



# Public Health and Health Planning Council

Project # 121358-E

## Catholic Health Care System d/b/a Archcare

**County:** Kings (Brooklyn)  
**Purpose:** Establishment

**Program:** Certified Home Health Agency  
**Submitted:** May 1, 2012

### Executive Summary

#### Description

Catholic Health Care System (CHCS) d/b/a Archcare, an existing not-for-profit corporation, requests approval to become the sole corporate member of Empire State Home Care Services (Empire), and Visiting Nurse Association of Brooklyn, Inc. (VNA of Brooklyn), both located at 15 Metrotech Center, 10<sup>th</sup> floor, Brooklyn. Each operates an Article 36 certified home health agency (CHHA) and long-term home health care program (LTHHCP).

Empire provides CHHA services in the following six counties: Bronx, Kings, New York, Queens, Richmond and Westchester, and provides LTHHCP services in New York County with a program capacity of 200. VNA of Brooklyn provides CHHA services in Kings County, and LTHHCP services in Kings and Queens Counties with program capacity of 750. Visiting Nurse Regional Health Care System will no longer be the non-member parent of the two CHHAs.

There is no acquisition cost or purchase agreement involved in the transition of Catholic Health Care System as the sole corporate member. The sole corporate member arrangement is expected to:

- promote the sharing of clinical best practices and joint training opportunities;
- integrate and centralize administrative functions; produce cost savings and efficiencies through group purchasing;
- improve staff recruitment and retention;
- and enhance the System's marketing presence.

There will be no change in lease arrangements nor any programmatic changes.

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 Providence Health Services, Catholic Health Care System, d/b/a Archcare, Visiting Nurse Association of Brooklyn, Inc., and Empire State Home Care Services, 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

There are no project costs associated with this project and there will be no change in the daily operations.

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of current Certificates of Good Standing for each of the following attorneys: Monsignor Gregory A. Mustaciuolo, Francis J. Serbaroli, and Kathryn K. Rooney. [CHA]
2. Submission of a photocopy of the executed Certificate of Incorporation of Empire State Home Care Services, Inc., and any amendments thereto, acceptable to the Department. [CSL]
3. Submission of a photocopy of the adopted Amended and Restated Bylaws of Empire State Home Care Services, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Certificate of Incorporation of Visiting Nurse Association of Brooklyn, Inc., and any amendments thereto, acceptable to the Department. [CSL]
5. Submission of a photocopy of the adopted Amended and Restated Bylaws of Visiting Nurse Association of Brooklyn, Inc., acceptable to the Department. [CSL]

Council Action Date

**October 11, 2012.**

# Programmatic Analysis

## Background

Empire State Home Care Services, Inc., is a not-for-profit Article 36 certified home health agency (CHHA) serving Bronx, Kings, New York, Queens, Richmond, and Westchester Counties, and long term home health care program (LTHHCP) serving New York County. Visiting Nurse Association of Brooklyn, Inc., is a not-for-profit Article 36 certified home health agency (CHHA) serving Kings County, and long term home health care program (LTHHCP) serving Kings and Queens Counties. The current non-member parent corporation of both is Visiting Nurse Regional Health Care System, a not-for-profit corporation.

The current proposal seeks to de-establish Visiting Nurse Regional Health Care System as the non-member parent corporation, and to establish Catholic Health Care System, d/b/a Archcare, a not-for-profit corporation, as the active sole member (parent) corporation of both Empire State Home Care Services, Inc. CHHA and LTHHCP, and Visiting Nurse Association of Brooklyn, Inc. CHHA and LTHHCP. The sole member (parent) corporation of Catholic Health Care System, d/b/a Archcare, is Providence Health Services, a not-for-profit corporation.

In addition to becoming the sole member corporation of Empire State Home Care Services, Inc. CHHA and LTHHCP, and Visiting Nurse Association of Brooklyn, Inc. CHHA and LTHHCP, Catholic Health Care System, d/b/a Archcare is also the member corporation of the following health care corporations:

- Calvary Hospital, Inc. - including Calvary Hospital (Hospital), Calvary Hospital Home Health Agency (CHHA), and Calvary Hospital Home Health Agency and Hospice Care (Hospice),
- Carmel Richmond Healthcare and Rehabilitation Center (RHCF),
- Ferncliff Nursing Home (RHCF),
- Kateri Residence (RHCF),
- Mary Manning Walsh Nursing Home (RHCF),
- St. Vincent DePaul Residence (RHCF),
- St. Teresa's Nursing and Rehabilitation Center (RHCF),
- Terence Cardinal Cooke Health Care Center (RHCF),
- CMLTC, Inc., d/b/a Archcare Senior Life (PACE Program and proposed Managed Long Term Care Plan), and
- CSNP, LLC, d/b/a Archcare Advantage (Medicare Advantage Special Needs Plan)

All of the above health care facilities and providers in the Catholic Health Care System, d/b/a Archcare corporate structure are listed as affiliations for each board member named below.

The governing body of the ultimate member (parent) corporation, Providence Health Services, consists of the following board members:

<b>Cardinal Timothy Dolan</b> Archbishop, Archdiocese of New York (Religious Organization)	<b>Bishop Robert Brucato</b> Retired Priest, Archdiocese of New York (Religious Organization)
<b>Bishop Dennis J. Sullivan</b> Vicar General, Archdiocese of New York (Religious Organization)	<b>Monsignor Gregory A. Mustaciuolo, Esq.</b> Chancellor, Archdiocese of New York (Religious Organization)

The governing bodies of the member (parent) corporation, Catholic Health Care System, d/b/a Archcare, and of Empire State Home Care Services, Inc. CHHA and LTHHCP, and Visiting Nurse Association of Brooklyn, Inc. CHHA and LTHHCP, all consist of the same individual board members as follows:

**Francis J. Serbaroli, Esq.** (Chairperson)  
Partner, Greenberg Traurig, LLP (Law Firm)

**Karl P. Adler, MD** (Vice-Chairperson / Secretary)  
CEO, New York Medical College (Medical School)

Additional Affiliations: St. Vincent's Hospital, St. Clare's / St. Vincent's Midtown Hospital, Our Lady of Mercy Hospital, St. Agnes Hospital, Benedictine Hospital, St. Francis Hospital, Center for Comprehensive Health Practice (D&TC)

**Thomas M. O'Brien** (Vice-Chairperson)  
Self Employed Banking Consultant

**Bishop Dennis J. Sullivan**  
(disclosed above)

**Monsignor Gregory A. Mustaciuolo, Esq.**  
(disclosed above)

**Manfred Altstadt, CPA**  
Retired COO, Mutual of America (Insurance Corp)

**Joseph P. Anderson**  
Retired CEO, Schaller Anderson, Inc. (Health Care Management / Administrative Services)

**Monsignor William Belford**  
Diocesan Administrator / Parish Priest, Archdiocese of New York (Religious Organization)

**John T. Dunlap, Esq.**  
Partner, Dunnington, Bartholow, and Miller, LLP (Law Firm)

**Monsignor Charles J. Fahey, LMSW**  
Retired Professor, Fordham University (Higher Education)  
Additional Affiliations: Village Center for Care, d/b/a VillageCare (RHCF, CHHA, and LTHHCP), Isabella Geriatric Center, Inc. (RHCF and LTHHCP)

**Thomas J. Fahey, MD**  
Retired Senior VP, Memorial Sloan Kettering Cancer Center (Cancer Health Care), Retired Associate Dean, Cornell University Medical College (Medical College)

**Eric P. Feldmann**, Real Estate Broker  
CEO / Executive Director, Sisters of Charity Housing Development Corporation (Affordable Housing)

**Rory Kelleher, Esq.**  
Senior Counsel, Sidley Austin, LLP (Law Firm)

**Scott La Rue, Registered Dietician / Nutritionist**  
CEO / President, Catholic Health Care System, d/b/a Archcare (NFP Health Care System)

**John Marinelli**  
Managing Director, Arc Partners, Inc. (Consulting Firm)

**Kathryn K. Rooney, Esq.**  
Retired Intern / Counsel to Senator Marchi, NYS Senate (State Government Legislature)  
Additional Affiliations: Richmond University Medical Center (Hospital), Homemakers of Staten Island, Inc., d/b/a Safe Harbor Healthcare Services (LHCSA)

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, and with the consultation of legal counsel, it is concluded that proceeding with the proposal is appropriate.

A search of all of the above named board members, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List.

The NYS Education Department's Office of the Professions, NYSDOH Office of Professional Medical Conduct, NYSDOH Physician Profile, NYS Department of State Occupational Licensing, and NYS Unified Court System all indicate no issues with the licensure of the health professionals and other licensed professionals associated with this application. Submissions of Certificates of Good Standing by the attorneys listed above are pending (see contingency). We have received current Certificates of Good Standing for two of the attorneys listed above. Submissions of Certificates of Good Standing for three of the attorneys listed above are still pending (see contingency).

The Division of Hospital Certification and Surveillance reviewed the compliance history of all affiliated hospitals, and diagnostic and treatment center, for the time period 2002 to 2012, or for the time periods specified as the affiliations, whichever applied.

An enforcement action was taken against St. Vincent's Hospital in 2006 citing violations in medical resident working hours regulations. This action was resolved with a \$6,000 civil penalty. An additional enforcement action was taken against St. Vincent's Hospital in 2007 citing violations in medical resident working hours regulations. This action was resolved with a \$25,000 civil penalty. An additional enforcement action was taken against St. Vincent's Hospital in 2007 citing the elopement of two psychiatric patients, one of which committed suicide. This action was resolved with a \$6,000 civil penalty. An additional enforcement action was taken against St. Vincent's Hospital in 2008 citing violations in medical resident working hours regulations. This action was resolved with a \$12,000 civil penalty.

It has been determined that the hospitals, and diagnostic and treatment center, have provided a substantially consistent high level of care.

The Division of Residential Services reviewed the compliance history of the 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 against Kateri Residence in 2009 based on a March, 2008 survey citing violations in Quality of Care; and Quality of Care: Accidents. The action was resolved with a \$4000 civil penalty.

An enforcement action was taken against Mary Manning Walsh Nursing Home in 2005 based on May 2002, and September 2003, surveys citing violations in Quality of Care; and Quality of Care: Medication Errors. The action was resolved with a \$3000 civil penalty.

An enforcement action was taken against St. Teresa's Nursing Home in 2004 based on an August, 2003 survey citing violations in Quality of Care: Accidents. The action was resolved with a \$2000 civil penalty.

An enforcement action was taken against Terence Cardinal Cooke Health Care Center in 2004 based on a November, 2002 survey citing violations in Quality of Care. The action was resolved with a \$1000 civil penalty. An additional enforcement action was taken against Terence Cardinal Cooke Health Care Center in 2005 based on an April, 2005 survey citing violations in Resident Assessment and Care Planning; Comprehensive Care Plans; Quality of Care: Accidents; Organization and Administration: Governing Body; and Organization and Administration: Nurse Aide Certification and Training. The action was resolved with a \$4000 civil penalty. An additional enforcement action was taken against Terence Cardinal Cooke Health Care Center in 2007 based on a February, 2007 survey citing violations in Quality of Care: Accidents; and Organization and Administration. The action was resolved with a \$3000 civil penalty. An additional enforcement action was taken against Terence Cardinal Cooke Health Care Center in 2009 based on a March, 2008 survey citing violations in Quality of Care: Accidents; Organization and Administration; and Organization and Administration: Governing Body. The action was resolved with a \$6000 civil penalty. An additional enforcement action was taken against Terence Cardinal Cooke Health Care Center in 2011 based on an April, 2010 survey citing violations in Quality of Care: Highest Practicable Potential. The action was resolved with a \$2000 civil penalty.

An enforcement action was taken against Village Center for Care, d/b/a VillageCare Rehabilitation and Nursing Center, in 2004 based on an April, 2003 survey citing violations in Quality of Care: Accidents. The action was resolved with a \$2000 civil penalty. An additional enforcement action was taken against Village Center for Care, d/b/a

VillageCare Rehabilitation and Nursing Center, in 2009 based on an April, 2008 survey citing violations in Quality of Care. The action was resolved with a \$2000 civil penalty.

It has been determined that the affiliated nursing homes have provided a substantially consistent high level of care.

The Division of Home and Community Based Services reviewed the compliance history of all affiliated certified home health agencies, long term home health care programs, licensed home care service agencies, and hospices for the time period 2002 to 2012, or for the time periods specified as the affiliations, whichever applied.

An enforcement action was taken against Village Center for Care, d/b/a VillageCare Long Term Home Health Care Program in 2005 based on April 2005 and June 2005 surveys, citing violations in Policies and Procedures of Service Delivery; Patient Care; and Governing Authority. This action was resolved with a \$3000 civil penalty, \$1500 of which was suspended.

An enforcement action was taken against Village Center for Care, d/b/a VillageCare Certified Home Health Agency in 2005 based on an August 2005 survey, citing violations in Policies and Procedures of Service Delivery; and Governing Authority. This action was resolved with a \$4000 civil penalty.

It has been determined that the certified home health agencies, long term home health care programs, licensed home care service agencies, and hospices have 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 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 Managed Long Term Care reviewed the compliance history of the affiliated Medicare Advantage Special Needs Plan, and PACE Program, for the time period 2002 to 2012, or for the time periods specified as the affiliations, whichever applied. It has been determined that both plans have provided a substantially consistent high level of care.

A review of all personal qualifying information indicates there is nothing in the background of the board members of Providence Health Services, Catholic Health Care System, d/b/a Archcare, Visiting Nurse Association of Brooklyn, Inc., and Empire State Home Care Services, 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.

#### Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Capability and Feasibility

There are no significant issues of capability or feasibility associated with this application. There will be no change in the daily operations of each health care facility, although each facility is expected to experience cost benefits from the sole corporate member designation.

Presented as BFA Attachment B is the pro-forma balance sheet of Catholic Health Care System as sole Member, which shows on the first day of operation of VNA and Empire there will be an allocation of investment assets of \$16,856,975 and \$7,384,727, respectively, to both CHHAs, therefore maintaining positive working capital.

Presented as BFA Attachment C is the financial summary of the Visiting Nurse Regional Health Care System, Inc., which has maintained positive net asset positions and generated excess revenues in 2011, and also through March 31, 2012. The applicant indicates that Visiting Nurse Regional Health Care System, Inc. allocates a significant proportion of their liquid investment assets as long term assets, which are available and should be taken into consideration in reviewing for positive working capital for 2011, as well as through March 31, 2012.

Presented as BFA Attachments D is the financial summary of the Catholic Health Care System, Inc., which has maintained positive working capital, net asset positions, and experienced a net loss from operations in the years shown for 2011, and also through March 31 2012. The net losses from operations are due to the start-up of its PACE program, a dual-eligible Managed Long Term Care Plan. The applicant indicates that the losses will be eliminated once the program is fully operational and generates revenue to cover its operating expenses.

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.**

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## Attachments

BFA-Attachment A	Organizational Chart
BFA-Attachment B	Pro-forma Balance Sheet
BFA-Attachment C	Financial Summaries for Visiting Nurse Regional Health Care System, Inc., 2011 and March 31, 2012 internal
BFA-Attachment D	Financial Summary for Catholic Health Care System 2011 and March 31, 2012 internal