



# Public Health and Health Planning Council

Project # 121240-E  
**Your Choice at Home, Inc.**

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

**Program:** Certified Home Health Agency  
**Submitted:** April 18, 2012

## Executive Summary

### Description

Your Choice at Home, Inc., a to-be-formed not-for-profit corporation, requests approval to establish an Article 36 Certified Home Health Agency (CHHA) to serve Kings, Queens and New York counties. The applicant is closely affiliated with Cobble Hill Health Center, Inc. a 364-bed, not-for-profit residential health care facility (RHCF) located in Kings County, and also operates a Long Term Home Health Care Program (LTHHCP) and Adult Day Health Care Program (ADHCP) in the county of Kings.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to Section 760.5 of Title 10 NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHAs. Cobble Hill Health Center, Inc. submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

Effective May 1, 2012, a new Episodic Payment System (EPS) reimbursement methodology to reimburse CHHA providers for services provided to Medicaid patients receiving home care services took effect. The EPS is based on a price for 60-day episodes of care which will be adjusted by patient acuity and regional wage differences. The EPS was recommended by the Medicaid Redesign Team (MRT proposal #5) and authorized in the 2011-2012 enacted budget. The EPS is designed to address the issue of rapid growth in Medicaid costs per patient by better aligning payments with needed services and is part to a broad effort to promote the development of care management arrangements for Medicaid recipients.

DOH Recommendation  
Contingent approval.

### Need Summary

The applicant provided evidence of a population in need of the services of a CHHA and presented the projected need for additional CHHA capacity based on projected CHHA utilization for each county and projected the growth rate of the population and how that would impact the need for CHHA services based on the current visit rate. In addition, the applicant provided statistical information on dual-eligible individuals and identified medically-underserved areas within each county.

### Program Summary

A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. 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 proposal.

Budget:	<i>Revenues:</i>	\$ 9,980,310
	<i>Expenses:</i>	<u>9,701,677</u>
	<i>Gain/(Loss):</i>	\$ 278,633

Subject to the noted contingency, 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 a current Certificate of Good Standing for attorney Thomas Edward Spath. [LTC]
2. Submission of a executed building lease acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 760.8, the applicant shall be providing services in the entire geographic area approved by the Council within one year of the Council's approval. The failure, neglect or refusal of an applicant for the establishment of a new certified home health agency to commence operation of the certified home health agency within one year of issuance of the Council's approval or contingent approval of the application shall constitute an abandonment of the application by the applicant, with any such approval to be deemed cancelled and withdrawn without further action by the Council. [LTC]

Council Action Date

**December 6, 2012.**

# Need Analysis

## Background

Your Choice at Home, Inc., is a proposed not-for-profit corporation requesting approval to become established as a CHHA under Article 36 of the Public Health Law, with approval to serve Kings, Queens and New York counties.

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and that approval of the application will facilitate implementation of Medicaid Redesign Initiatives to shift Medicaid beneficiaries from traditional fee-for-service programs to managed care, managed long term care systems, integrated health systems or similar care coordination models or that approval will ensure access to CHHA services in counties with less than 2 existing CHHAs.

## Solicitation

The RFA for the establishment of new or expansion of existing CHHAs was released on January 25, 2012 with RFA applications due on March 9, 2012 and CON applications due on April 20, 2012. Applicants were permitted to submit questions to the Department to seek additional clarification regarding this process. The Department's answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

Applicants that were not presented to the Public Health and Health Planning Council with a recommendation for approval at either the August 2012 or October 2012 meetings were considered deferred. The department notified RFA applicants that we are exercising our authority under the RFA Section VII.D.5 to seek clarifications and revisions of applications from those applicants whose applications have been deferred. Letters dated September 17<sup>th</sup> and 27<sup>th</sup> were sent to these applicants through NYSECON and included information related to the review and evaluation criteria and characteristics of approved applicants.

Additionally, the opportunity to arrange a meeting or phone conference with the Division of Home and Community Based Services to discuss the RFA criteria that was used to evaluate each application was made available to each applicant

## Competitive Review

The CON determination of need was based on the applicant's response to the RFA which includes any additional information submitted by the applicant in response to the aforementioned September 17<sup>th</sup> and 27<sup>th</sup> letters. The applications were reviewed on criteria that included, but were not limited to:

- Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives;
- Knowledge and experience in the provision of home health services;
- Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data;
- Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population;
- Description of a comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

Your Choice at Home, Inc is affiliated with Cobble Hill Health Center, Inc. which is an existing nursing home that operates a long term home health care program. They have existing relationships with Guildnet, VNSChoice and Wellcare. In addition, Cobble Hills Health Center, Inc. is the LLC member of Cobble Hill Lifecare Plus, LLC, which has

contracted with Aetna, Inc. and together with Aetna have applied for approval of the proposed Better Health Managed Long Term Care Plan (MLTCP) to provide managed care services. The relationship with Aetna's new MLTCP, Better Health will help facilitate the transition of long term home health care patients into Managed Long Term Care. They will also provide a continuum of care through this transition as a care management provider for the MLTCP.

The applicant has partnered with hospitals through participation in CMS' Continuing Care Transition Program and discussed implementation of care management teams, care coordination, and transition of fee for service to managed care. The applicant makes a strong case for advancing the initiatives for the MRT with its care continuum and linkages to MLTCP's.

The applicant has a strong commitment to the principles of quality improvement and has demonstrated dynamic innovation in this arena that has resulted in improved health outcomes.

Their innovative approach to disease management enhances their capacity to support Medicaid Redesign initiatives. These strong and innovative QA programs will help control CHHA utilization.

The applicant demonstrated that they will have extensive partnering, and care coordination, and will establish a continuum of care that will serve to reduce operating costs, reduce inappropriate utilization, and improve outcomes. They describe techniques that they will employ such as medication management, disease management tools and protocols, training of aides to alert nurses and doctors in order to avoid hospital admissions. They described in detail community collaborations that the organization has that will help reduce inappropriate utilization while improving outcomes. An example is their involvement with the Brooklyn Care Transition Coalition to reduce high rates of readmissions.

The applicant provided demographic data for each county requested, including extensive discharge statistical data for each county, correlating hospital and NH discharges to projected post hospital and NH home care needs. The applicant provided evidence of a population in need of the services of a CHHA and presented the projected need for additional CHHA capacity based on projected CHHA utilization for each county and projected the growth rate of the population and how that would impact the need for CHHA services based on the current visit rate. In addition, the applicant provided statistical information on dual-eligible individuals and identified medically-underserved areas within each county.

Recommendation

**From a need perspective, approval is recommended.**

## Programmatic Analysis

### Background

Your Choice at Home, Inc., is a proposed not-for-profit corporation requesting approval to become established as a CHHA under Article 36 of the Public Health Law, with approval to serve the three downstate counties of Kings, Queens, and New York. Although the corporation will have a working affiliation, and share common board members, with Cobble Hill Health Center, Inc., and its affiliates, the corporation Your Choice at Home, Inc., will have no member, parent, or subsidiary corporations within its own corporate organizational structure.

All board members of the proposed Your Choice at Home, Inc., are also either board members of, or employed by, Cobble Hill Health Center, Inc. an existing not-for-profit corporation that operates Cobble Hill Health Center, Inc. a not-for-profit Article 28 nursing home, and Cobble Hill Health Center, Inc., LTHHCP, a not-for profit Article 36 long term home health care program (LTHHCP). In addition, the Cobble Hill organizational chart provided by the applicant indicates that Cobble Hill Health Center, Inc., is the LLC member of Cobble Hill Lifecare Plus, LLC, which has contracted with Aetna, Inc., and together with Aetna, has applied with the New York State Department of Health for approval of the proposed Better Health Managed Long Term Care Plan (MLTCP) to provide managed care services.

The applicant proposes to operate the CHHA from an office located at 822 Lexington Avenue, Brooklyn, New York 11221 (Kings County), which is also the practice location of the existing Cobble Hill Health Center, Inc., LTHHCP. 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
Homemaker	Housekeeper	
Medical Supplies, Equipment, and Appliances		

The members of the Board of Directors of Your Choice at Home, Inc. will be as follows:

**Frances M. McPartland**

Retired Senior Vice President & Portfolio Manager,  
Bank of America (formerly Fleet Bank)

**Thomas Edward Spath, Esq.**

Of Counsel, Abelman, Frayne, and Schwab  
Law Firm

**Judith A. Francis**

Marketing Director / Copywriter, Advertising  
Management (Advertising Agency)

**Anthony S. Yang-Lewis, LNHA**

Administrator, Cobble Hill Health Center, Inc.

Ms. McPartland, Mr. Spath, and Ms. Francis are all currently board members of Cobble Hill Health Center, Inc., and Mr. Yang-Lewis is currently employed by Cobble Hill Health Center, Inc. as RHCF/LTHHCP Administrator. The board members list no other health care affiliations.

A search of the individuals and their affiliations named above revealed no matches on either the NYS OMIG Medicaid Disqualified Provider List, or the US DHHS Office of the Inspector General Exclusion List. The Division of Residential Services indicates no issues with the licensure of the Nursing Home Administrator associated with this application. The New York State Unified Court System indicates no issues with the licensure of the attorney associated with this application. Submission of a Certificate of Good Standing for the attorney listed above is still pending (see contingency).

A ten year review of the following facilities was performed as part of this review:

Cobble Hill Health Center, Inc. (RHCF),  
Cobble Hill Health Center, Inc., LTHHCP (LTHHCP)

The Division of Residential Services has indicated that the nursing home has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations. There were no enforcement actions within the previous ten years.

The Division of Home and Community Based Services has indicated that the long term home health care program has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations. There were no enforcement actions within the previous ten years.

A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. 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

### Lease Rental Agreement

The applicant has submitted a draft lease for the proposed site, the terms are summarized below:

<i>Premises:</i>	3,000 gross square feet located at 822 Lexington Avenue, Brooklyn
<i>Landlord:</i>	Cobble Hill Health Center, Inc.
<i>Lessee:</i>	Your Choice At Home, Inc.
<i>Term:</i>	10 years
<i>Rent</i>	\$60,000 per year for the first two years (\$20 per sq. ft.) After the initial two years- rent will be based on the greater of the existing rate or the fair market rental value (FMRV)
<i>Provisions:</i>	Utilities and basic maintenance are included in the rent

The applicant states the lease is a non-arm's length arrangement.

### Operating Budget

The applicant has submitted the first and third year's incremental operating budgets, in 2012 dollars, as summarized below:

Description	<u>First Year</u>	<u>Third Year</u>
Medicaid	\$2,620,309	\$7,236,852
Medicare	931,400	2,686,380
Private Pay	<u>20,480</u>	<u>57,078</u>
Total Revenues	\$3,572,189	\$9,980,310
Total Expenses	<u>\$3,680,638</u>	<u>\$9,701,677</u>
Net Income or (Loss)	\$(108,449)	\$278,633

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

	<u>First Year</u>	<u>Third Year</u>
Medicaid – Fee for Service	36.17%	14.47%
Medicaid – Manage Care	36.15%	57.89%
Medicare – Fee for Service	20.65%	20.60%
Medicare – Manage Care	3.38%	3.39%
Private Pay	0.35%	0.35%
Charity Care	3.30%	3.30%

Utilization and expense assumptions are based on evaluations by the applicant. They expect the patients will need approximately: 3 visits per month for Nursing; 2 visits per month for rehabilitation therapy (physical therapy, occupational therapy or speech pathology); 1 visit per month for social services; and 20 visits per month for home health aids.

The Medicare average episodic payment of \$3,337 is predicated on the calendar year 2012 national standardized 60-day episode payment rate of \$2,138.52, adjusted for the average case mix of 1.2632 and a wage index of 1.3052 for the New York City service area. Medicaid average episode payment is expected to be \$5,618 after adjusting for the local wage index factor of .996524 and using a case mix factor of 1.

### Capability and Feasibility

There are no project costs associated with this application.

The working capital requirement is estimated at \$1,616,946, which appears reasonable based upon two months of third year expenses, which will be provided from Cobble Hill Health Center, Inc. accumulated funds. Presented as BFA Attachment A is Cobble Hill Health Center, Inc 2010 and 2011 certified financial summary which shows sufficient resources for this purpose. Presented as BFA Attachment B is Pro Forma Balance Sheet showing Cobble Hill Health Center, Inc., will provide \$1,667,000 in financial support.

The budget projects a first year operating loss of \$108,449 and a third year operating surplus of \$278,633. Revenues are based current payment methodologies. The submitted budget appears reasonable

A review of Attachment A shows Cobble Hill Health Center, Inc (Center) had an average operating surplus for the years 2010 -2011 of \$1,035,863. When you add in non-operating income the net assets decreased in 2011 by \$149,669 and increased by \$10,035,629 in 2010. The loss reflected in 2011 is due to a unrealized negative change of \$6,832,577 in the interest rate swap agreement. Also as part of non-operating revenues, the Center recognized HEAL NY Phase 2 grant payments of \$5,061,336 in 2011 and \$8,952,699 in 2010. The Center had a positive average working capital position of \$17,089,746 and ended 2011 with \$39,180,587 in total net assets.

It appears 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	Financial Summary for 2010 and 2011, Cobble Hill Health Center, Inc.
BFA Attachment B	Pro Forma Balance Sheet

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BFA Attachment A

COBBLE HILL HEALTH CENTER, INC.

BALANCE SHEET

DECEMBER 31, 2011 AND 2010

	<u>2011</u>	<u>2010</u>
<b>ASSETS</b>		
Current assets		
Cash	\$ 6,091,433	\$ 5,210,157
Cash - resident funds	282,627	322,013
Investments - operating	12,350,452	12,074,253
Investments - certificate of deposit	529,438	527,125
Accounts receivable - residents (net of allowance for doubtful accounts of \$1,128,000 in 2011 and \$1,116,000 in 2010)	6,989,313	7,219,412
Accounts receivable - adult day care (net of allowance for doubtful accounts of \$45,000 in 2011)	351,785	418,194
Accounts receivable - long-term home health care (net of allowance for doubtful accounts of \$180,000 in 2011 and \$60,000 in 2010)	652,917	774,952
Accounts receivable - rate adjustments - adult day care	713,483	
Government grants receivable - HEAL funds	963,295	35,729
Inventories	57,390	76,341
Prepaid expenses	103,160	296,007
Deposits and other receivables	136,922	130,121
Due from Cobble Hill Foundation, Inc.	126,482	157,140
	<u>29,348,697</u>	<u>27,241,444</u>
Total current assets		
Assets limited as to use		
Cash - construction escrow	5,917,473	12,263,117
Cash - other escrow		1,506,603
	<u>5,917,473</u>	<u>13,769,720</u>
Total assets limited as to use		
Mortgage costs - net	1,798,108	1,865,614
Fixed assets - net	71,726,875	60,319,258
	<u>71,726,875</u>	<u>60,319,258</u>
Total assets		
	<u>\$ 108,791,153</u>	<u>\$ 103,196,036</u>

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BFA Attachment A cont.

COBBLE HILL HEALTH CENTER, INC.

BALANCE SHEET

DECEMBER 31, 2011 AND 2010

	<u>2011</u>	<u>2010</u>
<b>LIABILITIES AND NET ASSETS</b>		
Current liabilities		
Accounts payable and accrued expenses	\$ 2,554,165	\$ 767,397
Accounts payable - construction	4,712,582	5,594,899
Accrued payroll and related liabilities	1,671,926	1,829,501
Estimated amount due to third parties	995,129	1,945,410
Resident funds	282,627	322,013
Mortgage payable	890,000	845,000
Total current liabilities	<u>11,106,429</u>	<u>11,304,220</u>
Swap agreements	13,114,137	6,281,560
Mortgage payable	<u>45,390,000</u>	<u>46,280,000</u>
Total liabilities	<u>69,610,566</u>	<u>63,865,780</u>
Net assets		
Unrestricted	39,044,834	39,199,793
Temporarily restricted	<u>135,753</u>	<u>130,463</u>
Total net assets	<u>39,180,587</u>	<u>39,330,256</u>
Total liabilities and net assets	<u>\$ 108,791,153</u>	<u>\$ 103,196,036</u>

**COBBLE HILL HEALTH CENTER, INC.**

**STATEMENT OF OPERATIONS AND CHANGES IN NET ASSETS**

**YEARS ENDED DECEMBER 31, 2011 AND 2010**

	2011		2010		Total
	Unrestricted	Temporarily Restricted	Unrestricted	Temporarily Restricted	
Operating revenues and other support					
Revenues from care of residents	\$ 37,594,465	\$	\$ 37,594,465	\$	\$ 38,196,087
Revenues from adult day care	3,264,501		3,264,501		2,424,394
Revenues from long-term home health care	5,279,435		5,279,435		5,122,376
Prior-period rate adjustments	629,382		629,382		(386,579)
Net assets released from restriction	8,405	\$ (8,405)		\$ 7,376	
Total operating revenues and other support	46,776,188	(8,405)	46,767,783	(7,376)	45,356,278
Operating expenses:					
Professional care of residents	16,212,305		16,212,305		16,520,964
Dietary	2,596,113		2,596,113		2,666,679
Maintenance	1,401,904		1,401,904		1,389,041
Housekeeping and laundry	2,594,859		2,594,859		2,732,228
Security services	138,652		138,652		144,954
Administration	4,205,983		4,205,983		3,981,561
Payroll taxes and employee benefits	7,592,237		7,592,237		6,950,055
Adult day care	1,721,261		1,721,261		1,603,626
Long-term home health care	4,254,741		4,254,741		3,918,532
Nondepartmental (includes interest expense and depreciation and amortization of \$780,481 and \$1,413,785 in 2011 and \$655,691 and \$1,413,483 in 2010)	2,982,458		2,982,458		2,848,343
New York State cash receipts assessment	1,910,665		1,910,665		1,685,174
Total operating expenses	45,611,178		45,611,178		44,441,157
Operating gain (loss)	1,165,010	(8,405)	1,156,605	(7,376)	915,121
Grant for care of residents				10,843	10,843
Government-grants	31,432	13,695	13,695		
Capital grant	5,061,336		5,061,336		8,952,699
Nonoperating revenues	340,897		340,897		844,780
Nonoperating expenses	(32,057)		(32,057)		(22,304)
Change in value of swap agreement	(6,832,577)		(6,832,577)		(773,510)
Transfer from Foundation	111,000		111,000		108,000
Change in net assets	(154,959)	5,290	(149,569)	3,467	10,035,629
Net-assets - beginning of year	39,199,793	130,463	39,330,256	126,996	29,294,627
Net assets - end of year:	\$ 39,044,834	\$ 135,753	\$ 39,180,587	\$ 130,463	\$ 39,330,256

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BFA Attachment B

COBBLE HILL HEALTH CENTER, INC.  
PROFORMA BALANCE SHEET  
YEAR ONE  
2012 \$

ASSETS

Cash and cash equivalents	\$ 1,617,000
Fixed Assets	50,000
Total assets	<u>\$ 1,667,000</u>

LIABILITIES & NET ASSETS

Net assets	1,667,000
Total net assets	<u>\$ 1,667,000</u>