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<td>HOS</td>
<td>2001-10/2009</td>
</tr>
<tr>
<td>Care One at Dunroven</td>
<td>SNF</td>
<td>2001-10/2009</td>
</tr>
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<td>Care One at East Brunswick</td>
<td>SNF</td>
<td>2/2002-10/2009</td>
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<tr>
<td>Care One at Evesham</td>
<td>SNF</td>
<td>8/2000-10/2009</td>
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<td>Care One at Evesham Assisted Living</td>
<td>ALF</td>
<td>10/2007-10/2009</td>
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<td>Care One at Ewing</td>
<td>SNF</td>
<td>11/2004-10/2009</td>
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<td>Care One at Hamilton</td>
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<td>5/2002-10/2009</td>
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<td>Care One at Holmdel</td>
<td>SNF</td>
<td>8/1997-10/2009</td>
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<td>Care One at Jackson (a/k/a Jackson HCC)</td>
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<td>2004-10/2009</td>
</tr>
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<td>Care One at King James</td>
<td>SNF</td>
<td>2003-10/2009</td>
</tr>
<tr>
<td>Care One at Livingston</td>
<td>SNF</td>
<td>10/2002-10/2009</td>
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<tr>
<td>Care One at Livingston Assisted Living</td>
<td>ALF</td>
<td>9/2005-10/2009</td>
</tr>
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<td>Care One at Madison Avenue</td>
<td>SNF</td>
<td>1/2005-10/2009</td>
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<td>Care One at Moorestown</td>
<td>SNF</td>
<td>9/2003-10/2009</td>
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<tr>
<td>Care One at Harmony Village at Moorestown</td>
<td>ALF</td>
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<tr>
<td>Care One at Morris</td>
<td>SNF</td>
<td>8/2001-10/2009</td>
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<tr>
<td>Care One at Morris Assisted Living</td>
<td>ALF</td>
<td>3/2003-10/2009</td>
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<td>Care One at Pine Rest</td>
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<td>2001-10/2009</td>
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<td>Care One at Raritan Bay MC</td>
<td>LTA</td>
<td>3/2004-10/2009</td>
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<td>Care One Harmony Village at Moorestown</td>
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<td>9/2003-10/2009</td>
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<td>Care One at Teaneck</td>
<td>SNF</td>
<td>4/2007-10/2009</td>
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<td>Care One at The Cupola</td>
<td>SNF</td>
<td>2001-10/2009</td>
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<td>Care One at The Highlands</td>
<td>SNF</td>
<td>2001-10/2009</td>
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<td>Care One at Valley</td>
<td>SNF</td>
<td>2001-10/2009</td>
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<td>Care One at Wall</td>
<td>SNF</td>
<td>9/2004-10/2009</td>
</tr>
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<td>Care One at Wayne</td>
<td>SNF/ALF</td>
<td>6/2002-10/2009</td>
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<td>Care One at Wellington</td>
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<td>6/2002-10/2009</td>
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<td>Marlton Rehabilitation Hospital</td>
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<td>5/2003-7/2004</td>
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<td>Oradel Health Care Center</td>
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<td>2003-10/2009</td>
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<td>Partners Pharmacy of New Jersey</td>
<td>RX</td>
<td>2001-10/2009</td>
</tr>
<tr>
<td>Somerset Valley Rehabilitation &amp; Nursing Center</td>
<td>SNF</td>
<td>10/2009-10/2009</td>
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<tr>
<td>South Jersey Health Care Center</td>
<td>SNF</td>
<td>2003-10/2009</td>
</tr>
<tr>
<td>Woodcrest Health Care Center</td>
<td>SNF</td>
<td>2003-10/2009</td>
</tr>
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</table>

### North Carolina

<table>
<thead>
<tr>
<th>Facility</th>
<th>Type</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blue Ridge Health Care Center</td>
<td>SNF</td>
<td>8/2002-10/2009</td>
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</table>

### Ohio

<table>
<thead>
<tr>
<th>Facility</th>
<th>Type</th>
<th>Duration</th>
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<tbody>
<tr>
<td>Bellbrook Health Care Center</td>
<td>SNF</td>
<td>2003-10/2009</td>
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<tr>
<td>The Rehabilitation &amp; Nursing Center at Elm Creek</td>
<td>SNF</td>
<td>10/2006-10/2009</td>
</tr>
<tr>
<td>The Rehabilitation &amp; Nursing Center at Firelands</td>
<td>SNF</td>
<td>10/2006-10/2009</td>
</tr>
<tr>
<td>The Rehabilitation &amp; Nursing Center at Spring Creek</td>
<td>SNF</td>
<td>10/2006-10/2009</td>
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### Pennsylvania

<table>
<thead>
<tr>
<th>Facility</th>
<th>Type</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Care Alternatives of Pennsylvania</td>
<td>HOS</td>
<td>2003-10/2009</td>
</tr>
<tr>
<td>Pediatric Specialty Care at Doylestown</td>
<td>SNF</td>
<td>2/2011-present</td>
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<tr>
<td>Pediatric Specialty Care at Hopewell</td>
<td>PED ICF</td>
<td>2/2011-present</td>
</tr>
<tr>
<td>Pediatric Specialty Care at Lancaster</td>
<td>PED ICF</td>
<td>2/2011-present</td>
</tr>
<tr>
<td>Pediatric Specialty Care at Point Pleasant</td>
<td>PED ICF</td>
<td>2/2011-present</td>
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<tr>
<td>Pediatric Specialty Care at Quakertown</td>
<td>PED ICF</td>
<td>2/2011-present</td>
</tr>
<tr>
<td>Presque Isle Rehabilitation &amp; Nursing Center</td>
<td>SNF</td>
<td>10/2006-10/2009</td>
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<tr>
<td>Senior Living of Lancaster</td>
<td>HOM</td>
<td>2/2011-present</td>
</tr>
<tr>
<td>The Rehabilitation &amp; Nursing Center at Greater Pittsburg</td>
<td>SNF</td>
<td>10/2006-10/2009</td>
</tr>
</tbody>
</table>
In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator’s track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

During the applicable period identified …, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period …, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the Alabama facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the California facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the Colorado facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.
A review of the Connecticut facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

- Danbury Health Care Center
- Darien Health Care Center
- Long Ridge of Stamford
- Newington Health Care Center
- West River Health Care Center
- Westport Health Care Center
- Wethersfield Health Care Center

A review of the Kansas facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Kentucky facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Maryland facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the Massachusetts facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the Missouri facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the New Jersey facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the North Carolina facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Ohio facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Pennsylvania facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the Puerto Rico health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the Rhode Island facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Virginia facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department’s standards for analysis, of the applicants’ operation of 35 facilities in five different states. However, it
should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

**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: March 16, 2012
Name of Agency: 580 Orchard Park Road Operating Company, LLC d/b/a Elderwood Home Care at West Seneca
Address: West Seneca
County: Erie
Structure: Limited Liability Company
Application Number: 2029-L

Description of Project:

580 Orchard Park Road Operating Company, LLC d/b/a Elderwood Home Care at West Seneca, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Westwood Village, Inc. d/b/a Elderwood Village at Westwood was previously approved as a home care services agency by the Public Health Council at its January 24, 2003 meeting and subsequently licensed as 1171L001. At that time the membership was as follows: Robert Chur, Member – 75% and Carol Chur, Member – 25%.

The members of the 580 Orchard Park Road Operating Company, LLC d/b/a Elderwood Home Care at West Seneca comprises the following individuals:

Warren D. Cole, Member, Co-CEO – 50%
Partner, Post Acute Partners, LLC

Jeffrey Rubin, Member, Co-CEO – 50%
Partner, Post Acute Partners, LLC

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant will continue to serve the residents of the Erie from an office located at 580 Orchard Park Road, West Seneca, New York 14224.

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Physical Therapy Speech-Language Pathology
Occupational Therapy

A review of the operations of the following facilities was performed as part of this review for the time periods specified:

ACU-acute care/hospital ICF-intermediate care facility/group home
ALF-assisted living facility IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
HHA-home health agency LTA-long term acute care hospital (similar to TCU)
HOM-homecare RX-pharmacy
HOS-hospice SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)

**Alabama**
Laurelton Rehabilitation and Nursing Center* SNF 10/2006 to 5/2008

**California**
San Joaquin Valley Rehabilitation Hospital Hospital 7/2004-7/2004
Kenfield Rehabilitation Hospital Hospital 8/2003-7/2004
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**New Jersey**

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**North Carolina**

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**Pennsylvania**

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<td>2/2011-present</td>
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In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator’s track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

*During the applicable period identified …, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period …, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …*

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.
A review of the Connecticut facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

- Danbury Health Care Center
- Darien Health Care Center
- Long Ridge of Stamford
- Newington Health Care Center
- West River Health Care Center
- Westport Health Care Center
- Wethersfield Health Care Center

A review of the Kansas facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Kentucky facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Maryland facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the Massachusetts facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the Missouri facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the New Jersey facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the North Carolina facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Ohio facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Pennsylvania facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the Puerto Rico health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the Rhode Island facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Virginia facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department’s standards for analysis, of the applicants’ operation of 35 facilities in five different states. However, it
should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

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: March 16, 2012
Name of Agency: 76 Buffalo Street Operating Company, LLC d/b/a Elderwood Home Care at Hamburg
Address: Hamburg
County: Erie
Structure: Limited Liability Company
Application Number: 2030-L

Description of Project:

76 Buffalo Street Operating Company, LLC d/b/a Elderwood Home Care at Hamburg, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Rosewood Village, Inc. was previously approved as a home care services agency by the Public Health Council at its September 25, 1998 meeting and subsequently licensed as 0784L001. At that time the membership was as follows: Robert Chur, Member – 75% and Carol Chur, Member – 25%.

The members of the 229 76 Buffalo Street Operating Company, LLC d/b/a Elderwood Home Care at Hamburg comprises the following individuals:

Warren D. Cole, Member, Co-CEO – 50%
Partner, Post Acute Partners, LLC

Jeffrey Rubin, Member, Co-CEO – 50%
Partner, Post Acute Partners, LLC

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant will continue to serve the residents of the Erie from an office located at 76 Buffalo Street, Hamburg, New York 14075.

The applicant proposes to provide the following health care services:

<table>
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<tr>
<th>Nursing</th>
<th>Home Health Aide</th>
<th>Personal Care</th>
<th>Speech-Language Pathology</th>
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<tr>
<td>Physical Therapy</td>
<td>Occupational Therapy</td>
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A review of the operations of the following facilities was performed as part of this review for the time periods specified:

- **ACU-acute care/hospital**
- **ICF-intermediate care facility/group home**
- **ALF-assisted living facility**
- **IRF-intermediate rehabilitation facility (similar to SNF short term rehab)**
- **HHA-home health agency**
- **LTA-long term acute care hospital (similar to TCU)**
- **HOM-homecare**
- **RX-pharmacy**
- **HOS-hospice**
- **SNF-skilled nursing facility/nursing home**

*(Note: actual dates of ownership may extend prior to 2003)*

**Alabama**

Laurelton Rehabilitation and Nursing Center* | SNF | 10/2006 to 5/2008

**California**

San Joaquin Valley Rehabilitation Hospital | Hospital | 7/2004-7/2004
Kenfield Rehabilitation Hospital | Hospital | 8/2003-7/2004
Care Alternatives of California* | Hospice | 2003-10/2009
**Colorado**
North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care) ACU-PSYCH 7/2003-8/2004
North Valley Rehabilitation Hospital (Vibra LTACH) LTA 7/2003-8/2004
North Valley Rehabilitation Hospital (Vista View Care Center) SNF 7/2003-8/2004

**Connecticut**
Danbury Health Care Center* SNF 8/2003-10/2009
Darien Health Care Center* SNF 8/2003-10/2009
Golden Hill Health Care Center* SNF 8/2003-10/2009
Newington Health Care Center* SNF 8/2003-10/2009
Partners Pharmacy of Connecticut* RX 2003-10/2009
River Glen Health Care Center (a/k/a Southbury HCC)* SNF 8/2003-10/2009
The Highlands Health Care Center* SNF 8/2003-10/2009
West River Health Care Center (a/k/a Milford North HCC)* SNF 8/2003-10/2009
Westport Health Care Center* SNF 8/2003-10/2009
Wethersfield Health Care Center* SNF 8/2003-10/2009

**Kansas**
Care Alternatives of Kansas HOS 2004-10/2009

**Kentucky**
Southern Kentucky Rehabilitation Hospital IRF 5/2003-7/2004

**Maryland**
Montgomery Village Health Care Center SNF 2003-10/2009

**Massachusetts**
Brookline Health Care Center* SNF 8/2003-10/2009
Calvin Coolidge Nursing & Rehab Center for Northampton* SNF 8/2003-10/2009
Care Alternatives of Massachusetts* HOS 2005-10/2009
Concord Health Care Center* SNF 8/2003-10/2009
Holyoke Health Care Center* SNF 8/2003-10/2009
Lexington Health Care Center* SNF 8/2003-10/2009
Lowell Health Care Center* SNF 8/2003-10/2009
Millbury Health Care Center* SNF 8/2003-10/2009
New Bedford Health Care Center* SNF 8/2003-10/2009
New Bedford Rehabilitation Hospital* IRF 7/2003-8/2004
Newton Health Care Center* SNF 8/2003-10/2009
North Shore Health Care Center* SNF 8/2003-10/2009
Partners Pharmacy of Massachusetts* RX 2004-10/2009
Peabody Glen Health Care Center* SNF 8/2003-10/2009
Redstone Health Care Center (a/k/a East Longmeadow HCC)* SNF 8/2003-10/2009
Weymouth Health Care Center* SNF 8/2003-10/2009
Wilmington Health Care Center* SNF 8/2003-10/2009

**Michigan**
Grand Blanc Rehabilitation & Nursing Center SNF 10/2006-10/2009

**Missouri**
Care Alternatives of Missouri HOS 2003-10/2009
Cliffview at Riverside Rehab & Nursing Center SNF 10/2006-5/2008
Partners Pharmacy of Missouri* RX 2003-10/2009
### New Jersey

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### North Carolina

- Blue Ridge Health Care Center: SNF, 8/2002-10/2009

### Ohio

- Bellbrook Health Care Center: SNF, 2003-10/2009
- The Rehabilitation & Nursing Center at Elm Creek: SNF, 10/2006-10/2009
- The Rehabilitation & Nursing Center at Firelands: SNF, 10/2006-10/2009
- The Rehabilitation & Nursing Center at Spring Creek: SNF, 10/2006-10/2009

### Pennsylvania

- Pediatric Specialty Care at Doylestown: SNF, 2/2011-present
- Pediatric Specialty Care at Hopewell: PED ICF, 2/2011-present
- Pediatric Specialty Care at Lancaster: PED ICF, 2/2011-present
- Pediatric Specialty Care at Point Pleasant: PED ICF, 2/2011-present
- Pediatric Specialty Care at Quakertown: PED ICF, 2/2011-present
- Presque Isle Rehabilitation & Nursing Center: SNF, 10/2006-10/2009
- Senior Living of Lancaster: HOM, 2/2011-present
- The Rehabilitation & Nursing Center at Greater Pittsburg: SNF, 10/2006-10/2009
Puerto Rico

Rhode Island
Scallop Shell Nursing & Rehabilitation Center SNF 12/2010-present

Virginia
Care Alternatives of Virginia* HOS 4/2002-10/2009
Colonial Heights Health Care Center* SNF 4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center* SNF 4/2002-10/2009
Hopewell Health Care Center* SNF 4/2002/10/2009
Partners Pharmacy of Virginia* RX 4/2002-10/2009
Valley Health Care Center* SNF/ALF 4/2002-10/2009
Westport Health Care Center* SNF 4/2002-10/2009

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator's track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the Alabama facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the California facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the Colorado facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.
A review of the Connecticut facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

- Danbury Health Care Center
- Darien Health Care Center
- Long Ridge of Stamford
- Newington Health Care Center
- West River Health Care Center
- Westport Health Care Center
- Wethersfield Health Care Center

A review of the Kansas facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Kentucky facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Maryland facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the Massachusetts facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the Missouri facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the New Jersey facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the North Carolina facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Ohio facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Pennsylvania facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the Puerto Rico health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the Rhode Island facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the Virginia facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department’s standards for analysis, of the applicants’ operation of 35 facilities in five different states. However, it
should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

**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: March 16, 2012
Division of Home & Community Based Care  
Character and Competence Staff Review  

Name of Agency: 44 Ball Street Operating Company, LLC d/b/a Elderwood Home Care at Waverly  
Address: Waverly  
County: Tioga  
Structure: Limited Liability Company  
Application Number: 2031-L  

Description of Project:  

44 Ball Street Operating Company, LLC d/b/a Elderwood Home Care at Waverly, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.  

Elderwood Assisted Living at Tioga, LLC was previously approved as a home care services agency by the Public Health Council at its November 16, 2007 meeting and subsequently licensed as 1626L001. At that time the membership was as follows: Robert Chur, Member – 75% and Carol Chur, Member – 25%.  

The members of the 44 Ball Street Operating Company, LLC d/b/a Elderwood Home Care at Waverly comprises the following individuals:  

Warren D. Cole, Member, Co-CEO – 50%  
Jeffrey Rubin, Member, Co-CEO – 50%  
Partner, Post Acute Partners, LLC  
Partner, Post Acute Partners, LLC  

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.  

The applicant will continue to serve the residents of the Tioga from an office located at 44 Ball Street, Waverly New York 14892.  

The applicant proposes to provide the following health care services:  

Nursing  
Physical Therapy  
Nutrition  
Home Health Aide  
Occupational Therapy  
Homemaker  
Personal Care  
Audiology  
Housekeeper  
Speech-Language Pathology  
Respiratory Therapy  
Medical Social Services  

A review of the operations of the following facilities was performed as part of this review for the time periods specified:  

ACU-acute care/hospital  
ALF-assisted living facility  
HHA-home health agency  
HOM-homecare  
HOS-hospice  
ICF-intermediate care facility/group home  
IRF-intermediate rehabilitation facility (similar to SNF short term rehab)  
LTA-long term acute care hospital (similar to TCU)  
RX-pharmacy  
SNF-skilled nursing facility/nursing home  

(Note: actual dates of ownership may extend prior to 2003)  

**Alabama**  
_Laurelton Rehabilitation and Nursing Center*  
SNF  
10/2006 to 5/2008  

**California**  
_San Joaquin Valley Rehabilitation Hospital  
Hospital  
7/2004-7/2004  
_Kenfield Rehabilitation Hospital  
Hospital  
8/2003-7/2004_
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<tr>
<td>The Rehabilitation &amp; Nursing Center at Spring Creek</td>
<td>SNF</td>
<td>10/2006-10/2009</td>
</tr>
</tbody>
</table>

## Pennsylvania

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Type</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Care Alternatives of Pennsylvania</td>
<td>HOS</td>
<td>2003-10/2009</td>
</tr>
<tr>
<td>Pediatric Specialty Care at Doylestown</td>
<td>SNF</td>
<td>2/2011-present</td>
</tr>
<tr>
<td>Pediatric Specialty Care at Hopewell</td>
<td>PED ICF</td>
<td>2/2011-present</td>
</tr>
<tr>
<td>Pediatric Specialty Care at Lancaster</td>
<td>PED ICF</td>
<td>2/2011-present</td>
</tr>
<tr>
<td>Pediatric Specialty Care at Point Pleasant</td>
<td>PED ICF</td>
<td>2/2011-present</td>
</tr>
<tr>
<td>Pediatric Specialty Care at Quakertown</td>
<td>PED ICF</td>
<td>2/2011-present</td>
</tr>
<tr>
<td>Presque Isle Rehabilitation &amp; Nursing Center</td>
<td>SNF</td>
<td>10/2006-10/2009</td>
</tr>
<tr>
<td>Senior Living of Lancaster</td>
<td>HOM</td>
<td>2/2011-present</td>
</tr>
</tbody>
</table>
In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator’s track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

During the applicable period identified …, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period …, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the Alabama facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the California facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the Colorado facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.
A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

- Danbury Health Care Center
- Darien Health Care Center
- Long Ridge of Stamford
- Newington Health Care Center
- West River Health Care Center
- Westport Health Care Center
- Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the **New Jersey** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **North Carolina** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Ohio** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Pennsylvania** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the **Puerto Rico** health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Rhode Island** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Virginia** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department’s standards for analysis, of the applicants’ operation of 35 facilities in five different states. However, it
should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

**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:**  March 16, 2012
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY:
1691-L ABC Home Care, Inc.
(Bronx, Richmond, Kings, New York and Queens Counties)

1882-L BaCOR Healthcare Solutions Group, LLC d/b/a BaCOR Care for Life
(Nassau and Richmond Counties)

1716-L Elite Home Care Service Agency, Inc.
(New York, Nassau, Kings, Queens, Bronx and Richmond Counties)

1634-L Healing Touch Home Care, Inc.
(Bronx, Kings, New York, Queens and Richmond Counties)
1901-L Heritage Christian Services, Inc. (Genesee, Wayne, Livingston, Monroe, Erie, Niagara, and Ontario Counties)

1906-L JS Homecare Agency of NY, Inc. (Bronx, Richmond, Kings, Westchester, New York, Queens, Dutchess, Suffolk, Nassau, Sullivan, Orange, Rockland, Putnam and Ulster Counties)

1962-L Louis Career Development Center, Inc., d/b/a Smart Home Care Agency (New York, Nassau, Kings, Queens, Bronx, and Richmond Counties)

1996-L Steps in Home Care, Inc. (Westchester, Nassau, Bronx, and New York Counties)

2107-L Niagara County Department of Health (Niagara County)

2106-L St. Lawrence County Public Health Department (St. Lawrence County)

2108-L Tompkins County Health Department (Tompkins County)

2096-L Yates County Public Health (Yates County)

2068-L Hudson Valley Home Health Care, LLC (Westchester, Putnam, Ulster, Rockland, Dutchess, Orange, and Sullivan Counties)

2010-L Samaritan Senior Village, Inc. (Jefferson, Lewis, and St. Lawrence Counties)
<table>
<thead>
<tr>
<th>Number</th>
<th>Company Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>2075-L</td>
<td>Golden Acres Home for Adults SP, LLC (Rockland, Putnam, Bronx, Orange, Ulster, Sullivan, Dutchess and Westchester Counties)</td>
</tr>
<tr>
<td>2034-L</td>
<td>Robynwood, LLC d/b/a Robynwood Home Care (Chenango, Delaware, Otsego, and Schoharie Counties)</td>
</tr>
<tr>
<td>2028-L</td>
<td>229 Bennett Road Operating Company, LLC d/b/a Elderwood Home Care at Cheektowaga (Erie County)</td>
</tr>
<tr>
<td>2029-L</td>
<td>580 Orchard Park Road Operating Company, LLC d/b/a Elderwood Home Care at West Seneca (Erie County)</td>
</tr>
<tr>
<td>2030-L</td>
<td>76 Buffalo Street Operating Company, LLC d/b/a Elderwood Home Care at Hamburg (Erie County)</td>
</tr>
<tr>
<td>2031-L</td>
<td>44 Ball Street Operating Company, LLC d/b/a Elderwood Home Care at Waverly (Tioga County)</td>
</tr>
</tbody>
</table>
## New York State Department of Health
Public Health and Health Planning Council

April 5, 2012

### B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

**CATEGORY 4:** Applications Recommended for Approval with the Following:

- PHHPC Member Recusals
- Establishment and Project Review Committee Dissent, or
- Contrary Recommendation by HSA

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 112382 B</td>
<td>North Country Eye Center (Saratoga County)</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>
North Country EC, LLC d/b/a North Country Eye Center

County:  Saratoga (Wilton)  Program:  Ambulatory Surgery Center
Purpose: Establishment and Construction  Submitted: December 30, 2011

Executive Summary

Description
North Country EC, LLC d/b/a North Country Eye Center (NCEC) is a joint venture between Glens Falls Hospital (30%) and NCEC Holdings, LLC (70%) and is requesting approval for the establishment and construction of a single-specialty ophthalmology freestanding ambulatory surgery center, to be located at North Road, Wilton. Glens Falls Hospital will construct the building shell and lease it to the applicant who will construct the leasehold improvements.

The proposed members of NCEC Holdings, LLC are four physicians: Dr. Amjad Hammad, Dr. Mark Hite, Dr. Steven Solomon and Dr. David Westfall, each with 25% membership interests.

Total project costs are estimated at $2,354,870.

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

Need Summary
NCEC has four members, all ophthalmologists, who are members of Glens Falls Hospital's (GFH) medical staff. GFH currently needs additional operating room capacity, and the proposed project will address this need, in part, by moving ophthalmology cases from GFH to NCEC.

The majority of the patients of the proposed facility are expected to come from Warren County, which does not have a single specialty-ophthalmology ambulatory surgery center.

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 $586,670 in cash and a $1,768,200 in bank loans.

Budget:
Revenues:  $ 2,110,580
Expenses:  $1,512,703
Gain/(Loss):  $597,877

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

Architectural Summary
The 5,840 SF surgery center will be located in a one-story building, and will include two procedure rooms accommodating the current and future needs of the community.
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. [FMU]

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 appropriate information on the operating hours of NCEC. [RNR]

6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

7. Submission of an executed building lease that is acceptable to the Department. [BFA, CSL]

8. Submission of both loan commitments for project costs that is acceptable to the Department. [BFA]

9. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]

10. Submission of a photocopy of the applicant’s executed proposed amended articles of organization, acceptable to the Department. [CSL]

11. Submission of a photocopy of the applicant’s executed proposed amended operating agreement, acceptable to the Department. [CSL]

12. Submission of a list of name, membership interest and percentage ownership interest for each member of NCEC Holdings, LLC, including the indirect ownership percentage each will have in the applicant.

13. Submission of a photocopy of an executed amendment to NCEC Holdings, LLC articles of organization, acceptable to the Department. [CSL]

14. Submission of a photocopy of an executed amendment to NCEC Holdings, LLC operating agreement, acceptable to the Department. [CSL]

15. Submission of a photocopy of the certificate of incorporation of Glens Falls Hospital, 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 request for, and Department’s granting approval for the start of construction. [AER]
7. The applicant shall start construction on or before November 1, 2012 and complete construction by May 1, 2014 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
April 5, 2012.
Need Analysis

Background
North Country Eye Center, LLC (NCEC) requests approval to establish and construct a single specialty ophthalmology ambulatory surgery center (ASC) that will be located at North Road, Wilton, Saratoga County.

NCEC’s service area will be consistent with the service areas of the four ophthalmologists. The majority of patients will come from Warren County. Approximately 25 percent of the patients will come from Washington County, and the remainder will be from Albany, Saratoga, and Montgomery Counties, and Vermont.

The number of projected visits is as follows:

- Current Year: 0
- First Year: 2,622
- Third Year: 2,780

The table below shows that Albany County is the only county in the proposed service area that has a single specialty ophthalmology ASC.

<table>
<thead>
<tr>
<th>Diagnostic &amp; Treatment Centers</th>
<th>Single Specialty- Ophthalmology</th>
<th>Multi Specialty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warren County D&amp;TCs</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Albany County D&amp;TCs</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Saratoga County D&amp;TCs</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Montgomery County D&amp;TCs</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Washington County D&amp;TCs</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health, HFIS

Between 2009 and 2010, the number of patients for ophthalmology surgery procedures, cataract, glaucoma, and other eye disorders in Warren County increased by 5.1%.

NCEC has an existing transfer and affiliation agreement for backup and emergency services with GFH, which is located 12 miles and 17 minutes travel time from the proposed NCEC.

The four ophthalmologists primarily perform their outpatient surgical cases at GFH. The proposed project will enable these physicians to perform more procedures than at GFH, which will improve access to ophthalmologic surgery services by expanding capacity within the region.

Recommendation
From a need perspective, contingent approval is recommended for a limited life of five years.

Programmatic Analysis

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

<table>
<thead>
<tr>
<th>Proposed Operator</th>
<th>North Country EC, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility Name</td>
<td>North Country Eye Center</td>
</tr>
<tr>
<td>Site Address</td>
<td>North Road, Wilton</td>
</tr>
<tr>
<td>Surgical Specialties</td>
<td>Ophthalmology</td>
</tr>
<tr>
<td>Operating Rooms</td>
<td>0</td>
</tr>
<tr>
<td>Procedure Rooms</td>
<td>2</td>
</tr>
<tr>
<td>-----------------</td>
<td>---</td>
</tr>
<tr>
<td>Hours of Operation</td>
<td>Monday through Friday from 7:00 am to 3:00 pm (Extended as necessary to accommodate patient needs).</td>
</tr>
<tr>
<td>Staffing (1st Year / 3rd Year)</td>
<td>10 FTEs/ 10 FTEs</td>
</tr>
<tr>
<td>Medical Director(s)</td>
<td>Steven Solomon</td>
</tr>
<tr>
<td>Emergency, In-Patient and Backup Support Services Agreement and Distance</td>
<td>Will be provided by Glens Falls Hospital, 12 miles and 17 minutes away</td>
</tr>
<tr>
<td>On-call service</td>
<td>Access to the facility’s on-call physician during hours when the facility is closed.</td>
</tr>
</tbody>
</table>

**Character and Competence**

The members of the LLC are:

- **NCEC Holdings LLC** 70%
  - Amjad Hammad
  - Mark Hite
  - Steven Solomon
  - David Westfall
- **Glens Falls Hospital** 30%

The members of NCEC Holdings, LLC are all practicing ophthalmologists and members of the Hospital’s medical staff.

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.

**Integration with Community Resources**

The center will encourage the establishment of a primary care relationship for those surgical patients who do not have one. The center will reach out to all primary care physicians/groups in its service area both to inform them of the center and to facilitate the coordination of care for common patients.

The center believes it will be an important component in on or more of the new delivery models, including those in which Glens Falls Hospital participates. The center will use an electronic medical record system and will participate in HIXNY, the regional health information organization servicing the area.

**Recommendation**

From a programmatic perspective, contingent approval is recommended.

**Financial Analysis**

**Lease Rental Agreement**

The applicant will lease approximately 5,840 square feet of space at 100 Park Street, Glens Falls, under the terms of the proposed lease agreement summarized below:
Date: October 1, 2011
Lessor: Glens Falls Hospital
Lessee: North Country EC, LLC
Term: 15 Years with two additional five year renewal options
Rental: $102,000 ($12.00 per sq. ft) per year for the initial term. The first five year renewal term will be $112,200 per year and the second renewal term will be $119,000 per year
Provisions: Triple Net Lease

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 leasehold Improvements and the acquisition of movable equipment is estimated at $2,354,870, itemized as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Construction</td>
<td>$1,366,560</td>
</tr>
<tr>
<td>Design Contingency</td>
<td>136,656</td>
</tr>
<tr>
<td>Construction Contingency</td>
<td>68,328</td>
</tr>
<tr>
<td>Planning Consultant Fees</td>
<td>74,500</td>
</tr>
<tr>
<td>Architect/Engineering Fees</td>
<td>74,500</td>
</tr>
<tr>
<td>Other Fees (Consulting)</td>
<td>30,000</td>
</tr>
<tr>
<td>Movable Equipment</td>
<td>553,000</td>
</tr>
<tr>
<td>Interim Interest Expense</td>
<td>36,456</td>
</tr>
<tr>
<td>Application Fee</td>
<td>2,000</td>
</tr>
<tr>
<td>Additional Processing Fee</td>
<td>12,870</td>
</tr>
<tr>
<td><strong>Total Project Cost</strong></td>
<td><strong>$2,354,870</strong></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity</td>
<td>$586,670</td>
</tr>
<tr>
<td>Bank Loan for improvements @ 5% over fifteen years</td>
<td>1,215,200</td>
</tr>
<tr>
<td>Bank Loan for equipment @ 4.5% over five years</td>
<td>553,000</td>
</tr>
</tbody>
</table>

A letter of interest has been submitted by NBT Bank for both loans.

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

| Year | Revenues | Expenses | Net Income | Utilization
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Year One</td>
<td>Year Three</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$1,991,410</td>
<td>$2,110,580</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenues:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expenses:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$1,118,417</td>
<td>$1,185,522</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest</td>
<td>102,030</td>
<td>83,043</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation and Rent</td>
<td>244,138</td>
<td>244,138</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Expenses</td>
<td>$1,464,585</td>
<td>$1,512,703</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Income</td>
<td>$526,825</td>
<td>$597,877</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utilization: (procedures)</td>
<td>2,622</td>
<td>2,780</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost Per Procedure</td>
<td>$558.58</td>
<td>$544.14</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Utilization by payor source for the first and third years is as follows:

<table>
<thead>
<tr>
<th>Payor Source</th>
<th>Years One and Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Insurance-Managed Care</td>
<td>18.0%</td>
</tr>
<tr>
<td>Medicare Fee-For-Service</td>
<td>77.0%</td>
</tr>
<tr>
<td>Medicaid Fee-For-Service</td>
<td>2.0%</td>
</tr>
<tr>
<td>Self Pay</td>
<td>1.0%</td>
</tr>
<tr>
<td>Charity Care</td>
<td>2.0%</td>
</tr>
</tbody>
</table>

Expense and utilization assumptions are based on the combined historical experience of the members of NCEC Holdings, LLC and Glens Falls Hospital.

**Capability and Feasibility**

Project cost will be satisfied by two loans from NBT Bank for $1,768,200 at stated terms, with the remaining $586,670 from proposed member’s equity.

Working capital requirements, estimated at $252,117, appear reasonable based on two months of third year expenses and will be provided through a $126,000 loan over 5 years @ 4.5% and the remaining $126,117 through equity of the proposed members. Dr. Amjad Hammad will obtain a personal loan from the bank for $40,000 to complete his equity requirement. A letter of interest has been submitted. Presented as BFA Attachment A, is a summary of net worth statement of the proposed members of NCEC Holdings, LLC, which indicates the availability of sufficient funds for the stated levels of equity. Presented as BFA Attachment B, is a summary of Glens Falls Hospital, which indicates the availability of sufficient funds for the stated levels of equity.

Glens Falls Hospital maintained positive working capital, positive net equity and a net profit from operations of $6,263,000 for the year 2011, and achieved an average net profit of $709,020 for 2009-2010, respectively. Presented as BFA Attachment D, is the pro-forma balance sheet of North Country Eye Center as of the first day of operation, which indicates positive member’s equity position of $712,790.

The submitted budget indicates a net income of $526,825 and $597,877 during the first and third years of operation, respectively. 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.

**Recommendation**

From a financial perspective, contingent approval is recommended.

---

**Architectural Analysis**

**Background**

The applicant is proposing to build a new freestanding Ambulatory Surgery Center as a one story building, a full sprinkler system installed, with a total of 5,840 SF; the applicant being the single occupant. The space will include a waiting/reception area with a patient toilet room before entering a pre/post operatory area including seven (7) pre/post-op bays, a nurse station, janitor’s closet, and clean and soiled storage rooms.

The semi-restricted core will include two (2) Class C operating rooms, and soiled and clean processing workrooms located between the operating rooms for sterilization. Also proposed within this core space, is an equipment storage room, a sterile supplies storage room, a unisex locker room with shower, and a second janitor’s closet dedicated to the semi-restricted core.

Additional support areas will include a staff break room, and various mechanical and utility rooms such as electrical, mechanical and vacuum, medical gas room, and a generator provided for emergency power.
Environmental Review
The Department has deemed this project to be a TYPE I Action and the lead agency shall be the county of Saratoga or the authority having jurisdiction.

Recommendation
From an architectural perspective, approval is recommended.

Attachments

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>Summary Net Worth Statement of Proposed Members of NCEC Holdings, LLC</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Financial Summary of Glens Falls Hospital 2011 Internals</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Financial Summary of Glens Falls Hospital 2009/2010 - Audited</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>Pro- forma Balance Sheet</td>
</tr>
<tr>
<td>BFA Attachment E</td>
<td>Establishment Checklist</td>
</tr>
<tr>
<td>BHFP Attachment</td>
<td>Map</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single specialty ophthalmology ambulatory surgery center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:
112382-B North Country Eye Center
APPROVAL CONTINGENT UPON:

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 appropriate information on the operating hours of NCEC. [RNR]

6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

7. Submission of an executed building lease that is acceptable to the Department. [BFA, CSL]

8. Submission of both loan commitments for project costs that is acceptable to the Department. [BFA]

9. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]

10. Submission of a photocopy of the applicant’s executed proposed amended articles of organization, acceptable to the Department. [CSL]

11. Submission of a photocopy of the applicant’s executed proposed amended operating agreement, acceptable to the Department. [CSL]

12. Submission of a list of name, membership interest and percentage ownership interest for each member of NCEC Holdings, LLC, including the indirect ownership percentage each will have in the applicant.
13. Submission of a photocopy of an executed amendment to NCEC Holdings, LLC articles of organization, acceptable to the Department. [CSL]
14. Submission of a photocopy of an executed amendment to NCEC Holdings, LLC operating agreement, acceptable to the Department. [CSL]
15. Submission of a photocopy of the certificate of incorporation of Glens Falls Hospital, 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 request for, and Department's granting approval for the start of construction. [AER]
7. The applicant shall start construction on or before November 1, 2012 and complete construction by May 1, 2014 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]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299
New York State Department of Health  
Public Health and Health Planning Council  

April 5, 2012

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION  
OF HEALTH CARE FACILITIES

CATEGORY 6: Applications for Individual Consideration/Discussion

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 112086 B</td>
<td>1504 Richmond, LLC d/b/a Richmond Surgery Center (Richmond County) Mr. Kraut – Recusal</td>
<td>No Recommendation</td>
</tr>
</tbody>
</table>
Executive Summary

Description
1504 Richmond, LLC d/b/a Richmond Surgery Center, a to-be-formed proprietary limited liability company, requests approval to establish and construct a freestanding multi-specialty ambulatory surgery center (FASC) to serve the residents of Richmond County. The FASC will be located in leased space at 1504 Richmond Road, Staten Island, and will provide the following surgical services: plastic surgery, gastroenterology, gynecology, ophthalmology, orthopedics, otolaryngology and urology.

The proposed members of Richmond Surgery Center, and their ownership percentages, are as follows:

- Todd Vitolo: 25%
- Noreen Vitolo: 75%

Michael Costes, MD will be employed with the practice and has accepted the position as the Medical Director.

In response to the Department’s inquiry to local hospitals regarding the impact of the proposed ASC in the service area, two objections were received (Richmond University Medical Center and Staten Island University Hospital). The information submitted by the objecting hospitals seem not to be cognizant of the fact that 85% of the cases projected for the proposed ASC are currently performed in an office-based setting, not in hospitals or hospital-based ambulatory surgery centers. The Department does not find the comments of the two hospitals sufficient to warrant reversal or modification of the recommendation for five-year limited life approval.

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

Need Summary
Eleven surgeons have committed to perform an estimated 2,981 procedures at the proposed FASC. There are currently no existing freestanding ambulatory surgery centers on Staten Island.

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 is no project cost associated with this application.

Budget:
- Revenues: $2,376,790
- Expenses: $1,856,376
- Gain/(Loss): $518,414

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 FASC will entirely occupy an existing 5,320 SF two-story building, and will have two operating rooms, along with a pre-op and recovery area with four recovery bays. The proposed center has previously been constructed to be in compliance with all applicable regulations, including the current AIA guidelines for freestanding ambulatory surgery centers.

Upon review by the applicants architect/engineer, there is no need for any modifications to the existing center.
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 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]

2. 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]

3. 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]

4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

5. Submission of an executed building lease that is acceptable to the Department. [BFA]

6. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]

7. Submission of an original signed and dated first page of Schedule 1A which must be acceptable to the Department. [CSL]

8. Submission of a photocopy of the applicant’s Articles of Organization, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]

9. Submission of a photocopy of a fully executed and dated amendment to the applicant’s Articles of Organization, which must be acceptable to the Department. [CSL]

10. Submission of a photocopy of a fully executed and dated amendment to the applicant’s Operating Agreement, which must be acceptable to the Department. [CSL]

11. Submission of a photocopy of the applicant’s revised Certificate of Doing Business under an Assumed Name, which must be acceptable to the Department. [CSL]

12. Submission of a photocopy of a fully executed and dated Lease between Landmark 1504, LLC, as landlord, and the applicant, as tenant, which must be acceptable to the Department. [CSL]

13. Submission of documentation verifying the list of the applicant’s managers, which must be 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. [AER]

Council Action Date
April 5, 2012.
Need Analysis

Background
The applicant requests approval to establish and construct a freestanding multi-specialty ambulatory surgery center at 1504 Richmond Road, Staten Island. The proposed center will have 2 operating rooms, 4 exam rooms, and 4 pre/postoperative and recovery bays.

The proposed services to be offered are: plastic surgery, gastroenterology, gynecology, ophthalmology, orthopedics, otolaryngology, and urology.

The following surgeons have submitted letters of support for this application.

<table>
<thead>
<tr>
<th>Physician</th>
<th>Specialty</th>
<th>Volume</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert V. Vitolo, M.D.</td>
<td>Plastic Surgery</td>
<td>450</td>
</tr>
<tr>
<td>Jospeh L. Assim, DPM</td>
<td>Podiatry</td>
<td>40</td>
</tr>
<tr>
<td>Peter Albert, M.D.</td>
<td>Urologist</td>
<td>111</td>
</tr>
<tr>
<td>Louis C. Cutole, Jr., M.D.</td>
<td>Plastic Surgery</td>
<td>250</td>
</tr>
<tr>
<td>Vinod Bopaiah, M.D.</td>
<td>Colon-rectal Surgery</td>
<td>450</td>
</tr>
<tr>
<td>Hakan Usal, M.D.</td>
<td>Plastic Surgery</td>
<td>200</td>
</tr>
<tr>
<td>Joseph A. Racanelli, D.O.</td>
<td>Plastic Surgery</td>
<td>850</td>
</tr>
<tr>
<td>George Ferzli, M.D.</td>
<td>General Surgery</td>
<td>300</td>
</tr>
<tr>
<td>Sean Rim, M.D.</td>
<td>General Surgery</td>
<td>50</td>
</tr>
<tr>
<td>Corneliu T. Vulpe, M.D.</td>
<td>General Surgery</td>
<td>80</td>
</tr>
<tr>
<td>Mukund Patel, M.D.</td>
<td>Hand Surgery</td>
<td>200</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td>2,981</td>
</tr>
</tbody>
</table>

These eleven surgeons expect to perform 2,981 procedures at the proposed ASC.

There are no existing freestanding ambulatory surgery centers on Staten Island.

Recommendation
From a need perspective, contingent approval is recommended.

Programmatic Analysis

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

<table>
<thead>
<tr>
<th>Proposed Operator</th>
<th>1504 Richmond, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operator Type</td>
<td>LLC</td>
</tr>
<tr>
<td>Doing Business As</td>
<td>Richmond Surgery Center</td>
</tr>
<tr>
<td>Site Address</td>
<td>1504 Richmond Road, Staten Island</td>
</tr>
<tr>
<td>Surgical Specialties</td>
<td>Multi-Specialty, including: Plastic Surgery Gastroenterology Gynecology Ophthalmology Orthopedics Otolaryngology Urology</td>
</tr>
<tr>
<td>Operating Rooms</td>
<td>2</td>
</tr>
<tr>
<td>Procedure Rooms</td>
<td>0</td>
</tr>
</tbody>
</table>
Character and Competence
The members of the LLC are:

- Todd Vitolo 25% member
- Noreen Vitolo 75% member

Todd Vitolo is an attorney currently employed as a licensed associate broker for a real estate company. Noreen Vitolo, a licensed esthetician, is the owner/operator of a skin care business.

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.

Integration with Community Resources
Should any patients present themselves at the center in need of primary care services, the center hopes to work with Staten Island University Hospital to provide such services. The proposed operators indicate they have reached out to SIUH in an effort to establish a mutual network relationship. Additionally, the operators intend to participate in community health events and local religious institution events to make sure the community is aware of their services.

The center intends to utilize electronic medical records and hopes to integrate in the regional health information organization or health information exchange.

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.

Recommendation
From a programmatic perspective, contingent approval is recommended.
Financial Analysis

Lease Rental Agreement
The applicant has submitted a draft lease rental agreement for the site to be occupied. The terms of which are summarized below:

Premises: 5,760 square feet located at 1504 Richmond Road, Staten Island, New York, Richmond County
Lessor: Landmark 1504, LLC
Lessee: 1504 Richmond, LLC d/b/a Richmond Surgery Center
Rental: $96,000 annually/$8,000 monthly ($16.67 per sq. ft.)
Term: (5) year term
Provisions: The lessee is responsible for paying 100% of the property taxes.

The applicant has provided two letters indicating the rent reasonableness. The applicant has indicated that the lease agreement will be an arms length lease agreement and provided an affidavit indicating the disclosure.

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

<table>
<thead>
<tr>
<th></th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$2,163,352</td>
<td>$2,376,790</td>
</tr>
<tr>
<td>Expenses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$1,562,995</td>
<td>$1,750,376</td>
</tr>
<tr>
<td>Capital</td>
<td>108,000</td>
<td>108,000</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>$1,670,995</td>
<td>$1,858,376</td>
</tr>
<tr>
<td>Net Income</td>
<td>$492,357</td>
<td>$518,414</td>
</tr>
<tr>
<td>Utilization: (Procedures)</td>
<td>1,980</td>
<td>2,183</td>
</tr>
<tr>
<td>Cost Per Visit</td>
<td>$843.94</td>
<td>$851.29</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Payor Source</th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Fee-for-Service</td>
<td>20.11%</td>
<td>20.18%</td>
</tr>
<tr>
<td>Commercial Managed Care</td>
<td>19.15%</td>
<td>19.22%</td>
</tr>
<tr>
<td>Medicare Fee-for-Service</td>
<td>38.31%</td>
<td>38.44%</td>
</tr>
<tr>
<td>Medicaid Fee-for-Service</td>
<td>5.27%</td>
<td>5.29%</td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>10.06%</td>
<td>10.09%</td>
</tr>
<tr>
<td>Charity Care</td>
<td>3.94%</td>
<td>3.60%</td>
</tr>
<tr>
<td>Private Pay</td>
<td>3.16%</td>
<td>3.18%</td>
</tr>
</tbody>
</table>

Expense and utilization assumptions are based on projected need study by the applicant and current reimbursement methodologies.

Capability and Feasibility
There is no project cost associated with this application.

Working capital requirements, estimated at $309,730 which appear reasonable based on two months’ of third year expenses.
The proposed members will provide equity in the amount of $154,865 to meet the working capital requirement. Presented as BFA Attachment A is a summary net worth statement of the proposed members of Richmond Surgery Center, LLC which indicates the availability of sufficient funds for the stated equity levels. Also, a disproportionate resources affidavit has been submitted by proposed member Todd Vitolo, indicating he will provide proposed member Noreen Vitolo resources needed to meet the working capital requirements.

The residual $154,865 will be provided by a bank to 1504 Richmond, LLC at a rate of 7% for a term of (5) years. A letter of interest from Capital One Bank has been submitted. Presented as BFA Attachment B, is the pro-forma balance sheet of Richmond Surgery Center, which indicates a positive shareholders’ equity position of $154,865 as of the first day of operation.

The submitted budget projects a net income of $492,357 and $518,414 during the first year and third year of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services.

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

**Recommendation**
From a financial perspective, contingent approval is recommended.

---

### Architectural Analysis

#### Background

- **Cellar floor (2,681 sf existing)**

  The cellar floor consists of 2,681 sf which includes two (2) operating rooms, a pre-op and recovery room with four (4) bays, a nurse station, a patient toilet room, a soiled workroom, a clean supply storage room, a sterilization and clean assembly room, and a staff lounge with a staff toilet and lockers.

- **First floor (2,639 sf existing)**

  The first floor consists of 2,639 sf and includes a waiting room, reception area, patient and staff toilet rooms, offices, four (4) exam rooms, a multi-purpose room, a staff lounge, and storage rooms.

#### Environmental Review

The Department has deemed this project to be an UNLISTED ACTION and has determined that for its purposes an Environmental Impact Statement (EIS) 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** Personal Net Worth Statement
- **BFA Attachment B** Pro Forma Balance Sheet of Richmond Surgery Center, LLC
- **BFA Attachment C** Detailed Budget of Richmond Surgery Center
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: Richmond University Medical Center
355 Bard Avenue
Staten Island, NY 10310

Operating Room utilization at Richmond University Medical Center (RUMC):

<table>
<thead>
<tr>
<th>Current OR Use</th>
<th>Surgery Cases¹</th>
<th>Amb. Surg. Cases by Applicant Physicians</th>
<th>Reserved OR Time for Applicant Physicians</th>
</tr>
</thead>
<tbody>
<tr>
<td>60%-90%</td>
<td>Ambulatory 85%</td>
<td>Inpatient 15%</td>
<td>164</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Not specified</td>
</tr>
</tbody>
</table>

RUMC opposes the application but does not specify the number of cases from the applicant surgeons that may be lost to the proposed ASC, nor does it attach a dollar amount to any expected loss of ambulatory surgical volume. The hospital states that its current surgical revenues help support vital services, such as its primary care and subspecialty clinics, its 911 ambulance and trauma services and its CPEP psychiatric coordination. The hospital does not quantify the impact that a loss of surgical revenues to the proposed ASC would have on these or any other of its services or operations.

RUMC had a working capital ratio of 1.1 in both 2009 and 2010. In 2009, RUMC had an operating gain of $7.2 million on revenues of 304.9 million. In 2010, the facility had an operating gain of $6.5 million on revenues of $305.5 million. In 2009, RUMC provided charity care of $23.4 million and experienced bad debt of $16.4 million. In 2010, the facility provided $18.3 million in charity care and had $16.0 million in bad debt.

Facility: Staten Island University Hospital
475 Seaview Avenue
Staten Island, NY 10305

Operating Room utilization at Richmond University Medical Center (RUMC):

¹ Number of cases not specified.
The hospital opposes the application, based on its assumption that all 458 cases performed by applicant physicians at SIUH in 2011 would be transferred to the proposed ASC. The hospital projects that this would result in a loss of $1 million in revenues, which would put “great pressure” on the facility’s $5.3 million worth of community health improvement services, such as health education events, chronic disease screening, flu vaccinations, smoking cessation programs, and similar activities. The hospital does not specify the specific impact that the projected loss would have on any individual service.

SIUH had working capital ratios of 1.7 and 1.8 in 2009 and 2010, respectively. In 2009, the hospital had an operating gain of $18.8 million on operating revenue of $700.8 million. In 2010, the facility’s operating gain was $24.4 million on operating revenue of $757.8 million. SIUH provided uncompensated care at established charges of approximately $56,880,000 and $56,169,000 in 2011 and 2010, respectively. This amount consisted of charity care of $51,080,000 and $49,619,000 in 2011 and 2010, respectively, and uncollectible charges written off as bed debt of $5,800,000 and $6,550,000 for 2011 and 2010, respectively.

Supplemental Information from Applicant

- Need and Sources of Cases

The applicant states that the projected volume of cases is based on the actual experience of the physicians who have expressed an interest in performing procedures at the proposed facility. The vast majority of these cases (85 percent) are currently performed in office-based settings. The applicant also expects the demand for ambulatory surgical services to continue to grow. The applicant further expects that patients will be attracted to the proposed ASC because of its convenience in scheduling and the fact that it will be located in an out-of-hospital setting.

- Office-Based Cases

As noted, 85 percent of the cases projected for the proposed ASC are currently performed in an office-based setting.

- Staff Recruitment and Retention

The applicant expects to employ existing staff of the current office-based practice. To the extent that additional staff is needed, the proposed operators are committed to not actively seeking staff from local hospitals.

OHSM Comment

Although two hospitals oppose this application, their objections seem not to be cognizant of the fact that 85 percent of the cases projected for the proposed ASC are currently performed in an office-based setting, not in hospitals or hospital-based ambulatory surgery centers. In addition, neither hospital furnished information on its current annual

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2 The hospital did not furnish the number of surgical cases. The percentages show the distribution of cases between inpatient and ambulatory surgery at each site.

3 Four of the seven applicant physicians who performed ambulatory surgery cases at the hospital in 2011 have OR block time.
number of ambulatory surgery cases. The Department does not find the comments of the two hospitals sufficient to warrant 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.
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a free standing multi-specialty ambulatory surgery center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

112086-B 1504 Richmond, LLC d/b/a Richmond Surgery Center
APPROVAL CONTINGENT UPON:

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 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]

2. 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]

3. 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]

4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

5. Submission of an executed building lease that is acceptable to the Department. [BFA]

6. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]

7. Submission of an original signed and dated first page of Schedule 1A which must be acceptable to the Department. [CSL]

8. Submission of a photocopy of the applicant’s Articles of Organization, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]

9. Submission of a photocopy of a fully executed and dated amendment to the applicant’s Articles of Organization, which must be acceptable to the Department. [CSL]

10. Submission of a photocopy of a fully executed and dated amendment to the applicant’s Operating Agreement, which must be acceptable to the Department. [CSL]

11. Submission of a photocopy of the applicant’s revised Certificate of Doing Business under an Assumed Name, which must be acceptable to the Department. [CSL]

12. Submission of a photocopy of a fully executed and dated Lease between Landmark 1504, LLC, as landlord, and the applicant, as tenant, which must be acceptable to the Department. [CSL]

13. Submission of documentation verifying the list of the applicant’s managers, which must be 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. [AER]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299