

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

April 11, 2013

Immediately following the Committee on Codes, Regulations and Legislation

*Century House
997 New Loudon Road (Route 9)
Main Ball Room
Latham, New York 12110*

I. INTRODUCTION OF OBSERVERS

Dr. William Streck, Chairman

II. APPROVAL OF MINUTES

February 7, 2013 Meeting Minutes

Exhibit #1

III. REGULATION

Report of the Committee on Codes, Regulations and Legislation

Exhibit #2

Angel Gutiérrez, M.D., Chair

IV. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

Sue Kelly, Executive Deputy Commissioner

B. Report of the Offices of Primary Care and Health Systems Management Activities

Karen Westervelt, Deputy Commissioner, Offices of Primary Care and
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

Elizabeth Misa, Medicaid Deputy Director, Office of Health Insurance Programs

E. Report of the Office of Public Health Activities

Dr. Guthrie Birkhead, Deputy Commissioner, Office of Public Health

V. PUBLIC HEALTH SERVICES

Report on the Activities of the Committee on Public Health

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

VI. HEALTH POLICY

Report on the Activities of the Committee on Health Planning

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

VII. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Jeffrey Kraut, Chair of Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Construction

Exhibit #3

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122190 C	John T Mather Memorial Hospital of Port Jefferson (Suffolk County)	Contingent Approval
2.	122229 C	Montefiore Medical Center – North Division (Bronx County)	Contingent Approval

Residential Health Care Facility – Construction

Exhibit #4

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122294 C	Alice Hyde Medical Center (Franklin County)	Contingent Approval

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

Exhibit #5

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	112363 C	Mount Sinai Hospital (Queens County) Dr. Martin - Recusal	Contingent Approval
2.	122297 C	New York Presbyterian Hospital – Columbia Presbyterian Center (New York County) Ms. Regan - Interest	Contingent Approval

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| 3. | 122306 C | New York Presbyterian Hospital –
Columbia Presbyterian Center
(New York County)
Ms. Regan - Interest | Contingent Approval |
| 4. | 122314 C | New York Presbyterian Hospital –
New York Weill Cornell Center
(New York County)
Ms. Regan - Interest | Contingent Approval |
| 5. | 122316 C | New York Presbyterian Hospital –
New York Weill Cornell Center
(New York County)
Ms. Regan - Interest | Contingent Approval |

**Downstate Request for Applications – Certified Home Health Agencies – Exhibit #6
Construction**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	121201 C Alpine Home Health Care, LLC (Bronx County) Mr. Fassler – Recusal Mr. Fensterman - Recusal	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

**Downstate Request for Applications – Certified Home Health Agencies – Exhibit #7
Construction**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	121229 C Calvary Hospital (Bronx County) Ms. Hines – Abstained at EPRC	Contingent Approval
2.	121241 C Prime Home Health Services, LLC (Kings County) Ms. Hines – Abstained at EPRC	Approval

3.	121289 C	Winthrop-University Hospital Home Health Agency (Nassau County) Ms. Hines – Abstained at EPRC	Approval
4.	121312 C	Good Samaritan Hospital Home Care Department (Rockland County) Ms. Hines – Abstained at EPRC	Approval
5.	121323 C	St Cabrini Nursing Home (New York County) Ms. Hines – Abstained at EPRC	Approval

Long Term Home Health Care Program – Construction

Exhibit #8

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	131109 C Health Services of Northern New York, Inc. (St. Lawrence County) Ms. Hines – Opposed at EPRC	Contingent Approval

CATEGORY 4: Applications Recommended for Approval with the Following:

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

**Downstate Request for Applications – Certified Home Health Agencies –
Construction**

Exhibit #9

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	121214 C New York Congregational Nursing Center LTHHCP (Kings County) Mr. Fassler – Interest Ms. Hines – Abstained at EPRC	Contingent Approval
2.	121287 C Gurwin Jewish Nursing and Rehabilitation Center LTHHCP (Suffolk County) Mr. Fassler – Interest Ms. Hines – Abstained at EPRC	Approval

3.	121313 C	Visiting Nurse Service of New York Home Care (New York County) Mr. Fassler – Interest Ms. Regan – Recusal Ms. Hines – Abstained at EPRC	Approval
4.	121217 C	Bethel Nursing Home Co Inc (Westchester County) Mr. Fensterman – Recusal Ms. Hines – Abstained at EPRC	Contingent Approval
5.	121231 C	Parker Jewish Institute for Health Care and Rehabilitation (Nassau County) Mr. Fassler – Interest Mr. Fensterman – Recusal Ms. Hines – Abstained at EPRC	Approval

**Downstate Dear Administrator Letters – Certified Home Health Agencies – Exhibit #10
Construction**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	121421 C Four Seasons Nursing and Rehabilitation Center LTHHCP (Kings County) Mr. Fensterman – Recusal Ms. Hines – Abstained at EPRC	Approval
2.	121440 C Hillside Manor Nursing Center (Queens County) Mr. Fensterman – Recusal Ms. Hines – Abstained at EPRC	Approval

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

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Establish/Construct

Exhibit #11

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122213 E	Catholic Health Ministry Services, Inc. (Erie County)	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct

Exhibit #12

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122104 B	GoldStep Ambulatory Surgery Center, LLC (Kings County)	Contingent Approval
2.	122223 E	Hudson Valley Endoscopy Center, Inc. (Dutchess County)	Contingent Approval
3.	122280 B	Cortland ASC, LLC d/b/a Cortland Surgical Center (Cortland County)	Contingent Approval

Diagnostic and Treatment Center – Establish/Construct

Exhibit #13

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122013 B	The New York Foundling Bronx Health Care Center (Bronx County)	Contingent Approval

Dialysis Services – Establish/Construct

Exhibit #14

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122181 E	Dialysis Newco, Inc. d/b/a DSI Renal (Dutchess County)	Contingent Approval
2.	122319 E	St. Joseph’s Dialysis – Regional (Onondaga County)	Contingent Approval

Residential Health Care Facility – Establish/Construct

Exhibit #15

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122233 E	Batavia Health Care Center, LLC (Genesee County)	Contingent Approval
2.	122276 E	Livingston Hills Nursing and Rehabilitation Center, LLC (Columbia County)	Contingent Approval
3.	122298 E	Golden Hill Planning Corporation d/b/a Golden Hill Nursing and Rehabilitation Center (Ulster County)	Contingent Approval

Certificate of Dissolution

Exhibit #16

	<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
1.	Community General Hospital of Greater Syracuse	Approval

HOME HEALTH AGENCY LICENSURES

Exhibit #17

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	2128-L	Achieve-ALP, LLC d/b/a Achieve Assisted Living Program (Sullivan County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

HOME HEALTH AGENCY LICENSURES

Exhibit #18

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
	1940-L	Allcare Homecare Agency, Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties) Ms. Regan - Interest	Contingent Approval

2053-L	Lavin Home Care, Inc. d/b/a Home Instead Senior Care (Suffolk, Nassau and Queens Counties) Ms. Regan - Interest	Contingent Approval
2043-L	Bushwick Economic Development Corp. (Kings, New York, Queens, and Richmond Counties) Ms. Regan - Interest	Contingent Approval
2084-L	Renewal Care Partners, LLC (Bronx, Westchester, Kings, Queens, New York and Richmond Counties) Ms. Regan - Interest	Contingent Approval
2027-L	Westchester Family Care, Inc. (Westchester, Rockland, Putnam and Dutchess Counties) Ms. Regan - Interest	Contingent Approval

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

CON Applications

Residential Health Care Facility – Establish/Construct

Exhibit #19

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122215 E Excel at Woodbury for Rehabilitation and Nursing, LLC (Nassau County) Mr. Fensterman – Abstained at EPRC	Contingent Approval
2.	122251 E Rosewood Rehabilitation and Nursing Center (Rensselaer County) Mr. Fensterman – Abstained at EPRC	Contingent Approval

**Downstate Request for Applications – Certified Home Health Agencies – Exhibit #20
Establish/Construct**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	121232 E	Amber Court at Home, LLC (Nassau County) Ms. Hines- Abstained at EPRC	Contingent Approval
2.	121260 E	Constellation Home Care (Nassau County) Ms. Hines – Opposed at EPRC	Contingent Approval

CATEGORY 4: Applications Recommended for Approval with the Following:

- ❖ PHHPC Member Recusals
- ❖ Establishment an 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

CON Applications

Residential Health Care Facility – Establish/Construct

Exhibit #21

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122261 E	St. Marks Brooklyn Associates LLC d/b/a Crown Heights Center for Nursing and Rehabilitation (Kings County) Mr. Fensterman – Abstained at ERPC	Contingent Approval

VIII. PROFESSIONAL

Executive Session - Report of the Committee on Health Personnel and Interprofessional Relations

Dr. Jodumutt Bhat, Chair
One Case arising under PHL 2801-b

IV. NEXT MEETING

May 21, 2013 – NYC – Special Health Planning Committee Meeting
May 22, 2013 – NYC – Ad Hoc Committee to Lead the State Health Improvement Plan Meeting
May 23, 2013 – NYC – Committee Day
June 6, 2013 – NYC – Full Council Meeting

X. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
February 7, 2013

The meeting of the Public Health and Health Planning Council was held on Thursday, February 7, 2013 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	Ms. Ellen Rautenberg
Dr. Howard Berliner	Mr. Peter Robinson
Dr. Jodumatt Bhat	Dr. John Ruge
Mr. Christopher Booth	Dr. Theodore Strange
Dr. Jo Ivey Boufford	Dr. Ann Marie Sullivan
Mr. Howard Fensterman	Dr. Anderson Torres
Dr. Ellen Grant	Dr. Patsy Yang
Dr. Angel Gutiérrez	Commissioner Shah (ex-officio)
Ms. Victoria Hines	
Mr. Arthur Levin	
Dr. Glenn Martin	

DEPARTMENT OF HEALTH STAFF PRESENT:

Mr. Charles Abel	Mr. Robert Loftus – Albany (via video)
Dr. Guthrie Birkhead	Mr. Keith McCarthy – Albany (via video)
Ms. Rachel Block – Albany (via video)	Ms. Sylvia Pirani – Albany (via video)
Mr. James Clancy	Ms. Linda Rush – Albany (via video)
Ms. Anna Colello – Albany (via video)	Mr. Robert Schmidt – Albany (via video)
Ms. Barbara DelCogliano – Albany (via video)	Mr. Bill Schwarz
Ms. Colleen Frost	Ms. Lisa Thomson
Ms. Rebecca Fuller Gray – Albany (via video)	
Ms. Sandy Haff	
Mr. Michael Heeran	
Ms. Mary Ellen Hennessy – Albany (via video)	
Ms. Karen Lipson	

INTRODUCTION:

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

MEETING OVERVIEW:

Dr. Streck gave a brief overview of the Council meeting agenda.

APPROVAL OF THE MINUTES OF DECEMBER 6, 2012:

Dr. Streck asked for a motion to approve the December 6, 2012 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 pages 2 and 3 of the attached transcript.

ANNUAL MEETING:

Dr. Streck advised the members and public that the meeting is the Council's annual meeting.

Election of Council's Vice Chair:

Dr. Streck motioned for Jeffrey Kraut to serve as the Vice Chair of the Council. The motion was seconded by Dr. Grant. The motion to appoint Mr. Kraut to serve as Vice Chair passed unanimously. Please see page 3 of the transcript.

2013 Standing Committee's:

Continuing with the Annual Meeting Dr. Streck announced the Standing Committee memberships. Please see pages 3 through 4 of the attached transcript.

REGULATION

Dr. Streck introduced Dr. Gutiérrez to give his Report of the Committee on Codes, Regulations and Legislation.

For Adoption

- 11-09 Amendment of Part 16 of Title 10 NYCRR (Quality Assurance Requirements for Medical Use of Radioactive Material and Radiation Therapy)
- 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)

Dr. Gutiérrez introduced Amendment of Part 16 of Title 10 NYCRR for adoption regarding Quality Assurance Requirements for Medical Use of Radioactive Material and Radiation Therapy. Dr. Gutiérrez motioned for adoption which was seconded by Dr. Berliner. The motion to adopt passed. Please see pages 5 and 6 of the attached transcript.

Dr. Gutiérrez then introduced Amendment of Parts 763 and 766 of Title 10 NYCRR Certified Home Health Agency (CHHA) and Licensed Home Care Services Agency (LHCSA) Requirements for adoption. Dr. Gutiérrez motioned for adoption. Dr. Berliner seconded the motion and the motion to adopt passed. Please see pages 6 through 8 of the attached transcript.

For Information

- 13-01 Amendment of Sections 405.2 and 405.4 of Title 10 NYCRR (Hospital Sepsis Protocols)
- 13-02 Amendment of Part 405 of Title 10 NYCRR (Hospital Pediatric Care)
- 13-05 Amendment of Sections 2.59, 405.3, 415.19, 751.6, 763.13, 766.11 and 793.5 of Title 10 NYCRR (Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel)

Next, Dr. Gutiérrez described Amendment of Sections 405.2 and 405.4 of Title 10 NYCRR, Hospital Sepsis Protocols which is on the agenda For Information. Dr. Gutiérrez then introduced Amendment of Part 405 of Title 10 NYCRR, Hospital Pediatric Care and Amendment of Sections 2.59, 405.3, 415.19, 751.6, 763.13, 766.11 and 793.5 of Title 10 NYCRR relative to Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel. Please see pages 8 through 10 for details regarding the proposed regulations.

Dr. Gutiérrez concluded his report. Dr. Streck thanked Dr. Gutiérrez for the report and introduced Dr. Shah to give the Department of Health Activities.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES:

2013-14 Executive Budget

Commissioner Shah began his report by stating he presented the Governor's 2013-14 budget to the Senate and described one of the big components of the executive budget was the continuation of the historic Medicaid Redesign Team reforms that were initiated in 2011. The goal of those efforts is to achieve the triple aim which is better health, better care, and lower cost. This year the Governor's budget proposal also recognizes the need to cap local government Medicaid costs which would this year save them an additional, local government save an additional 111 million dollars in the upcoming fiscal year. This is part of the broader mandate relief that the Governor has promised and delivered on repeatedly.

Dr. Shah noted that health care delivery has been transformed through the Medicaid program. Such as radically increasing the number of patients who access their care through patient centered medical homes in the Medicaid program. Over 16,000 patients are getting care in health homes. These are high need chronic care patients who are now getting coordinated care in one or more of the health homes that have been established across the state. Meanwhile, enrollment in Medicaid managed care continues to grow. The Department is looking to continue this trend to move almost everyone in the Medicaid program to care management and complete that effort by 2016.

Dr. Shah stated that New York is also leading the nation in connecting high need Medicaid patients with supportive housing. Last year Governor Cuomo announced \$75 million in his budget to invest in supportive housing, and this was for 4000 high need individuals. The goal has been achieved. In January of this year, the Governor announced ground has actually been broken on the first supportive housing development in the Bronx.

Commissioner Shah explained the executive budget also builds on the reforms in the early intervention (EI) program that were accomplished last year by integrating covered services into health insurance networks and streamlining the eligibility requirements to insure timely access to high quality EI services for children and their families while reducing costs.

Dr. Shah noted that the reform extends also to the general public health works program which provides state aid reimbursement to local health departments who are on the front lines of delivering essential public health services. The Governor's budget proposal will provide administrative relief in many other areas to county public health agencies. It will modernize program components that have been largely unchanged since the late 1980s, and it will improve the fiscal predictability in spending.

Dr. Shah noted that the executive budget includes a provision that would authorize the Department to establish a temporary operator for an adult care facility, hospital, or D&TC in certain circumstances, either at the request of the facility's established operator or upon a determination that the facility is seeking extraordinary financial assistance to address serious financial instability and that the conditions in the facility are endangering the life, health, or safety of residents or patients. The established operator would be entitled to a notice, a meeting with the Department, and a hearing prior to the appointment of a temporary operator except in those cases where patient or public health or safety were in immediate jeopardy. The temporary operator would assume control and responsibility for the operation of the facility for an initial 180 days with the possibility of reappointments for multiple 90 day terms. This legislative proposal builds on the recommendation that was included in this Council's CON redesign report.

One last budget item the Commissioner discussed was the consolidation of certain activities. The 2013-14 budget provides a structure that will fund evidence-based programs and best practices to make public health investments more effective. State lab functions will be consolidated to achieve better coordination in response to our public health concerns. Currently there are five different state agencies currently operating public health and environmental labs and much of the lab space is in poor condition. The Department will explore ways to leverage our lab activities with private and university partners to improve facilities and advance economic development.

Sepsis

Shifting gears, the Commissioner next spoke on the topic of sepsis. In his State of the State address Governor Cuomo cited the need for New York to be a national leader in fighting sepsis and called for a gold standard of patient care in New York. He followed up on his pledge last week when he announced that New York will be the first state in the nation to require all hospitals to adopt best practices for early identification and treatment of sepsis. The initiatives the Governor has championed are known collectively as Rory's Regulations, in tribute to Rory Staunton the 12 year old boy who died of sepsis in April of last year. He also announced that the Department will issue regulations to ensure that the unique needs of pediatric patients are respected and also require hospitals to post a patient bill of rights to make parents and patients aware of those important protections for those under those regulations. The Department will issue guidance to hospitals in collaboration with the societies, the Hospital Association of New York and the Greater New York Hospital Association on these best practices and adopt a time frame that is reasonable but is aggressive to make sure that these best practices are out there in the community.

Influenza

Dr. Shah stated that this has been the worst flu season since H1N1 in 2009. Dr. Shah sadly noted that recently a six-year-old girl died in Tonawanda of the flu. On January 12, 2013, Governor Cuomo declared a public health emergency for the entire State and issued in the executive order to allow pharmacists to administer flu vaccine to children between the ages of six months and 18 years of age. Thousands of children received their flu shots in pharmacies led by groups such as Rite-Aid that were very effective in making sure that children were getting their vaccination. As of the week ending January 26 the Department's surveillance reports have shown a 45 percent decline in the number of reported cases, and a 28 percent decline in flu hospitalizations. Dr. Shah encouraged those who have not received their flu shot to get one as it is not too late.

Dr. Shah described the Department is looking at new ways to prevent flu transmission in healthcare settings and are moving ahead to enact regulations to require all unvaccinated healthcare personal to wear a surgical or procedure mask. This has broad support from the hospital associations of New York to the Greater New York Hospital Association, the visiting nurse services, many of the medical societies including ACP, pediatrics, family practice, as well as others.

Health Benefit Exchange

Dr. Shah gave the members an update on the health benefit exchange. The first week of February 2013 the Exchange issued an invitation to health insurance companies to participate in the Exchange. The goal is to build an Exchange that offers a variety of affordable, quality health plans. The Exchange will make it easy for individuals, families, and small business owners to compare Qualified Health Plans and purchase the product that meets their specific needs. Qualified Health Plans approved by the Exchange will provide comprehensive health coverage, follow limits on out of pocket expenses such as copayments and deductibles, and also meet other state and federal requirements. Through the certification process for the plans, the Exchange

will, among other things offer comprehensive, affordable coverage in all areas of the state, balance innovation with reasonable choice, make it easy for consumers to compare options, ensure that Qualified Health Plans have adequate provider networks, preserve consumer protections, and monitor quality, utilization of services, and consumer satisfaction. Health plans must submit a non-binding letter of interest to the New York Health Benefit Exchange no later than February 15, 2013. New York's Exchange truly is a national leader and is on target to begin enrollment on October 1, 2013, with coverage starting on January 1, 2014.

Montefiore

Lastly, Commissioner Shah discussed the CON application by Montefiore to operate a freestanding emergency department at the site of the former Westchester Square Medical Center in the Bronx. There are currently four approved freestanding emergency department (ED)'s in New York; in suburban Buffalo, Lake Placid, Manhattan, and in Sydney in Delaware County. In the CON report of the Council's Planning Committee, it says the CON process must be supportive of new models of, for the organization and delivery of healthcare. And clearly a freestanding ED qualifies as such a model. They will participate in studying the model as it rolls out as prior North Shore group is studying their freestanding ED, both groups will collaborate on a shared study so we can see how this model works in different settings, using the same metrics and the same sets of questions. The Westchester Square has been a significant source of emergency care in its geographic area of the Bronx, and it seems well-advised to follow, to allow for the continued operation of emergency services at that site.

Commissioner Shah concluded his report. Dr. Streck asked if members had questions. To review Dr. Shah's complete report and comments from the members, please refer to pages 10 through 25 of the attached transcript. Dr. Streck thanked Dr. Shah and introduced Ms. Westervelt to give the Report of the Activities of the Office of Health Systems Management.

REPORT OF THE OFFICE OF HEALTH SYSTEMS MANAGEMENT ACTIVITIES

Mr. Westervelt began her report by introducing Ms. Dellehunt who will manage the new Division of Data Management Analysis and Research under the Office of Health Systems Management.

Ms. Westervelt gave the members a brief recap on post-Sandy with repatriation efforts. Currently four hospitals still have some form of closure although they are getting closer every day and described the hospital's individual status. Ms. Westervelt also updated the Council on three nursing homes still affected by Sandy.

Ms. Westervelt updated the Council on CON redesign and explained the Department is in the process right now of developing very extensive work plans to carry out the implementation of that report, and will bring progress updates to the Council in the future.

Mr. Abel gave a brief overview of phase one CON reform foundation plan and stated the Department is working on phase implementation. There are a number of the statutory changes necessary to execute both the phase one and phase two changes in the Governor's budget bill and if passed, give us the legal authority to move forward with many of those CON reform measures. Developing the phase two implementation plan should have that available and within just a couple of weeks, already beginning to implement what we can do without statutory or regulatory changes.

Mr. Abel next discussed CON processing. The Department has been in the last year concerted efforts to not only improve processing time of CON applications under review, but also to assertively move forward with applicants, encourage applicants to move forward with their contingently approved projects. Mr. Abel stated that in 2012 the Department had hit a historically low median processing times over the 10 year period and made substantial progress over last year and have been as efficient as ever with CON processing time. Mr. Abel also discussed the CON backlog and stated the numbers that are still in the queue with respect to actions, final actions being needed, tremendously reduced currently from when the Department began a process to eliminate the CON backlog.

Ms. Westervelt and Mr. Abel concluded the OHSM Report. Please see pages 25 through 29 of the attached transcript for a more detailed report.

REPORT OF THE OFFICE OF HEALTH INFORMATION TECHNOLOGY TRANSFORMATION ACTIVITIES

Dr. Streck introduced Ms. Block who participated via video from Albany to give the report of the Office of Health Information Technology Transformation activities

Ms. Block updated that Council on the Department's evaluation activities. There were two new studies that were recently released by Hitec. One demonstrates distinctly different, as in positive, performance on standardized quality measures for physician practices, utilizing Virtual Health Records (VHR) compared to practices using paper. Even more impressive is the significantly greater positive performance by those practices using VHRs that have qualified as patient centered medical homes.

Ms. Block gave details on a study that was just released by the Rochester RHIO that was conducted with Hitec called the virtual health record which is a means for providers anywhere in the community to access data across the RHIO regardless of what kind of VHR they might have. Three key findings from that study is the use of the virtual health record during an emergency department visit decreased the odds of an inpatient admission by 30 percent and their estimate was that would result in extrapolating to about \$9 million savings across the community. A second, within 90 days within initial imaging procedure decreased the likelihood of repeating that procedure by 35 percent. Finally another topic of great interest is the VHR was used after a hospital discharge, it lowered by 55 percent the likelihood that a patient would be readmitted within 30 days.

Ms. Block advised that the New York E-Health Collaborative Board had a two day meeting the first week of February 2013. Ms. Block identified key milestones of New York and national developments, and the national developments being all things that New York State is actively participating in. Ms. Block described important items that came out of the Board meeting such as five key agreements in terms of the future development of the SHIN-NY to finalize a new governance structure which will included in an upcoming regulation, comment policies across the State, a new certification process for participation in SHIN-NY, definition of a common set of state-wide services, called dial tone services, to be available through the SHIN-NY, representing the public utility aspect, commitment to further increase adoption and use both through increased participation and a specific focus on value add, to identify continued funding sources. The State funds under HEAL are ending at the end of this year. Federal funds end in the second quarter of next year, and there is the need to be looking to the sustainability model to continue all of this. Ms. Block stated that there is an agreement on a very robust and specific set of public health and population health functionality that she anticipates making available across the entire SHIN-NY, and have been working closely with the staff from the Office of Public Health and the New York City Health Departments.

Ms. Block concluded her report. To see the complete report, please refer to pages 30 through 34 of the attached transcript. Dr. Streck thanked Ms. Block for her report and moved to the Establishment and Project Review Committee Report and turned the meeting over to Mr. Booth.

ROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Dr. Streck introduced Mr. Booth to give the Report of the Committee on Establishment and Project Review

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 #4

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	122161 C	East Harlem Council for Human Services, Inc. d/b/a Boriken Neighborhood Health Center (New York County)	Contingent Approval

Mr. Booth introduced application 122161. Dr. Gutiérrez seconded the motion. The motion to approve passed. Please see pages 34 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

Ambulatory Surgery Center – Construction

Exhibit #6

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	122085 C	Gramercy Surgery Center, Inc. (Queens County) Dr. Sullivan – Abstaining/Interest	Contingent Approval

Transitional Care Units – Construction

Exhibit #5

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	122236 T	Upstate University Hospital at Community General (Onondaga County) Mr. Booth - Interest	Contingent Approval
2.	122237 T	St. Joseph’s Hospital (Chemung County) Mr. Booth - Interest	Contingent Approval

Mr. Booth briefly described applications 122085, 122336 and 122237 and noted for the he has an interest on applications 122236 and 122237 and motioned for approval which was seconded by Dr. Gutiérrez. The motion to approve the applications with the above referenced member interests passed. Please see pages 34 and 35 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

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

Acute Care – Construction

Exhibit #6

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	131015 C	Montefiore Medical Center – Henry and Lucy Moses Division (Bronx County)	Contingent Approval

Mr. Booth moved to Category 6 and introduced application 131015 and motioned for approval which was seconded by Dr. Gutiérrez. The motion to approve carried. Please see page 35 of the attached 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

Ambulatory Surgery Centers – Establish/Construct

Exhibit #7

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	121395 B	Havemeyer ASC, LLC d/b/a Havemeyer Ambulatory Surgery Center (Kings County)	Contingent Approval
2.	122016 B	Omnicare Multi-Specialty Center, LLC (Kings County)	Contingent Approval

Dialysis Services – Establish/Construct

Exhibit #8

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	122066 E	Hauppauge Dialysis Center, LLC (Suffolk County)	Contingent Approval
2.	122175 E	Avantus Renal Therapy New York, LLC (New York County)	Contingent Approval

- | | | | |
|----|----------|--|---------------------|
| 3. | 122242 E | LSL Newburgh, LLC d/b/a Liberty
Hudson Valley Dialysis
(Orange County) | Contingent Approval |
|----|----------|--|---------------------|

Certified Home Health Agencies – Establish/Construct

Exhibit #11

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	122078 E Litson Certified Care, Inc. d/b/a Willcare (Greene County)	Contingent Approval
2.	122165 E Hudson Valley Home Care (Dutchess County)	Contingent Approval

Amended and Restated Certificate of Incorporation

Exhibit #12

Applicant

Council Action

JTM Health Facilities Foundation, Inc.

Approval

HOME HEALTH AGENCY LICENSURES

Exhibit #13

Number

Applicant/Facility

Council Action

2076-L

Ideal Care SP, LLC
(Ulster, Dutchess, Orange,
Sullivan and Greene Counties)

Contingent Approval

Mr. Booth read all applications in Category One and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve all applications in Category One passed. Please see page 36 of the 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

Ambulatory Surgery Centers – Establish/Construct

Exhibit #14

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	122051 B Rockaways ASC Development, LLC (Queens County) Mr. Kraut - Interest Dr. Sullivan – Abstaining/Interest	Contingent Approval

2.	122164 B	Mason ESC, LLC d/b/a Mason Eye Surgery Center (Queens County) Dr. Sullivan – Abstaining/Interest	Contingent Approval
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Diagnostic and Treatment Centers – Establish/Construct

Exhibit #15

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	121445 B	New Life Community Development Corporation d/b/a New Life Community Health Center (Queens County) Dr. Sullivan – Abstaining/Interest	Contingent Approval

Dialysis Services – Establish/Construct

Exhibit #9

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	122067 E	Watertown Dialysis Center, LLC (Jefferson County) Mr. Booth – Interest	Contingent Approval

Residential Health Care Facility – Establish/Construct

Exhibit #10

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	121099 E	Parkview Care and Rehabilitation Center, Inc. d/b/a Parkview Care and Rehabilitation Center (Nassau County) Mr. Fensterman – Recusal (not present)	Approval

Residential Health Care Facility – Establish/Construct

Exhibit #16

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	122003 E	Pavilion Operations, LLC d/b/a Corning Center for Rehabilitation and Healthcare (Steuben County) Mr. Booth - Interest Mr. Fassler – Recusal Mr. Fensterman – Recusal (not present)	Contingent Approval

Certified Home Health Agencies – Establish/Construct**Exhibit #17**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 121325 E	Tri-Borough Certified Health Systems of New York, LLC d/b/a Tri-Borough Certified Health Systems of New York (Nassau County) Ms. Regan – Interest (not present)	Contingent Approval
2. 121328 E	Tri-Borough Certified Health Systems of the Hudson Valley, LLC d/b/a Tri-Borough Certified Health Systems of the Hudson Valley (Westchester County) Ms. Regan – Interest (not present)	Contingent Approval

Mr. Booth described applications 122051, 122164, 121445, 122067, 121099, 122003, 121325, and 121328 and noted for the record that he has an interest on application 122003. Mr. Booth motioned for approval which seconded by Dr. Gutiérrez. The motion to approve was carried. Please see pages 37 and 38 of the transcript.

Restated Certificate of Incorporation**Exhibit #18**

<u>Applicant</u>	<u>Council Action</u>
Pluta Cancer Center Foundation, Inc. Ms. Hines – Recusal Mr. Robinson – Recusal Mr. Booth - Interest	Approval

Mr. Booth noted for the record he has an interest in Pluta Cancer Center Foundation, Inc. and that Ms. Hines and Mr. Robinson have a conflict and have left the meeting room. Mr. Booth motioned for approval which was seconded by Dr. Gutiérrez. The motion to consent to filing was approved with Ms. Hines and Mr. Robinson’s noted recusals. Ms. Hines and Mr. Robinson re-entered the meeting room. Please see page 38 of the attached transcript.

HOME HEALTH AGENCY LICENSURES**Exhibit #19**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
2061-L	ADG Health Care Holdings, Inc. d/b/a ComForcare Senior Services- Northeast Westchester (Westchester, Putnam, Dutchess and Orange Counties) Ms. Regan - Interest	Contingent Approval
2017-L	A-Plus Care HHC, Inc (New York, Kings, Queens, Bronx, Richmond and Westchester Counties) Ms. Regan - Interest	Contingent Approval
1946-L	ASC of New York, LLC d/b/a Affordable Senior Care of New York (Bronx, Kings, Nassau, New York, Richmond and Queens Counties) Ms. Regan - Interest	Contingent Approval
1878-L	Christine Home Care Services, Inc. (New York, Bronx, Queens, Kings and Nassau Counties) Ms. Regan - Interest	Contingent Approval
2015-L	Eden Home Care Services, inc. (Bronx, Kings, New York, Queens, Richmond and Nassau Counties) Ms. Regan - Interest	Contingent Approval
2082-L	JC Beginnings, Inc. d/b/a Senior Helpers (Nassau and Suffolk Counties) Ms. Regan - Interest	Contingent Approval

1995-L	Life Quality Homecare Agency, Inc. (Bronx, Kings, New York, Queens, Richmond and Westchester Counties) Ms. Regan - Interest	Contingent Approval
2006-L	Millennium Concepts, Inc. d/b/a Exclusive Care (Bronx, Kings, New York, Queens, Richmond and Nassau Counties) Ms. Regan - Interest	Contingent Approval
2013-L	Ochlor, Incorporated d/b/a Right at Home (Kings, New York, Queens and Richmond Counties) Ms. Regan - Interest	Contingent Approval
1979-L	SonicLeibs, Inc. d/b/a Synergy HomeCare (Bronx, Kings, New York, Queens, Richmond and Westchester Counties) Ms. Regan - Interest	Contingent Approval
1907-L	SR Homecare of NY, Inc. (New York, Kings, Queens, Bronx, Richmond, and Westchester Counties) Ms. Regan - Interest	Contingent Approval
1812-L	St. Vincent de Paul Residence d/b/a St. Vincent de Paul LHCSA (Bronx County) Ms. Regan - Interest	Contingent Approval
1881-L	Marian Care, Inc. (Nassau, Suffolk, and Queens Counties) Ms. Regan - Interest	Contingent Approval

2070-L

Tri-Borough Health Careers, LLC
d/b/a Metro Care Home Services,
a division of Tri-Borough Health
Careers, LLC
(Bronx, Kings, New York,
Queens, Richmond and
Westchester Counties)
Ms. Regan - Interest

Contingent Approval

2069-L	Tri-Borough Home Care, Ltd. d/b/a Family Pediatric Home Care, a division of Tri-Borough Home Care, Ltd. (Dutchess, Orange, Putnam, Sullivan Westchester, Ulster, Nassau, Suffolk, and Rockland Counties) Ms. Regan - Interest	Contingent Approval
2103-L	Tri-Borough Home Care, Ltd. d/b/a Metrocare Givers, a division of Tri-Borough Home Care, Ltd. (Bronx, Kings, New York, Queens, Richmond and Westchester Counties) Ms. Regan - Interest	Contingent Approval

HOME HEALTH AGENCY LICENSURES

Exhibit #13

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
2153-L	Garden Homecare, LLC (Erie County) Mr. Booth - Interest	Contingent Approval

Mr. Booth introduced applications 2061, 2017, 1946, 1878, 2015, 2082, 1995, 2006, 2013, 1979, 1907, 1812, 1881, 2070, 2069, 2103, and 2153 and noted for a record that he has an interest in application 2153. Mr. Booth motioned for approval which was seconded by Dr. Gutiérrez. The motion to approve the applications listed above passed. Please see page 39 of the 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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

- ❖ PHHPC Member Recusals
- ❖ Establishment an 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

CON Applications

Ambulatory Surgery Center – Establishment

Exhibit #20

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 121346 E	White Plains Ambulatory Surgery, LLC d/b/a White Plains Ambulatory Surgery Center, Inc. (Westchester County)	Contingent Approval

Mr. Booth described application 121346 and motioned for approval which was seconded by Dr. Berliner. The motion to approve carried. Please see page 39 of the attached transcript.

Residential Health Care Facility – Establishment

Exhibit #21

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 122194 E	SSS Operating, LLC d/b/a Atlantic Harbor Center for Rehabilitation and Nursing Mr. Fensterman – Recusal (not present)	Deferred

Mr. Booth introduced application 122194 and motioned for a deferral for one meeting cycle. Dr. Grant seconded the motion to defer. The application was deferred. Please see 40 through 55 for the members comments and full discussion.

PUBLIC HEALTH SERVICES

Report on the Activities of the Committee on Public Health

Next, Dr. Streck asked Dr. Boufford to report on the Activities of the Committee on Public Health.

Dr. Boufford noted five very important prevention initiatives, there is a very strong evidence-base of three to five to seven to one return on every dollar invested in community-based interventions in tobacco, exercise, and diet over a two to five year period, not a lifetime. There is a strong evidence-base at the community level and stated they are trying to get this to occur at the local level as there is on many clinical interventions. They will continue bringing this topic to people's attention and have hope of receiving some resources in order to help the local communities accomplish this effort.

Dr. Streck thanked Dr. Boufford for her report. Please see pages 55 and 56 of the attached transcript.

REPORT OF THE OFFICE OF PUBLIC HEALTH ACTIVITIES

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

Dr. Birkhead continued on the same topic as Dr. Boufford and stated that there is a not an over abundance of money and funding to implement this initiative and the Department is putting together an index of contractors, and is going to work through the contract managers with the community based contractors to get them at the community level. They may actually have resources that meet their contract deliverables that they could bring to the table. Dr. Boufford stated she is glad to hear that is hopeful to receive some support from the Commissioner and others in approaching private foundations to support things in their geographic area around the State.

Dr. Birkhead concluded by advising that on the Department of Health's website homepage there is a button for the Prevention Agenda.

To review the full report of the Office of Public Health please refer to pages 56 through 58 of the attached transcript.

ADJOURNMENT:

Dr. Streck hearing not further business of the Council adjourned the meeting.

1 WILLIAM STRECK: Good afternoon everyone. I'm Dr.
2 William Streck, the Chair of the Public Health and Health
3 Planning Council. And it's my pleasure to convene the Council.
4 I would like to begin by thanking the officials of the
5 metropolitan area regional office for their support this
6 morning, and helping manage the many interested parties over the
7 items that were presented to the Project Review and
8 Establishment Committee. I think we should also note the
9 thoughtful and courteous presentations on the part of all those
10 who came to represent their viewpoints on those issues. It was a
11 very positive morning, characterized by thoughtful discussion by
12 those individuals as well as thoughtful discussion by members of
13 the Council. But there was some element of crowd management and
14 security involved, and we do thank those from (Merrill) for
15 that.

16 [Have you started the meeting?]

17 We have.

18

19 [Have you started the meeting, because we can't hear you.

20 We can't hear you.]

21

22 That's your loss. [laughter] They couldn't hear that,
23 just remember. OK. I'm going to go through the housekeeping
24 details of our meetings briefly. We are webcasting. We're
25 subject to the open meeting law. You can find the webcast on

1 the Department of Health website. We have synchronized
2 captioning so it's best for those reasons and others of courtesy
3 not to have two people speaking at once. We ask that you
4 identify yourselves. Remember the mics are hot and pick up
5 rustling of papers and side conversations. There is a record of
6 appearance form. We ask guests and the audience to fill out.
7 Those are available outside the meeting. Now, I'd like to give
8 you a brief overview of today's schedule. We actually have our
9 annual meeting today which we will move through crisply in the
10 beginning voting on the, some of the offices and the making note
11 of the chairs of the various committees. We will then move to
12 the Committee on Regulations. Dr. Gutierrez will report. We'll
13 them move to the Department of Health reports, the Public Health
14 Services report, Health Policy, and then Project Review and
15 Establishment action recommendations. We will be having
16 committed a fair amount of time already to these efforts. We
17 will have the opportunity not to extend repetitive discussions
18 on some of the topics, and so we'll be moving with some alacrity
19 through this agenda, in part because we have time tables to
20 maintain our quorum. I would point out to members of the
21 Council that they need to make note of their conflicts, at least
22 those of the Public Health Council conflicts. Those are - you
23 need to make note of those in our discussions. And then I would
24 begin by asking for adoption of our minutes from the December 6
25 meeting. May I have a motion to that effect?

1 [so moved]

2 Moved and seconded. Those in favor, aye.

3 [Aye]

4 Thank you. I would then move to the annual meeting portion
5 of our meeting today and I would open that by making a motion to
6 elect a vice-chair of the Council continuing Jeff Kraut's role
7 in that position. May I have a motion and a second to that
8 effect? Moved and seconded. Those in favor, aye.

9 [Aye.]

10 Opposed? He will be glad to know it was unanimous. Then
11 we'll move on to the Council member of the Committees. I'd like
12 to thank all of those who are, have worked on the Committees and
13 I will briefly note the chairs of the Committee and we will
14 continue with - do I need to read all members, Coleen? OK, so I
15 will note all members, if you'd bear with me here. So we have
16 the Committee on Codes and Regulations chaired by Dr. Gutierrez,
17 vice-chair is Dr. Palmer, and the members are Dr. Bhat, Mr.
18 Fassler, Mr. Hurlbut, Dr. Rugge, Dr. Sullivan, Dr. Torrez, Dr.
19 Yang. The Committee on Establishment and Project Review, Jeff
20 Kraut will continue as Chair, Mr. Booth who so ably managed this
21 morning will be the vice-chair, Dr. Berliner, Mr. Fassler, Mr.
22 Fensterman, Dr. Grant, Dr. Gutierrez, Ms. Hines, Mr. Levin, Dr.
23 Martin, Ms. Regan, Mr. Robinson and Dr. Sullivan will serve on
24 that Committee. The Committee on Public Health will continue to
25 be chaired by Dr. Boufford, vice-chair will be Dr. Torrez, also

1 serving will be Mr. Booth, Dr. Boutin-Foster, Dr. Gutierrez, Ms.
2 Hines, Mr. Levin, Ms. Rautenberg, Ms. Regan, Dr. Strange, and
3 Dr. Yang. The Committee on Health Planning will continue to be
4 chaired by Dr. Ruge, with a vice-chair of Dr. Grant, Dr.
5 Berliner, Mr. Booth, Dr. Boufford, Mr. Fassler, Mr. Kraut, Mr.
6 Levin, Dr. Martin, Dr. Palmer, Ms. Rautenberg, and Mr. Robinson
7 will serve on that. The Committee on Health Personnel and
8 Interprofessional Relations, Dr. Bhat will replace Dr. Strange
9 and we thank him for his service on that. He, assuming other
10 positions in OPMC is not going to serve on this committee
11 because there are potential overlaps, I would say. Vice-chair
12 is Ellen Grant, and then Mr. Fensterman, Mr. Hurlbut, and Ms.
13 Regan will serve on that committee. And finally the ad-hoc
14 committee to lead the State Health Improvement Plan is a
15 robustly staffed committee that surely generate an equally
16 robust plan. It'll be chaired by Dr. Boufford and it will have
17 as members as well, Dr. Boutin-Foster, Dr. Gutierrez, Ms. Hines,
18 Ms. Rautenberg, Dr. Yang, Dr. Arce, Ms. Abdella, Mr. Bishop,
19 I'll go on with Kate Breslin, Elvira -- ,M.D., Christina Chang,
20 Patricia Clancy, Kira Geraci-Cirardullo M.D., Kevin Jobin-Davis,
21 Renee Gechedi, Raymond Goldsteen, Jean Hudson M.D., Cheryl
22 Hunter-Grant, James Knickman, Paul Macielack, Lauren Pickering,
23 Kyu Rhee M.D., Elizabeth Swain, Linda Wagner, Sue Ellen Wagner,
24 Susan Waltman, and Judy Wessler. Adequately staffed committee.
25 Under your aegis, Dr. Boufford. So, with that, those are the

1 committee members. Those are the committees that will continue
2 to work for the Public Health and Health Planning Council moving
3 forward, and having provided that information, does that
4 conclude the annual meeting? So we will conclude the annual
5 meeting and adjourn that, and now we will be in the regular
6 meeting of the Public Health and Health Planning Council, and we
7 will begin that with a report from the Committee on Codes and
8 Regulations. Dr. Gutierrez.

9

10 ANGELO GUTIERREZ: Thank you very much. The Codes
11 Regulations and Legislation Committee reviewed two regulations
12 at the January 24 meeting, both on for adoption. Earlier today
13 the Committee met again in special meeting to review three
14 regulations for information. The first item on the agenda on
15 January 24 contained ionizing radiation. Part 16 of title 10
16 NYCRR of the sanitary code is being amended to update and add
17 new requirements for the use of radioactive material and to
18 update and consolidate requirements currently contained in the
19 code rule 38. Most of the proposed changes are promulgated to
20 ensure compatibility with those of the U.S. nuclear regulatory
21 commission and that requires part of New York State agreement
22 with the NRC. Other changes include X-ray equipment
23 registration updates and clarification on current requirements
24 for certified radiation equipment safety officers. A
25 requirement that licensees and registrants be accredited on

1 radiation oncology by the American College of Radiology or the
2 American College of Radiation Oncology prompted the question as
3 to whether there was a significant difference between the two
4 accrediting organizations, and the response was that they are
5 very similar. They both involve an on-site review and the cost
6 and time commitments are the same. Another question as
7 concerned the training hours for physicians who wish to use
8 radio pharmaceuticals for diagnostic nuclear medicine and
9 nuclear cardiology regarding whether a test was required. There
10 is no test; simply didactic classroom and laboratory training.
11 After a motion and a second the Committee unanimously
12 recommended adoption to the full Council, and I so move.

13

14 [Second]

15

16 WILLIAM STRECK: So, we have a motion and a second. Is
17 there discussion? Hearing none, those in favor of the motion as
18 presented please say aye?

19 [Aye]

20 Opposed? Thank you. The motion carries.

21

22 ANGEL GUTIERREZ: The next item on the agenda for
23 adoption concern amendments to the certified home health
24 agencies, CHHAs, and licensed home care services agencies,
25 LHCSAs, requirements. This regulation would incorporate two

1 recommendations from the Medicaid Redesign Team. The first
2 recommendation would add a requirement that the plans of care
3 medical orders required for patients of CHHAs and LHCSAs address
4 the patient's need to palliative care. The second
5 recommendation would eliminate the need for physician to serve
6 on a quality improvement committee of LHCSAs. This measure
7 would also remove the requirement that CHHAs provide more than
8 one qualifying service directly to coincide with federal
9 standards. It also changes the maximum period of time that
10 might lapse before a comprehensive assessment is reviewed from
11 62 to 60 days, which is also the federal standard. When asked
12 if there are any clinical staffs on the quality improvement
13 committee, if there are no physicians and whether a nurse was
14 required, the Codes Committee was informed that yes, nurses are
15 required. Another question asked if there was a point where the
16 work of the quality improvement committee was reviewed by a
17 physician, and the answer was no. After a motion and a second
18 the committee unanimously recommended adoption to the full
19 council, and I so move.

20

21 [Second]

22

23 WILLIAM STRECK: There is a motion and a second. Is
24 there discussion on the motion? Hearing none, those in favor,
25 aye.

1 [Aye.]

2 Opposed? Thank you.

3

4 ANGEL GUTIERREZ: The Codes Regulations and Legislation
5 Committee also met today earlier and heard presentations
6 regarding three regulatory proposals that are on for
7 information. The first proposal concerned hospital sepsis
8 protocols. This proposal will require general hospitals to have
9 in placed evidence-based protocols for the early recognition and
10 treatment of patients with severe sepsis, septic shock, that are
11 based on generally accepted standards of care. The medical
12 staff must adopt and implement periodically update and submit to
13 the Department such evidence-based protocols and also ensure
14 that professional staff are periodically trained to implement
15 the protocols. The next item in today's agenda concerns hospital
16 pediatric care and other amendments to part 405 title 10 New
17 York Code, rules and regulations. Medical services for children
18 advisory committee in particular, significant changes have been
19 made to the emergency radiology and pharmacy provisions. New
20 provisions require age and size appropriate equipment and
21 supplies and the assurance the personnel have the skill and
22 competencies to assess and manage a critically ill or injured
23 pediatric patient. New provisions are also added regarding
24 standards for pediatric intensive care unit. Changes in
25 technology and equipment for diagnostic and medical imaging and

1 appropriate use of such equipment are also addressed. Pediatric
2 medication dosing must be metrically based and all patients must
3 be weighed so. Pediatric advanced life support or equipment
4 training for appropriate staff will be required. Hospitals will
5 also be required to provide patients and the parents or other
6 medical decision makers with critical information about the
7 patient's care and post the patient and parents bill of rights.
8 The last item on the agenda was a proposal regarding prevention
9 of influenza transmission by healthcare, residential facility or
10 agency personnel. This measurement will require all
11 unvaccinated personnel and healthcare sites and residential
12 facilities and agencies to wear surgical or procedure masks
13 while in areas where patients or residents may be present during
14 the time when the Commissioner determines that influenza is
15 prevalent. All healthcare and residential facilities and
16 agencies must document the influenza status of all personnel for
17 the current influenza season in each individual personnel record
18 or other appropriate records. Upon the request of the
19 Department, healthcare and residential facility or agency must
20 report the number or percentage of personnel that have been
21 vaccinated against influenza for the current influenza season.
22 Anybody who wants to read more about the second item in this
23 proposal, there are 87 pages that you can read during the storm.
24 This concludes my report. Thank you very much.

25

1 WILLIAM STRECK: Thank you Dr. Gutierrez. We'll now
2 move to the Department of Health reports, and it's my pleasure
3 to have Dr. Shah provide an update to the Council about the
4 Department's activities since our last meeting.

5
6 NIRAV SHAH: Thank you, Dr. Streck. And good afternoon
7 everyone. Congratulations on yet another very productive year
8 in PHHPC. It's been a whirlwind tour with some major reports
9 including the adoption of the redesigning the certificate of
10 need and health planning report, but let me assure you that the
11 work has just started. With the new healthcare models that
12 we're seeing, with freestanding EDs this morning, I can assure
13 you that there's much work to be done in terms of defining where
14 the State needs to go. And you got a little hint of it today,
15 but I anticipate by the next meeting we will have a long agenda
16 which I'll share with you on some of the work that needs to be
17 done, whether it's for accountable care organizations. You
18 know, we need your input. We need your leadership on defining
19 how the State will deal with all that's changing in front of us,
20 sometimes right under our feet.

21 You know, as you know, with this new year comes new
22 challenges and opportunities, and last week I presented my
23 budget to the Senate -- Governor Cuomo's budget, actually, sorry
24 - for the Department of Health for 2013-2014, and I just want to
25 take a few minutes to share with you what we discussed. One of

1 the big components of the executive budget was the continuation
2 of the historic Medicaid Redesign Team reforms that were
3 initiated in 2011. The goal of those efforts, as you know, is
4 to achieve the triple aim; better health, better care, lower
5 cost. And this year the Governor's budget proposal also
6 recognizes the need to cap local government Medicaid costs which
7 would this year save them an additional, local government save
8 an additional \$111 million in the upcoming fiscal year. This is
9 part of the broader mandate relief that the Governor has
10 promised and delivered on repeatedly. We've transformed how
11 care is delivered through the Medicaid program, and I want to
12 site a few examples. Some of you know that we've radically
13 increased the number of patients who access their care through
14 patient centered medical homes in the Medicaid program. But I
15 don't know if you know the number. It's one million patients
16 since we started MRT, are now receiving high quality care in
17 patient centered medical homes. And as of today, over 16,000
18 patients are getting care in health homes. These are high need
19 chronic care patients who are now getting coordinated care in
20 one or more of the health homes that have been established
21 across the state. Meanwhile, enrollment in Medicaid managed
22 care continues to grow. It's doubled since we started this
23 work, and for the executive budget, we're looking to continue
24 this trend to move almost everyone in the Medicaid program to
25 care management and complete that effort by 2016. New York is

1 also leading the nation in connecting high need Medicaid
2 patients with supportive housing. Last year, you know, Governor
3 Cuomo announced \$75 million in his budget to invest in
4 supportive housing, and this was for 4000 high need individuals.
5 The goal has been achieved. In January of this year, the
6 Governor announced ground has actually been broken on the first
7 supportive housing development in the Bronx, and I think as we
8 see what we've done, we will want to do more of it, and I
9 imagine that that line item will grow in future years. These are
10 just some of the examples that we've achieved in the last year
11 and a half, but it doesn't stop there. This year there's a
12 number of cost neutral MRT initiatives, again, advanced in the
13 budget. Things like care coordination for mentally ill
14 recipients discharged from state psychiatric centers, and those
15 receiving court ordered services through assisted outpatient
16 treatment. Increased payments to essential community providers
17 and integrating service delivery in common locations for
18 physical health, mental health, and substance abuse. Assisting
19 hospitals with the transition to a new indigent care
20 methodology. Throughout these processes we worked with numerous
21 stakeholders and will continue that transparent open process to
22 continue the reform path that we've started.

23 The executive budget also builds on the reforms in the
24 early intervention program that were accomplished last year by
25 integrating covered services into health insurance networks and

1 streamlining the eligibility requirements to insure timely
2 access to high quality EI services for children and their
3 families while reducing costs. The reform extends also to the
4 general public health works program which provides state aid
5 reimbursement to local health departments who are on the front
6 lines of delivering essential public health services. The
7 Governor's budget proposal will provide administrative relief in
8 many other areas to county public health agencies. It'll
9 modernize program components that have been largely unchanged
10 since the late 1980s, and it'll improve the fiscal
11 predictability in spending. Additionally, the executive budget
12 includes a provision that would authorize the Department to
13 establish a temporary operator for an adult care facility,
14 hospital, or D&TC in certain circumstances, either at the
15 request of the facility's established operator or upon a
16 determination that the facility is seeking extraordinary
17 financial assistance to address serious financial instability
18 and that the conditions in the facility are endangering the
19 life, health, or safety of residents or patients. We know
20 several examples in just the past year where this would've been
21 a very helpful provision. The established operator of course
22 would be entitled to a notice, a meeting with the Department,
23 and a hearing prior to the appointment of a temporary operator
24 accept in those cases where patient or public health or safety
25 were in immediate jeopardy. The temporary operator would assume

1 control and responsibility for the operation of the facility for
2 an initial 180 days with the possibility of reappointments for
3 multiple 90 day terms. This legislative proposal builds on the
4 recommendation that was included in this council's CON redesign
5 report.

6 A final budget topic I want to mention is consolidation of
7 certain activities to get to meet the needs of our State and
8 its people. Consistent with that goal, the 2013-2014 budget
9 provides a structure that will fund evidence-based programs and
10 best practices to make public health investments more effective.
11 State lab functions will be consolidated to achieve better
12 coordination in response to our public health concerns. You
13 know, right now we have five different state agencies currently
14 operating public health and environmental labs and much of the
15 lab space is in poor condition. We will explore ways to leverage
16 our lab activities with private and university partners to
17 improve facilities and advance economic development.

18 Overall, Governor's executive budget for health reflects
19 his commitment to instituting reforms and making strategic,
20 targeted investments in our healthcare delivery system. It's a
21 budget that will allow us to move forward to meet the needs of
22 New Yorkers as healthcare consumers and as taxpayers. The
23 Department will continue to work with the Governor, the State
24 Legislature, and various stakeholders to create a better, more
25 efficient healthcare system. I'm going to keep you updated on

1 this progress, on the progress of these initiatives as they
2 continue through the spring into the early summer.

3 While the budget is a strategic formulation and financial
4 plan for the coming year, there are other things that we have to
5 pay attention to right now. And one of these issues that you've
6 heard about earlier today is sepsis. In his State of the State
7 address Governor Cuomo cited the need for New York to be a
8 national leader in fighting sepsis and called for a gold
9 standard of patient care in New York. He followed up on his
10 pledge last week when he announced that New York will be the
11 first state in the nation to require all hospitals to adopt best
12 practices for early identification and treatment of sepsis. The
13 initiatives the Governor has championed are known collectively
14 as Rory's Regulations, in tribute to Rory Staunton the 12 year
15 old boy who died of sepsis in April of last year. He also
16 announced that the Department will issue regulations to ensure
17 that the unique needs of pediatric patients are respected and
18 also require hospitals to post a patient bill of rights to make
19 parents and patients aware of those important protections for
20 those under those regulations. Dr. Gesten has already spoken
21 about those regulations today, along with those proposed
22 regulations related to pediatric patients and a patient's bill
23 of rights. So I won't go over them in detail. I do, however,
24 want to emphasize the importance of this effort, and want to
25 thank you for helping us move forward on this. New York - the

1 Department will issue guidance to hospitals in collaboration
2 with the societies, the Hospital Association of New York And the
3 Greater New York Hospital Association on these best practices
4 and adopt a time frame that is reasonable but is aggressive to
5 make sure that these best practices are out there in the
6 community.

7 You know, one of the big parts of these regulations is
8 about the collection and reporting of data. We've done that
9 time and again in the Department, and every time we've done that
10 we've seen significant continued and sustained gains in the
11 quality of care delivered. That's part of this proposal, and I
12 think an important component that we shouldn't overlook.

13 Another public health threat that we've been combating
14 lately that I've talk about is influenza. While Dr. Birkhead
15 will talk about his details about more details later, this has
16 been the worst flu season since H1N1 in 2009. And in fact, just
17 on Monday, a six-year-old girl died in Tonawanda of the flu. So
18 the flu season is not over by far and we have a lot to do.

19 On January 12, Governor Cuomo declared a public health
20 emergency for the entire State and issued in the executive order
21 to allow pharmacists to administer flu vaccine to children
22 between the ages of six months and 18 years of age. And that
23 was a real success. Thousands of kids received their flu shots
24 in pharmacies led by groups such as Rite-Aid that were very
25 effective in making sure that kids were getting their

1 vaccination. Right now the good news is that for the week ending
2 January 26 we've seen our surveillance reports have shown a 45
3 percent decline in the number of reported cases, and a 28
4 percent decline in flu hospitalizations. This doesn't mean that
5 we've peaked. There are sometimes two peaks in a given year,
6 but we're hopeful that the numbers will continue to decline and
7 we'll keep monitoring the situation. And as you know, the best
8 protection is a flu shot so the best time to get the flu shot is
9 before you get the flu. It's not too late. And if you haven't
10 had one, please do get one.

11 We're looking at new ways to prevent flu transmission in
12 healthcare settings and are moving ahead to enact regulations to
13 require all unvaccinated healthcare personal to wear a surgical
14 or procedure mask. This has broad support from the hospital
15 associations of New York to the Greater New York Hospital
16 Association, the visiting nurse services, many of the medical
17 societies including ACP, pediatrics, family practice, as well as
18 others. And as we deal with this year's flu epidemic and we
19 brace ourselves for next year, I think this is going to be a
20 real quiver in our - a real arrow in our quiver to helping
21 improve rates of vaccination and ultimately protecting patients.

22 I want to give you a quick update on another thing that
23 we've been working a lot on. That's the health benefit
24 exchange. Last week the exchange issued an invitation to health
25 insurance companies to participate, and our goal is to build the

1 exchange that offers a variety of affordable and quality health
2 plans. The exchange will make it easier for individuals, small
3 businesses, families, and others to compare qualified health
4 plans and purchase the products that meet their specific needs.
5 Qualified health plans approved by the exchange will provide
6 comprehensive healthcare coverage. They will follow limits on
7 out-of-pocket expenses such as co-payments and deductibles and
8 also meet other state and federal requirements. Through the
9 certification process for the plans, the exchange will, among
10 other things, offer comprehensive and affordable coverage in all
11 areas of the State. It'll balance innovation with reasonable
12 choice. It'll make it easy for consumers to compare the various
13 options they have. It'll ensure that qualified health plans
14 have adequate provider networks. I'll preserve consumer
15 protections, and finally monitor quality, utilization of
16 services, and consumer satisfaction. Health plans must submit a
17 non-binding letter of interest to the New York health benefit
18 exchange no later than February 15 of this year, and our
19 exchange is really a national leader on target to begin
20 enrollment on October 1 of this year with coverage starting on
21 January 1, 2014. I'll continue to update you on the progress
22 we're making on our exchange in future meetings.

23 The final topic I want to touch on briefly involves the CON
24 application by Montefiore to operate a freestanding emergency
25 department at the site of the former Westchester Square Medical

1 Center in the Bronx. There are currently four approved
2 freestanding EDs in New York; in suburban Buffalo, Lake Placid,
3 Manhattan, and in Sydney in Delaware County. In the CON report
4 of the Council's Planning Committee, it says the CON process
5 must be supportive of new models of, for the organization and
6 delivery of healthcare. And clearly a freestanding ED qualifies
7 as such a model. As a data geek I'm also excited that they will
8 participate in studying the model as it rolls out as prior North
9 Shore group is studying their freestanding ED, and I'm hoping
10 that both groups will collaborate on a shared study so we can
11 see how this model works in different settings, using the same
12 metrics and the same sets of questions. We also understand the
13 Westchester Square has been a significant source of emergency
14 care in it's geographic area of the Bronx, and it seems well-
15 advised to follow, to allow for the continued operation of
16 emergency services at that site.

17 I will end my report on that. Thank you very much.

18

19 WILLIAM STRECK: Thank you Commissioner. Are there
20 questions for the Commissioner on the report or other items?
21 Ms. Rautenberg.

22

23 ELLEN RAUTENBERG: One of the accomplishments that you
24 didn't mention was the State Health Improvement Plan, which was,
25 from some of our points of view, a very big accomplishment, and

1 I want to thank Dr. Boufford and Sylvia Pirani for leading that
2 effort to ably. The consolidation of public health programs
3 though, my understanding is that it's a 10 percent reduction in
4 the amount of resources that are going to be attributed to that.
5 State Health Improvement Plan laid out a very complex set of
6 interventions that could use additional resources, clearly. So,
7 how do you align those two?

8

9 NIRAV SHAH: So, the reduction in funding is about
10 getting to a balanced budget. In these fiscal times we need to
11 figure out how to stay you know, live within our means, and
12 that's what led to the reduction in funding. But the
13 consolidation allows us to look at programs from a higher level.
14 Many of those services that were initially just single line
15 items, when they're in a bucket like that, there's the
16 opportunity for programs to be consolidated so that one or more
17 providers can get together and more efficiently provide these
18 services to, sometimes, the same populations which were
19 previously under separate line items. So, there's opportunities
20 to provide services better, and there is actually the
21 opportunity to look at all of these programs again through the
22 evidence-based perspective and say does this actually support
23 our goals and where is the evidence for our money? What is the
24 ROI based on the best available data? And you know, it's not
25 clear on all these programs and there is a spectrum of evidence.

1 So, it's an opportunity. My goal is, if it's a great evidence-
2 based program, maybe it's - funding will go up relative to
3 others that don't have the evidence base. But the reality is
4 these fiscal constraints are tough and we're going to have to
5 figure this out.

6

7 WILLIAM STRECK: Dr. Berliner.

8

9 HOWARD BERLINER: Dr. Shah, one of the other aspects in
10 the Governor's proposed budget was the use of private capital to
11 assist in health capital formation in New York City and
12 someplace else in New York. Can you say anything more than the
13 sketchy stuff that was in the proposal?

14

15 NIRAV SHAH: Sure. So, last summer we convened a
16 conference on the opportunities of introducing private capital,
17 private equity hedge funds and other who may want to invest in
18 the healthcare system of New York. As you know, this is a model
19 that has been tried around the country. There are some
20 successful pilots you can see from Van Guard and their
21 investment in Detroit, Ascension, Caritas, there's a lot of
22 activity there, and in places like Brooklyn where we have the
23 net assets are overshadowed by the net debt of the hospitals, of
24 the 17 hospitals by over \$1.2 billion, there is a severe need
25 for capital and we haven't been able to access that capital very

1 easily. Net debt. I'm sorry. The net debt exceeds assets. So
2 they owe over a billion dollars. How do you get access to
3 capital in such markets? Well, our hope is that buy forwarding
4 pilots, ok, this is a pilot, where we can instill the discipline
5 of the private sector and marry it with the mission of the non-
6 profit sector, we can come up with a model that works in New
7 York to actually allow the system change, allow the
8 consolidations, allow the growth that has to happen to really
9 bend the cost curve and to improve quality and access. Our goal
10 is to look at two pilots. One would be in the Brooklyn area and
11 one would be in a rural upstate area. Two very different areas,
12 but all with very real needs for capital. Again, stressing that
13 this is a pilot. I think it's an exciting opportunity and we're
14 looking for support for that model.

15

16 ELLEN GRANT: In view of the Governor's recent anti-gun
17 legislation, do you anticipate or know at this point in time if
18 he anticipates adding additional dollars to schools to help
19 identify so that educators can help identify children that are
20 having some issues to you know, in other words, be more
21 preventive and looking for more preventive dollars.

22

23 NIRAV SHAH: You know, the Governor as part of his
24 executive budget talked about something he called "community
25 schools," and the opportunity for community schools is the

1 opportunity to invest in these hubs of communities, in
2 underserved urban areas -- urban and rural -- as the place for
3 healthcare delivery, the place for more services to be delivered
4 to the family and community. The details are yet in early
5 stages of being worked out, but I can anticipate that proven
6 evidence-based models like school-based health clinics and
7 others will continue to be supported and expanded under this
8 model. This is really an opportunity to think of a school in a
9 different way, and it's going to be focused on underserved
10 areas. So, the answer is, we don't have the details on that
11 specific initiative, but I think this is the opportunity with
12 real new dollars to invest in schools.

13

14 WILLIAM STRECK: Commissioner, Mr. Hurlbut had contacted
15 me and had come today with expressed concerns about the payment
16 system for the nursing homes as recently implemented, primarily
17 the adjustment on the case mix index, the decision that
18 uncertain nursing homes whose case mix index had risen about
19 five percent, that to protect them from a difficult audit in the
20 future it was decided not to pay them in the present, is Mr.
21 Hurlbut's view. And that was not necessarily a policy he
22 supports because he felt that there were not reason, not
23 substantial reasons to reduce the payment simply because it
24 threatened the cap, when in fact as part of the normal payment
25 mechanism it should've been there. So he has concerns about

1 that. Then he also had concerns about the use of emergency
2 regulations to effect this and the role of the Council in
3 addressing any emergency regulations and if he were here, and
4 I'm simply paraphrasing, he had to leave unexpectedly, that the
5 use of emergency regulations in this area, he totaled up at 65
6 over the course, 65 of 80 over the course of the last year. So,
7 I in honoring his concerns present these observations to you.

8

9 NIRA V SHAH: So, we've worked with the stakeholders,
10 again, in this regard as well and thought about how do we avoid
11 these wide swings that are very real and very disruptive on many
12 levels, to the extent that the final approach is as balanced as
13 it can be. We'll look and work on an individual basis if
14 needed, but capping those swings at five percent initially and
15 then prospectively looking and understanding the reasons behind
16 it to make adjustments as necessary was the approach that most
17 seemed to favor.

18 In terms of the use of emergency regulations, I think we
19 have a situation of crisis in so much of the healthcare system
20 across New York. We see hospitals closing. We saw two of them,
21 two large institutions close last year. We see primary care
22 networks that are weak, fragile at best and haven't partnered.
23 Crisis calls for quick action, and I think that the use of
24 emergency regulations are not only appropriate but are necessary
25 when it comes to things like the many proposals we've used them

1 on. We're responsive, and we appreciate your understanding and
2 your flexibility. We've called you back together on several
3 occasions to consider emergency regulations. Certainly to be as
4 prospective as possible, to be as thoughtful about what our
5 year's agenda as possible is going to be the norm, but we will
6 certainly use emergency regulations as needed to solve problems.

7

8 WILLIAM STRECK: Are there other questions or comments
9 for the Commissioner? Thank you Commissioner. We will now move
10 on to Karen Westervelt with the OHSM report. Thank you.

11

12 KAREN WESTERVELT: In the interest of time, I'm going to
13 be very brief, but I would like to take the liberty of
14 introducing a new senior member of the Office of Health Systems
15 Management staff. Laura Delahunt, while she's not here
16 physically today, she's via video conference. Laura, if you can
17 wave, you look very small on the screen. So, but Laura joins
18 us. She's going to be running the new division of data
19 management analysis and research in the Office of Health Systems
20 Management, so that's a new role for the office. Laura
21 previously, and Laura, I'm going to out you here, had been with
22 the Department for over a quarter of a century, but I can say
23 that I have too, so, but prior to that for eight years she had
24 run the SPARCS division for the State Department of Health.
25 Prior to that she had worked 10 years in the Office of Managed

1 Care and was one of the individuals instrumental in creating the
2 (QUAR) analysis as well. So, we're very happy to have Laura
3 joining us, and she's going to be frequently part of these
4 meetings. So, just point of information.

5 The other thing I thought I would do is just give you a
6 real brief recap as to where we are post-Sandy with repatriation
7 efforts. Currently we still have four hospitals still with some
8 form of closure although they're getting closer every day. I'm
9 happy to say today that Bellevue Hospital, they opened inpatient
10 beds as of today. So, they're getting back on track. Coney
11 Island Hospital is not fully opened yet, but again, in phases
12 they're moving. They have some inpatient beds. They have their
13 ED. Well, their ED yet isn't at full capacity. You know,
14 taking high acuity patients and the like, but they're making a
15 lot of progress as well. NYU, similarly you know they have some
16 inpatient services. Their ED is not currently opened. And
17 then we have Long Beach Medical Center in Long Beach as well
18 that still remains closed. And for Long Beach they have the
19 Long Beach Medical Center has created a primary care practice
20 and we also have a federally qualified community health center
21 provider who is also providing mobile van services. What's
22 that? OK. Sorry.

23 So, and then with respect to nursing homes we currently
24 have three nursing homes that are still effected. Two were full
25 evacuations, Seacrest Healthcare Center in the Rockaways, and

1 Shoreview Nursing Home. Both anticipate repatriation possibly
2 in June or July. And Coler-Goldwater nursing home which had a
3 partial evacuation of 104 patients, anticipates those patients
4 returning possibly as soon as April. And then for adult care
5 facilities I'm happy to report as of today as well, Park Inn,
6 another adult care facility that we had in temporary shelter,
7 they're repatriating back to home today, which leaves us with
8 one adult care facility which is Ocean View Manor which is still
9 in temporary shelter which we similarly are optimistic that next
10 month they'll be able to repatriate back to their former home.

11 And I just wanted to mention as the Commissioner had with
12 CON redesign, we're in the process right now of developing very
13 extensive work plans to carry out the implementation of that
14 report, and we will be bringing progress updates to you in the
15 future. And I would like to take the opportunity to have Charlie
16 Abel speak to where we are as far as some of our system
17 efficiencies that we've been able to do through your efforts,
18 with CON phase one redesign efforts as well as some of the work
19 that Charlie and his team as well as central office and regional
20 office has taken to quicken the, improve efficiencies as far as
21 the CON certificate of need process. I'll turn it over to
22 Charlie in that regard.

23

24 CHARLIE ABEL: Very quickly, as Karen mentioned, we have a
25 phase one CON reform foundation plan and we are working on that,

1 bringing about changes as quickly as possible. We have a number
2 of the statutory changes necessary to execute both the phase one
3 and phase two changes in the Governor's budget bill and that
4 should give us, if passed, give us the legal authority to move
5 forward with many of those CON reform measures. Developing the
6 phase two implementation plan should have that available and
7 within just a couple of weeks, already beginning to implement
8 what we can do without statutory or regulatory changes.

9 With respect to CON processing, obviously the Department
10 hears the criticism with respect to time is money and the longer
11 we take with the CON review the more cost is added to a given
12 project and therefore the healthcare system. So, we have been
13 in the last year plus making concerted efforts to not only
14 improve processing time of CON applications under review, but
15 also to assertively move forward with applicants. Encourage
16 applicants to move forward with their contingently approved
17 projects. With the, before UR2 charts that indicate historical
18 project volume, CON project volume as well as CON median
19 processing times, and you'll see first on the volume, you'll see
20 that we introduced a limited review category back in 2010 so
21 that of course accounts for that large spike in numbers.
22 Previous to that we had a number of other little categories of
23 application that got consolidated to limited reviews. Those
24 were not charted by numbers previously to 2010. But what I hope
25 to show you is with the efforts over the last year plus, and

1 much of this credit I think goes to the NYSECON system that
2 really brought us a toolset from a management perspective to be
3 able to better monitor applications through the review process
4 and a concerted effort that the management and staff levels to
5 focus on efficiency, CON efficiency. You'll see that in 2012 we
6 have hit pretty much historically low median processing times
7 over the 10 year period. We've made substantial progress over
8 last year and as you take a look at the 10 year performance we
9 are about as efficient as we've ever been with CON processing
10 time. Now you might say, OK, CON processing time, these are the
11 projects you processed, so therefore that's the information that
12 you have of the work that you've completed. What about the work
13 that goes uncompleted? Well, that's we've called - we talk
14 about a CON backlog and that's this project, this chart here.
15 And back in October of 2010 we set about creating a small
16 targeted workgroup to look at all of the CON projects that
17 constituted a backlog with respect to under review projects of
18 different categories and also contingently approved projects
19 that were lingering for one reason or another. And you can see
20 the progress, the numbers that are still in the queue with
21 respect to actions, final actions being needed, tremendously
22 reduced currently from when we started. So our efforts have
23 been two pronged attack and we've made significant progress, I
24 think, on both of those fronts. Thank you.

25

1 WILLIAM STRECK: Other comments on that? Certainly your
2 graphs are effective. I'll say that. These are dramatic.
3 Reflect some real progress there. So if we'd have seen these we
4 probably could've done away with Rugge's committee.

5
6 JOHN RUGGE: I'm trying to think how to respond to that,
7 and I can't.

8
9 ANGEL GUTIERREZ: I was commenting on how much of that
10 had to do with for months there was no PHHPC.

11
12 WILLIAM STRECK: We'll move on then. Is Rachel in
13 Albany? We're going to have -

14
15 RACHEL: Yes, I am.

16
17 WILLIAM STRECK: Please proceed.

18
19 RACHEL: [no audio]

20 ...hospitals, over 10,000 professionals who are now
21 receiving over \$616 million in incentive payments. This is a
22 significant increase even in just a one month period as I don't
23 remember all the details of the timing, but I think there's a
24 key deadline coming up in terms of qualifying for the 2012
25 payment cycle. But obviously I'd like to report on this to you

1 because it's a significant enhancement of financial support for
2 our healthcare system and ties directly to the healthcare
3 transformation activities that the Commissioner mentioned
4 earlier. I've also provided you with some detail on our
5 evaluation activities. I bring this up with you periodically
6 when there's something new to report. Just two new studies that
7 were recently released by high tech. One demonstrates
8 distinctly different, as in positive, performance on
9 standardized quality measures for physician practices, utilizing
10 VHRs compared to practices using paper. And then even more
11 impressive is the significantly greater positive performance by
12 those practices using VHRs that have qualified as patient
13 centered medical homes. And I think that it's a very
14 quantitative demonstration of the benefit of medical homes and
15 VHRs. I've also given you some detail on a study that was just
16 released by the Rochester RHIO that was conducted with high
17 tech, and just briefly for the period that they were studying
18 this, they have something they called the virtual health record
19 which is a means for providers anywhere in the community to
20 access data across the RHIO regardless of what kind of VHR they
21 might have. And three key findings from that study that I think
22 are really impressive that the use of the virtual health record
23 during an emergency department visit decreased the odds of an
24 inpatient admission by 30 percent and their estimate was that
25 would result in extrapolating to about \$9 million savings across

1 the community. A second, within 90 days within initial imaging
2 procedure decreased the likelihood of repeating that procedure
3 by 35 percent. I think we all recognize that imaging is an
4 enormous area of increasing cost. And finally another topic of
5 great interest to all of us that if the VHR was used after a
6 hospital discharge, it lowered by 55 percent the likelihood that
7 a patient would be readmitted within 30 days. Now, recognizing
8 that this is one study and one community, we would recognize
9 that these results may not be replicable in every community
10 across New York State, but I think that it really demonstrates
11 very impressive potential and real results as a result of the
12 use of these systems.

13 Finally we had a very significant meeting last week, two
14 day meeting. Art Levin who is a member of the New York E-Health
15 Collaborative Board could also weigh in on this. But part of
16 what we wanted to do was review what we've accomplished so far,
17 and where we are going. And I included in the slides some of the
18 key milestones of New York and national developments, and the
19 national developments being all things that New York State is
20 actively participating in. And I have to say that even as
21 somebody who's been involved in all of this from the very
22 beginning, it really represents just a mind boggling amount of
23 activity that's going on, but I think it cumulatively represents
24 the significant investment that we've made in both dollars and
25 implementation activities, and it's something that you might

1 want to use for your own purposes in the future. And finally
2 coming out of that meeting, five key agreements in terms of the
3 future development of the SHIN-NY to finalize a new governance
4 structure which will include our upcoming regulation which I
5 hope now will be out in February. Comment policies across the
6 State, a new certification process for participation in SHIN-NY,
7 definition of a common set of state-wide services, we're now
8 calling them dial tone services, to be available through the
9 SHIN-NY, really representing the public utility aspect of what
10 we were hoping to accomplish with all of this. Commitment to
11 further increase adoption and use both through increased
12 participation and a specific focus on value add, and I think
13 several of you over time have recognized that it's not just a
14 matter of making technology available and getting people
15 connected, but to ensure that we're really looking at workflow
16 and how to optimize the use of these capabilities, and the Board
17 asked us to particularly focus on those issues. To identify
18 continued funding sources. The State funds under HEAL are
19 ending at the end of this year. Our federal funds end in the
20 second quarter of next year, and so we need to be looking to the
21 sustainability model to continue all of this, and I'm very
22 pleased to say that we have agreement on a very robust and
23 specific set of public health and population health
24 functionality that we anticipate making available across the
25 entire SHIN-NY, and we've been working closely with Gus's folks,

1 with the New York City Health Department, with Patsy and her
2 colleagues to develop that, we'll be able to give you a more
3 detailed report on that in the near future. So that is my
4 report.

5

6 WILLIAM STRECK: Thank you. Are there questions? Are
7 there questions for Rachel? Hearing none, thank you for that
8 report. I'm going to change the agenda and because of impending
9 quorum threats we're going to move to the Project Review and
10 Establishment Committee. Gus. We may move you a little later
11 in the program, I'm sure we'll get to you by 4:30 or 5. So.
12 But I'm going to ask Mr. Booth to -

13

14 CHRIS BOOTH: I'm afraid to get near the mic. OK. So,
15 application 122161C, East Harlem Council for Human Services,
16 Inc., d/b/a Boriken Neighborhood Health Center, approval with
17 conditions and contingencies was recommended and I move it.

18 [second]

19 WILLIAM STRECK: Motion made and seconded. Discussion?
20 Hearing none, those in favor, aye?

21 [Aye]

22 Thank you. Approved.

23

24 CHRIS BOOTH: We will batch the next three applications.
25 122085C, Gramercy Surgery Center. Approval with conditions and

1 contingencies. It was recommended. Application 122236T,
2 Upstate University Hospital Community General. Approval with
3 contingencies is recommended. 122237T, St. Joseph's Hospital,
4 approval with contingencies were recommended, and I move the
5 batch.

6 [second]

7

8 WILLIAM STRECK: Moved and seconded. Discussion on any
9 of those applications? Hearing none, those in favor, aye?

10 [Aye]

11 Approved, thank you.

12

13 CHRIS BOOTH: Application 121015C, Montefiore Medical
14 Center, Henry and Lucy Moses Division. Conditional and
15 contingent approval with an expiration of the operating
16 certificate five years from the date of it's issuance is
17 recommended and I move it.

18 [second]

19 WILLIAM STRECK: Wait a minute. So there's a motion and
20 seconded. Any further discussion? Hearing none, those in favor,
21 aye?

22 [Aye]

23 Thank you. Approved.

24

1 CHRIS BOOTH: We have a large batch; 121395B, Havemeyer
2 ASC, LLC, d/b/a Havemeyer Ambulatory Surgery Center.
3 Conditional and contingent approval with an expiration of the
4 operating certificate five years from the date of it's issuance
5 is recommended. 122016B, Omnicare Multispecialty Center.
6 Conditional and contingent approval with an expiration of the
7 operating certificate five years from the date of it's issuance
8 is recommended. 122066E, Hauppauge Dialysis Center, approval
9 with conditions, with contingencies is recommended. 122175E,
10 Avantus Renal Therapy, New York, LLC, approval with conditions
11 and contingencies is recommended. 122242E, LSL Newburgh LLC,
12 d/b/a Liberty Hudson Valley Dialysis, approval with
13 contingencies is recommended. 122078E, Litson Certified Care,
14 Inc., d/b/a Will Care. Approval with a contingency is
15 recommended. 122165E, Hudson Valley Home Care. Approval with
16 contingencies is recommended. JTM health facilities foundation,
17 amended and restated certificate of incorporation. Approval is
18 recommended. 2076L, Ideal Care approval with a contingency was
19 recommended. I move the batch.

20 [second]

21 WILLIAM STRECK: Moved and seconded. Discussion on any
22 of those applications? Hearing none, those in favor aye.

23 [Aye]

24 Opposed? All are approved, thank you.

25

1 CHRIS BOOTH: 122051B, Rockaways ASC, Development LLC,
2 conditional and contingent approval with an expiration date of
3 the operating certificate five years from the date of its
4 issuance is recommended. 122164B, Mason ESC, LLC, d/b/a Mason
5 Eye Surgery Center. Conditional and contingent approval with an
6 expiration of the operating certificate five years from the date
7 of its issuance is recommended. 121445B, New Life Community
8 Development Corporation d/b/a, New Life Community Health Center,
9 approval with conditions and contingencies is recommended.
10 122067E, Watertown Dialysis Center, approval with contingencies
11 is recommended. Interest by Mr. Booth on that one. 121099E,
12 Park View Care and Rehabilitation Center d/b/a Park View Care
13 and Rehabilitation Center, approval is recommended. 122003E,
14 Pavilion Operations LLC, d/b/a Corning Center for Rehabilitation
15 and Healthcare. Interest declared by Mr. Booth. Approval with
16 conditions and contingencies is recommended. 121325E, Tri-
17 Borough Certified Health Systems of New York LLC, d/b/a Tri-
18 Borough Certified Health Systems of New York. Note for the
19 record the name shall be Tri-Borough Certified Health Systems of
20 New York, d/b/a Family Care Certified, a division of Tri-Borough
21 Certified Health Systems of New York. Approval with
22 contingencies is recommended. 121328E, Tri-Borough Certified
23 Health Systems of the Hudson Valley, LLC, d/b/a Tri-Borough
24 Certified Health Systems of the Hudson Valley. Note for the
25 record, Tri-Borough Certified Health Systems of the Hudson

1 Valley LLC, d/b/a Family Care Certified, a division of Tri-
2 Borough Certified Health Systems of the Hudson Valley. Approval
3 with conditions and contingencies is recommended, and I move the
4 batch.

5 [second]

6

7 WILLIAM STRECK: There has been a motion for approval of
8 all these applications. Is there discussion? Hearing none,
9 those in favor, aye?

10 [Aye]

11 Thank you.

12

13 CHRIS BOOTH: We have a restated certificate of
14 incorporation for Pluta Cancer Center Foundation. Ms. Hines and
15 Mr. Robinson have declared a conflict and are leaving the room.
16 An interest by Mr. Booth. Approval is recommended, and I move
17 it.

18 [second]

19

20 WILLIAM STRECK: Motion has been made and seconded. Is
21 there discussion? Hearing none, those in favor, aye?

22 [Aye]

23 Thank you.

24

1 CHRIS BOOTH: We have a series of home health agency
2 licenses. 2061L, 2017L, 1946L, 1878L, 2015L, 2082L, 1995L,
3 2006L, 2013L, 1979L, 1907L, 1812L, 1881L, 2070L, 2069L, 2013L,
4 2153L, all recommended approval with a contingency, and I move
5 them as a batch.

6 [second]

7

8 WILLIAM STRECK: The batch has been moved and seconded.
9 Discussion on any single applications? Hearing none, those in
10 favor, aye?

11 [Aye]

12 Thank you. They're approved.

13

14 CHRIS BOOTH: Application 121346E, White Plains Ambulatory
15 Surgery, LLC, d/b/a/ White Plains Ambulatory Surgery Center.
16 Approval, conditional and contingent approval with an expiration
17 of the operating certificate five years from the date of it's
18 issuance is recommended. And I move.

19 [second]

20

21 WILLIAM STRECK: Motion made and seconded. Discussion?
22 Hearing none, those in favor, aye?

23 [Aye]

24 The motion carries, Thank you.

25

1 CHRIS BOOTH: Application 122194B, SSS Operating LLC,
2 d/b/a Atlantic Harbor Center for Rehabilitation and Nursing.
3 Motion to approve did not pass this morning, so there is no
4 recommendation.

5
6 WILLIAM STRECK: So, most of the Council members were
7 here this morning to hear that discussion. The motion failed.
8 The motion for approval failed solidly in the vote. And there
9 was not an extensive discussion, so I'd ask Ms. Westervelt to
10 offer comments about where that puts us in terms of the County,
11 the nursing home and the supportive individuals this morning.

12
13 KAREN WESTERVELT: One of the things I just wanted to
14 raise and it might not have been clear from the earlier
15 conversation is that in lieu of us, in lieu of us moving forward
16 on this application, the County has indicated to us the other
17 alternative is closure. So, we just need to, the Council, the
18 County Exec, you know, has the ability to enter into this
19 transaction. They've indicated to us closure. So for continuity
20 of services in the community the Council just needs to be aware
21 you know that that's a potential option here. And the issue is,
22 and I'm going to have Jim Dering speak to this issue is this is
23 a transaction between the County and between a private seller,
24 so we need to make sure that we're applying the same rule sets

1 and standards to this transaction that we would to any other
2 transaction. I'll let Jim talk to that.

3

4 JIM DERING: Sure. Thanks Karen. With no discussion
5 from the Committee and no questions from the Committee to the
6 Department, just brings up the issue that we wanted to raise
7 with regard to consistency. So, in usual circumstances where
8 you have a willing seller and a willing buyer you look at the
9 criteria, character and competence, financial feasibility, and
10 need. And in this circumstance we want to make sure that we
11 apply the same criteria that would be applied to any other
12 application. And I think what's interesting about too is where
13 you have a circumstance that involves a county or another
14 municipal entity I think that the Council also wants to make
15 sure that they don't put themselves in the place of being policy
16 makers for the County. So here you have a situation where the
17 County has decided that from a policy standpoint that they want
18 to sell the nursing home, and we want to make sure that we apply
19 the same criteria to this application that we would apply to
20 every other application.

21

22 WILLIAM STRECK: Mr. Booth.

23

24 CHRIS BOOTH: So, two comments and I'll make a motion as
25 well here. One is, as Mr. Fensterman always says that

1 applicants that don't show up for their own projects do so at
2 their own peril, and again, we had that happen today and learn
3 information after the meeting was held as opposed to during the
4 meeting. So, there's that element of it. Having said that,
5 obviously if that's true that there's a closure of the facility
6 as a result that should've been part of the conversation this
7 morning, and I think we'd all want to know about that, so, my
8 recommendation would be to bring this back at the next cycle and
9 ask the County to be here in presence to answer questions about
10 that. So I would move to defer to the next cycle.

11 [second]

12

13 WILLIAM STRECK: So, we have a motion for deferral. Do
14 we have discussion on that motion? Jo.

15

16 JO BOUFFORD: The other, and I certainly would support
17 that approach, I think if we are deferring for further
18 conversation, the other element that disturbed me that the
19 lawyer mentioned that in his view, admittedly in his view, we
20 had no one responding that there had been a number of illegal
21 steps; failure to do a competitive bid, a set of issues that he
22 questioned the legality of the transaction in the first
23 instance. So I would think that we would need some comfort, I
24 would want some comfort about that issue.

25

1 JIM DERING: Sure, just responding to that, we've had
2 other circumstances where there have been private disputes, if
3 you will, with regard to an application, and I think with regard
4 to the jurisdiction of PHHPC, the jurisdiction really relates to
5 the application itself and to the application of the criteria
6 that's in the statute. So if we have a situation where somebody
7 says hey, there's a zoning issue, or someone says we don't like
8 it, we want to fight it in another forum, that's really an issue
9 for another body. That doesn't come in within the jurisdiction
10 of PHHPC.

11

12 JO BOUFFORD: I would just think - I'm sorry - I would
13 just think that the State would be concerned if, in fact, there
14 were legal questions. I'm not saying it's our purview, but I'm
15 just saying coming to us with something that's being challenged
16 legally for reasons that sounded logical, I don't know the
17 gentleman or anyone else, just seemed to me important issues, I
18 appreciate that we aren't in a position to adjudicate them, but
19 it would be good data to have.

20

21 ANGEL GUTIERREZ: The whole process appeared to be
22 rushed. I felt, I voted no mainly because there was very little
23 thing to vote yes. And so I think we need to keep that in mind
24 and perhaps rethink how we are doing things for the future.

25

1 WILLIAM STRECK: Dr. Martin.

2

3 GLENN MARTIN: So, during this delay, is there anything
4 that stops the County Executive from locking the door if they
5 should decide to do that? And secondly doesn't he require some
6 sort of closure plan or whatever that would need to be approved
7 and eventually even come back to this Council?

8

9 KAREN WESTERVELT: Yeah, so, they would be required to
10 submit a closure plan to the Department of Health and we would
11 have to approve that closure plan. So the delay will be two
12 months, and I think Dr. Gutierrez, preferably we never like to
13 put applications so quickly before the Council, obviously. I
14 think the County has indicated to us that they're in financial
15 extremis, you know, so but understanding that I think with a two
16 month delay they have to have, they have to have the closure
17 plan which would be in that same timeframe, so they can't just
18 lock the doors. So, you know, it does mean we would take it up
19 at the next Council meeting.

20

21 WILLIAM STRECK: Does that address your concern, Glenn?

22

23 GLENN MARTIN: Yeah. I just want to follow up. There was
24 an assertion made that the zoning variance wasn't granted, which
25 strikes me as different than when we're dealing with St.

1 Vincent's where - I don't remember which one it is, St.
2 Vincent's or Jewish Home, where the zoning just threw up their
3 hands and said there's nothing we could do about it; go ahead.
4 This sounds like somebody already said no. Does that mean they
5 can still come before us and ask for a CON when they don't have
6 local approval?

7
8 KAREN WESTERVELT: It's again, and I'll have Jim speak to
9 this, it's outside of our purview. It may mean we approve this
10 application, however, they may not be able to locally get the
11 you know, what they need locally to be able to move forward.
12 But it's just outside of our particular purview.

13
14 JIM DERING: And I think one of the other difficulties
15 when you have these tangential legal issues is if someone wants
16 to stop an application than, if we don't strict - if we don't
17 look at our jurisdiction and follow our jurisdiction then the
18 concern is that someone can thwart an application by raising
19 allegations and putting it into the court system that would take
20 years to resolve.

21
22 GLENN MARTIN: No, the point I was trying to make though,
23 and assuming the facts were correct, this wasn't an allegation
24 that was going to be adjudicated, it was a statement that the
25 zoning board had not given them a variance therefore they

1 couldn't do it. So, again, I assume that we couldn't approve a
2 CON if it weren't based on a foundation that you could actually
3 follow through with it. So, I'm a little confused you know,
4 they said they turned it down. I understand the lawsuit is a
5 separate issue. We wouldn't stop it for that.

6

7 JIM DERING: I think from a zoning perspective if PHHPC
8 approved it and for some reason it wasn't approved from a zoning
9 perspective than that would be a different issue with regard to
10 their ability to operate, you know, based on that municipality.

11

12 HOWARD BERLINER: So if we had approved it and then a
13 zoning board turned it down, where would that leave us, and
14 where would that leave the facility?

15

16 JIM DERING: I think from a practical standpoint right
17 now we have a facility, it's in financial distress and the
18 leaders of the county have decided that it needs to be sold. We
19 have an application before us. It's under our criteria. We need
20 to apply the standards and the public health law. With regard
21 to all these other tangential issue, you know, we're really not
22 in a place to sort all of that out.

23

24 HOWARD BERLINER: I just want to make a comment, and this
25 may be about the consistency with which we deal with this.

1 First, I'd be willing to put \$.38 cents towards you know, the
2 construction fund to help the County out. When we dealt with
3 the Albany County Nursing Home, we had, I mean, essentially the
4 opposite situation. We had you know, the County Executive that
5 said he wanted to rebuild the place and then a whole bunch of
6 people who said they, we shouldn't including some members of
7 this council, in some cases interests in similar fields. And
8 that was considered fine for us to make that, you know, to say
9 well, no. The County is wrong. They don't know what they're
10 doing. We, why is it this way where the County doesn't want to
11 do it but we think it's something that should be done. Is that
12 inconsistent with our policy?

13

14 JIM DERING: I don't think it is. And I think it goes
15 back to applying the standards that are in the public health
16 law, so the concern with regard to Albany County was financial
17 feasibility. So, they were admittedly going to run at a
18 significant deficit, so, I think in that case the Council
19 applied the criteria under the public health law and based on
20 that decided that the application didn't meet the criteria, and
21 all I'm saying is with regard to this application, I think you
22 should do the exact same thing and apply the criteria under the
23 statute.

24

1 MR. ROBINSON: So, it does appear as though we will be
2 probably cycling this thing back for another review. I would
3 actually like to raise the issue of Certificate of Need, meaning
4 what is the health needs of that population, and I have a
5 concern that was isn't addressed is the patient population
6 that's currently being served by that facility and how that will
7 be impacted by this transaction. So as generally is the case
8 with county long term care facilities, they tend to have younger
9 populations that stay in place for decades as opposed to the
10 average length of stay in a traditional nursing home. And so
11 when you get a proprietary nursing home that's undertaking a
12 transaction like that, what happens to that population. From an
13 economic standpoint the reason the county may not be able to
14 make it work is because that's a very, very expensive population
15 to manage, and the only way a proprietary manager can do it is
16 actually by changing the patient mix. So then you get to the
17 question of what happens to those patients? So, I voted no
18 because I didn't think we had the answer to that question. And I
19 think that's a significant public health issue, and I believe
20 that is within the purview of this Council and should be part of
21 our decision making. So that's the reason for my vote.

22

23 ART LEVIN: I would like to second that. I think my
24 concern was how no matter what people say at the microphone
25 about what patient mix they tend to serve, I'm not sure how that

1 gets carried out over time. What, you know, one the monitoring,
2 and two the recourse. If it turns out that that patient mix is
3 just not there. I mean, very easy to get up and say, we believe
4 in this and we're going to keep the patient mix, but as it's
5 been pointed out, doesn't make a lot of economic sense for a new
6 owner.

7 Just an aside, I'm a little puzzled by why there's even a
8 zoning issue. The facility is already there. I thought zoning
9 - so it makes me wonder if there's something we don't know about
10 in terms of construction or reconstruction or remodeling because
11 normally you buy a house, you buy anything, it's already there.
12 It's not a new zoning issue. So I'm a little confused by it.

13

14 WILLIAM STRECK: Dr. Boufford.

15

16 JO BOUFFORD: Yeah, I actually believe they said that, and
17 I believe there was a contingency put on it for 70 percent
18 Medicaid, or something, I can't remember exactly the number, by
19 the state, but I think the gentleman said, there were 9 percent
20 private or 10 percent - I don't know - some number. He was very
21 clear to say we cannot sustain the payer mix of the current
22 patient population and make a go of this. So we would have to
23 increase. Now, he didn't imply they would be shutting anyone
24 out. We don't know that. But he did say they would have to
25 raise the private payer and raise the Medicare in order to make

1 a go of it financially. They couldn't keep the current payer
2 mix in place with the current patients. So, he was clear about
3 that.

4

5 WILLIAM STRECK: Other comments? We should - we'll
6 get to see a few more of these county nursing home conversions
7 coming before us, so we might as well try to get it right this
8 time in terms of our own self-education and the questions. I
9 mean, I think it is an opportunity and it was clear that the
10 rejections this morning was broad-based. I mean, there was not
11 a single item but just a discomfort in the group I think has
12 been well articulated now. So, this could be good practice for
13 future, for other counties. Charlie, do you have an additional
14 comment?

15

16 CHARLIE ABEL: Yeah, just to kind of clarify some of the
17 questions for that, when we bring this project back, we're
18 bringing it back with the added analysis that is the - that you
19 desire. So, first of all, I think the zoning issue that was the
20 question that was that this, the current zoning is for a county
21 facility and the question was whether a proprietary facility
22 could go operate at that site. Zoning decisions and zoning
23 variances are all subject to various appeals levels, so, just
24 the fact that and I don't know whether the fact is that there's
25 a true impediment in the zoning for this or not, it's, again,

1 it's not our purview. But I do know that I have seen many cases
2 where the current zoning for what is being approved doesn't
3 match, but zoning gets changed.

4 So, and then I just want to - the payer mix, I think is
5 clearly a valid concern because you heard the applicant deal
6 with that. But I'm not sure how to reconcile Mr. Robinson's and
7 Mr. Levin's second on healthcare needs of the population that is
8 being solation, that is being served at this nursing home, and a
9 little more help in terms of what you think is needed so that we
10 can work with the applicant would be helpful.

11

12 KAREN WESTERVELT: And I think one of the things we need
13 to be careful about too is making sure that we're not applying a
14 new standard to this application; if we're talking about policy
15 issues, we just need to make sure it's not around this
16 application, we have the broader conversation. I just wanted to
17 caution.

18

19 MR. ROBINSON: I think as Dr. Streck mentioned, this is
20 probably an issue that's more unique to county nursing home
21 facilities and their conversions than it would be a not-for-
22 profit sale to a for-profit where the payer mixes and the
23 patient mixes are likely to be somewhat similar. Here, it is a
24 more chronic, long term care population, and so the transition
25 of patients, should that be necessary, is going to be something

1 that I think is uniquely applicable to an application like this.
2 That's the concern. And to ensure - I mean there's an access
3 issue that's ongoing for new patients that need to find
4 services, but you really do need to ensure that at least the
5 patients that are there because they are long term. I mean,
6 really, decade-long patients. So that's really the question for
7 me.

8

9 NIRAV SHAH: I just want to add, you know, if you think
10 of it as a choice between a nursing home being there and it
11 shutting down, the access issues become very stark. So I think
12 that has to be considered, and I guess as part of the
13 information we'll receive, we'll understand that what are the
14 real choices out there better.

15

16 GLENN MARTIN: No, I certainly agree, Commissioner, with
17 what you said. The suspicious part of it this morning was they
18 were operating well under census when we know it's under bedded
19 in Suffolk. So, clearly things are going on that just weren't
20 brought to - we just couldn't get an answer this morning because
21 people weren't here. So, I think it was because of that, as
22 well as I said, the real service needs that, I mean, it sounded
23 very clearly they weren't going to throw anyone out on the
24 street, which was nice to hear, but it sounded like they weren't
25 going to let anyone in in addition to what they already had.

1 They couldn't afford the paperwork. So, as Mr. Robinson said, I
2 really was concerned on a variety of issues. That being
3 primary.

4
5 ANGEL GUTIERREZ: So, Dr. Streck, if what you said is
6 correct, and I think it is, supported by what Mr. Robinson and
7 what Commissioner Shah said, how do we prepare ourselves here at
8 the council to better deal with a similar situation because we
9 are expecting that it's going to happen more, and how do we
10 avoid the embarrassment of being caught not knowing how to move?

11
12 WILLIAM STRECK: Well, I think Charlie has begun that
13 process by outlining the questions we're going to answer the
14 next time around. And the questions that have come from the
15 group, I think we can compile the questions. I think each of us
16 should feel free to send our version of the question we had, and
17 then we can compile those and then suspect they will have
18 applicability. I know in our region there are public county
19 nursing homes going through this same process, and they will be
20 here eventually with the same questions and the same populations
21 speaking against them. Jo.

22
23 JO BOUFFORD: I think one of the disadvantages personally,
24 I don't know, I was out of town, but it may be that the material
25 came in time to be reviewed but I don't, I was looking through

1 my emails, I don't recall seeing it or getting it until this
2 morning, and I did see people who were better at collecting
3 their homework in advance than I, and appeared to have documents
4 they were familiar with, but again, I think it would be useful -
5 you wouldn't be doing you a disservice if we had a chance to
6 really take a look at things, we wouldn't be asking you
7 questions that you've already answered. So,

8

9 CHRIS BOOTH: And I don't think the Council should feel
10 bad about today. They didn't show up. If they were here today,
11 a lot of these questions would have been asked directly and we
12 would've gotten to probably a solution that we should've gotten
13 to.

14

15 HOWARD BERLINER: I'd like to ask the Department as they
16 go through this, if we could get more information about the
17 other efforts that the County has made to sell the nursing home
18 not just - if there was only one bidder or only one person
19 interested or were there others that got turned down? I'm very
20 nervous about the kind of implicit blackmail of "do this, or
21 we're going to close," and then you have nothing. That's kind
22 of a scary position for the State and for healthcare and for us
23 to be that. Because some things just may not be the best things
24 to approve.

25

1 WILLIAM STRECK: Extortion is a well-accepted strategy
2 in healthcare. OK. Are there other comments on this project?
3 There is a motion on the floor by Mr. Booth to defer, and was
4 there a second to that motion? There was a second. OK. I just
5 want to have the record clear. So, there is a motion on the
6 floor. We have had discussions. Is there additional
7 discussion? Hearing none, I would ask those in favor of the
8 motion as presented please say aye?

9 [aye]

10 Opposed? So, the applicant is deferred. Thank you for
11 this discussion.

12 We are no longer quorum sensitive, so that those who have
13 pressing travel arrangements may go. Your absence will be noted
14 in your personnel file here, while the rest of us continue our
15 work. And if you didn't get a flu shot, that too will be noted.
16 So, OK. Gus? Ok. Gus is, I see, not here.

17 [you scared him away]

18 I did. So, we'll now move to Dr. Boufford and her report
19 on public health services.

20

21 JO BOUFFORD: Well, Gus and I were going to do a tag team,
22 so, in view of the fact that we don't have anybody who hasn't
23 heard this already I would defer it. I would only say for
24 everybody to be aware of this is a process that is now rolling
25 out and it's on the web and we're hoping to have a state-wide

1 event and process, and I think it's going to be an invisible
2 process unless we keep it visible and keep sort of beating the
3 drum because people, we don't have the advantage of having
4 Certificates of Need come up for people and audiences asking for
5 things. This has the potential to really mobilize the State
6 around five very important prevention initiatives, which there
7 is a very strong evidence-base of three to five to seven to one
8 return on every dollar invested in community-based interventions
9 in tobacco, exercise, and diet over a two to five year period,
10 not a lifetime. So, I just want to raise that there is a strong
11 evidence-base I wanted to mention at the community level and
12 we're trying to get to happen at the local level as there is on
13 many clinical interventions. So, we'll keep bringing it to
14 people's attention and hopefully get some resources in order to
15 help the local communities do this. So, thank you. We won't go
16 away. We'll come back next time.

17

18 WILLIAM STRECK: Comments or questions for Dr. Boufford?
19 Thank you, Jo. Gus? We're now to your report if you would like
20 to provide the public health report.

21

22 GUS BIRKHEAD: Jo Boufford and I were going to share the
23 report, so I think she covered - did you cover the slides?

24

1 JO BOUFFORD: I didn't do any slides, because everybody
2 was - I just gave a summary. The punchline.

3

4 GUS BIRKHEAD: The punchline, right. And actually, one of
5 the things that we are doing that Jo mentioned to me, gee, we
6 don't have a lot of money, funding to implement this initiative.
7 But actually we have tens of millions of dollars of public
8 health funding going out. So what we're doing is putting
9 together an index of our contractors, and we're going to work
10 through the contract managers with our community based
11 contractors to get them at the community level.

12

13 JO BOUFFORD: That's exciting.

14

15 GUS BIRKHEAD: As one avenue. And they may actually have
16 resources that meet their contract deliverables that they could
17 bring to the table. It's at least worth exploring. So, we are
18 working on that one aspect.

19

20 JO BOUFFORD: I'm really glad to hear that. I also think
21 it would be helpful, I mean, there are some goals in this area
22 that would not be covered by previous approaches which I think
23 are quite innovative, so, hopefully perhaps we could get some
24 support from the Commissioner and others in approaching private

1 foundations to support things in their geographic area around
2 the State.

3

4 GUS BIRKHEAD: If you go on the website, there's now a
5 button on the homepage for the prevention agenda, and I want to
6 note that prevention agenda beat out the Certificate of Need
7 reform folks in getting their button on the homepage, so we won
8 that battle.

9

10 [Low blow, guys]

11

12 I'm sorry that John Ruge is not here to hear that.

13

14 WILLIAM STRECK: Now we'll see who gets the more hits.
15 All right. Is there other business to come before the remainder
16 of the Council here? Hearing none, I thank everyone for their
17 attention today, and we are adjourned.

18

19 [end of video]

20

21

22

23

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

April 11, 2013

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Construction

Exhibit #3

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122190 C	John T Mather Memorial Hospital of Port Jefferson (Suffolk County)	Contingent Approval
2.	122229 C	Montefiore Medical Center – North Division (Bronx County)	Contingent Approval

Residential Health Care Facility – Construction

Exhibit #4

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122294 C	Alice Hyde Medical Center (Franklin County)	Contingent Approval



Public Health and Health Planning Council

Project # 122190-C
John T. Mather Memorial Hospital of Port Jefferson

County: Suffolk (Patchogue)
Purpose: Construction

Program: Acute Care Services
Submitted: October 23, 2012

Executive Summary

Description

John T. Mather Memorial Hospital, a 248-bed not-for-profit hospital, requests approval to certify a linear accelerator to provide stereotactic cyberknife services at an extension service clinic. The hospital will enter into a professional services agreement with North Shore Hematology Oncology Associates, P.C. (NSHOA), which will provide the personnel for the cyberknife services. The hospital has indicated that the need for this service is predicated on the fact that only one facility offers this service in Suffolk County, and that facility is a non-Article 28 provider. The program will be located at an extension clinic located at 285 Sills Road, Building 17, Patchogue, NY 11772. Services will be provided by both John T. Mather Memorial Hospital and NSHOA staff.

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

DOH Recommendation
Contingent approval.

Need Summary

John T. Mather Hospital seeks CON approval to certify an extension clinic with a linear accelerator service to provide Stereotactic Radiosurgery through the use of a

Cyberknife. The facility will enter into a professional services agreement with North Shore Hematology Oncology Associates, P.C. (NSHOA) for professional and non-professional services. There is a need for 12 linear accelerators in Suffolk County, based on the Radiation Oncology Need Methodology set forth in 10 NYCRR Section 709.16. This project will help to meet this need.

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

Total project costs of \$6,323,838 will be met with equity of \$998,838, a bank lease agreement of \$4,200,000 for leased equipment, and a \$1,125,000 loan for the construction of the building at rates of 4% and 3.09%, respectively, for a term of 7 years.

Budget:
Revenues: \$2,369,205
Expenses: \$2,075,801
Gain/ (Loss) \$ 293,404

Recommendations

Health Systems Agency

There will be no HSA review 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. Approval, by the Department, of a management agreement. [HSP]
3. Submission of an executed equipment lease that is acceptable to the Department of Health. [BFA]
4. Submission of an executed building sub-lease that is acceptable to the Department of Health. [BFA]
5. Submission of an executed equipment construction lease that is acceptable to the Department of Health. [BFA]
6. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01 [AER].

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, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction [AER].
6. The applicant shall complete construction by November 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 11, 2013.

Need Analysis

Background

John T. Mather Memorial Hospital of Port Jefferson New York (Mather Hospital) is a 248-bed acute care hospital located at 75 North Country Road Port Jefferson, 11777, in Suffolk County. Mather Hospital seeks approval to certify an extension clinic for linear accelerator service at 285 Sills Road, Patchogue, 11772, in Suffolk County.

Background

John T. Mather Memorial Hospital of Port Jefferson New York has the following certified beds and services:

<u>John T. Mather Memorial Hospital of Port Jefferson New York:</u>	
<u>Certified Beds by Service.</u>	
<u>Bed Category</u>	<u>Certified Beds</u>
Coronary Care	8
Intensive Care	12
Medical / Surgical	175
Psychiatric	37
Transitional Care	16
Total	248

Source HFIS December 2012.

John T. Mather Memorial Hospital of Port Jefferson New York Certified Services

<u>Services</u>	<u>Existing Services</u>	<u>Proposed Action</u>	<u>Services Upon Completion</u>
Ambulatory Surgery - Multi Specialty	√		√
Audiology O/P	√		√
CT Scanner	√		√
Chemical Dependence - Withdrawal O/P	√		√
Clinical Laboratory Service	√		√
Coronary Care	√		√
Emergency Department	√		√
Health Fairs O/P	√		√
Intensive Care	√		√
Linear Accelerator		Add	√
Lithotripsy	√		√
Magnetic Resonance Imaging	√		√
Medical Social Services	√		√
Medical/Surgical	√		√
Nuclear Medicine - Diagnostic	√		√
Pharmaceutical Service	√		√
Primary Medical Care O/P	√		√

John T. Mather Memorial Hospital of Port Jefferson New York Certified Services

<u>Services</u>	<u>Existing Services</u>	<u>Proposed Action</u>	<u>Services Upon Completion</u>
Psychiatric	√		√
Radiology - Diagnostic	√		√
Radiology-Therapeutic	√		√
Renal Dialysis - Acute	√		√
Therapy - Occupational O/P	√		√
Therapy - Physical O/P	√		√
Therapy - Speech Language Pathology	√		√

John T. Mather Memorial is authorized to operate four (4) extension clinics in Suffolk County. These clinics provide outpatient services such as Primary Medical Care, Magnetic Resonance Imaging, Certified Mental Health Services, and Chemical Dependence – Rehabilitation. John T. Mather Memorial is also designated as a stroke center.

The proposed facility will use the Cyberknife to provide stereotactic radiosurgery services. It is anticipated that the number of visits during the first and third years of operation will be 300 and 330, respectively.

John T. Mather Memorial’s primary inpatient service area is Suffolk County. Approximately 98.0 percent of its patients live in the county. In 2000, the census count for Suffolk County was 1,419,369. By 2010, the census of Suffolk County grew by 5.2 percent to 1,493,350.

In 2007, the hospital recorded 11,864 total inpatient discharges. By 2009, these discharges declined by 0.5 percent to 11,927, continued to decline in 2010 to 11,410 patients, and increased to 11,886 in 2011.

John T Mather Memorial Hospital of Port Jefferson New York: Distribution of Total Inpatient Discharges.				
2007	2008	2009	2010	2011
11,864	11,591	11,927	11,410	11,886

Source: SPARCS, 2007 – 2011.

During 2005 through 2009, the total new annual average cancer cases diagnosed in Suffolk County was 8,774 residents.

709.16 Radiation Oncology Need Methodology

The factors for determining the public need for megavoltage (MEV) devices used in therapeutic radiology shall include, but not be limited to, the following:

- 1) No equipment other than four or more MEV or cobalt teletherapy units with a source axis distance of 80 or more centimeters and rotational capabilities will be considered appropriate as the primary unit in a multi-unit radiotherapy service or as the sole unit in a smaller radiotherapeutic unit.
- 2) Ninety-five percent of the total population of each health region is within a one-hour mean travel time, adjusted for weather conditions, of a facility providing therapeutic radiology services.
- 3) The expected volume of utilization sufficient to support the need for an MEV machine shall be calculated as follows:
 - i. Each applicant and MEV machine shall provide a minimum of 5,000 treatments per year and have the capacity to provide 6,500 treatments per year. These volumes may be adjusted for the expected case-mix of a specific facility.

- ii. Sixty percent of the annual incidence of cancer cases in a service area will be candidates for radiation therapy.
- iii. Fifty percent of radiation therapy patients will be treated for cure with an average course of treatment of 35 treatments and fifty percent of patients will be treated for palliation with an average course of treatment of 15 treatments. These estimates may be adjusted based on the case-mix of a specific facility.

Radiation Oncology Need — Suffolk County	
Need for Linacs in Suffolk County	20
Existing/ Approved Resource	8
Remaining Need	12

Conclusion

Based on the 709.16 need methodology for linear accelerators, there is a remaining need for twelve (12) linear accelerators in Suffolk County. This proposal will help to meet the need for this service.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

John T. Mather Memorial Hospital requests approval to certify an extension clinic to provide therapeutic radiology services via a cyberknife. Mather will contract with a physician group to provide the professional and non-professional services at this location. The location will provide stereotactic radiosurgery and stereotactic body radiotherapy for the treatment of certain tumors and lesions.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Professional Agreement

The applicant has submitted an executed professional agreement, the terms of which are summarized below:

Facility : John T. Mather Memorial Hospital
 Dated: September 25, 2012
 Provider: North Shore Hematology Oncology Associates, P.C.

Services Provided: NSHOA will provide professional and non-professional staff, supplies and administrative services.

Indemnification: The hospital will be the operator of the medical facility and provide the services as part of their cancer treatment services. Each party to this agreement agrees to indemnify and hold harmless the other from and against all claims and liabilities arising out of the acts and omissions of its trustees, officers, employees and agents.

Term: The agreement will continue through September 30, 2020 with a renewal term extended.

Rate: \$389,238 for leased personnel and \$130,000 per year for Medical Director Services. All fees are subject to pro-rata adjustments to be determined for any part of the year.

*This agreement is to enhance a strategic alliance between both facilities.

Lease Rental Agreement

The applicant has submitted a draft sublease agreement for the site that they will occupy; which is summarized below:

Premises: 2,456 Square feet located at 285 Sills Road, Patchogue, NY
Lessor: Brookhaven Professional Park, LP
Sub lessor: North Shore Hematology Oncology Associates, P.C.
Sub lessee: J.T. Mather Hospital
Term: 15 Years
Rental: \$122,880 (\$50.03 per sq. ft.) with a 3% escalation per year or the CPI, whichever is higher.
Provisions: The sub lessee shall be responsible for maintenance and utilities, and will be held to a 2% charge for the space it occupies for parking, waiting area.

The applicant has submitted an affidavit indicating that there is no relationship between Brookhaven Professional Park, LP (landlord) and J. T. Mather Hospital (Sub lessee).

Equipment Lease Rental Agreement

The applicant has submitted a draft lease agreement for the equipment they will lease, which is summarized below:

Vendor: Accuray
Equipment: Accuray Cyberknife
lessor: Key Equipment Finance
lessee: J. T. Mather Hospital
Term: 7 Years
Rate: 4%
Rental: \$50,799.81 per month which includes a purchase option at the end of the lease at the fair market value not to exceed 14% of the total cost.
Provisions: The lessee shall be responsible for maintenance and utilities.

The applicant has submitted a letter of interest from Key Equipment Financing for the construction lease of this transaction.

Vendor: Accuray
Equipment: Accuray Cyberknife Construction/Installation
lessor: Key Equipment Finance
lessee: J. T. Mather Hospital
Term: 7 Years
Rate: 3.09%
Rental: \$14,910.72 per month, which includes a purchase option for \$1.00 at the end of the lease.

Provisions: The lessee shall be responsible for maintenance and utilities.

The applicant has submitted a letter of interest from Key Equipment Financing.

Total Project Cost and Financing

Total project cost for renovations and the acquisition of moveable equipment is estimated at \$6,323,838, itemized as follows:

Renovation & Demolition	\$1,509,416
Design Contingency	150,941
Construction Contingency	150,942
Architect Fees	120,753
Other Fees	25,583
Moveable Equipment	4,298,000
Telecommunications	10,234
Financing Costs	11,250
Interim Interest Expense	10,139
CON Fees	<u>36,580</u>
Total Project Cost	<u>\$6,323,838</u>

Project costs are based on an April 1, 2013 start date and a seven month completion period.

The applicants financing plan appears as follows:

Cash/Equity	\$ 998,838
Equipment Lease (4%, 7 years)	\$4,200,000
Bank Loan (3.09%, 7 years)	\$1,125,000

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,153,823	\$2,369,205
Expenses:		
Operating	\$ 699,385	\$1,106,307
Capital	<u>1,009,357</u>	<u>969,494</u>
Total Expenses	\$1,708,742	\$2,075,801
Excess of Revenues over Expenses	<u>\$ 445,081</u>	<u>\$ 293,404</u>
Outpatient: (Visits)	300	330
Cost Per Visit	\$5,695.80	\$6,290.30

Utilization by payor source, broken down by outpatient services for radiation cyberknife services for the first and third years is as follows:

Outpatient Revenue

<u>Outpatient</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-for-Service	5.0%	4.8%
Medicaid HMO	10.0%	10.0%
Medicare Fee-for-Service	32.0%	32.1%
Medicare HMO	8.0%	7.9%

Commercial Fee-for-Service	21.0%	20.9%
Commercial Managed Care	21.0%	21.2%
Private Pay	1.3%	1.5%
Charity care	1.7%	1.6%

Expense and utilization assumptions are based on the historical experience of other clinics that operate cyberknife services.

Capability and Feasibility

Project costs of \$6,323,838 will be met via equity of \$998,838, an equipment lease for \$4,200,000, and bank loan for \$1,125,000. Presented as BFA Attachment A is the financial summary of John T. Mather Hospital, which indicates sufficient resources for the equity contribution. A letter of interest for the equipment lease from Key Equipment Finance has been provided for \$4,200,000 at a rate of 4% for a term of 7 years. The construction letter of interest from Key Equipment Financing in the amount of \$1,125,000 has been provided at a rate of 3.09% for a term of 7 years.

The submitted budget projects an excess of revenues over expenses of \$445,081 and \$293,404 during the first and third year of operation, respectively. Revenues are based on the hospital's current reimbursement rates and current reimbursement methodologies for the new services.

As shown on Attachment A, the hospital has maintained an average positive working capital and average net asset position. Also, the hospital achieved an excess of operating revenue over operating expenses of \$1,423,131 and \$2,236,769 during 2011 and 2010, respectively.

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	Financial Summary for John T. Mather Memorial Hospital
BHFP Attachment	Map



Public Health and Health Planning Council

Project # 122229-C Montefiore Medical Center – North Division

County: Bronx (Bronx)
Purpose: Construction

Program: Acute Care Services
Submitted: November 15, 2012

Executive Summary

Description

Montefiore Medical Center North Division (MMCN, or Wakefield Hospital), which is part of the overall Montefiore Medical Center, a 1,491-bed not-for-profit hospital, requests approval to certify an additional twenty four (24) inpatient psychiatric beds. These beds are for an inpatient Psychiatric unit, which will be located on the 6 North wing at the Wakefield Hospital. The facility is requesting permission to renovate parts of the existing building in order to house this new unit. Currently, Wakefield Hospital has a 33-bed adult inpatient psychiatric unit and the Moses division has a 22-bed adult inpatient psychiatric unit, which is currently operating at full capacity. Montefiore must transfer upwards of 525 patients per year to other hospitals that present to them at the Montefiore Emergency departments with clinical presentation or patients who present a danger to themselves or others, and are in need of immediate secure inpatient admission for stabilization under psychiatric supervision. This project will give Wakefield a total Inpatient psychiatric capacity of 57 beds and a total inpatient psychiatric bed capacity for Montefiore of 79 beds.

This project will expand the existing inpatient psychiatric service at Wakefield Hospital. This new unit will serve as a short term acute diagnostic and treatment service and shall review for admission all those requiring hospitalization for mental illness. The unit will be comprised of nine (9) semi private rooms and six (6) private rooms. Each room will have its own toilet and shower room. The remaining space will be comprised of patient activity spaces including dayroom/dining, quiet activities, visitor and comfort rooms.

DOH Recommendation
Contingent approval.

Need Summary

Montefiore Medical Center – North Division is a member of Montefiore Health System, Inc. which includes two (2) other acute care facilities (Montefiore Medical Center - Henry & Lucy Moses Division and Montefiore Medical Center - Jack

D. Weiler Hospital of Albert Einstein College Division). MMCN seeks approval to add 24 psychiatric beds to alleviate the inpatient psychiatric overcrowding that the hospitals in the system have been experiencing.

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

Total project cost of \$5,924,395 will be met via equity from existing recourses.

Incremental

Budget:	Revenues:	\$7,926,553
	Expenses:	<u>5,699,401</u>
	Gain/(Loss)	\$2,227,152

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

Recommendations

Health Systems Agency

There is no HSA review 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 Notice showing final approval by the New York State Office of Mental Health. [RNR]
3. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

Approval conditional upon:

1. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
2. The applicant shall complete construction by December 31, 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 11, 2013.

Need Analysis

Background

Montefiore Medical Center – North Division (MMCN or Wakefield Hospital), is a 321-bed acute care facility located at 600 East 233rd Street, Bronx, 10466, in Bronx County. The facility seeks to add 24 net new inpatient psychiatric beds. Upon approval, the total number of inpatient psychiatric beds on the facility's operating certificate will be 57.

Montefiore Medical Center North Division has the following certified beds and services:

Table 1: Montefiore Medical Center – North Division: Certified Beds by Service.			
<u>Bed Category</u>	<u>Certified Capacity</u>	<u>Requested Action</u>	<u>Certified Capacity Upon Completion</u>
Chemical Dependence - Detoxification	10		10
Intensive Care	16		16
Maternity	30		30
Medical / Surgical	208		208
Neonatal Continuing Care	2		2
Neonatal Intensive Care	4		4
Neonatal Intermediate Care	9		9
Pediatric	9		9
Psychiatric	33	+24	57
Total	321	+24	345

Table 2: Montefiore Medical Center – North Division: Certified Services.	
Ambulance	Ambulatory Surgery - Multi Specialty
Audiology O/P	CT Scanner
Certified Mental Health Services O/P	Chemical Dependence - Detoxification
Chemical Dependence - Rehabilitation O/P	Chemical Dependence - Withdrawal O/P
Clinic Part Time Services	Clinical Laboratory Service
Coronary Care	Dental O/P
Emergency Department	Family Planning O/P
Intensive Care	Linear Accelerator
Magnetic Resonance Imaging	Maternity
Medical Social Services	Medical/Surgical
Neonatal Continuing Care	Neonatal Intensive Care
Neonatal Intermediate Care	Nuclear Medicine - Diagnostic
Nuclear Medicine - Therapeutic	Pediatric
Pharmaceutical Service	Physical Medicine and Rehabilitation O/P
Primary Medical Care O/P	Psychiatric
Radiology - Diagnostic	Radiology-Therapeutic
Renal Dialysis – Acute	Renal Dialysis - Chronic
Therapy - Occupational O/P	Therapy - Physical O/P
Therapy - Speech Language Pathology	

New York State Designation:

- Level 3 Perinatal Center.

Montefiore Medical Center – North Division seeks to add 24 additional inpatient psychiatric beds to admit patients seeking such care at the hospital. MMCN states that Montefiore Health System transfers more than 500 psychiatric patients a year to other hospitals for psychiatry admission due to the inability to place them within the existing Montefiore's psychiatric units. MMCN indicates that the average length of stay for psychiatric patients in its Emergency Department awaiting transfer was 30 hours because of insufficient psychiatric capacity at Montefiore Medical Center Moses and Montefiore Medical Center – North.

Analysis/Discussion

Montefiore Medical Center – North and Montefiore Medical Center Moses are certified to operate 33 and 22 inpatient psychiatric beds, respectively. The majority of the psychiatric patients that are discharged from the two hospitals are residents of Bronx County. The 2000 census for Bronx County stood at 1,332,650 residents; by 2010, it increased by 3.9 percent to 1,385,108. Projections for 2020 show the county growing to 1,453,970 residents.

From 2007 to 2011, Montefiore Medical Center North averaged about 741 inpatient psychiatric discharges a year. The average daily census (ADC) for these patients ranged from 29 to 33 patients on any given day. This resulted in occupancy rates ranging from 87.6 percent to 99.7 percent. During the same period, Montefiore Medical Moses averaged about 553 inpatient psychiatric discharges a year and an ADC of 24 to 25 psychiatric patients on any given day. This population of patients generated psychiatric occupancy rates that exceeded 100 percent. During the period, these rates ranged from 108.2 percent to 112.7 percent (Table 3).

	2007	2008	2009	2010	2011	Current Beds
Discharges:						
Montefiore M. C. - North	737	719	716	794	741	
Montefiore M. C. - Moses	562	617	536	543	506	
Average Daily Census :						
Montefiore M. C. - North	31	33	31	29	29	
Montefiore M. C. - Moses	25	25	24	24	24	
Average Length of Stay :						
Montefiore M. C. - North	15.2	16.7	15.7	13.3	14.5	
Montefiore M. C. - Moses	16.0	14.6	16.4	16.0	17.3	
Occupancy Based on Current Beds:						
Montefiore M. C. - North	93.0	99.7	93.3	87.6	89.1	33
Montefiore M. C. - Moses	112.3	112.7	109.1	108.2	108.6	22

Conclusion

The request to add additional beds at MMCN is supported by the extremely high psychiatric occupancy rates exhibited at both MMCN and Montefiore Moses Division over the last five (5) years. The additional beds will provide Montefiore with the capacity to admit the patients that present at the system hospitals in search of inpatient psychiatric care. In addition, the new beds will provide the residents of Bronx County with the opportunity to seek care at a facility of choice rather than being transferred to a different hospital with an open bed.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

Montefiore Medical Center is requesting approval to add 24 inpatient psychiatric beds at its North Division (Wakefield Hospital), for a total of 57 at that location. The additional beds will be located in a to-be-renovated section of the hospital. This project is in response to Montefiore’s transfer of over 500 patients per year to other hospitals due to inadequate psychiatric bed resources at its member facilities. It is anticipated that staffing will increase by 38.1 FTEs as a result of this project.

Compliance with Applicable Codes, Rules and Regulations

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable 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.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of movable equipment, is estimated at \$5,924,395, further itemized as follows:

Renovation & Demolition	\$4,500,000
Design Contingency	225,000
Construction Contingency	225,000
Architect/Engineering Fees	360,000
Movable Equipment	430,000
Telecommunications	150,000
CON Fees	2,000
CON Additional Fees	32,395
Total Project Cost	\$5,924,395

The facility intends to fund total project cost with equity from existing resources.

Equity	\$5,924,395
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The construction start date is May 1, 2013 with an eight-month construction period.

Operating Budget

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

	Year One and Three
Revenues:	\$7,926,553
Expenses:	
Operating:	\$5,308,501
Capital:	<u>\$390,900</u>
Total Expenses:	\$5,699,401
Excess Revenues:	\$2,227,152
Utilization: (Patient days)	8,316
Cost Per patient day:	\$685.35

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

	Years One and Three
Commercial Fee-for-Service	2.97%
Commercial Managed Care	2.97%
Medicare Fee-for-Service	28.00%
Medicare Managed Care	6.92%
Medicaid Fee-for-Service	45.63%
Medicaid Managed Care	11.53%
Other	.66%
Charity Care	1.32%

Expense and utilization assumptions are based on the experience of the present operator.

Capability and Feasibility

The issue of capability centers on the applicant's ability to meet the total project cost. Presented as BFA Attachment A is the 2010-2011 financial summary of Montefiore Medical Center, which indicates the availability of sufficient resources.

The working capital requirement is estimated at \$949,900, based on two months' of third year expenses. The facility will provide the full amount through equity. As presented on BFA Attachment A, the 2010-2011 financial summary for Montefiore Medical Center, the facility has sufficient resources to fund both the project and the required working capital.

The issue of feasibility is centered on the applicant's ability to meet expenses with revenue and maintain a viable operating entity. The submitted budget indicates an excess of Revenues over Expenses of \$2,227,152 during both the first and third years of operation.

BFA Attachment A is comprised of the 2010-2011 certified financial statements of Montefiore Medical Center. As shown, the facility has maintained an average positive working capital position and has maintained an average positive net asset position and has had a positive average net revenue of \$83,252,000 for the period shown.

BFA Attachment B is comprised of the 1/1/2012-11/30/2012 internal financial statements for Montefiore Medical Center. As shown, the facility has maintained an average positive working capital position, has maintained an average positive net asset position and has a positive net revenue of \$93,150,000 for the period shown.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary- 2010 - 2011 Montefiore Medical Center
BFA Attachment B	Financial Summary – Internal 1/1/2012-11/30/2012 Montefiore Medical Center



Public Health and Health Planning Council

Project # 122294-C Alice Hyde Medical Center

County: Franklin (Malone)
Purpose: Construction

Program: Residential Health Care Facility
Submitted: December 19, 2012

Executive Summary

Description

Alice Hyde Medical Center, a 76-bed, not-for-profit hospital located in Franklin County, requests approval to certify 80 new residential health care facility beds from Franklin County Nursing Home, construct a 135-bed facility on the medical center campus, and decertify 20 residential health care facility beds. The address of the new facility will be 14859 State Route 30, Malone, New York.

This nursing home project is part of a larger project, which also includes the construction of assisted living program (ALP) beds, and represents the culmination of an innovative and unique public private practice in rural Franklin County, which will allow critically needed long term care services to be maintained in the County. The overall project would permit Alice Hyde to construct a critically needed new 135-bed facility, which would replace its current aging and obsolete 75-bed nursing home, add an additional 60 nursing home beds to account for the planned closure of the obsolete 80-bed Franklin County Nursing Home, and add 30 ALP beds, a service which currently does not exist in Franklin County.

The County has indicated their strong support for this project and has agreed to provide financial support to the new facility for a finite period of time to assure continued access of Franklin County residents to long term care services. Also, inherent in the project, is a reduction of 20 nursing home beds in Franklin County. The site of the project is owned by Alice Hyde Medical Center in Malone, New York.

Alice Hyde Medical Center provides a majority of the healthcare services for this rural area, including: a 76-bed acute care facility; a 75-bed long term care facility;

four family health centers; a cancer center; a dental center, and a hemodialysis unit.

DOH Recommendation
Contingent approval.

Need Summary
The utilization of Alice Hyde Medical Center's nursing home was 98.3% in 2011, which was greater than that of Franklin County as a whole. There will be a 20-bed reduction in Franklin County upon project completion, and the new facility will include a 30-bed assisted living center.

Program Summary
Alice Hyde Medical Center is currently in substantial compliance with all applicable codes, rules and regulations.

Financial Summary
The total project cost for the replacement facility is estimated at \$30,917,203, which will be met as follows: HEAL 19 grant \$4,483,733; Equity \$155,729 and \$26,277,741 mortgage at an interest rate of 5.00% for a 25 year term.

Revenues	\$11,603,003
Expenses	<u>12,286,264</u>
Excess of Revenues over Expenses	(\$683,261)

The loss will be offset via operations. 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.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The applicant is required to submit design development drawings, complying with requirements of 10NYCRR Part 710.4, for review and approval by DASNY. [AES]
3. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
4. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - Submit an annual report for two years to the DOH, which demonstrates substantial progress in the implementation of the plan. The plan should include but not be limited to:
 - Information on activities relating to a-c above; and
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - Other factors as determined by the applicant to be pertinent. [RNR]

The DOH reserves the right to require continued reporting beyond the two year period.

5. Submission and programmatic review and approval of a plan to ensure the security and safety of the patients in the dementia/"memory care" unit. [LTC]
6. Submission and programmatic review and approval of a plan to ensure the privacy of residents in the first floor neighborhoods when residents from other floors are accessing the courtyard. [LTC]
7. Submission of an executed HEAL 19 grant contract that is acceptable to the Department of Health. [BFA]
8. Documentation of approval of the Vital Access Provider application that is acceptable to the Department of Health. [BFA]
9. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by the Department of Health. Included with a submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]

Approval conditional upon:

1. Signage should be installed and maintained restricting public access through the staff parking area entrance and the central access corridor entryway. [LTC]
2. The applicant is required to submit final construction documents, complying with requirements of 10NYCRR Part 710.7, to NYS DOH Bureau of Architecture and Engineering Facility Planning (BAEFP) prior to start of construction. [AES]
3. The applicant shall complete construction by November 1, 2014 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Need Analysis

Background

Alice Hyde Medical Center, which includes a 76-bed acute care facility, a 75-bed long term care facility, four family health centers, a cancer center, a dental center, and a hemodialysis unit, proposes to build a new 135-bed residential health care facility (RHCF) and a 30-bed assisted living facility. The residential health care facility will include Alice Hyde’s current beds and 40 beds from the Franklin County Nursing Home, which will close. The new facility will be located at 14859 State Route 30, Malone, 12953, in Franklin County.

Analysis

The new facility will comprise the majority of RHCF beds in the community, since there is only one other RHCF in Franklin County with 60 beds. This project will result in the following redistribution of beds to the proposed facility:

<u>Facility</u>	<u>Current Beds</u>	<u>Requested Action</u>	<u>Beds After Project Approval</u>
Alice Hyde Medical Center	75	-75	0
Franklin County Nursing Home	80	-80	0
New Alice Hyde Facility	0	135	135

Alice Hyde Medical Center’s RHCF bed utilization is above that of Franklin County for 2009, 2010, and 2011, as shown in Table 1 below:

Table 1: RHCF –Franklin County/ Alice Hyde Medical Center

<u>Facility/County</u>	<u>% Occupancy 2009</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>
Alice Hyde Medical Center	97.9%	97.3%	98.3%
Franklin County	93.7%	89.4%	93.7%

Alice Hyde Medical Center has remained above the Department’s 97% planning optimum for RHCF beds for all three years in question. Currently Franklin County is below the 97% planning optimum, but the approval of this project will reduce the number of overall beds by 20 RHCF beds with the closure of Franklin County Nursing Home. The current projected bed need for Franklin County for 2016 is 46. Also, this project will increase the availability of assisted living beds in Franklin County, which will increase long term care options for county residents.

Table 2: RHCF Need – Franklin County

2016 Projected Need	261
Current Beds	215
Beds Under Construction	0
Total Resources	215
Unmet Need	46

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patients admissions is at least 75% of the planning area percentage of health Systems Agency percentage, whichever is applicable.

Alice Hyde Medical Center was above the 75 percent planning average for Franklin County for 2009 and 2010. The facility reported Medicaid admissions of 17.61 percent and 34.65 percent in 2009 and 2010 respectively. The 75 percent planning averages for Franklin County for these years were 9.98 percent (2009) and 31.47 percent (2010).

Conclusion

This 135-bed project will provide a new, modern and necessary resource for the community and improve access to long term care for Franklin County residents. The replacement facility will provide improvements in efficiency and operations. This project will also offer a new level of service through the assisted living facility.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

	<u>Existing</u>	<u>Proposed</u>
Facility Name	Alice Hyde Medical Center	Same
Address	133 Park Street Malone, New York 12953	Same
RHCF Capacity	75	135
ADHCP Capacity	N/A	N/A
Type Of Operator	Voluntary	Same
Class Of Operator	Corporation	Same
Operator	Alice Hyde Medical Center	Same

Program Review

Alice Hyde Medical Center is a 75 bed hospital based nursing facility located in Malone, Franklin County. Franklin County borders on Canada in extreme northern New York, and contains only three nursing homes. Malone is also home to the Franklin County Nursing Home, an 80 bed nursing facility, and combined with the two nursing homes' bed complement of 155 beds, represents 72% of the total skilled nursing facility beds available in the County. Both nursing homes were constructed in the 1960's, and are significantly outdated and inefficient. In December, 2010 Alice Hyde was awarded a HEAL grant for the construction of a new facility to replace both the Alice Hyde and Franklin County nursing homes with a modern nursing home and a 30 bed assisted living facility.

The project which ensued calls for the closing of the underutilized County nursing home, which continues to require substantial subsidies from Franklin County to maintain operations. The project also downsizes the total number of beds from 155 to 135, and introduces ALP beds as a new long term care alternative in the County. The replacement nursing home will offer focused care in three specialty sub-units: a 12-bed "clinically complex" unit, a 12-bed short term rehabilitation unit and a 27-bed dementia/"memory care" unit. These units do not receive formal designation on the operating certificate, but are generally designed with additional features to address the special program requirements of the resident sub-group. The applicant has not heretofore provided the specialized program for these sub-units.

Physical Environment

The proposed building will consist of three stories without basement, situated directly north of the existing Alice Hyde Medical Center. The replacement nursing home will utilize a conventional square design with double loaded corridors, surrounding an interior courtyard. The assisted living facility is attached to the nursing home through two corridors connecting to the first and second floors at the southeast corner. Entrance from the drop-off area into the nursing home is made from the southern side of the building, into a compact waiting area. The waiting area opens into the elevator lobby, and is flanked by the admissions and administrative offices. The kitchen for the first floor nursing units is located to the rear of the lobby, serving the two neighborhood dining areas located on each side. The kitchen/dining area is also replicated on the two floors directly above. Access into the central courtyard is made through a corridor which bisects the northern end of the building. The corridor will include a service entrance to the outside of the building

to enable access for equipment into the courtyard. An additional entrance into the nursing home is available on the west side of the building, adjacent to the staff parking lot. The applicant will be required to maintain appropriate signage restricting entry to authorized staff.

The first floor consists of 55 beds divided into a 28 bed "conventional" neighborhood and 27 bed dementia/"memory care" unit. The second floor consists of 56 conventional nursing home beds divided into two 28 bed neighborhoods. Each neighborhood contains adequate lounge and dining space, with a nursing station and separate staff alcove providing sufficient unit coverage. The third floor will only total 24 beds organized into 12 bed "clinically complex" and short term rehabilitation units. The two 12 bed neighborhoods will contain the same dining and activity space as the larger first and second floor units. The two dining areas may include an excess of space needed for mealtimes, which would open up additional space for recreation and activities. Each floor will include a spa room with whirlpool tub located on the southern end for assistive bathing.

The resident rooms will be arranged in a nearly 3 to 1 ratio of double to single bedrooms, well in excess of the 10% single bed requirement. The doubles will all be constructed as generously sized enhanced doubles, which feature partitions between the beds to afford greater privacy for the residents. All resident rooms will include bathrooms with European-type showers. A bariatric-sized bedroom will be located on the first and second floors, with two more bariatric rooms on the third floor.

As previously noted, specialty designated units are located on the first and third floors. The short term rehab unit is located adjacent to the rehab gym, which aligns with the program for the unit. However no special features are evidenced for the "clinically complex" and dementia units which relate to their intended programmatic focus. The dementia unit notably lacks a wandering loop, and its location adjacent to the ALP corridor and front entrance way increases its vulnerability to an elopement incident.

Since the building is to be constructed without a basement, industrial and service functions are located on the ground or first floor, in the southwest corner. A service elevator will connect to the upper floors, however substantial traffic will be generated through the nursing units for housekeeping and general and medical supplies. The location of these functions, including the mechanical and electrical rooms, in the front of the building precludes their use for additional resident amenities, which heightens the overall institutional character of the facility. The barber and beauty salon is located on the second floor, adjacent to the ALP connector. Provision for storage, including resident personal belongings is also impacted by the exclusion of a basement. Resident storage areas are included on each floor, which detracts from space available for activities and socialization.

Conclusion

The new Alice Hyde Nursing Home will replace two obsolete nursing homes and permit the closure of the County facility. While the proposed design is more akin to a traditional institutional model than a modern resident-centered home-like environment, it is an improvement over the obsolete nursing homes it will be replacing. The resident rooms will be arranged in a nearly 3 to 1 ratio of double to single bedrooms, well in excess of the 10% single bed requirement. The doubles will all be constructed as generously sized enhanced doubles, which feature partitions between the beds to afford greater privacy for the residents, All resident rooms will include bathrooms with European-type showers. However, while the resident rooms will be spacious, they are arrayed in a linear placement, and socialization areas are limited in the proposed design. Also, the location of the memory unit near the connector to the assisted living wing and the front entrance increases the risk of elopement or unaccompanied egress by the residents on the unit; therefore the applicant must address how patient safety in this area will be ensured.

The applicant should consider making the following design changes, if not cost prohibitive:

- An additional entry into the interior outdoor area, adjacent to the elevator bank.
- Possible relocation of the dementia/"memory care" unit or provision of other safeguards to ensure the security and safety of the unit's residents.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of moveable equipment, is estimated at \$30,917,203, further itemized as follows:

Land Acquisition	\$0
New Construction	19,067,644
Site Development	1,823,696
Design Contingency	1,030,817
Construction Contingency	1,614,367
Fixed Equipment	45,000
Planning Consultant Fees	50,000
Architect/Engineering Fees	1,917,598
Construction Manager Fees	30,100
Other Fees (Consultant)	195,660
Moveable Equipment	1,057,000
Telecommunications	638,400
Financing Costs	1,303,187
Interim Interest Expense	1,972,631
CON Fee	2,000
Additional Processing Fee	<u>169,103</u>
Total Project Cost	\$30,917,203

Project costs are based on a June 1, 2013 construction start date and a seventeen month construction period.

Based on the midpoint of the construction in 2014, the Bureau of Architectural and Engineering Facility Planning has determined that the respective costs are within the construction cost per bed. The applicant has indicated that the land is currently recorded on the hospital's balance sheet.

The applicant's financing plan appears as follows:

HEAL 19 Grant	\$4,483,733
Equity	155,729
Mortgage (5.00% interest rate for 25 years)	26,277,741

The applicant is in the process of determining whether to pursue financing via the Dormitory Authority of the State of New York or a Local Development Corporation. The applicant submitted a letter of interest in regard to the financing.

The Department of Health has reduced the equity requirement for this project to 15% due to financial hardship and the reduction of 20 RHCF beds in the County.

Long Term Health Care Restructuring Services Agreement

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

Parties:	Franklin County Board of Legislature, the governing body for the Unincorporated County of Franklin and Alice Hyde Medical Center
Purpose:	The Board desires to close the County nursing home but only if an adequate alternative is developed to ensure that Franklin County residents have access and the Board commits to provide financial support in a fixed annual amount over a ten year period, to make the project financially feasible for Alice Hyde.
Appropriations:	The Board will appropriate and pay to Alice Hyde a total of \$10,000,000 towards the project, to be paid annually in ten equal installments of \$1,000,000.

Operating Budget

The applicant has submitted an operating budget for the 135 beds, in 2013 dollars, for the third year after the completion of the replacement facility, summarized as follows:

	<u>Per Diem</u>	<u>Total</u>
Medicaid Fee-for-Service	\$233.73	\$9,593,682
Medicare	260.00	1,012,368
Private Pay	294.96	<u>996,953</u>
Total Revenues		\$11,603,003
Expenses:		
Operating	\$197.54	\$9,539,118
Capital	<u>56.89</u>	<u>2,747,146</u>
Total Expenses	<u>\$254.43</u>	\$12,286,264
Excess of Revenues over Expenses		\$(683,261)
Utilization: (patient days)		48,290
Occupancy		98.00%

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

- The capital component of Medicaid revenues will be going from a public facility reimbursement methodology to the voluntary reimbursement methodology.
- The case index for the nursing facility is .85.
- Utilization for the nursing facility beds, itemized by payor source, for the third year after the completion of the replacement facility is as follows:

Medicaid	85.00%
Medicare	8.00%
Private Pay	7.00%

Expense and utilization assumptions are based on the historical experience trended to reflect 2013 expenses and a 135 bed facility.

Capability and Feasibility

The total project cost of \$30,917,203 will be met as follows: HEAL 19 Grant of \$4,483,733; Equity of \$155,729, and a mortgage of \$26,277,741 at an interest rate of 5.00% for a twenty year term. The applicant is in the process of determining whether to pursue financing via the Dormitory Authority of the State of New York or a Local Development Corporation. The applicant submitted a letter of interest in regard to the financing.

Working capital requirements are estimated at \$2,047,710, which appears reasonable based on two months of third year expenses. The applicant has submitted a Vital Access Provider application to assist with the operational costs associated with the start up of the new facility as well as the costs associated with closing of the existing facility. The remainder, \$1,023,855, will be provided via accumulated funds. Presented as BFA Attachment A, is the October 31, 2012 internal financial statements of Alice Hyde Medical Center, which indicates the availability of sufficient funds for the equity contribution to meet the total project cost and the working capital requirement.

The submitted budget indicates an excess of revenues over expenses of (\$683,261). The loss will be offset via operations. Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with a cost based capital component payment methodology, to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

Presented as BFA Attachment B is the 2010 and 2011 certified financial statements of Alice Hyde Medical Center. As shown on Attachment B, the hospital had an average positive working capital position and an average positive net asset position from 2010 through 2011. Also, the applicant incurred an average loss of \$1,361,942 from 2010 and 2011. The applicant has indicated that the reason for the losses were as follows: primarily due to reductions in reimbursement, reduction in inpatient admissions due to an increase in observation care; costs associated with physician recruitment, and the development of a hospitalist program. In addition, the hospital transitioned to a full MD emergency room coverage model, which increased their operating costs as well. The applicant implemented the following steps to improve operations: implemented an aggressive restructuring and reorganization plan, which will improve the organization operating performance; hired a new president and CEO in 2012, and full time equivalents have been reduced by 8.2% or 50.

As shown on Attachment A, the hospital had a positive working capital position and a positive net asset position for the period through October 31, 2012. Also, the hospital achieved an operating excess of revenues over expenses of \$25,169 through October 31, 2012.

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-	October 31, 2012 internal financial statements of Alice Hyde Medical Center
BFA Attachment B-	2010 and 2011 certified financial statements of Alice Hyde Medical Center

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

April 11, 2013

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

Acute Care Services – Construction

Exhibit #5

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	112363 C	Mount Sinai Hospital (Queens County) Dr. Martin - Recusal	Contingent Approval
2.	122297 C	New York Presbyterian Hospital – Columbia Presbyterian Center (New York County) Ms. Regan - Interest	Contingent Approval
3.	122306 C	New York Presbyterian Hospital – Columbia Presbyterian Center (New York County) Ms. Regan - Interest	Contingent Approval
4.	122314 C	New York Presbyterian Hospital – New York Weill Cornell Center (New York County) Ms. Regan - Interest	Contingent Approval
5.	122316 C	New York Presbyterian Hospital – New York Weill Cornell Center (New York County) Ms. Regan - Interest	Contingent Approval

**Downstate Request for Applications – Certified Home Health Agencies – Exhibit #6
Construction**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	121201 C	Alpine Home Health Care, LLC (Bronx County) Mr. Fassler – Recusal Mr. Fensterman - Recusal	Contingent Approval



Public Health and Health Planning Council

Project # 112363-C

Mount Sinai Hospital

County: Queens (Long Island City)
Purpose: Construction

Program: Acute Care Services
Submitted: December 21, 2011

Executive Summary

Description

Mount Sinai Hospital Medical Center of Manhattan is proposing to modernize its Mount Sinai Hospital – Queens facility (MSHQ) through the construction of a new freestanding building for emergency, ambulatory and surgical care on the MSHQ campus. The proposed facility will house a “polyclinic” with new and expanded space for primary care, specialty care, diagnostic imaging services, laboratory services and urgent care. The new building will also have an expanded emergency department with 36 treatment bays and eight observation beds, and will further include 10 operating rooms. The project will also include minor renovations to MSHQ’s existing buildings.

Mount Sinai will change the paradigm in delivery, as the Polyclinic will provide one-stop care, with coordinated and comprehensive medical services. Currently employed physicians will also contribute to the expansion of this facility. There will be no change to the number of inpatient beds at Mount Sinai Hospital as a result of this project.

DOH Recommendation
Contingent approval.

Need Summary

Mount Sinai Hospital Medical Center seeks to transform Mount Sinai Hospital Queens into a Center of Excellence for Comprehensive Ambulatory Care and

Surgery. The project will provide significant improvements to emergency and urgent services, imaging, endoscopy, ambulatory surgery, physician space, operating rooms and patient support spaces. The hospital will add four net new operating rooms for a total of ten (10), expand emergency room capacities to accommodate 36 treatment bays and eight observation beds.

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

The total project cost for construction is \$148,902,389. \$114,905,277 is for Article 28 space and the residual \$33,997,112, is for non-Article 28 space. Project costs will be met via tax-exempt bonds in the amount of \$134,000,000 at a rate of 5% for a term of 30 years, and \$10,902,389 in equity and Heal Phase 14 for \$4,000,000.

Incremental Budget:	Revenues:	\$ 59,741,174
	Expenses:	<u>55,942,999</u>
	Gain/ (Loss)	\$3,798,175

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 review 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 a bond resolution that is acceptable to the Department of Health. Included with the submitted bond resolution must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. The applicant is required to submit design development drawings, complying with requirements of 10NYCRR Part 710.4, for review and approval by DASNY. [AES]

Approval conditional upon:

1. The applicant is required to submit final construction documents, complying with requirements of 10NYCRR Part 710.7, to NYS DOH Bureau of Architecture and Engineering Facility Planning (BAEFP) prior to start of construction. [AES]
2. The applicant shall complete construction by June 15, 2016 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 11, 2013.

Need Analysis

Background

Mount Sinai Hospital Queens (MSHQ) is a 235-bed acute care hospital located at 25-10 30th Avenue Long Island City, Queens County. Mount Sinai Hospital Queens is a division of The Mount Sinai Hospital Medical Center (MSHMC). The facility is seeking approval to construct a new patient tower to modernize and expand services on the Queens campus.

Mount Sinai Hospital Queens (MSHQ) has the following certified beds and services:

Table 1: Mount Sinai Hospital Queens: Certified Beds by Service.	
<u>Bed Category</u>	<u>Current Capacity</u>
Medical / Surgical	227
Intensive Care	8
Total	235

Table 2: Mount Sinai Hospital Queens: Certified Service.	
Ambulatory Surgery - Multi Specialty	CT Scanner
Clinical Laboratory Service	Emergency Department
Intensive Care	Magnetic Resonance Imaging
Medical Social Services	Medical/Surgical
Nuclear Medicine - Diagnostic	Nuclear Medicine - Therapeutic
Optometry O/P	Pharmaceutical Service
Primary Medical Care O/P	Radiology - Diagnostic
Renal Dialysis - Acute	Therapy - Occupational O/P
Therapy - Physical O/P	Therapy - Speech Language Pathology O/P

State Designation:

- Stroke Center.

The following are the important elements of the proposal:

- a new five-(5)-story addition for the hospital campus;
- space for a new emergency department with 36 treatment bays and 8 observation beds;
- an increase in operating rooms from 6 to 10; and
- new medical office space.

The applicant intends to have freestanding and small multi-specialty practices function as Mount Sinai's health care network in Queens. Mount Sinai indicates that the network has grown by 56 physicians since 2008, including 24 primary care physicians and 32 specialists. The hospital expects to expand primary and preventive care and to further extend its outreach programs to the various population groups in the service area.

The project also includes a freestanding and integrated polyclinic offering the following:

- Primary Care – 20 new primary care physicians;
- Specialty Care – 20 new specialists in the following areas: cardiology; endocrinology; gastroenterology; general surgery; thoracic and vascular surgery;
- Diagnostic services – MRI, CT Scan, Bone density, mammography, X-Ray and ultra sound services;
- Laboratory Services – improved laboratory services, to help eliminate unnecessary visits; and
- Urgent Care –an urgi-center operating six (6) days a week, which will accept Medicaid patients.

The expanded surgical capacity at the facility will focus on:

- Ambulatory and mid-complexity patients
 - Thoracic;
 - Orthopedic; and
 - General surgery.

These services will reduce the number of low-and-mid-complexity patients who migrate from Queens to Mount Sinai Hospital in Manhattan.

Analysis

Patient Origin and Population

From 2008 to 2011, an average of 89.6 percent, of Mount Sinai Hospital Queens' total inpatient discharges were residents of Queens, while 4.9 percent were from New York County. In 2000, the census of these counties was 3,766,574. Census counts for 2010 showed a small increase of 1.3 percent to 3,816,595 residents. Between the two census periods, the total population of Queens County increased slightly, by 0.1 percent, from 2,229,379 in 2000 to 2,230,722 in 2010.

Displayed in Table 3 below is MSHQ's total inpatient utilization. As shown below, from 2007 to 2011, MSHQ has averaged about 10,250 total inpatient discharges a year. During this five-year interval, these patients generated an average daily census that ranged from 157 to 164 patients on any given day. The associated occupancy rates based on the hospital's total certified beds of 235 ranged from 67.0 percent to 70.0 percent (Table 3). However, MSHQ indicated that due to space constraints only 192 of its 235 total certified beds were available for inpatient use. Adjusting its occupancy rates based only on active beds yielded revised occupancy rates that ranged from 81.8 percent to 85.4 percent.

Table 3: Mount Sinai Hospital Queens: Total Inpatient Utilization Statistics. Source: SPARCS 2007- 2011*.					
	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011*</u>
Discharges	10,085	9,988	10,543	10,634	10,014
Average Daily Census	158	158	164	157	158
Average Length of Stay	5.7	5.8	5.7	5.4	5.8
Occupancy Based on Current Beds	67.2	67.1	70.0	67.0	67.3

*Reporting fro 2011 is incomplete

Because there exists a need for acute care beds in Queens, due in part to the closure of several facilities in the borough in recent years, MSHQ plans to retain its full complement of acute care beds. The hospital also anticipates that the fuller use of its bed capacity will occur as the MSHQ health care network in Queens continues to grow and as outreach programs to underserved and at-risk populations bring more patients into needed care. The preservation of inpatient capacity at MSHQ will lead to greater efficiency in the Mount Sinai network by obviating the need for patients with more general diagnoses to travel to MSH Manhattan, restricting referrals to that facility to patients with conditions requiring complex tertiary and quaternary services.

Mount Sinai Hospital Queens also provides care for patients seeking Emergency Department (ED) services. During the period under review, the hospital's total emergency visits increased by 13.7 percent from 44,775 in 2007 to 50,914 in 2011. Of the aforementioned visits, on average, about 20.0 percent of these visits resulted in an inpatient admission. MSHQ also performed a sizable number of ambulatory surgery procedures. During the years under consideration, these procedures increased by 39.6 percent, from 3,685 in 2007 to 5,144 in 2011. The hospital's general clinic visits increased steadily from 33,272 in 2007 to 37,930 in 2011 (Table 4).

Table 4:
Mt. Sinai Hospital Queens: Emergency Department, Ambulatory Surgery and General Clinic Statistics.
Source: Institutional Cost Reports 2007 – 2011.

Year	Total Emergency Department Visits	% of Emergency		
		Department Visits Resulting in Inpatient Admission	Amb/Surg Procedures	General Clinic Visits*
2007	44,775	21.3	3,685	33,272
2008	46,093	20.7	4,004	33,547
2009	49,812	19.2	4,645	36,907
2010	49,948	20.1	4,892	37,576
2011	50,914	18.6	5,144	37,930

The hospital's request to increase its Emergency Department bays and operating rooms are supported by its significant growth in the two areas. MSHQ's Emergency Department visits increased by 13.7 percent from 44,775 visits in 2007 to 50,914 in 2011; based on NYSDOH ED standard of 1,500 visits per bay per year, the hospital needed 34 bays to operate within the desired parameters. By increasing the number of ED bays to 36, MSHQ will have the needed capacity to treat its ED patients.

The additional ORs that MSHQ request are also supported by its growth in total surgical cases. Combined inpatient and outpatient cases recorded by the hospital increased by 24.1 percent from 6,931 in 2007 to 8,598 in 2011. The additional ORs will allow the hospital to accommodate its growth in surgical cases and let the hospital operate within NYSDOH standard of 800 to 1,200 cases per OR per year.

MSHQ is located in Western Queens County in City Planning District 1, which is a racially diverse community. In addition to modernizing and expanding the facility to meet its inpatient needs, MSHQ is also developing programs to address the community outpatient needs in areas such as hypertension, diabetes and bacterial pneumonia. The hospital plans to expand its outreach program to the various communities in Western Queens in an effort to encourage the underserved to seek help for health issues that require intervention to avoid exacerbation and subsequent hospitalization.

Conclusion

This project will further integrate the clinical services of Mount Sinai's Manhattan and Queens campuses. It will allow MSHQ to take advantage of the Centers of Excellence in Manhattan by bringing physicians and programs to Western Queens in key areas such as Thoracic Oncology Surgery, Colo-rectal Surgery, Interventional Radiology and Joint Replacement and Spine. As an integral part of the system, MSH will provide services for complex tertiary and quaternary level services that cannot be provided or do not make sense to replicate at the community level.

The increased capacity in Emergency Department bays and operating rooms fall within NYSDOH utilization guidelines.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Mount Sinai Hospital of Queens, a division of Mount Sinai Hospital, requests approval to undertake a modernization and expansion of their facility. This project will enable improvements to emergency services, surgical care, and patient and staff support capabilities through the construction of a five-story (plus cellar) addition and limited renovations to the existing building. Construction and modernization will include a new emergency department, additional operating rooms, and an observation unit. Two floors of the new addition will be non-Article 28 space to accommodate Mount Sinai physician practices to allow for the expansion of the Mount Sinai Health Network.

Mount Sinai anticipates increasing staffing by 73 FTEs by the third year after construction.

Compliance with Applicable Codes, Rules and Regulations

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

The 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.

- Mount Sinai was fined \$6,000 in 2007 for resident working hour violations.
- Mount Sinai was fined \$126,000 in 2003 based on the investigation into the death of a liver donor who was under inadequate supervision in the recovery room. A focused survey of the service resulted in fifty three additional cases where similar deficiencies were identified.

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost for new construction and the acquisition of moveable equipment is estimated at \$114,905,277 itemized as follows:

Renovation & Demolition	\$12,280,445
New Construction	48,429,305
Site Development	750,000
Design Contingency	5,433,594
Construction Contingency	4,725,384
Architect/Engineering Fees	4,380,000
Construction Manager Fees	1,825,000
Other Fees	1,168,000
Moveable Equipment	14,500,000
Telecommunications	2,920,000
Financing Cost	4,127,200
Interim Interest Expense	13,735,838
Application Fee	2,000
Processing Fee	<u>628,511</u>
Total Project Costs	\$114,905,277

Project costs are based on a September 1, 2013 start date and a thirty three month construction period. The Bureau of Architectural and Engineering Facility Planning has determined that this project includes non-Article 28 space costs

of \$33,997,112, which is not included in total project cost above. As a result, the total approved project cost for reimbursement purposes shall be limited to \$114,905,277. Accordingly, the total construction cost including the non-Article 28 space is \$148,902,390.

The applicants financing plan appears as follows:

	<u>Article 28</u>	<u>Non-Article 28</u>
Cash/Equity	\$ 7,490,528	\$ 3,411,861
Heal – Phase 14	4,000,000	0
*Tax-exempt Bonds	<u>103,414,749</u>	<u>30,585,251</u>
Total Project Cost	<u>\$114,905,277</u>	<u>\$33,997,112</u>

*DASNY Bonds represent 90% of total project costs and will assume a 5% interest rate for a 30 year term. Also, based on the 2041 bond maturity and bond rating of (A2, A) from Moody’s Investor’s service, the range for interest is 5% to 6%. The financing will also include a Debt Service Reserve Fund for approximately \$9.4 million, representing the maximum annual debt service.

Operating Budget

The applicant has submitted an incremental operating budget in 2013 dollars, for MSH, for the first and third years, summarized below:

Mount Sinai Hospital – Inpatient/Outpatient

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Outpatient Revenue	\$6,368,999	\$9,215,226
Inpatient Revenue	29,012,339	\$48,078,714
*Other Revenue	<u>1,904,234</u>	<u>2,447,234</u>
Total Revenue	<u>\$37,285,572</u>	<u>\$59,741,174</u>
Expenses:		
Operating	\$30,390,000	\$42,847,999
Capital	10,495,000	13,095,000
Total Expenses	<u>\$40,885,000</u>	<u>\$55,942,999</u>
Excess Revenues over Expenses	(\$3,599,428)	\$3,798,175
(Outpatient Visits)	36,855	63,196
** (Discharges)	(388)	(513)

Presented as Attachment B, is the cost analysis of the impact of the project. The following is noted with respect to the applicant’s budget:

- Discharges are decreasing in year one and three due to a decrease in re-admissions.
- The average length of stay will decrease from 5.64 to 5.30, reducing the discharge rate.
- Cost per visit increases as the facility will be able to treat more severe patients as outpatients, but the reimbursements would also be higher.

*Other revenue consists of contracted physician fees, rental income and miscellaneous fees paid to MSHQ.

Mount Sinai Hospital – Discharges

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-for-Service	8.4%	7.5%
Medicaid HMO	19.0%	20.0%
Medicare Fee-for-Service	33.0%	33.5%
Medicare HMO	18.2%	19.0%
Commercial Fee-for-Service	6.8%	5.7%
Commercial Managed Care	9.4%	8.9%
Private Pay	5.2%	5.4%

Incremental utilization, indicated by payor source for the first and third year for Mount Sinai Hospital outpatient services is as follows:

Mount Sinai Hospital– Visits

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-for-Service	5.0%	4.3%
Medicaid HMO	36.2%	37.9%
Medicare Fee-for-Service	13.4%	13.1%
Medicare HMO	10.8%	11.1%
Commercial Fee-for-Service	6.1%	5.9%
Commercial Managed Care	18.3%	18.5%
Private Pay	10.2%	9.2%

Expense and utilization is based on historical trends; expenses are based on current reimbursement methodologies.

Capability and Feasibility

The total project cost is \$148,902,389 for MSHQ, which the applicant will pay \$10,902,389 in cash equity, \$4,000,000 in HEAL grant funding, and a loan of \$134,000,000 in tax-exempt bonds at a rate of 5% for 30 years. Presented as BFA Attachment A is the 2010 and 2011 certified financial statements of Mount Sinai Hospital, which indicates the availability of sufficient funds for the equity contribution. Also, a letter of interest has been submitted from the lending institution, and an executed contract from the NYS Department of Health for HEAL 14 grant monies has been submitted.

The submitted budget for MSH projects an excess of revenues over expenses of (\$3,599,428), and \$3,798,175 for the first and third year of operation, respectively. Revenues are based on the hospitals' current reimbursement methodologies.

As shown on Attachment A, MSH maintained an average positive working capital position and an average positive net asset position. Also, MSH has achieved an excess of revenue over expenses of \$79,236,000, and \$87,390,000 in 2011 and 2010, respectively.

Presented as BFA Attachment B are the 2012 internal financial statements for MSH from January 1, 2012 thru September 30, 2012. MSH has maintained a positive working capital position and positive net asset position. Also, MSH has achieved an excess of revenue over expenses of \$48,870,000 for the period shown.

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.

Attachments

- | | |
|------------------|--|
| BFA Attachment A | Financial Summary |
| BFA Attachment B | Financial Summary |
| BFA Attachment C | Summary Detailed Budget Mount Sinai Hospital |
| BHFP Attachment | Map |



Public Health and Health Planning Council

Project # 122297-C New York Presbyterian Hospital – Columbia Presbyterian Center

County: New York (New York)
Purpose: Construction

Program: Acute Care Services
Submitted: December 19, 2012

Executive Summary

Description

New York Presbyterian Hospital, a 2,298-bed not-for-profit hospital located in New York County, requests approval to renovate the existing Adult Emergency Department (ED) located on the 1st floor of the Vanderbilt Clinic (VC) Building, and vacant space on the 1st floor of the Presbyterian Hospital Building at the New York Presbyterian Hospital/Columbia University Medical Center campus. Upon project completion, the Adult ED will consist of 66 acute care treatment areas and 22 Rapid Medical Evaluation areas. To keep vital hospital functions operational, the project will be completed in 5 phases. The applicant consists of the following four divisions with respective bed capacities: Columbia Presbyterian Center (977); Allen Hospital (201); New York Weill Cornell Center (850) and Westchester Division (270).

The existing Adult ED has not been renovated in over 20 years, and while the existing Adult Ed continues to maintain its commitment to providing quality patient care to the community, the configuration of the existing space presents functional and operational challenges.

The project will include the following:

- The renovation of the existing hospital Broadway Avenue entrance for the creation of a new structure that will contain a dedicated ambulatory entrance, designated public entrance to the hospital and a new waiting area for the Adult ED.
- The renovation of the existing RME area and vacant hospital space for the creation of new triage, waiting and expanded 22 bay RME areas.
- The renovation of existing acute care areas A, B and C for the creation of new acute care Area A with 17 treatment areas.
- The renovation of vacant administrative space on the 1st floor of the PH Building for the creation of new acute care Area E with 15 treatment areas for a total of 15 acute care treatment areas.

- Modifications and upgrades to the existing mechanical, electrical, and plumbing systems for the installation of new MED systems to accommodate the new architectural layout of the ED.

DOH Recommendation
Contingent approval.

Need Summary

New York Presbyterian Hospital - Columbia seeks to renovate its existing Adult Emergency Department to meet the operational challenges that are presented by the ED's current configuration. Adult treatment areas will increase from 45 to 66, and the rapid medical evaluation area will increase by 12, from 10 to 22. The proposed project will allow the hospital to increase patient satisfaction, improve staff productivity, and modernize the architectural layout of the department.

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

Total project cost of \$73,921,053 will be met via fundraising. The applicant has indicated that if fundraising proceeds are not met, then the hospital will provide equity from operations.

Budget:

Revenues	\$67,714,668
Expenses	55,589,119
Excess of Revenues over Expenses	\$12,125,549

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

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

Approval conditional upon:

1. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
2. The applicant shall complete construction by April 1, 2017 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 11, 2013.

Need Analysis

Background

New York Presbyterian Hospital - Columbia Presbyterian (NYPH Columbia) Center is a 977-bed acute care facility located at 622 West 168th Street, New York, 10032, in New York County. NYPH Columbia seeks to renovate its existing Adult Emergency Department and increase its acute treatment areas from 45 to 66 and rapid medical evaluation areas from 10 to 22.

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

Table 1: New York Presbyterian Hospital - Columbia Presbyterian Center: Certified Beds by Service. Source: HFIS, February 2013.	
<u>Bed Category</u>	<u>Certified Capacity</u>
AIDS	14
Bone Marrow Transplant	4
Chemical Dependence - Detoxification	3
Coronary Care	18
Intensive Care	99
Maternity	58
Medical / Surgical	541
Neonatal Continuing Care	11
Neonatal Intensive Care	14
Neonatal Intermediate Care	33
Pediatric	100
Pediatric ICU	41
Physical Medicine and Rehabilitation	16
Psychiatric	25
Total	977

Table 2: New York Presbyterian Hospital - Columbia Presbyterian Center: Certified Services. Source: HFIS, February 2013.	
AIDS	AIDS Center
Ambulatory Surgery - Multi Specialty	Audiology O/P
Cardiac Catheterization - Adult Diagnostic	Cardiac Catheterization - Electrophysiology (EP)
Cardiac Catheterization - Pediatric Diagnostic	Cardiac Catheterization - Pediatric Intervention
	Elective
Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)	Cardiac Surgery - Adult
Cardiac Surgery - Pediatric	Certified Mental Health Services O/P
Chemical Dependence - Detoxification	Clinical Laboratory Service
Comprehensive Psychiatric Emergency Program	Coronary Care
Dental O/P	Emergency Department
Epilepsy Comprehensive Services	Family Planning O/P
Health Fairs O/P	Intensive Care
Linear Accelerator	Lithotripsy
Magnetic Resonance Imaging	Maternity
Medical Social Services	Medical/Surgical
Neonatal Continuing Care	Neonatal Intensive Care
Neonatal Intermediate Care	Nuclear Medicine - Diagnostic
Nuclear Medicine - Therapeutic	Pediatric
Pediatric Intensive Care	Pediatric O/P
Pharmaceutical Service	Physical Medical Rehabilitation
Physical Medicine and Rehabilitation O/P	Prenatal O/P
Primary Medical Care O/P	Psychiatric
Radiology - Diagnostic	Radiology-Therapeutic

Table 2: New York Presbyterian Hospital - Columbia Presbyterian Center: Certified Services. Source: HFIS, February 2013.	
Renal Dialysis - Acute	Renal Dialysis - Chronic
Respiratory Care	Therapy - Occupational O/P
Therapy - Physical O/P	Therapy - Speech Language Pathology
Transplant - Bone Marrow	Transplant - Heart - Adult
Transplant - Heart - Pediatric	Transplant - Kidney
Transplant - Liver	

NYPH has the following New York State Designations:

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

The NYPH Columbia Adult Emergency Department renovation project will accomplish the following:

- Improved triage process in order to handle cases more efficiently;
- Provide a larger rapid medical evaluation area for low acuity patients;
- Revamp the acute care area and increase efficiency for high acuity patients;
- Enhance the continuum of care by improving adjacencies;
- Create larger waiting areas for patients and families.

Analysis/Discussion

Over the last three years, excluding healthy newborns, NYPH Columbia has averaged more than 47,000 inpatient discharges for an occupancy rate of almost 85.0 percent. When healthy newborns are factored in during the period under review, the hospital's discharges increase by 3,600 to an average of 50,600 (Table 3).

Table 3: New York Presbyterian Hospital - Columbia Presbyterian Center: Inpatient Summary Statistics. Source: SPARCS 2009 – 2011.							
Service Category	Discharges:			Occupancy Based on Current Beds			Current Beds
	2009	2010	2011	2009	2010	2011	Beds
Subtotal (Excluding Healthy Newborns)	46,944	47,434	46,645	83.4	83.4	84.7	977
Healthy Newborns	3,663	3,610	3,523				
Grand Total	50,607	51,044	50,168				

In 2009, NYPH Columbia recorded 106,443 total Emergency Department visits; by 2011, these visits increased by 2.1 percent to 108,730 and stood at 126,732 in 2012 (Table 4). Approximately 17.0 percent to 21.1 percent of the hospital's total ED visits results in an inpatient admission.

Table 4: New York Presbyterian Hospital - Columbia Presbyterian Center: Total Emergency Department Visits. Source: SPARCS 2009 – 2012.		
Year	Total Emergency Department Visits	% ED Visits Admitted
2009	106,443	20.1
2010	104,132	20.6
2011	108,730	18.4
2012	126,732	16.5

The proposed enhancements to the hospital's Adult Emergency Department will include the following:

- Renovation of the existing the Broadway Avenue entrance and create a new structure that will contain: dedicated ambulatory entrance, designated public entrance, and new waiting area.
- Renovation of the existing rapid medical evaluation area and creation of a new triage and waiting area;
- Renovation of existing acute care areas and creation of appropriate treatment areas; and
- Modification and upgrading of the existing mechanical and electrical systems and plumbing to accommodate the new architectural layout.

The hospital indicates that the renovation of the existing ED is consistent with NYPH's Community Service Implementation Plan.

Conclusion

The new ED will allow NYPH Columbia to efficiently triage its patients and reduce the average wait time from treatment to discharge, thus reducing overcrowding in all areas of the ED. The patient flow will be greatly enhanced and staff will be able to effectively triage all patients. As the patient volume continues to grow, the new and renovated ED will allow the hospital to provide needed care in a more efficient manner.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

New York-Presbyterian Hospital (NYP) requests approval to renovate and expand the existing adult emergency department at the Columbia University Medical campus.

It is anticipated that staffing will increase by 72 FTEs by the first year following construction.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$73,921,253, further itemized as follows:

Renovation and Demolition	\$44,751,619
Asbestos Abatement or Removal	1,401,125
Design Contingency	4,475,181
Construction Contingency	4,475,181
Planning Consultant Fees	837,725
Architect/Engineering Fees	4,795,012
Other Fees (Consultant)	3,920,000
Moveable Equipment	8,858,878
CON Fee	2,000
Additional Processing Fee	<u>404,332</u>
Total Project Cost	\$73,921,053

Project costs are based on an September 1, 2013 construction start date and a forty month construction period.

The applicant's financing plan appears as follows:

Fundraising \$73,921,053

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$37,175,731	\$67,714,668
Expenses:		
Operating	\$29,084,825	\$51,914,350
Capital	<u>4,312,940</u>	<u>3,674,769</u>
Total Expenses	\$33,397,765	\$55,589,119
Excess of Revenues over Expenses	\$4,317,966	\$12,125,549
Utilization:		
Outpatient: (Visits)	7,602	13,848
Inpatient: (Discharges)	1,901	3,462

Utilization shown by payor source for incremental inpatient discharges during the first and third years is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-for-Service	17.15%	17.12%
Medicaid Managed Care	17.62%	17.65%
Medicare Fee-for-Service	34.77%	34.74%
Medicare Managed Care	13.68%	13.69%
Commercial Fee-for-Service	.47%	.46%
Commercial Managed Care	13.83%	13.83%
Other	2.48%	2.51%

Utilization broken down by payor source for incremental outpatient visits during the first and third years is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-for-Service	12.09%	12.08%
Medicaid Managed Care	28.35%	28.34%
Medicare Fee-for-Service	11.60%	11.60%
Medicare Managed Care	5.55%	5.54%
Commercial Fee-for-Service	.67%	.67%
Commercial Managed Care	15.90%	15.91%
Other	25.84%	25.86%

Expense assumptions are based on the historical experience related to the ED inpatient and ED outpatient. The volume is based on projected hospital capacity and physical capacity of the ED. Projections of ED volume growth for ED admissions the ED treatment releases are consistent with historical experience.

Capability and Feasibility

Project costs of \$73,921,053 will be met via fundraising. If the facility does not meet its fundraising goals, then the hospital will provide equity from operations.

Working capital requirements are estimated at \$9,264,853, which appears reasonable based on two months of third year incremental expenses. The applicant will provide equity from operations to meet the working capital requirement. Presented as BFA Attachment A are the October 31, 2012 internal financial statements of New York Presbyterian Hospital, which indicates the availability of sufficient funds to meet the total project cost and the working capital requirements.

The submitted budget indicates an excess of revenues over expenses of \$4,317,966 and \$12,125,549 during the first and third years, respectively. Revenues are based on current reimbursement methodologies.

As shown on Attachment A, New York Presbyterian Hospital had a positive working capital position and a positive net asset through October 31, 2012. Also, the hospital achieved operating excess of revenues over expenses of \$158,793,000 through October 31, 2012.

Presented as BFA Attachment B are the 2010 and 2011 certified financial statements of The New York Presbyterian Hospital. As shown, the hospital had an average positive working capital position and an average positive net asset position from 2010 through 2011. Also, the hospital achieved an average operating income of \$147,441,000 from 2010 through 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

BFA Attachment A-	Financial Summary- October 31, 2012 internal financial statements of New York Presbyterian Hospital
BFA Attachment B-	Financial Summary- 2010 and 2011 certified financial statements of New York Presbyterian Hospital



Public Health and Health Planning Council

Project # 122306-C New York Presbyterian Hospital – Columbia Presbyterian Center

County: New York (New York)
Purpose: Construction

Program: Acute Care Services
Submitted: December 21, 2012

Executive Summary

Description

New York Presbyterian Hospital, a 2,298-bed not-for-profit hospital located in New York County, requests approval to renovate and upgrade 10 existing inpatient units located at the Milstein Hospital Building (MHB) at the New York Presbyterian/Columbia University Medical Center campus.

The applicant consists of the following four divisions with respective bed capacities: Columbia Presbyterian Center (977); Allen Hospital (201); New York Weill Cornell Center (850), and Westchester Division (270).

The proposed renovation will create the following:

- A discreet unit entry point that will be removed from the clinical traffic flow within the unit while remaining connected to the main nurse work area.
- Zoned nurse work areas to provide enhanced patient service while reducing visual and acoustical pollution.
- Provisions for a reimaged food service process including an easily accessible nourishment alcove for patients and families as well as dedicated alcove for food service distribution.
- Distributed nurse touch down work stations and supply storage to reduce travel times and improve patient service/access.
- A satellite nurse station to place caregivers closer to remote patient bedrooms.
- Aesthetically and functionally improved patient rooms.
- An enclosed and centralized Medication Room with two private work stations.
- Improved staff and resident respite/lounge areas.

- An enlarged IT Server Room to support expanded patient care and service technologies.
- Reconfigured and expanded clean and soiled storage areas.

In order to minimize patient care disruption, each unit will be renovated as a single phase.

DOH Recommendation
Contingent approval.

Need Summary
Because this project involves no changes in bed or service capacity, a Need review is not required.

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 of \$111,355,161 will be met via fundraising proceeds. The applicant has indicated that if fundraising proceeds are not met, then the hospital will provide equity from operations.

Incremental Budget:	
Revenues	\$143,417,546
Expenses	<u>123,280,131</u>
Excess of Revenues over Expenses	\$20,137,415

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

Recommendations

Health Systems Agency

There will be no HSA review 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. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

Approval conditional upon:

1. Per 711.9 approval of waiver with justification for existing DOH licensed 4 bedded rooms or revision of project scope and cost to eliminate or revise bed locations as necessary. [AER]
2. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. The applicant shall complete construction by June 1, 2019 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 11, 2013.

Programmatic Analysis

Background

New York-Presbyterian Hospital (NYP) requests approval to renovate and upgrade ten existing inpatient units located on the Columbia University campus. The space has remained unchanged over the last 22 years, and NYP feels that the renovations and upgrades will improve patient care experiences for both staff and patients.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$111,355,161, further broken down as follows:

Renovation and Demolition	\$73,341,675
Design Contingency	7,334,168
Construction Contingency	7,334,168
Planning Consultant Fees	200,000
Architect/Engineering Fees	5,540,670
Other Fees (Consultant)	8,471,274
Movable Equipment	8,522,114
CON Fee	2,000
Additional Processing Fee	<u>609,092</u>
Total Project Cost	\$111,355,161

Project costs are based on a December 1, 2013 construction start date and a sixty month construction period.

The applicant's financing plan appears as follows:

Fundraising	\$111,355,161
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The applicant has indicated that if fundraising proceeds are not met, they will provide equity from hospital operations.

Operating Budget

The applicant has submitted an incremental operating budget, in 2013 dollars, for the first and third years of operation; summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$89,008,837	\$143,417,546
Expenses:		
Operating	\$73,466,754	\$99,665,263
Capital	<u>13,903,195</u>	<u>23,614,868</u>
Total Expenses	\$87,369,949	\$123,280,131
Excess of Revenues over Expenses	<u>\$1,638,888</u>	<u>\$20,137,415</u>
Utilization: (Discharges)	5,273	7,569
Operating - Cost per Discharge	\$13,932.63	\$13,167.57
Capital - Cost per Discharge	<u>\$2,636.68</u>	<u>\$3,119.94</u>
Total - Cost Per Discharge	<u>\$16,569.31</u>	<u>\$16,287.51</u>

Utilization, itemized by payor source during the first and third years is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-for-Service	22.55%	22.55%
Medicare Fee-for-Service	49.50%	49.50%
Commercial Fee-for-Service	27.95%	27.95%

Expense assumptions are based on the current historical experience of New York Presbyterian/Columbia University Medical Center campus. Utilization assumptions are based on the incremental volume growth based on historical growth levels, as well as programmatic growth initiatives such as the expansions of NYP/Columbia's Adult Emergency Department and the new Bone Marrow Transplant unit.

Capability and Feasibility

Project costs of \$111,355,161 will be met via fundraising. If the facility does not meet its desired fundraising goals, then the hospital will provide equity from operations.

Working capital requirements are estimated at \$20,846,688, which appears reasonable based on two months of third year incremental expenses. The applicant will provide equity from operations to meet the working capital requirement. Presented as BFA Attachment A are the October 31, 2012 internal financial statements of New York Presbyterian Hospital, which indicates the availability of sufficient funds to meet the total project cost and the working capital equity requirements.

The submitted incremental budget indicates an excess of revenues over expenses of \$1,638,888 and \$20,137,415 during the first and third years, respectively. Revenues are based on current reimbursement methodologies.

As shown on Attachment A, New York Presbyterian Hospital had a positive working capital position and a positive net asset position through October 31, 2012. Also, the hospital achieved operating excess of revenues over expenses of \$158,793,000 through October 31, 2012.

Presented as BFA Attachment B are the 2010 and 2011 certified financial statements of The New York Presbyterian Hospital. As shown, the hospital had an average positive working capital position and an average positive net asset position from 2010 through 2011. Also, the hospital achieved an average operating income of \$147,441,500 from 2010 through 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

- BFA Attachment A- Financial Summary- October 31, 2012 internal financial statements of New York Presbyterian Hospital.
- BFA Attachment B- Financial Summary- 2010 and 2011 certified financial statements of New York Presbyterian Hospital.



Public Health and Health Planning Council

Project # 122314-C New York Presbyterian Hospital – New York Weill Cornell Center

County: New York (New York)
Purpose: Construction

Program: Acute Care Services
Submitted: December 28, 2012

Executive Summary

Description

New York Presbyterian Hospital, a 2,298-bed not-for-profit hospital, requests approval for the construction of a new Ambulatory Care Center to be located at 1283 York Avenue, New York. The proposed ACC building will be an extension clinic and will be located across the street from NYP-New York Weill Cornell Center Campus at 525 East 68th Street, New York.

The historic NYP-WC campus was built in 1932, and the facility is unable to accommodate the rapidly changing demands of the new healthcare technology within the existing footprint. Clinical programs are dispersed throughout the hospital, which can create a disorienting feeling for patients, as well as operational inefficiencies. This project seeks to address those concerns in the most logical way possible by constructing a new Ambulatory Care Center to move outpatient programs from the main campus at NYP-WC into a concentrated location across York Avenue. The new facility will transform the way the Hospital delivers care to its ambulatory patients and will provide the necessary space in the existing hospital to renovate and upgrade other clinical programs.

The proposed ACC building will include the following services: Ambulatory Surgery-Multispecialty, Primary Medical Care O/P (including infusion therapy services), Radiology, Magnetic Resonance Imaging, PET Scanner and Linear Accelerator Services.

By moving selected services to a dedicated ambulatory care setting in the proposed ACC, it will be possible to provide state-of-the-art technology, enhance the ambulatory patient care experience, increasing operational efficiencies and recapture outpatient business that is being referred elsewhere because of physical plant inadequacies. By decanting these ambulatory care services to another part of the main hospital campus, capacity for other services can also be expanded in the main hospital building.

The proposed building will also include non-Article 28 space, which will be for private medical offices.

DOH Recommendation
Contingent approval.

Need Summary

Ambulatory care services are interspersed throughout New York Presbyterian Hospital – New York Weill Cornell. This project will allow these services to be consolidated into one site across the street from the main campus and will create efficiencies in operations and patient care.

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 for the Article 28 and Non Article 28 space are estimated at \$895,497,927, which will be met as follows: Fundraising \$395,497,927 and a mortgage of \$500,000,000 at an interest rate of 6% for a 25 year term.

Incremental Budget:

Revenues	\$55,700,074
Expenses	<u>136,454,951</u>
Excess of Revenues over Expenses	\$(80,754,877)

Enterprise Budget:

Revenues	\$3,734,520,074
Expenses	<u>3,635,233,904</u>
Excess of Revenues over Expenses	\$99,286,170

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.

Recommendations

Health Systems Agency

There will be no HSA recommendation for 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 a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by the Department of Health. Included with a 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 real estate transfer agreement that is acceptable to the Department of Health. [BFA]
4. The BAEFP Construction Cost Control unit has determined that this project includes non reimbursable: Building Acquisition costs, leased Non Article 28 space, future CON program space and shell/core construction costs associated with these spaces totaling \$65,477,473. As a result, the approved Total Project Cost (TPC) for reimbursement purposes shall be limited to \$830,020,454 until such time as these spaces are approved for Article 28 use (via future CON) by the DOH. The facility shall submit a letter to the DOH acknowledging this limitation of reimbursable Total Project Costs. [CCC]
5. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

Approval conditional upon:

1. Project approval conditioned upon reimbursable TPC cost limitation of \$830,020,454. [CCC]
2. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. The applicant shall complete construction by May 1, 2017 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]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

April 11, 2013.

Need Analysis

Background

New York Presbyterian Hospital - New York Weill Cornell Medical Center seeks to construct an ambulatory care center at 1283 York Avenue, New York, 10065, in New York County. This site will be physically connected to the NYP-Weill Cornell Medical Center campus via an existing underground pedestrian tunnel and will offer ambulatory surgery, radiology, infusion therapy, and radiation oncology services, the latter through the use of two linear accelerators and one cyber-knife.

Analysis

New York Presbyterian Hospital - New York Weill Cornell Medical Center (NYP-WC) has the following certified beds and services:

Licensed Beds

AIDS	30
Bone Marrow Transplant	15
Burns Care	40
Chemical Dependence - Detoxification	3
Chemical Dependence - Rehabilitation	14
Coronary Care	20
Intensive Care	65
Maternity	68
Medical/Surgical	402
Neonatal Continuing Care	16
Neonatal Intensive Care	15
Neonatal Intermediate Care	19
Pediatric	30
Pediatric ICU	23
Physical Medicine and Rehabilitation	22
Psychiatric	68
Total	850

Certified Services

AIDS	Magnetic Resonance Imaging
AIDS Center	Maternity
Ambulance	Medical Social Services
Ambulatory Surgery - Multi Speciality	Medical/Surgical
Audiology O/P	Methadone Maintenance O/P
Burn Center	Neonatal Continuing Care
Burns Care	Neonatal Intensive Care
Cardiac Catheterization - Adult Diagnostic	Neonatal Intermediate Care
Cardiac Catheterization - Electrophysiology (EP)	Nuclear Medicine - Diagnostic
Cardiac Catheterization - Pediatric Diagnostic	Nuclear Medicine - Therapeutic
Cardiac Catheterization - Pediatric Intervention	Pediatric
Elective	
Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)	Pediatric Intensive Care
Cardiac Surgery - Adult	Pediatric O/P
Cardiac Surgery - Pediatric	Pharmaceutical Service
Certified Mental Health Services O/P	Physical Medical Rehabilitation
Chemical Dependence - Detoxification	Physical Medicine and Rehabilitation O/P
Chemical Dependence - Rehabilitation	Prenatal O/P
Chemical Dependence - Rehabilitation O/P	Primary Medical Care O/P
Chemical Dependence - Withdrawal O/P	Psychiatric
Clinic Part Time Services	Radiology - Diagnostic
Clinical Laboratory Service	Radiology-Therapeutic

Coronary Care	Renal Dialysis - Acute
CT Scanner	Renal Dialysis - Chronic
Dental O/P	Respiratory Care
Emergency Department	Therapy - Occupational O/P
Epilepsy Comprehensive Services	Therapy - Physical O/P
Family Planning O/P	Therapy - Speech Language Pathology
Health Fairs O/P	Transplant - Bone Marrow
Intensive Care	Transplant - Kidney
Linear Accelerator	Transplant - Liver
Lithotripsy	

NYP-WC has 10 hospital extension clinics, eight school-based hospital extension clinics, and the following NYS designations:

- AIDS Center
- Burn Center
- Regional Perinatal Center
- Regional Trauma Center
- SAFE Center
- Stroke Center

The service area includes New York, Bronx, Kings, Queens, and Westchester Counties.

In recent years, NYP-WC has increased its volume all of the services that will be offered at the new site. Ambulatory surgery has increased by 18.9% from 12,689 in 2009 to 15,090 in 2011. Infusion therapy visits have increased from 16,345 in 2009 to 23,942 in 2011. Interventional radiology visits have increased from 6,475 in 2009 to 7,648 in 2011. Radiation therapy visits have increased from 17,779 visits in 2007 to 18,749 in 2009. Visits decreased in the next two years because of equipment upgrades. NYP-WC expects to perform 47,854 treatments with its five linear accelerators, which include three in operation and two proposed, and with one cyber-knife.

The following numbers of visits are expected within the first three years of operation at the new site. It is expected that the number of visits will increase beyond these projections in subsequent years.

Service	<u>First Year</u>	<u>Third Year</u>
Ambulatory Surgery Services, Multi-Specialty	2,058	9,670
Infusion Services	2,930	4,395
Interventional Radiology	1,034	3,189
Radiation Oncology	996	7,168

Radiation Oncology – Linear Accelerator

Based on the need methodology set forth in 10 NYCRR section 709.16, the public need for linear accelerators in New York City is 15. Approval of this project will result in a need for 13. NYP-WC proposes to relocate a cyber-knife from NYP-Columbia Presbyterian Medical Center that was approved but never installed.

Number of Cancer Cases per Year, 2009 (NYSDOH-Cancer Registry, 2009)	37,840
60% will be candidates for Radiation Therapy	22,704
50% of 'b' will be Curative Patients	11,352
50% of 'b' will be Palliative Patients	11,352
Course of Treatment for Curative Patients @ 35 Treatments/Patient	397,322
Course of Treatment for Palliative Patients @ 15 Treatments/Patient	170,280
Total Number of Treatments	567,603
Need for MEV Machines in New York City	87
(MEV Machine Capacity is 6,500 Treatments/Machine)	
Existing Resources in New York City	66

Approved Resources in New York City	6
Total Resources in New York City	72
Remaining Need for MEV Machines in NYC	15
Cancer Incidence in New York City, 2009	

Conclusion

This project will provide a dedicated building for ambulatory care services and will allow NYP-WC to meet increasing demand for ambulatory care. The consolidation of ambulatory services into one building will provide increased efficiencies in operations and give patients a more seamless care experience.

Recommendation

From a need perspective, approval is recommended.

<h2>Programmatic Analysis</h2>

Background

New York-Presbyterian Hospital (NYP) requests approval to construct an extension clinic, located across the street from their Weill Cornell campus, to house outpatient services in a consolidated space. Additionally, NYP is requesting certification if a PET scanner to be housed in the new building. Not only will the decanting of outpatient services create efficiencies and modernization of such services for patients and staff, it will also free up space within the hospital to renovate and upgrade inpatient services. Such changes will be the subject of future CONs.

The new building, to be called the Ambulatory Care Center, will include ambulatory surgery, primary medical care, infusion services, therapeutic radiology, MRI, linear accelerator and, requested as part of this project, newly certified PET scanner services. Additionally, there will be space in the new building for private physician practices.

It is anticipated that staffing will increase by 311 FTEs by the third year of operation.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for building acquisition, new construction and the acquisition of moveable equipment, is estimated at \$895,497,927, further broken down as follows:

Building Acquisition	\$7,300,000
New Construction	371,020,570
Renovation and Demolition	11,371,631
Site Development	2,000,000
Temporary Utilities	1,500,000
Asbestos Abatement or Removal	23,000,000
Survey Tests and Borings	5,732,252
Other Project Costs	8,948,029
Design Contingency	37,102,057
Construction Contingency	18,551,029
Planning Consultant Fees	10,990,850
Architect/Engineering Fees	38,799,974
Construction Manager Fees	2,549,471
Other Fees	26,015,957
Moveable Equipment	133,348,628
Telecommunications	34,831,547
AMPO	10,000,000
Financing Costs	38,488,167
Interim Interest Expense	109,405,634
Con Fee	2,000
Additional Processing Fee	<u>4,540,131</u>
Total Project Cost	\$895,497,927

Project costs are based on an August 1, 2014 construction start date and a thirty month construction period. NYP Hospital's affiliated not-for-profit corporation, Royal Charter Properties, owns the two adjacent properties that constitute the project site and will transfer the title to NYP Hospital, for no consideration, once the buildings have been vacated by all current occupants. With regard to the \$7.3 million funding identified in Building Acquisition, these funds are allocated to costs related to vacating to two existing structures on the property. These funds will be used to relocate the residential tenants located in this building as well as to relocate the various hospital administrative offices that occupy the lower floors.

The Bureau of Architectural and Engineering Facility Planning has determined that this project includes shell space costs of \$65,477,473 for future expansion, private physician space and relocating expenses. As a result, the total approved project cost for reimbursement purposes shall be limited to \$830,020,454 until such time as the shell space is approved for use (under a future CON) by the Department.

The applicant's financing plan appears as follows:

Fundraising	\$395,497,927
DASNY Bonds (FHA Mortgage insured (6.00% for a 25 year term)	500,000,000

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the entire operation which includes this project, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Operating Revenue	\$3,472,431,829	\$3,508,318,074
Other	<u>226,202,000</u>	<u>226,202,000</u>
Total Revenues	\$3,698,633,829	\$3,734,520,074
Expenses:		
Operating	\$3,255,002,501	\$3,278,054,931
Capital	<u>363,838,660</u>	<u>357,178,973</u>
Total Expenses	\$3,618,841,161	\$3,635,233,904
Excess of Revenues over Expenses	\$79,792,668	\$99,286,170
Utilization:		
Visits	763,583	786,568
Discharges	117,980	117,980

The applicant has indicated that the projected incremental budget indicates an excess of expenses over revenues of \$100,248,380 and \$80,754,877 during the first and third years respectively. Staff notes that \$86,229,660 and \$79,569,973 are capital costs (interest and depreciation) during the first and third years, which equates to 71.82% and 58.31% of incremental expenses.

Expense and utilization assumptions are based on historical experience of the hospital.

Capability and Feasibility

Total project cost of \$895,497,927 for Article 28 and Non Article 28 purposes will be met as follows: Fundraising of \$395,497,927 and a Mortgage FHA insured of \$500,000,000 at an interest rate of 6% for a 25 year term. If the hospital does not achieve their desired fundraising proceeds, they will contribute funds from operations. Presented as BFA Attachment A are the October 31, 2012 internal financial statements of New York Presbyterian Hospital, which indicates the availability of sufficient funds for the equity contribution. As mentioned in a subsequent section, the reimbursable total project cost is \$830,020,454.

The submitted budget for the entire operation projects an excess of revenues over expenses of \$79,792,668 and \$99,286,170 during the first and third years, respectively. Revenues reflect current reimbursement methodologies.

Presented as BFA Attachment B are the 2010 and 2011 certified financial statements of New York Presbyterian Hospital during the period 2010 through 2011. As shown on Attachment B, the hospital had an average positive working capital position and average positive net asset position from 2010 through 2011. Also, the hospital achieved an average operating income of \$147,441,500 from 2010 through 2011.

As shown on Attachment A, the hospital had a positive working capital position and a positive net asset position through October 31, 2012.

Also, the hospital achieved an operating excess of revenues over expenses of \$158,793,000 through October 31, 2012.

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- October 31, 2012 internal financial statements of New York Presbyterian Hospital.
- BFA Attachment B- 2010 and 2011 certified financial statements of New York Presbyterian Hospital



Public Health and Health Planning Council

Project # 122316-C New York Presbyterian Hospital – New York Weill Cornell Center

County: New York (New York)
Purpose: Construction

Program: Acute Care Services
Submitted: December 28, 2012

Executive Summary

Description

New York Presbyterian Hospital, (NYPH), a 2,298-bed not-for-profit hospital located in New York County, requests approval to acquire New York Downtown Hospital (NYDH) and to certify NYDH as a new division of NYP Hospital via a merger agreement. NYDH will become a member of the New York Presbyterian Healthcare System.

The purpose of this project is to:

- Preserve the health care services provided by New York Downtown Hospital.
- Preserve needed jobs for persons currently employed by New York Downtown Hospital.
- Ensure the health care needs of the community.

The applicant consists of the following four divisions with respective bed capacities: Columbia Presbyterian Center (977); Allen Hospital (201); New York Weill Cornell Center (850) and Westchester Division (270).

DOH Recommendation
Contingent approval.

Need Summary

New York and Presbyterian Hospital (NYPH) seeks to acquire and certify New York Downtown Hospital (NYDH), a 180-bed acute care facility located at 170 William Street, New York, 10038, in New York County, as a division of NYPH. Post-acquisition, it is expected

that NYDH will become and remain a financially viable division of NYPH.

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

Since this is a merger, there is no purchase price associated with this application.

The applicant has submitted an incremental operating budget, in 2013 dollars, for the first year subsequent to the change in operator, which is summarized below:

Incremental Revenues	\$256,019,056
Incremental Expenses:	
Operating	\$227,208,253
Capital	<u>22,217,147</u>
Total Expenses	\$249,425,400
Excess of Revenues over Expenses	\$6,593,656

Enterprise Budget:

Revenues	\$3,911,127,056
Expenses	<u>3,748,255,396</u>
Excess of Revenues over Expenses	\$162,871,660

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.

Recommendations

Health Systems Agency

There will be no HSA review of this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed merger agreement that is acceptable to the Department of Health. [BFA, CSL]
2. Submission of an original affidavit from the applicant, 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. [BFA, CSL]
3. Submission of an executed Plan of Merger that is acceptable to the Department. [CSL]
4. Submission of an executed Certificate of Merger that is acceptable to the Department. [CSL]

Council Action Date

April 11, 2013.

Need Analysis

Background

The New York and Presbyterian Hospital (NYPH) seeks approval to acquire New York Downtown Hospital (NYHD) and to certify NYHD as a new division of NYPH.

New York Downtown Hospital has the following Certified Beds and Services:

Table 1: New York Downtown Hospital: Certified Beds by Service.	
<u>Bed Category</u>	<u>Certified Capacity</u>
Coronary Care	8
Intensive Care	13
Maternity	24
Medical / Surgical	127
Neonatal Intermediate Care	8
Total	180

Table 2: New York Downtown Hospital: Certified Services.	
Ambulance	Ambulatory Surgery - Multi Specialty
CT Scanner	Clinical Laboratory Service
Coronary Care	Dental O/P
Emergency Department	Family Planning O/P
Intensive Care	Magnetic Resonance Imaging
Maternity	Medical Social Services
Medical/Surgical	Methadone Maintenance O/P
Neonatal Intermediate Care	Nuclear Medicine - Diagnostic
Nuclear Medicine - Therapeutic	Optometry O/P
Outpatient Surgery	Pediatric O/P
Pharmaceutical Service	Physical Medicine and Rehabilitation O/P
Prenatal O/P	Primary Medical Care O/P
Radiology - Diagnostic	Radiology-Therapeutic
Renal Dialysis - Acute	Therapy - Physical O/P
Therapy - Speech Language Pathology	

New York State Designations:

- Level 2 Perinatal Center; and
- Stroke Center.

Analysis/Discussion

New York Downtown Hospital is the only acute care hospital located in lower Manhattan. The majority of New York Downtown Hospital's inpatient discharges originate from New York, Kings and Queens Counties. In 2000, the combined census of these counties stood at 6,321,295; by 2010, it increased by 1.4 percent to 6,321,295 and is projected to be 6,512,945 in 2020. A review of NYDH's discharges by patient zip code of origin show that a majority of its patients from New York County resides in zip codes 10002, 10013 and 10038.

Over the last three years, excluding healthy newborns, NYDH averaged about 8,600 inpatient discharges a year. These patients generated an average daily census of 104 patients on any given day for an average occupancy rate of 57.8 percent. When healthy newborns are included, the hospital averaged 10,900 inpatient discharges a year.

The facility provides a significant amount of care for patients seeking obstetric services. During the period under review, NYDH recorded an average of 2,656 obstetric discharges. These patients accounted for approximately 25 percent of the hospital's total discharges. The hospital's obstetric patients generated an average daily census of 19

patients and an average occupancy rate of 80.6 percent (Table 3). The hospital's average obstetric occupancy rate was several percentage points above the desired planning optimum of 75.0 percent.

**Table 3:
New York Downtown Hospital: Inpatient Utilization by Major Service category. Source: SPARCS
2009 – 2011.**

Service	<u>Discharges</u>			<u>Average Daily Census</u>		
	2009	2010	2011	2009	2010	2011
Medical/Surgical	5,818	5,751	5,315	82	83	74
Pediatric	7	6	0	0	0	0
Obstetric	2,500	2,608	2,860	18	19	21
General Psychiatric	48	50	38	0	1	1
Chemical Dependency	129	85	93	1	1	1
High Risk Neonates	131	129	124	3	3	4
Subtotal	8,633	8,629	8,430	105	107	100
Healthy Newborns	2,136	2,242	2,581	14	14	17
Grand Total	10,769	10,871	11,011	119	122	117

New York Downtown Hospital has an active outpatient department. During the years under review, the hospital recorded an average of 6,910 Ambulatory Surgery procedures, 28,210 clinic visits and 39,434 total Emergency Department visits (Table 4).

Table 4: New York Downtown Hospital: Emergency Department, General Clinic and Ambulatory Surgery Statistics: Source Institutional Cost Reports, 2009 – 2011.

<u>Year</u>	<u>Total Emergency Department (ED) Visits</u>	<u>% ED Visits Admitted into Hospital</u>	<u>Clinic</u>	<u>Amb/Surg Procedures</u>
2009	38,584	14.4	33,782	6,617
2010	39,921	13.6	25,660	7,176
2011	39,796	13.0	25,187	6,937
Ave. 09 - 11	39,434	13.7	28,210	6,910

The proposed acquisition would not result in any change in NYDH's current complement of beds or services.

Conclusion

NYDH provides needed patient care at all levels to residents of lower Manhattan, as well as to patients from Kings and Queens Counties. The proposed acquisition will help to make NYDH financially viable, and preserve it as a well-utilized health care resource in the New York City Region.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

New York-Presbyterian Hospital (NYP) requests approval to acquire New York Downtown Hospital (Downtown) and certify it as a division of NYP to be known as New York-Presbyterian/New York Downtown Hospital Division. Downtown is currently a 180-bed full-service community hospital that has been struggling financially for years. As the only hospital in lower Manhattan, Downtown provides is an invaluable resource to the residents, workers, and tourists in the area. As a division of NYP, it is expected the hospital's financial situation will not only stabilize but improve to a point of viability.

NYP plans to continue offering the same complement of beds and services as are currently provided at Downtown. As such, no construction or service changes are proposed as part of this project. All aspects of Downtown will be integrated into NYP operations, including medical staff, quality assurance and governance.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Merger Agreement

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

- Purpose: The merger of New York Downtown Hospital (NYDH) into New York Presbyterian Hospital (NYPH), and NYDH to be part of the New York Presbyterian Healthcare System.
- Governance: The members of the Board of Trustees of NYPH immediately prior to the Effective Date shall continue to be the Trustees of the Surviving Corporation upon consummation of the Merger.

NYPH will assume the existing debt of NYDH. As a contingency of approval, the applicant must submit an affidavit, which is acceptable to the Department of Health, 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 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 liabilities.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the first year of operation, summarized below:

Revenues:	
Operating Revenue	\$3,652,913,056
Other Operating Revenue	<u>258,214,000</u>
Total Revenues	\$3,911,127,056

Expenses:	
Operating	\$3,448,369,252
Capital	<u>299,886,144</u>
Total Expenses	\$3,748,255,396

Excess of Revenues over Expenses \$162,871,660

Utilization:	
Inpatient: (Discharges)	130,512
Outpatient (Visits)	1,890,589

Other operating revenues include professional practice revenues, grants, contributions and net assets released from restrictions.

Utilization for the combined New York Presbyterian's operations by payor source for inpatient services is as follows:

Medicare (including Medicare Managed Care	32.34%
Medicaid (including Medicaid Managed Care	28.56%
Commercial/HMO	36.82%
Self Pay & Other	2.28%

Utilization for the combined New York Presbyterian's operations by payor source for outpatient services is as follows:

Medicare (including Medicare Managed Care	23.87%
Medicaid (including Medicaid Managed Care)	32.04%
Commercial/HMO	34.15%
Self Pay & Other	9.94%

Expense and utilization assumptions are based on the historical experience of New York Presbyterian Hospital.

Capability and Feasibility

There are no issues of capability associated with this application.

Working capital requirements are estimated at \$978,813, which appears reasonable based on two months of first year incremental expenses.

The applicant will meet the working capital requirement through hospital operations of New York Presbyterian Hospital and New York Downtown Hospital.

Presented as BFA Attachment A and B are the October 31, 2012 internal financial statements of New York Presbyterian Hospital and November 30, 2012 internal financial statements of New York Downtown Hospital, which indicates the availability of sufficient funds to meet the working capital requirement.

The submitted budget indicates an excess of revenues over expenses of \$162,871,660 during the first year for the combined operations. Revenues are based on current reimbursement methodologies.

As shown on Attachment A, New York Presbyterian Hospital had a positive working capital position and a positive net asset position through October 31, 2012. Also, the hospital achieved operating excess of revenues over expenses of \$158,793,000 through October 31, 2012.

As shown on Attachment B, New York Downtown Hospital had a positive working capital position and a positive net asset position through November 30, 2012. Also, the hospital incurred an operating excess of expenses over revenues of \$12,463,000. The applicant has indicated that the reasons for New York Downtown's losses are the following: State and Federal reimbursement reductions, the hospital's payer and service mix and limited ability to increase revenues. The applicant has indicated that improvement of operations is a goal of the proposed merger.

Presented as BFA Attachment C are the 2010 and 2011 certified financial statements of The New York and Presbyterian Hospital. As shown, the hospital had an average positive working capital position and an average positive net asset position from 2010 through 2011. Also, the hospital achieved an average operating income of \$147,441,500 from 2010 through 2011.

Presented as BFA Attachment D are the 2010 and 2011 certified financial statements of New York Downtown Hospital. As shown, the hospital had an average positive working capital position and an average positive net asset position from 2010 through 2011. Also, the facility incurred an average loss from operations of \$3,544,500 from 2010 through 2011. The applicant has indicated that the reasons for the losses are the result of the following: State and Federal reimbursement reductions, the hospital's payer and service mix and limited ability to increase revenues. The applicant has indicated that to improve operations, the hospital's management instituted a corrective action plan to lower FTE's.

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-	October 31, 2012 internal financial statements of New York Presbyterian Hospital
BFA Attachment B-	November 30, 2012 internal financial statements of New York Downtown Hospital
BFA Attachment C-	2010 and 2011 certified financial statements of New York Presbyterian Hospital
BFA Attachment D-	2010 and 2011 certified financial statements of New York Downtown Hospital



Public Health and Health Planning Council

Project # 121201-C
Alpine Home Health Care, LLC

County: Bronx (Bronx)
Purpose: Construction

Program: Certified Home Health Agency
Submitted: April 11, 2012

Executive Summary

Description

Alpine Home Health Care, LLC is requesting to expand their existing Certified Home Health Agency (CHHA) services to include Kings, New York, Queens, Richmond, Rockland, Niagara, Erie, Nassau and Suffolk Counties. Alpine Home Health Care currently serves Bronx County.

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 CHHA's. Alpine Home Health Care submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

DOH Recommendation

Disapproved as proposed. Contingent and conditional approval as amended by the Department.

Need Summary

Alpine Home Health Care's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary

Alpine Home Health Care, LLC is currently in compliance with all applicable codes, rules and regulations.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:	Revenues:	\$7,425,335
	Expenses:	<u>5,842,156</u>
	Gain(Loss):	<u>\$ 1,583,179</u>

Subject to noted contingencies, 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 of this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of new incremental budgets to be re-evaluated for financial feasibility for all counties approved for establishment or expansion acceptable to the Department of Health. [BFA]
2. Submission of executed building lease(s) acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

April 11, 2013.

Need Analysis

Background

Alpine Home Health Care, LLC is an existing Article 36 Certified Home Health Agency with approval to serve Bronx County. The applicant has requested approval to expand the service area of their CHHA into the downstate counties of Kings, New York, Queens, Richmond, Nassau, and Suffolk. The applicant has also requested approval to expand into the upstate counties of Rockland, Erie and Niagara which will be presented to the Public Health and Health Planning Council at future meetings.

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 17th and 27th 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 applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made to the Public Health and Health Planning Council.

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 17th and 27th 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;
- 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.

The applicant is partnered with an affiliated MLTCP in the proposed counties. They discussed how the CHHA expansion would directly support numerous MRT initiatives.

Alpine Home Health Care, LLC reported having existing contracts with 8 MLTCPs and is affiliated with Centers Plan for Healthy Living, which has recently been approved as a MLTCP. The CHHA will support the affiliated MLTCP by providing care management to high risk-enrollees of the MLTCP. They discuss how the CHHA is well suited to support the MRT initiatives through their disease management programs, HIT systems, relationships with MLTCPs, and technical expertise to meet the needs of patients with complex care needs.

The applicant provided detailed county specific data regarding NYSDOH disease specific incidences and death rates, CHHA and LTHHCP utilization, population, Cornell Univ. Program applied Demographic regarding persons living alone and PRI data. A GAP analysis was provided for each county based on the projected increase of CHHA visits due to transition of LTHHCP patients to MLTC. The applicant demonstrated a clear understanding of impact of implementing Managed Care transition (population currently serviced by LTHHCP providers) and the increase need for CHHA services. The applicant also provided an analysis of each proposed county based on the projected increase of CHHA visits due to transition of LTHHCP patients and others to MLTC.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

This proposal seeks approval to expand the service area of Alpine Home Health Care, LLC, an existing Certified Home Health Agency (CHHA). Alpine Home Health Care, LLC CHHA is currently approved to serve Bronx County and is requesting approval to expand into Kings, New York, Richmond, Queens, Nassau, Suffolk, Erie, Niagara and Rockland counties pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Alpine Home Health Care, LLC is an existing limited liability company which operates a Certified Home Health Agency. Alpine Home Health Care, LLC is currently authorized to serve patients in Bronx County.

The applicant proposes to expand the service area of their existing CHHA into Kings, New York, Richmond, Queens, Nassau and Suffolk counties. Alpine Home Health Care, LLC will serve Bronx, Kings, New York, Richmond, Queens, Nassau and Suffolk counties from their existing office located at 4260 Bronx Boulevard, Bronx, New York 10466.

Alpine Home Health Care, LLC proposes to provide the following health care services: home health aide, medical social services, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, physical therapy, speech language pathology services.

The applicant has also requested approval to serve the following upstate counties: Erie, Niagara and Rockland counties. A determination regarding the recommendation for approval or disapproval for the establishment of a CHHA to serve the upstate counties will be presented to the Council at a future meeting. Therefore, this application has been amended by the Department to remove the request for the upstate counties at this time.

Recommendation

From a programmatic perspective, disapproval as proposed and approval as amended by the Department is recommended.

Financial Analysis

Lease Agreements

The applicant has submitted proposed lease agreements, the terms of which are summarized below:

Erie County Site:

Date: March 30, 2012
 Premises: 3,500 square feet located 200 Seventh Street, Buffalo, New York
 Landlord: Waterfront Land Associates, LLC
 Tenant: Alpine Home Health Care
 Rental: \$52,500 /year (\$15.00/sq.ft.)
 Term: 5 years with an additional 5 year renewal option.
 Provisions: The Lessee shall be responsible for taxes, maintenance and utilities.

Suffolk Site:

Date: March 30, 2012
 Premises: 5,000 square feet located 25 Schoenfeld Blvd., Patchogue, New York
 Landlord: Suffolk Land, LLC
 Tenant: Alpine Home Health Care
 Rental: \$100,000 /year (\$20.00/sq.ft.)
 Term: 5 years with an additional 5 year renewal option.
 Provisions: The Lessee shall be responsible for taxes, maintenance and utilities.

Daryl Hagler is the sole owner of the real property associated with the Erie County lease, and Daryl Hagler and Kenneth Rozenberg are the members for the Suffolk County Lease. Daryl Hagler has other business interests with Kenneth Rozenberg, who is the sole member of Alpine. The lease arrangement is a non-arm's length agreement, and the applicant has submitted letters from licensed real estate brokers attesting to the reasonableness of the per square foot rental.

Operating Budget

The applicant has submitted an incremental operating budget for the first and third years, in 2013 dollars, which is summarized below:

	<u>Year One</u>	<u>Year Three</u>
<u>Revenues:</u>		
Medicaid Managed Care	\$1,694,031	\$ 4,525,151
Medicare Fee-For-Service	957,028	2,556,443
Commercial Managed Care	<u>128,682</u>	<u>343,741</u>
Total Revenues	\$2,779,741	\$7,425,335
 Expenses	 <u>2,427,883</u>	 <u>5,842,156</u>
Net Gain(Loss)	\$ 351,858	\$ 1,583,179

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

<u>Payor</u>	<u>Year One and Year Three</u>
Commercial Managed Care	6.0%
Medicare Fee-for-Service	54.8%
Medicaid Managed Care	37.2%
Charity Care	2.0%

Expense and utilization assumptions are based on the existing CHHA Program's historical experience. Revenues are reflective of current payment rates as well as the Medicaid Episodic Payment system.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements, estimated at \$973,693, appear reasonable based on two months of third year expenses and will be provided through the existing operation.

The submitted budget indicates that the applicant will achieve a net gain of \$351,858 and a net gain of \$1,583,179 incremental net revenue in the first and third years of operations, respectively. Revenue is based on current payment rates for Certified Home Health Agencies. The submitted budget appears reasonable.

Presented as BFA Attachment A is the audited 2011 financial summary of Alpine Home Health Care, which shows the applicant has experienced negative working capital, net equity and maintained a net profit of \$1,642,130 from operations. The negative working capital and net equity in 2011 was due to a protracted opening process for Alpine Home Health Care, which had acquired the CHHA from Beth Abraham Health Services. The transfer of ownership did not include the agency's Medicare provider number and consequently a pre-opening process for Alpine was required, which resulted in the majority of the CHHA's patients being discharged before Alpine could take over. This resulted in startup costs that were not originally envisioned with the transfer of ownership. Furthermore, the Department did not give the agency a new rate, but assigned Beth Abraham's rate to Alpine. Alpine appealed this decision and anticipated receiving a new, higher rate from Medicaid.

At the end of 2011 Alpine was notified that its appeal for a higher rate would not be approved, and the agency, in order to correct its negative working capital position and negative equity position, added significant capital to the agency in 2012, paying the majority of its outstanding accounts payable and eliminating the negative working capital and negative equity that existed in 2011.

Presented as BFA Attachment B is the draft financial summary of Alpine Home Health Care, which shows the applicant has maintained positive working capital, net equity and a net loss of \$449,119 from operations for 2012. The \$449,119 loss is related to the startup expenses for the Managed Long Term Care Plan (Centers Plan for Healthy Living), which has not started to generate revenue. The Managed Long Term Care Plan has received Department approval to commence operations and will be self-supporting. The expenses for the Plan were listed on Alpine's financial statements as non-operating expenses, as the expenses were not related to the CHHA itself, but rather the startup of the new Managed Long Term Care Plan, of which Alpine is an owner. The CHHA generated net income from operations of \$1,156,356.

Based on preceding and subject to noted contingencies, it appears that the applicant has demonstrated the financial 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
BFA Attachment B

Financial Summary for Alpine Home Health Care, 2011
Financial Summary for Alpine Home Health care, draft 2012

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

April 11, 2013

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 3: Applications Recommended for Approval with the Following:

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

**Downstate Request for Applications – Certified Home Health Agencies – Exhibit #7
Construction**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	121229 C	Calvary Hospital (Bronx County) Ms. Hines – Abstained at EPRC	Contingent Approval
2.	121241 C	Prime Home Health Services, LLC (Kings County) Ms. Hines – Abstained at EPRC	Approval
3.	121289 C	Winthrop-University Hospital Home Health Agency (Nassau County) Ms. Hines – Abstained at EPRC	Approval
4.	121312 C	Good Samaritan Hospital Home Care Department (Rockland County) Ms. Hines – Abstained at EPRC	Approval
5.	121323 C	St Cabrini Nursing Home (New York County) Ms. Hines – Abstained at EPRC	Approval

Long Term Home Health Care Program – Construction

Exhibit #8

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	131109 C	Health Services of Northern New York, Inc. (St. Lawrence County) Ms. Hines – Opposed at EPRC	Contingent Approval



Public Health and Health Planning Council

Project # 121229-C

Calvary Hospital

County: Bronx (Bronx)
Purpose: Construction

Program: Certified Home Health Agency
Submitted: April 17, 2012

Executive Summary

Description

Calvary Hospital, an existing, Article 36, not-for-profit corporation has a Certified Home Health Agency (CHHA), which is requesting to expand into Richmond, Kings, Nassau, Rockland and Putnam counties to serve the general public. Calvary Hospital currently serves Bronx, New York, Queens and Westchester counties. Calvary Hospital is a long term acute care Hospital providing palliative end-of-life care. Approximately 80% of its patients are from other acute care hospitals, where the patients are too sick to be discharged to their home under hospice care and the originating hospital is not well prepared to manage final stages of life.

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 CHHA's. Calvary Hospital submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

Revenues were calculated in which the lower of incremental cost to episodic payment was projected for year one and year three for a conservative approach and budgets were sensitized.

DOH Recommendation

Disapproved as proposed. Contingent and conditional approval as amended by the Department.

Need Summary

Calvary Hospital's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary

The CHHA operated by Calvary Hospital, Inc. is currently in compliance with all applicable codes, rules and regulations.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:	Revenues:	\$5,757,376
	Expenses:	<u>5,601,959</u>
	Net Income:	\$155,417

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 of this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of new incremental budgets to be re-evaluated for financial feasibility for all counties approved for establishment or expansion acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

April 11, 2013.

Need Analysis

Background

Calvary Hospital, Inc. is an existing Article 36 certified home health agency which operates a special needs CHHA in Westchester and New York counties and a general purpose CHHA in Bronx and Queens counties. The applicant is proposing to convert their special needs CHHA into a general purpose CHHA and to expand their service area into the downstate counties of Richmond, Kings and Nassau. They have also requested approval to expand into the upstate counties of Rockland and Putnam which will be presented to the Public Health and Health Planning Council at future meetings.

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 17th and 27th 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 applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made to the Public Health and Health Planning Council.

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 17th and 27th 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;
- 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.

Calvary Hospital, Inc. provided detailed data that demonstrated their ability support the goals of the Department in advancing Medicaid Redesign Initiatives. The applicant also demonstrated community need and public need using the criteria specified in Section 709.1(a) of Title 10. The applicant demonstrated throughout their proposal their ability and capacity to expand their existing CHHA.

The applicant is a subsidiary of ArchCare, who operates a MLTCP. ArchCare is a large continuing care system with a broad array of services, including a Program of All-inclusive Care for the Elderly (PACE), Medicare Advantage Special Needs Plan, home care, hospice, a long-term acute care hospital, adult day health care and seven nursing homes located throughout the greater New York metropolitan area. In addition, the applicant indicated that they have contracts with seven other MLTCPs.

The applicant identifies their Palliative Home Care Services which provide a more coordinated, forward-thinking approach oriented towards better outcomes, higher satisfaction and lower costs, in line with MRT initiatives. Their organization is an end-of-life health care provider offering coordinated care through a full spectrum of care modalities including, clinics, CHHA, hospice and acute care hospitals. They state they can operate in a more integrated manner between modalities.

The applicant provided an extensive list of referral sources throughout the proposed counties. Throughout the application they demonstrate that they have the support and organizational capacity to facilitate Medicaid Redesign initiatives.

The applicant provided data and analysis that demonstrated community need and the health needs of the community, current and projected. They described how they will meet the unmet needs of the community they propose to serve and their ability to effectively and efficiently provide services to meet the growing needs of each community. Calvary states that they have proven outreach capabilities in minority communities. They have outreach mechanisms throughout the New York Metro area including East/Central Harlem, Bushwick/East New York, and Yonkers/Mt. Vernon, among other neighborhoods.

The applicant provided information that addressed actual utilization of home care services in the geographic service area proposed to be served and the capacity in that service area, with names of providers in the proposed service area. They provided data and analysis on the current number/rates of hospital discharges to homecare providers, and on the actual utilization rates/visits/patients served by the existing and proposed counties.

The applicant described specific strategies that they will use to manage high risk cases. The applicant discussed streamlining operations and reducing operating cost within the home health care system. The proposal provided specific strategies and controls that the proposed CHHA will use to monitor and control utilization and the cost of home care services.

Recommendation

From a need perspective, approved is recommended.

Programmatic Analysis

Background

Calvary Hospital, Inc. is an existing Article 36 certified home health agency (CHHA) which operates a special needs CHHA in Westchester and New York counties and a general purpose CHHA in Bronx and Queens counties. Calvary Hospital, Inc. is proposing to convert their special needs CHHA into a general purpose CHHA in Westchester and New York counties and to expand their service area in the downstate counties of Richmond, Kings and Nassau and the upstate counties of Rockland and Putnam. Calvary Hospital, Inc. is not proposing to establish any new branches at this time and will serve the counties from its existing office located at 1740 Eastchester Road, Bronx, New York 10461.

Calvary Certified Home Health Agency proposes to offer the following health care services in all of the above mentioned counties: nursing, home health aide, physical therapy, occupational therapy, speech language pathology, medical social services, nutrition, physician and medical supply, equipment and appliances.

The applicant has also requested approval to serve the following upstate counties: Rockland and Putnam. A determination regarding the recommendation for approval or disapproval for the establishment of a CHHA to serve the upstate counties will be presented to the Council at a future meeting. Therefore, this application has been amended by the Department to remove the request for the upstate counties at this time.

Recommendation

From a programmatic perspective, disapproval as proposed and approval as amended by the Department is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an incremental operating budget, in 2013 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid	\$983,134	\$5,251,488
Medicare	167,555	418,787
Commercial	<u>34,859</u>	<u>87,101</u>
Total Revenues:	\$1,185,548	\$5,757,376
Expenses:	<u>1,130,250</u>	<u>5,601,959</u>
Net Income:	\$55,298	\$155,417

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

	<u>Year One</u>	<u>Year Three</u>
Commercial Managed Care	5%	2%
Medicare Fee-for-Service	21%	10%
Medicare Managed Care	2%	1%
Medicaid Fee-for-Service	1%	1%
Medicaid Managed Care	69%	84%
Charity Care	2%	2%

Expense and utilization assumptions are based on the existing CHHA program's historical experience. Revenues are reflective of current payment rates, as well as the Medicaid Episodic Payment system, in which the lower of incremental cost to episodic payment was projected for year one and three years, for a conservative approach.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$933,660 based on two months of third year expenses and will be provided through the existing operation. Presented as BFA Attachment A, is the financial summary of Calvary Hospital, Inc., which indicates the availability of sufficient funds.

The submitted budget indicates a net income of \$55,298 and \$155,417 for the first and third years, respectively. Revenue is based on current payment rates for Certified Home Health Agencies. DOH Staff has sensitized the budgets to reflect the effect of the EPS payments. Presented as BFA Attachment C, is the sensitivity analysis. The budget appears reasonable.

As shown on BFA Attachment A, a financial summary of Calvary Hospital Inc., indicates that the facility has maintained positive working capital and net asset position, and experienced a net operating loss of \$8,010,200 and \$8,210,800 for 2010 and 2011 respectively, which represents 8.3% of gross operating revenue for both years.

Presented as BFA Attachment B, an internal financial summary of Calvary Hospital Inc. indicates that the facility has maintained positive working capital and a net asset position, and experienced a net operating loss of \$31,384,000 as of December 31, 2012, which represents 31% of gross operating revenue.

The applicant has indicated the reason for the losses is attributed to the uniqueness of the Hospital, in that it provides a great deal of patient care and family services that are not accounted for under current reimbursement methods. Calvary Hospital has an extensive network of donors that provide regular and consistent donations to support the operations. The significant loss in 2012 was due to Calvary Hospital's decision to buy out its obligation in the Archdiocesan pension plan for a cost of \$21,000,000 and switch to a plan managed by a third party. The benefit of switching pension plans will be a savings of several million dollars annually, which will strengthen the organization's financial performance.

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, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary 2011, Calvary Hospital, Inc.
BFA Attachment B	Internal Financial Summary as of 12/31/12, Calvary Hospital, Inc.
BFA Attachment C	Sensitivity Analysis for Episodic Payment System



Public Health and Health Planning Council

Project # 121241-C
Prime Home Health Services, LLC

County: Kings (Brooklyn)
Purpose: Construction

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

Executive Summary

Description

Prime Home Health Services, LLC, an existing Certified Home Health Agency (CHHA), requests approval to add five counties to its licensed service area: Bronx; Nassau; New York; Richmond and Westchester Counties. The applicant, who has an office located at 3125 Emmons Avenue, Brooklyn, is currently licensed to serve Kings and Queens Counties. The applicant will provide the following services: nursing, medical social services, nutritional, home health aide; occupational therapy; physical therapy and speech pathology services.

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 application (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's submitted an application in response to the competitive RFA and was awarded RFA approval. This Con application is in response to the RFA approval.

DOH Recommendation
Approval.

Need Summary

Prime Home Health Service's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary

Prime Home Health Services, LLC, is currently in compliance with all applicable codes, rules and regulations.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:

Revenues	\$4,046,767
Expenses	<u>3,020,764</u>
Net Income	\$1,026,003

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

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval conditional upon:

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

April 11, 2013.

Need Analysis

Background

Prime Home Health Services, LLC is an existing Article 36 certified home health agency with approval to serve Kings and Queens counties. The applicant is requesting approval to expand their service area to Bronx, New York, Richmond, Westchester and Nassau 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 17th and 27th 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 applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made to the Public Health and Health Planning Council.

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 17th and 27th 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;
- 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.

Prime Home Health Services, LLC demonstrated need in the proposed counties and has the capacity and potential to support Medicaid Redesign initiatives.

The CHHA currently has relationships with 13 MLTCPs and they also have successful partnerships with ACFs and provide services to ACF patients when they are being transferred between facilities.

The applicant has submitted a Certificate of Authority application for a partially capitated MLTCP (Prime MLTCP) that will serve the current and proposed service area of the CHHA. It is Prime's intent to have the CHHA partner with the MLTCP and have the MLTCP delegate its care coordination function to the CHHA. The CHHA expansion will also result in efficiencies within the home care system. The MLTCP and CHHA plan on sharing common administrative resources that will result in lower costs to the home health care system.

The existing CHHA has the appropriate infrastructure in place and is ready to proceed. The applicant demonstrated how approval of their proposal will build access to efficient and effective community-based systems of care through the development of formal relationships that coordinate care.

The organization has filed with CMS to become a fully integrated plan for dually eligible recipients (Medicare SNP (special needs program) Demonstration Program for Dual Eligible-FIDA). This would permit the opportunity to better serve its dually eligible beneficiaries by having care coordination and a seamless transition across payors.

The applicant described its disease management programs focused on the top diagnoses for MLTCP members, including osteoarthritis, diabetes, CVD, osteoporosis, and congestive heart failure. They also detailed the CHHAs QA/PI program and numerous disease management programs that will result in the efficient delivery of care and improved health outcomes.

The applicant describes a detailed gap analysis of all seven counties to support the identified need for each county the applicant proposes to service and also describes the projected population characteristics and needs which includes relevant health status indicators and socio-economic conditions. They state that the services provided by the CHHA are consistent with the long-range plans of service communities and that they will remain available to residents of all areas of each county.

The applicant discussed how they will perform outreach to underserved minority populations such as the Hispanic and Latino populations and discussed the need to integrate communities and healthcare systems in the proposed counties in order to reduce health disparities. The CHHA proposes to do this through specific strategies including: offering a list of physicians who make house calls, using MSW services to assist patients in obtaining community resources; providing home health services in all neighborhoods in the proposed service area; integrating community resources into the discharge plan; and patient education to enable patients to self-manage their condition.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

This proposal seeks approval to expand the existing Prime Home Health Services, LLC, Certified Home Health Agency (CHHA), which has current approval to serve Kings and Queens Counties, to include approval to serve Bronx, New York, Richmond, Nassau, and Westchester Counties, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties. The applicant is also requesting approval to add Nutritional Services to its approved services.

Prime Home Health Services, LLC, is an existing for-profit limited liability company that operates a CHHA located at 3125 Emmons Avenue, Brooklyn, New York 11235 (Kings County). The CHHA is currently approved to serve Kings and Queens Counties from its Brooklyn practice location. Pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties, Prime Home Health

Services, LLC, seeks approval to expand its CHHA by adding approval to serve Bronx, New York, Richmond, Nassau, and Westchester Counties. The CHHA will continue to be located at its current location of 3125 Emmons Avenue, Brooklyn, New York 11235 (Kings County), and will serve all approved counties from that location.

Prime Home Health Services, LLC, currently provides the following home health care services: home health aide; medical social services; medical supplies, equipment, and appliances; nursing; occupational therapy, physical therapy, and speech language pathology. The applicant is seeking approval to add nutritional services.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an incremental operating budget, in 2013 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Managed Care	\$309,315	\$1,005,536
Medicare Fee-for-Service	772,766	2,639,289
Commercial Managed Care	<u>117,685</u>	<u>401,942</u>
Total Revenues	\$1,199,766	\$4,046,767
Expenses:		
Operating	\$806,767	\$2,714,672
Capital	<u>89,903</u>	<u>306,092</u>
Total Expenses	\$896,670	\$3,020,764
Net Income	\$303,096	\$1,026,003

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	34.45%	34.49%
Medicare Fee-for-Service	52.41%	52.65%
Commercial Managed Care	11.14%	10.86%
Charity Care	2.00%	2.00%

Expense and utilization assumptions are based on the historical experience of the existing CHHA. Revenues are reflective of current payment rates as well as the recent implementation of the Medicaid Episodic Payment System.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$503,460, which appears reasonable based on two months of third year expenses. The working capital equity for this project will be funded entirely through existing cash equity of Prime Home Health Services, LLC. Presented as BFA Attachment A is the December 31, 2012 internal financial statements for Prime Home Health Services, LLC, which indicates that the availability of sufficient funds for the equity contribution to meet the working capital requirement.

The submitted budget indicates an excess of revenues over expenses of \$303,096 and \$1,026,003 during the first and third years, respectively. Revenue is based on current payment rates for certified home health agencies. The budget appears reasonable.

As shown on Attachment A, the applicant had a positive working capital position and a positive net asset position through December 31, 2012. Also, the applicant achieved a net income of \$4,835,306 through December 31, 2012.

Presented as BFA Attachment B are the 2010 and 2011 certified financial statements of Prime Home Health Services, LLC. As shown on Attachment A, the applicant had an average positive working capital position and an average positive net asset position from 2010 through 2011. Also, the applicant achieved an average net income of \$319,936. The applicant incurred a net loss of \$4,262,297 in 2011. The applicant has indicated that the loss was attributed to significant cuts in revenue attributable to changes in reimbursement and an increase in cost of providing services. This cost increase was the result of the agency transitioning its service delivery model in response to the significant cuts in revenue attributable to changes in reimbursement. The applicant has transitioned its care delivery system by improving information systems and staff productivity, and as a result, the agency has improved efficiencies and is profitable again in 2012.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A-	December 31, 2012 internal financial statements of Prime Home Health Services, LLC
BFA Attachment B-	2010 and 2011 certified financial statements of Prime Home Health Services, LLC



Public Health and Health Planning Council

Project # 121289-C Winthrop-University Hospital Home Health Agency

County: Nassau (Mineola)
Purpose: Construction

Program: Certified Home Health Care
Submitted: April 20, 2012

Executive Summary

Description

Winthrop University Hospital Home Health Agency (Winthrop), an existing voluntary not-for profit corporation, which operates a full service Certified Home Health Agency(CHHA) and a Long Term Home Health Care Program (LTHHCP), is requesting to expand their existing certified home health agency (CHHA) from Nassau County into Queens and Suffolk Counties.

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 CHHA's. Winthrop University submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

DOH Recommendation
Approval

Need Summary

Winthrop-University Hospital Home Health Agency's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary

Winthrop-University Hospital Home Health Agency is currently in compliance with all applicable codes, rules and regulations.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:	Revenues:	\$1,934,481
	Expenses:	<u>1,352,022</u>
		<u>\$582,459</u>
	Gain(Loss):	

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

Recommendations

Health Systems Agency

There is no HSA recommendation for this application.

Office of Health Systems Management

Approval conditional upon:

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of the receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

April 11, 2013.

Need Analysis

Background

Winthrop-University Hospital Association, dba Winthrop-University Hospital Home Health Agency, is an existing Article 36 certified home health agency (CHHA) approved to serve Nassau County and a long term home health care program also approved to serve Nassau County. Winthrop-University Hospital Home Health Agency is proposing to expand the service area of their CHHA into the two contiguous counties of Suffolk and Queens

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 17th and 27th 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 applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made to the Public Health and Health Planning Council.

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 17th and 27th 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;
- 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.

Winthrop-University Hospital Home Health Agency specified how they have the capacity to facilitate Medicaid Redesign. The applicant discusses many of the Medicaid Redesign Initiatives and programs they already have in place or their plans on how they will successfully implement the initiatives. The applicant has existing agreements and partnerships with local providers and has indicated that they currently are expanding relationships with local providers to advance Medicaid Redesign. The applicant has contractual relationships with Fidelis, Affinity, United Healthcare, Empire Plan, Oxford, Blue Cross Senior and VNS Choice. The entity also contracts with MLTCP EmblemHealth and is currently in contractual negotiations with Agewell New York, Elderplan and VNS Choice.

The applicant provided detailed, specific demographic information with regards to the criteria outlined in 10 NYCRR 709.1(a) for both counties they propose to serve. They provided an analysis of the data and explained how they are well suited to meet both public and community need. The applicant detailed their use of HIT and how their proposal will result in cost savings to the health care system. Their proposal demonstrates that the applicant understands the needs of the communities they serve and propose to serve and that they have special disease management programs which address the needs of the community. They detail community outreach programs, how they educate the community about their services, and describe their existing linkages within the proposed counties.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Winthrop-University Hospital Association dba Winthrop-University Hospital Home Health Agency is an existing Article 36 certified home health agency (CHHA) approved to serve Nassau County and a long term home health care program also approved to serve Nassau County. Winthrop-University Hospital Home Health Agency is proposing to expand the service area of their CHHA into the two contiguous counties of Suffolk and Queens.

Winthrop-University Hospital Home Health Agency does not plan to open any branch offices in either Suffolk or Queens Counties at this time and proposes to serve these counties from their current location at 290 Old Country Road in Mineola, New York.

Winthrop-University Hospital Home Health Agency proposes to provide the following health care services in Suffolk and Queens Counties: nursing, home health aide, personal care, physical therapy, occupational therapy, speech language pathology and medical social services.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an incremental operating budget for the first and third years, in 2013 dollars, which is summarized below:

	<u>Year One</u>	<u>Year Three</u>
<u>Revenues:</u>		
Commercial Fee-for-Service	\$7,175	\$9,988
Commercial Managed Care	134,299	187,014
Medicare	1,121,866	1,607,505
Medicaid	77,033	107,517
Private Pay	2,607	3,638
Charity Care	0	0
Other	<u>13,495</u>	<u>18,819</u>
Total Revenues	\$1,356,475	\$1,934,481
Expenses	<u>\$988,267</u>	<u>\$1,352,022</u>
Net Gain(Loss)	\$368,208	\$582,459

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial Fee For Service	12.09%	10.23%
Commercial Managed Care	15.04%	10.75%
Medicare	42.18%	42.06%
Medicaid	24.95%	32.37%
Private Pay/Other	2.47%	2.32%
Charity Care	3.27%	2.27%

Expense and utilization assumptions are based on the existing CHHA, as well as the recent implementation of the Medicaid Episodic Payment system.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements, estimated at \$225,337, which appears reasonable based on two months of third year expenses, and will be provided through the existing operation.

The submitted budget indicates that the applicant will achieve incremental net revenue in the first and third years of operations of \$368,208 and \$582,459, respectively. Revenue is based on current payment rates for Certified Home Health Agencies. The submitted budget appears reasonable.

Presented as BFA Attachment A is the audited 2010-2011 financial summary of Winthrop University Hospital Association and Subsidiaries. This shows the applicant has maintained a positive working capital position and a positive net asset position and achieved an average net income of \$20,997,289 from operations for the period 2010 through 2011.

Based on the preceding, it appears that the applicant has demonstrated the financial capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A Financial Summary for Winthrop University Hospital Association and
Subsidiaries 2010-2011 certified



Public Health and Health Planning Council

Project # 121312-C Good Samaritan Hospital Home Care Department

County: Rockland (West Nyack)
Purpose: Construction

Program: Certified Home Health Agency
Submitted: April 20, 2012

Executive Summary

Description

Bon Secours Charity Health System, Inc., an existing not-for-profit entity, requests approval to expand the existing certified home health agency (CHHA) to include Bronx, Westchester and New York counties. The CHHA is known as Good Samaritan Hospital Home Care Department and operated by Good Samaritan Hospital of Suffern. The CHHA will provide the following services: nursing, physical therapy, occupational therapy, social services, home health aide, personal care, and nutrition services.

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 application (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's. The applicant submitted an application in response to the competitive RFA and was awarded RFA approval. This CON application is in response to the RFA approval.

DOH Recommendation
Approval.

Need Summary
Good Samaritan Hospital Home Care Department's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary
Good Samaritan Hospital Home Care Department is currently in compliance with all applicable codes, rules and regulations.

Financial Summary
There are no project costs associated with this application.

Incremental Budget:	
Revenues	\$10,361,041
Expenses	<u>9,183,665</u>
Excess of Revenues over Expenses	\$1,177,376

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

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval conditional upon:

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

April 11, 2013.

Need Analysis

Background

Good Samaritan Hospital of Suffern, Inc. dba Good Samaritan Hospital Home Care Department is an existing Article 36 certified home health agency with approval to serve Orange and Rockland counties and an Article 36 long term home health care program also approved to serve Orange and Rockland counties. The applicant is requesting approval to expand the service area of the CHHA to include New York, Bronx, and Westchester 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 17th and 27th 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 applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made to the Public Health and Health Planning Council.

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 17th and 27th 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;
- 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.

The sole member of Good Samaritan Hospital of Suffern, Inc. is Bon Secours Charity Health System, Inc.

The applicant addressed the MRT initiatives in respect to incorporation of the continuum of care with emphasis on coordination of services between residential health care, adult housing, LTHHCP, and home transitioning with reduction of hospitalizations and SNF admissions; health information and care plan sharing to decrease gaps in addressing care needs; improve quality, appropriateness, timeliness, and efficiency of clinical decisions and care to improve outcomes. The emphasis is on the applicant's experience in meeting long term care needs and commitment to improve quality, appropriateness, timeliness and efficiency of clinical decisions and care in order to improve the quality and efficiency of health care. The applicant has electronic medical record systems, care management systems, and a telehealth program that would share information among providers to promote care coordination and continuity of care.

The applicant described strategies to partner with other providers to implement measures to reduce inappropriate utilization while improving health care outcomes. They demonstrated how approval of their proposal will build access to efficient and effective community-based systems of care through the development of an integrated health care system and formal relationships that coordinate care and standardized care coordination of patients.

The applicant presented data on the demographics of each county proposed including the projected population characteristics of the service area including: relevant health indicators and socio-economic conditions. The applicant described how they will meet the health needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services. The applicant described actual utilization of home care services in the geographic service area proposed to be served and described the patterns of in and out-migration for specific services and patient preferences or origin.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Good Samaritan Hospital of Suffern, Inc. d/b/a Good Samaritan Hospital Home Care Department is a not-for-profit corporation that currently operates an Article 36 certified home health agency (CHHA) with approval to serve Rockland and Orange counties and a long term home health care program also approved to serve Rockland and Orange counties. Good Samaritan Hospital Home Care Department is proposing to expand the service area of its CHHA to include New York, Bronx and Westchester Counties.

Good Samaritan Hospital Home Care Department proposes to offer the following health care services: nursing, home health aide, personal care, physical therapy, occupational therapy, respiratory therapy, speech language pathology, medical social services, nutrition and medical supply, equipment and appliances.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an incremental operating budget, in 2013 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Managed Care	\$6,257,359	\$6,817,976
Commercial Fee-for-Service	1,087,968	1,196,765
Medicare Fee-for-Service	<u>2,133,000</u>	<u>2,346,300</u>
Total Revenues	\$9,478,327	\$10,316,041
Expenses:		
Operating	\$8,033,118	\$8,771,257
Capital	<u>392,770</u>	<u>412,408</u>
Total Expenses	\$8,425,888	\$9,183,665
Excess of Revenues over Expenses	\$1,052,439	\$1,177,376

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	92.77%	92.76%
Medicare Fee-for-Service	3.40%	3.40%
Commercial Fee-for-Service	1.83%	1.84%
Charity Care	2.00%	2.00%

Expense and utilization assumptions are based on the historical experience of existing CHHA. Revenues are reflective of current payment rates as well as the recent implementation of the Medicaid Episodic Payment System.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$1,530,610, which appears reasonable based on two months of third year expenses. The applicant will provide equity from the operations at Bon Secours Charity Health System, Inc. Presented as BFA Attachment A are the 2010 and 2011 certified financial statements of Bon Secours Charity Health System, Inc., which indicates the availability of sufficient funds for the equity contribution to meet the working capital requirement.

The submitted budget indicates an excess of revenues over expenses of \$1,052,439 and \$1,177,376 during the first and third years, respectively. Revenues are reflective of current payment rates as well as the recent implementation of the Medicaid Episodic Payment System. The budget appears reasonable.

As shown on Attachment A, Bon Secours Charity Health System, Inc. had an average positive working capital position and an average negative net asset position.

Also, the entity incurred average operating losses of \$23,829,514 from 2010 through 2011. The applicant has indicated that the reason for the losses is as follows: increases in personnel and overhead costs, as well as the expansion of the system. The applicant implemented the following steps to improve operations: engaged a consulting firm to provide fiscal management, including COO and CFO replacement. To date, cost reduction efforts have included staffing reductions of over 100 personnel in non-clinical areas and overall expense management.

Presented as BFA Attachment B, is the 2012 internal financial statements of Bon Secours Charity Health System. As shown on Attachment B, the entity had a positive working capital position and a negative net asset position. Also, the entity incurred operating losses of \$18,721,514 through 2012. The applicant has indicated that the losses were the result of increases in personnel and overhead costs. The applicant implemented the following steps to improve operations: cost reduction efforts and the expansion of the CHHA.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

- | | |
|-------------------|---|
| BFA Attachment A- | 2010 and 2011 certified financial statements of Bon Secours Charity Health System, Inc. |
| BFA Attachment B- | 2012 internal financial statements of Bon Secours Charity Health System, Inc. |



Public Health and Health Planning Council

Project # 121323-C
St. Cabrini Nursing Home

County: New York (New York)
Purpose: Construction

Program: Certified Home Health Agency
Submitted: April 20, 2012

Executive Summary

Description

Cabrini of Westchester d/b/a St. Cabrini Nursing Home, a not-for-profit corporation, requests approval to expand its existing Long Term Home Health Care Program (LTHHCP) by establishing a Certified Home Health Agency (CHHA) to serve Bronx, New York and Westchester counties. The applicant is affiliated with St. Cabrini Nursing Home a 304-bed not-for-profit residential health care facility (RHCF) located in Westchester County, which also operates an Adult Day Health Care (ADHC) program in the same county.

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 CHHA's. Cabrini of Westchester d/b/a St. Cabrini Nursing Home submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

DOH Recommendation

Approval.

Need Summary

St. Cabrini Nursing Home's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary

Cabrini of Westchester, d/b/a St. Cabrini Nursing Home and St. Cabrini Nursing Home Long Term Home Health Care Program, plus Cabrini Care at Home, Inc., LHCSA, are all currently in compliance with all applicable codes, rules and regulations .

Financial Summary

There are no project costs associated with this proposal.

Budget	Revenues:	\$ 13,463,977
	Expenses:	<u>\$ 8,125,085</u>
	Gain:	\$5,338,892

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 of this application.

Office of Health Systems Management

Approval conditional upon:

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

April 11, 2013.

Need Analysis

Background

Cabrini of Westchester, dba St. Cabrini Nursing Home, is an existing not-for-profit corporation that operates an Article 28 residential health care facility and an Article 36 long term home health care plan currently approved to serve Westchester County. The applicant is requesting approval to expand the population served by establishing a new certified home health agency to serve Bronx, New York and Westchester 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 17th and 27th 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 applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made to the Public Health and Health Planning Council.

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 17th and 27th 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;
- 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.

The applicant met the criteria of the RFA including demonstrating need, support of MRT, and providing efficiencies in the home health care system. They provided data that detailed strategies they have already implemented or plan to implement that support the goals of the Department in advancing Medicaid Redesign. The applicant has been developing collaboration relationships with other Catholic providers to form a new-incorporated Independent Practice Association, Cardinal Health Partners IPA, LLC. The purpose of the IPA is for integrating efforts and sharing best practices and moving forward with one voice to preserve the traditions and legacy of excellence for the future. The IPA will organize and coordinate joint contracting with MLTCPs. They state that contracts have been formalized with two MLTCP partners (Archcare and VNS Choice).

The applicant stated that their experience in providing care to Medicaid recipients and minority populations, along with its quality improvement program and EMR system, will allow them to assist MLTCPs in addressing the adverse health outcomes affecting the residents of the proposed counties. Through the joint quality assurance/performance improvement effort within the Cardinal Health Partners IPA, the applicant states they will employ lessons learned and best practices to focus on PQI conditions.

In addition they applicant was able to demonstrate public need using the criteria specified in Section 709.1(a) of Title 10 and were able to identify their ability to operate a CHHA through their experience as a LTHHCP provider. They provided a detailed analysis of the data to demonstrate the public need. The applicant analyzed information by all proposed counties detailing demographics, projected growth in elderly population, persons receiving income support, disabled elderly population, mortality rates for selected causes, PQI rates by race/ethnicity and MUA.

The applicant also provided a need gap analysis based on provider types, MLTCP availability, CHHA projected utilization, as well as meeting the need of the underserved. They discussed the projected population growth in the proposed counties and the projected increase in CHHA utilization due to LTHHCP shift in patients to MLTCPs. They also described the projected increase in CHHA utilization resulting from efforts to prevent hospitalization and nursing home placement.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

This proposal seeks approval to expand the existing St. Cabrini Nursing Home Long Term Home Health Care Program (LTHHCP), with current approval to serve Kings, New York, Queens and Westchester Counties, by adding St. Cabrini Nursing Home Certified Home Health Agency (CHHA), with approval to serve Bronx, New York, and Westchester Counties, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Cabrini of Westchester, d/b/a St. Cabrini Nursing Home is an existing not-for-profit nursing home located at 115 South Broadway, Dobbs Ferry, New York 10522 (Westchester County), which currently operates the Monsignor Terrence Attridge Day Health Center, and the St. Cabrini Nursing Home Long Term Home Health Care Program (LTHHCP). The LTHHCP is located at the same address as the nursing home and is approved to serve Westchester County.

Effective November 1, 2012, Cabrini of Westchester, d/b/a St. Cabrini Nursing Home LTHHCP, officially purchased, acquired and merged Cabrini Center for Nursing and Rehabilitation LTHHCP (CON project 121093-C), which was located in Manhattan (New York County) and was operated by sister facility Cabrini Center for Nursing and Rehabilitation, thus adding Kings, New York, and Queens Counties to the approved geographic service area of St. Cabrini Nursing Home LTHHCP, and adding an additional branch office practice location at 541 East 5th Street, New York, New York 10009 (New York County) for St. Cabrini Nursing Home LTHHCP. That branch office has since relocated effective January 3, 2013, to 220 East 19th Street, Lower Level, New York, New York 10003 (New York County). Cabrini of Westchester also discloses affiliations with providers Cabrini Care at Home, Inc., a Licensed Home Care Services Agency (LHCSA) approved to serve Bronx, Kings, New York, Queens, Richmond, and Westchester Counties, and Cabrini Housing Development Fund Corporation.

Pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties, St. Cabrini Nursing Home LTHHCP seeks approval to expand its LTHHCP by adding St. Cabrini Nursing Home Certified Home Health Agency (CHHA), with approval to serve Bronx, New York, and Westchester Counties only. The new CHHA will be located at the LTHHCP's current location of 115 South Broadway, Dobbs Ferry, New York 10522 (Westchester County), and will also utilize the existing branch office practice location at 220 East 19th Street, Lower Level, New York, New York 10003 (New York County).

Cabrini of Westchester, d/b/a St. Cabrini Nursing Home Certified Home Health Agency will provide the following home health care services: home health aide; medical social services; medical supplies, equipment, and appliances; nursing; nutritional services; occupational therapy, personal care; physical therapy, and speech language pathology.

Recommendation

From a programmatic perspective, approval is recommended.

<h2>Financial Analysis</h2>

Operating Budget

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

Description	<u>First Year</u>	<u>Third Year</u>
Medicaid	\$4,469,265	\$9,376,287
Medicare	2,043,845	4,087,690
Total Revenues	\$6,513,110	\$13,463,977
Total Expenses	\$4,301,340	\$8,125,085
Net Income or (Loss)	\$2,211,770	\$5,338,892

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

	First and Third Years
Medicaid Fee for Service	85.8%
Medicare Episodic	12.1%
Charity Care	2.1%

Utilization was based upon the applicant's experience in providing home care service in the community and the anticipated need for additional CHHA services as the system transitions to Managed Long Term Care Plans (MLTCP) directed care and the projected reduction of LTHHCP services. The expense projections are based upon the applicant's experience in providing LTHHCP services in the community and similarly sized CHHA's in the downstate region.

The average Medicaid episodic payment is expected to be \$4,876.14 after taking into consideration the average case mix of .789251 and adjusting for the Hudson Valley Wage Index Factor of 1.125693. The applicant expects to have approximately 925.8 Medicaid episodes in the first year and 1,942.3 episodes by the third year.

Medicare average episodic payment of \$4,310 was based on the applicant's historical LTHHCP payment experience. The applicant expects to have approximately 479 Medicare episodes in the first year and 958 Medicare episodes in the third year.

Capability and Feasibility

There are no project costs associated with this application.

The working capital requirement is estimated at \$1,354,181, which appears reasonable based upon two months of third year expenses, which will be provided from Cabrini of Westchester d/b/a St. Cabrini Nursing Home accumulated funds and from ongoing operations. Presented as BFA Attachment A is Cabrini of Westchester and Subsidiary 2010 and 2011 certified financial summary which shows sufficient resources for this purpose.

The budget projects a first year operating surplus of \$2,211,770 and a third year operating surplus of \$5,338,892. Revenues are based on current payment methodologies. The submitted budget appears reasonable.

A review of Attachment A, the 2010-2011 financial summary for Cabrini of Westchester and Subsidiary (Center) shows that the facility had an average operating surplus for the years 2010 -2011 of \$401,632. The Center had a positive average working capital position of \$6,618,824 and ended 2011 with \$15,872,326 in total net assets.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary for 2010 and 2011, Cabrini of Westchester and Subsidiary
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Public Health and Health Planning Council

Project # 131109-C
Health Services of Northern New York, Inc.

County: St. Lawrence (Potsdam)
Purpose: Construction

Program: Long-Term Home Health Care
Submitted: February 25, 2013

Executive Summary

Description

Health Services of Northern New York, Inc., an existing proprietary Certified Home Health Agency, requests approval for the certification of a Long Term Home Health Care Program to serve the residents of St. Lawrence County. Currently, St. Lawrence County Public Health Department's Long Term Home Health Care Program is the only LTHHCP serving St. Lawrence County. The county has received approval for a closure plan for their CHHA and LTHHCP and they intend to close in the near future.

The LTHHCP will provide the following services: Nursing; home health aide; homemaker; housekeeper; medical social services; nutrition; occupational therapy; personal care; physical therapy; respiratory therapy and speech pathology services.

DOH Recommendation
Contingent approval.

Need Summary

There will be no Need recommendation of this application

Program Summary

Health Services of Northern New York, Inc. is currently in compliance with all applicable codes, rules and regulations.

Financial Summary

There is no project cost associated with this application.

Incremental Budget:

Revenues	\$1,214,958
Expenses	<u>530,535</u>
Net Income	\$ 684,423

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval contingent upon:

1. St. Lawrence County Public Health Department's implementing the closure plan for their Long Term Home Health Care Program. [CHA]

Council Action Date

April 11, 2013.

Programmatic Analysis

Background

Health Services of Northern New York, Inc., an Article 36 certified home health agency (CHHA) with approval to serve St. Lawrence County, is proposing to establish a long term home health care program (LTHHCP) with 160 slots to serve the residents of St. Lawrence County. St. Lawrence County Public Health Department's Long Term Home Health Care Program is currently approved to operate a 160 slot LTHHCP and they are the only LTHHCP currently serving the residents of St. Lawrence County. The county has submitted a closure plan for its CHHA and LTHHCP to the Department which has been approved. Health Services of Northern New York, Inc. is the only other operational home health care provider in St. Lawrence County, and is proposing to establish this LTHHCP in conjunction with its current CHHA operations. Health Services of Northern New York, Inc. plans to operate out of its current CHHA office at 56 Market Street, Potsdam, New York 13617.

Health Services of Northern New York, Inc. is proposing to offer the following thirteen required home health care services in its new LTHHCP: audiology, home health aide, homemaker, housekeeper, medical social services, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, personal care, physical therapy, respiratory therapy and speech language pathology.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an incremental operating budget, in 2013 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Fee-for-Service	\$1,134,214	\$1,203,288
Medicare Fee-for-Service	8,792	9,327
Other	<u>2,209</u>	<u>2,343</u>
Total Revenues	\$1,145,215	\$1,214,958
Expenses:		
Operating	\$500,080	\$530,535
Capital	<u>0</u>	<u>0</u>
Total Expenses	\$500,080	\$530,535
Net Income	\$645,135	\$684,423

Utilization is shown by payor source during the first and third year is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-for-Service	99.56%	99.56%
Medicare Fee-for Service	.36%	.36%
Other	.08%	.08%

Expense assumptions are based on the additional staffing that they will require to serve the LTHHCP clients, in addition to their current CHHA operations. Utilization assumptions are based on St. Lawrence County Public Health Department's 2011 figures and then increased 3% each year based on St. Lawrence County Public Health Department historical growth.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$88,422, which is equivalent to two months of third year expenses. The applicant will provide equity from operations to meet the working capital requirement. Presented as BFA Attachment A are the 2010 and 2011 certified financial statements of Health Services of Northern New York, Inc., which indicates the availability of sufficient funds to meet the working capital requirement.

The submitted budget indicates an excess of revenues over expenses of \$645,135 and \$684,423 during the first and third years, respectively. Revenues are reflective of current payment rates for long term home health care services.

As shown on Attachment A, the entity had an average positive working capital position and an average negative net asset position from 2010 through 2011. The applicant incurred a loss of \$86,197 in 2011, which was the result of the Company incurred an \$858,000 expense, which is scheduled to be repaid over four years. The expense was a lawsuit brought by an insurance company regarding workers compensation claims.

Presented as BFA Attachment B, is the November 30, 2012 internal financial statement (income statement) of Health Services of Northern New York, Inc. As shown, the applicant achieved a net income of \$1,021,606 through November 30, 2012.

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

Recommendation

From a financial perspective, approval is recommended.

<h2>Attachments</h2>

- | | |
|-------------------|---|
| BFA Attachment A- | Financial Summary- 2010 and 2011 certified financial statements of Health Services of Northern New York, Inc. |
| BFA Attachment B- | Financial Summary- November 30, 2012 internal financial statements (income statement) of Health Services of Northern New York, Inc. |

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

April 11, 2013

A. APPLICATIONS FOR 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

**Downstate Request for Applications – Certified Home Health Agencies – Exhibit #9
Construction**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	121214 C	New York Congregational Nursing Center LTHHCP (Kings County) Mr. Fassler – Interest Ms. Hines – Abstained at EPRC	Contingent Approval
2.	121287 C	Gurwin Jewish Nursing and Rehabilitation Center LTHHCP (Suffolk County) Mr. Fassler – Interest Ms. Hines – Abstained at EPRC	Approval
3.	121313 C	Visiting Nurse Service of New York Home Care (New York County) Mr. Fassler – Interest Ms. Regan – Recusal Ms. Hines – Abstained at EPRC	Approval
4.	121217 C	Bethel Nursing Home Co Inc (Westchester County) Mr. Fensterman – Recusal Ms. Hines – Abstained at EPRC	Contingent Approval

5.	121231 C	Parker Jewish Institute for Health Care and Rehabilitation (Nassau County) Mr. Fassler – Interest Mr. Fensterman – Recusal Ms. Hines – Abstained at EPRC	Approval
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**Downstate Dear Administrator Letters – Certified Home Health Agencies – Exhibit #10
Construction**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	121421 C	Four Seasons Nursing and Rehabilitation Center LTHHCP (Kings County) Mr. Fensterman – Recusal Ms. Hines – Abstained at EPRC	Approval
2.	121440 C	Hillside Manor Nursing Center (Queens County) Mr. Fensterman – Recusal Ms. Hines – Abstained at EPRC	Approval



Public Health and Health Planning Council

Project # 121214-C New York Congregational Nursing Center LTHHCP

County: Kings (Brooklyn)
Purpose: Construction

Program: Certified Home Health Agency
Submitted: April 16, 2012

Executive Summary

Description

New York Congregational Nursing Center, Inc., a not-for-profit corporation that operates a 200-bed residential health care facility (RHCF) and a 200-slot long term home health care program (LTHHCP) in Kings County, requests approval to expand the LTHHCP's services by certifying a Certified Home Health Agency (CHHA) that will serve the residents of Kings County, specializing in the mental health home care needs of Caribbean, Asian and Russian clients in Brooklyn.

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 application (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's. The applicant submitted an application in response to the competitive RFA and was awarded RFA approval. This CON application is in response to the RFA approval.

DOH Recommendation
Contingent approval.

Need Summary

New York Congregational Nursing Center LTHHCP's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary

New York Congregational Nursing Center, Inc. is currently in compliance with all applicable codes, rules and regulations.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:

Revenues	\$2,314,574
Expenses	<u>1,810,001</u>
Excess of Revenues over Expenses	\$504,573

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.

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

April 11, 2013.

Need Analysis

New York Congregational Nursing Center, Inc. is an existing not-for-profit corporation which operates a residential health care facility and a long term home health care program with approval to serve Kings County. The applicant is requesting approval to expand their services offered by certifying an Article 36 Certified Home Health Agency (CHHA) to serve Kings County.

Background

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 17th and 27th 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 applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made to the Public Health and Health Planning Council.

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 17th and 27th 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;

- 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.

New York Congregational Nursing Center has extensive experience in providing care to Medicaid recipients and minority populations. They described their quality improvement program and HIT systems which will allow them to assist MLTCPs in addressing the adverse health outcomes affecting the residents of Kings County. The applicant described how their agency will place emphasis on care coordination, disease management and prevention, and performance, they have the ability to assist with the MRT goal of reducing costly and avoidable hospital and nursing home admissions and readmissions while improving patient outcomes.

The applicant volunteered to be one of twenty-three long term care providers in NYS to implement Interventions to Reduce Preventable Acute Care Transfers NY (INTERACT NY) initiative. The goal of this initiative is to prevent unnecessary hospitalizations and re-hospitalizations for patients receiving long-term care services through the use of standardized tools to improve communication, promote clinical guidelines and support and advanced care planning.

The applicant is very familiar with the demographics of Kings County and they have existing collaborative relationships. The applicant described their experience and ability to manage high risk patients through their existing diverse and specialized programs. They propose to integrate mental health and primary care services to effectively manage the health needs of people with chronic disease.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

New York Congregational Nursing Center, Inc. is an existing not-for-profit corporation which operates an Article 28 residential health care facility (RHCF) and an Article 36 long term home health care program (LTHHCP) with approval to serve Kings County. The applicant proposes to establish a certified home health agency with the name New York Congregational Nursing Center CHHA to be located at 123 Linden Boulevard, Brooklyn, New York 11226.

Although this CHHA proposes to be a general service CHHA, the applicant will serve the residents of Kings County specializing in the mental health needs of Caribbean, Asian, and Russian clients residing in Brooklyn. The applicant proposes to offer the following health care services in the CHHA: home health aide, medical social services, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, personal care, physical therapy and speech language pathology.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site that they will occupy, which is summarized below:

Premises: 1,200 sq. ft. located at 123 Linden Building, Brooklyn, New York
 Landlord: New York Congregational Center for Community Life
 Tenant: New York Congregational Nursing Center CHHA
 Term: 5 years with a 5 year term
 Rental: \$48,000 annually (\$40.00 per sq. ft.)
 Provisions: The tenant shall be responsible for utilities, sewer and maintenance services.

The applicant has indicated that the lease arrangement will be a non arms length lease arrangement.

Operating Budget

The applicant has submitted an incremental budget, in 2013 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Managed Care	\$213,939	\$588,470
Medicare Fee-For-Service	475,549	1,497,975
Commercial Managed Care	<u>72,421</u>	<u>228,129</u>
Total Revenues	\$761,909	\$2,314,574
Expenses:		
Operating	\$563,972	\$1,633,272
Capital	<u>56,215</u>	<u>176,729</u>
Total Expenses	\$620,187	\$1,810,001
Excess of Revenues over Expenses	\$141,722	\$504,573

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	34.50%	34.00%
Medicare Fee-for-Service	54.01%	54.00%
Commercial Managed Care	9.49%	10.00%
Charity Care	2.00%	2.00%

Expense assumptions are based on the applicant's New York Congregational's experience in providing LTHHCP services in the community and similarly sized CHHA's in the downstate region.

Utilization projections are based on the number of patients that the CHHA will be likely to serve in Year 1 as it transitions its agency to provide CHHA services and increases to a fully operational agency by Year 3.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$301,666, which appears reasonable based on two months of third year expenses. The applicant will provide equity to meet the working capital requirement. Presented as BFA Attachment A are the 2010 and 2011 certified financial statements of New York Congregational Nursing Center, which indicates the availability of sufficient funds to meet the working capital requirement.

The submitted budget indicates an excess of revenues over expenses of \$141,722 and \$504,573 during the first and third years, respectively. Revenue is reflective of current payment rates, as well as the recent implementation of the Medicaid Episodic Payment System. The budget appears reasonable.

As shown on Attachment A, the entity had a positive working capital position and a positive net asset position during 2011. Also, the entity incurred an operating loss of \$618,955 during 2011. The applicant has indicated that the reason for the 2011 loss is the result of allocation of prior year allowances of \$944,000 due to changes in the facility's rates, effecting anticipated receivables from prior years. As a result of the loss in 2011, the facility will be eliminating 34 positions through layoffs; on call reductions and non salary expenses were reviewed and reduced by changing vendors and services.

Presented as BFA Attachment B, is the November 30, 2012 internal financial statements of New York Congregational Nursing Center. As shown on Attachment B, the applicant had a positive working capital position and a negative net asset position. Also, the applicant incurred a loss of \$672,435 through November 30, 2012. The applicant has indicated that the reason for the loss is due to inadequate reimbursement for expenses incurred. The applicant implemented the following steps to improve operations: discontinued its contract with a special needs program that voluntarily enrolled residents into their Medicaid Managed Care Program, as the reimbursement rates were inadequate for the services rendered; the Long Term Home Health Care Program increased its capacity from 100 to 200 clients, and the applicant refinanced long term debt, providing financing cost savings.

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-	2011 certified financial statements of New York Congregational Nursing Center
BFA Attachment B-	November 30, 2012 internal financial statements of New York Congregational Nursing Center



Public Health and Health Planning Council

Project # 121287-C Gurwin Jewish Nursing and Rehabilitation Center LTHHCP

County: Suffolk (Commack)
Purpose: Construction

Program: Certified Home Health Agency
Submitted: April 20, 2012

Executive Summary

Description

Gurwin Jewish Nursing and Rehab Center Long Term Home Health Care Program (LTHHCP), is requesting to expand their existing LTHHCP services by establishing a Certified Home Health Agency (CHHA) to serve Nassau and Suffolk Counties.

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 CHHA's. Gurwin Jewish Nursing and Rehab submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

DOH Recommendation
Approval.

Need Summary

Gurwin Jewish Nursing and Rehabilitation Center's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary

Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. is currently in compliance with all applicable codes, rules and regulations.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:	Revenues:	\$15,945,493
	Expenses:	<u>15,603,260</u>
	Gain(Loss):	\$ 342,233

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 of this application.

Office of Health Systems Management

Approval conditional upon:

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

April 11, 2013.

Need Analysis

Background

Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island Inc. dba Gurwin Jewish Nursing and Rehabilitation Center is an existing not-for-profit corporation approved to operate an Article 28 residential health care facility and an Article 36 long term home health care program with approval to serve Nassau and Suffolk counties. The applicant is requesting approval to expand their population served by establishing an Article 36 Certified Home Health Agency (CHHA) to serve Nassau and Suffolk 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 17th and 27th 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 applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made to the Public Health and Health Planning Council.

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 17th and 27th 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;
- 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.

Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island Inc. states that their key objective in establishing a new CHHA is to assist in the transition of dual eligibles into the MLTCP in order to support the initiatives of the NYS MRT. They intend to improve efficiencies in the health care system with decreased fragmentation and greater care coordination to the frail, elderly and disabled.

The proposal states that their experience in care coordination and the provision of a full continuum of care in Nassau and Suffolk counties as a long term home health care program will allow them to facilitate the implementation of the MRT initiatives. They identify their expertise in the provision of culturally sensitive and compassionate services to a diverse population and their full array of services to the dual eligible population along with their commitment to providing necessary CHHA services within an integrated health care system and formal partnerships to prevent duplication of services and decrease fragmented care and prevent adverse outcomes.

The applicant has developed care protocols targeting specific diseases prevalent in the counties proposed and actively works closely with other health care providers and hospitals. Through the applied use of these disease management protocols, the applicant will positively impact several targeted chronic conditions and reduce hospitalization.

The applicant emphasized their expertise with implementation of an effective quality assurance and continuous performance improvement processes that will be used by the CHHA. They have demonstrated the ability to establish and implement quality assessments, identify areas for improvements, establish benchmarks and take steps to enhance performance and improve patient outcomes.

The applicant provided data to support public need and community need in the proposed areas. They provided projected growth rates of the elderly population and did an analysis of the service area which indicates high rates of mortality and hospitalizations for overall cardiovascular disease, diseases of the heart, stroke, diabetes, asthma and cancer among residents of all ages in both counties. The proposal provided a descriptive demand analysis which describes demographics, hospital discharges, impact on preventable hospital and ER use, and the health status of these counties.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

This proposal seeks approval to expand the existing Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a Gurwin Jewish Nursing and Rehabilitation Center Long Term Home Health Care Program (LTHHCP), with current approval to serve Nassau, and Suffolk counties, by adding Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a Gurwin Jewish Certified Home Health Agency (CHHA), requesting approval to serve Nassau, and Suffolk counties, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. is an existing not-for-profit corporation which operates a residential health care facility and a long term home health care program (LTHHCP).

The applicant proposes to expand their population served by the LTHHCP to establish a CHHA to serve patients in Nassau and Suffolk counties adding Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a d/b/a Gurwin Jewish Certified Home Health Agency. Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a d/b/a Gurwin Jewish Certified Home Health Agency will serve Nassau and Suffolk counties from their existing office located at 5036 Jericho Turnpike, Ste 202, Commack, New York 11725.

Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a Gurwin Jewish Certified Home Health Agency (CHHA) proposes to provide the following health care services: home health aide, medical social services, medical supply, equipment and appliances, nursing, occupational therapy, physical therapy, respiratory therapy, nutritional, audiology, speech language pathology, homemaker and housekeeper services.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an incremental operating budget for the first and third years, in 2013 dollars, which is summarized below:

	<u>Year One</u>	<u>Year Three</u>
<u>Revenues:</u>		
Medicaid Managed Care	\$3,758,969	\$11,576,114
Medicare Fee-For-Service	1,158,720	3,837,659
Medicare Managed Care	138,456	443,520
Other	27,330	88,200
Total Revenues	\$5,083,475	\$15,945,493
Expenses	<u>5,170,482</u>	<u>15,603,260</u>
Net Gain(Loss)	\$(87,007)	\$342,233

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

<u>Payor</u>	<u>Year One and Year Three</u>
Medicare Managed Care	3.8%
Medicare Fee-for-Service	23.2%
Medicaid Managed Care	69.0%
Charity Care	4.0%

Expense and utilization assumptions are based on the existing LTHHCP Program's historical experience. Revenues are reflective of current payment rates as well as the Medicaid Episodic Payment system.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements, estimated at \$2,600,543, appear reasonable based on two months of third year expenses and will be provided through the existing operation.

The submitted budget indicates that the applicant will achieve a net loss of \$87,007 and a net gain of \$342,233 incremental net revenue in the first and third years of operations, respectively. Revenue is based on current payment rates for Certified Home Health Agencies. The submitted budget appears reasonable.

Presented as BFA Attachment A is the audited 2011 financial summary of Gurwin Jewish Nursing and Rehab which shows the applicant has maintained positive working capital, net equity and experienced a net loss of \$1,970,557 from operations. The 2012 draft financial summary of Gurwin Jewish Nursing and Rehab which shows the applicant has maintained positive working capital, net equity and a net profit of \$911,690 from operations for 2012.

The prior year losses have been eliminated through voluntary incentive resignation, appropriate expense controls and an increase on emphasis of sub-acute patients leading to a higher Medicaid case mix and increased Medicare revenues.

Based on the preceding, it appears that the applicant has demonstrated the financial capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A Financial Summary for Gurwin Jewish Nursing and Rehab, 2011 audited and
2012 draft



Public Health and Health Planning Council

Project # 121313-C Visiting Nurse Service of New York Home Care

County: New York (New York)
Purpose: Construction

Program: Certified Home Health Care
Submitted: April 20, 2012

Executive Summary

Description

Visiting Nurse Service of New York Home Care (VNSNY), an existing not-for-profit, certified home health agency (CHHA) located in New York City, is requesting to expand their existing certified home health agency (CHHA) service area from its existing service area in Bronx, Kings, New York, Queens, Richmond, Rockland, Westchester and Nassau counties, to include Suffolk County as well. The applicant will provide the following services: Nursing, Home Health Aide, Medical Social Services, Occupational Therapy, Physical Therapy and Speech Pathology services.

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 CHHA's. VNSNY submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

DOH Recommendation
Approval.

Need Summary

Visiting Nurse Service of New York Home Care's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary

Visiting Nurse Service of New York Home Care II, Inc., d/b/a Visiting Nurse Service of New York Home Care CHHA, and Visiting Nurse Service of New York Home Care II, Inc., d/b/a Visiting Nurse Service of New York Home Care LTHHCP, are currently in compliance with all applicable codes, rules and regulations.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:

Revenues:	\$14,741,275
Expenses:	<u>14,537,539</u>
Gain(Loss):	<u>\$203,736</u>

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 of this application.

Office of Health Systems Management

Approval conditional upon:

Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

April 11, 2013.

Need Analysis

Background

Visiting Nurse Service of New York Home Care II, Inc. dba Visiting Nurse Service of New York Home Care is an existing Article 36 Certified Home Health Agency (CHHA) with approval to serve Bronx, Kings, New York, Queens, Richmond, Nassau, Westchester and Rockland counties and an Article 36 Long Term Home Health Care Program with approval to serve Bronx, Kings, New York, Queens and Nassau counties. The applicant is requesting approval to expand the service area of their CHHA to include the downstate county of Suffolk. They have also requested approval to expand into an additional 15 upstate counties which will be presented to the Public Health and Health Planning Council at future meetings.

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 17th and 27th 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 applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made to the Public Health and Health Planning Council.

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 17th and 27th 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;

- 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.

The applicant provided a thorough analysis of the home health care needs and demonstrated knowledge of the issues surrounding home health care in Suffolk County. The applicant also demonstrated how its organizational capacity, including disease management and care management programs, will produce quality and efficient home health care.

VNSNY demonstrates support of Medicaid Redesign initiatives and elaborates on transitioning patients into MLTCPs; reducing utilization while improving outcomes; managing high risk complex cases; extensive experience in care management programs and existing utilization control programs; health home initiatives; behavioral health programs; and their HIT system that utilizes a variety of tools that will enhance care coordination and improve health outcomes.

The applicant has existing proven care management programs such as their Congregate Care program, SPARK program, ESPIRIT, and Centers of Excellence. These programs provide outreach to the community and/or improve care management for high-risk cases. The applicant has existing utilization control programs and has an HIT system that utilizes a variety of tools that will enhance care coordination and improve health outcomes.

The applicant discusses how the CHHA will produce operating efficiencies within the health care system through clinical innovation and economies of scale as the CHHA and MLTCP expand using existing administrative resources.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

This proposal seeks approval to expand the existing Visiting Nurse Service of New York Home Care Certified Home Health Agency (CHHA), which has current approval to serve Bronx, Kings, New York, Queens, Richmond, Nassau, Westchester, and Rockland Counties, to include approval to serve the downstate county of Suffolk, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties. The applicant's request to establish additional CHHAs to serve the upstate counties of Putnam, Orange, Dutchess, Ulster, and Sullivan, Delaware, Otsego, Montgomery, Fulton, and Hamilton, and Onondaga, Cortland, Oneida, Madison, and Herkimer, will be addressed in separate establishment CON applications to be submitted under separate covers.

Visiting Nurse Service of New York Home Care II, Inc., d/b/a Visiting Nurse Service of New York Home Care, located at 107 East 70th Street, New York, New York 10021, is an existing not-for-profit voluntary corporation that operates a Certified Home Health Agency (CHHA) and a Long Term Home Health Care Program (LTHHCP), both located at 1250 Broadway, New York, New York 10001 (New York County). The CHHA is currently approved to serve Bronx, Kings, New York, Queens, Richmond, Nassau, Westchester, and Rockland Counties, and the LTHHCP is currently approved to serve Bronx, Kings, New York, Queens, and Nassau Counties. The main parent office practice location is located at 1250 Broadway, New York, New York 10001 (New York County), with current additional branch office practice locations located at 375 North Broadway, Jericho, New York 11753 (Nassau County), 1200 Waters Place, Bronx, New York 10461 (Bronx County), 1150 South Avenue, Suite 302, Staten Island, New York 10314 (Richmond County), 75-20 Astoria Boulevard, Suite 220, Jackson Heights, New York 11370 (Queens County), 1630 East 15th Street, Brooklyn, New York 11229 (Kings County), and 90 South Ridge Street, Suite 1110, Rye Brook, New York 10573 (Westchester County).

Visiting Nurse Service of New York Home Care II, Inc., d/b/a Visiting Nurse Service of New York Home Care, also discloses affiliations with the following sibling providers within the organizational structure of its member (parent) corporation Visiting Nurse Service of New York:

Visiting Nurse Service of New York Hospice Care (Hospice)
 Family Care Services (LHCSA)
 New Partners, Inc., d/b/a Partners in Care (LHCSA)
 VNS Choice Community Care (LHCSA)
 VNS Choice d/b/a VNSNY Choice (HMO)

Pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties, Visiting Nurse Service of New York Home Care seeks approval to expand its CHHA by adding approval to serve the downstate geographic service area of Suffolk County. The CHHA proposes to serve Suffolk County from its existing practice locations noted above. The applicant is also requesting approval to serve fifteen (15) additional upstate counties, which will be addressed in separate establishment CON applications to be submitted under separate covers.

Visiting Nurse Service of New York Home Care CHHA currently provides the following home health care services: home health aide; medical social services; medical supplies, equipment, and appliances; nursing; occupational therapy, physical therapy, and speech language pathology.

Recommendation

From a programmatic perspective, disapproval as proposed and conditional approval as amended by the Department, is recommended.

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

The applicant has submitted an incremental operating budget for the first and third years, in 2013 dollars, which is summarized below:

	<u>Year One</u>	<u>Year Three</u>
<u>Revenues:</u>		
Medicare Fee-for Service	\$2,730,747	\$4,904,897
Medicare Managed Care	531,853	1,026,063
Medicaid Fee-for-Service	764,764	1,475,400
Medicaid Managed Care	5,809,966	6,277,759
Commercial Managed Care	547,969	1,057,156
Charity Care	0	0
Total Revenues	\$10,385,299	\$14,741,275
Expenses	<u>\$10,322,496</u>	<u>\$14,537,539</u>
Net Gain(Loss)	<u>\$62,803</u>	<u>\$203,736</u>

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial Managed Care	6.02%	8.13%
Medicare Fee-for-service	21.12%	28.50%
Medicare Managed Care	5.84%	7.89%
Medicaid Fee-for-Service	6.45%	8.70%
Medicaid Managed Care	58.57%	44.78%
Charity Care	2.00%	2.00%

Expense and utilization assumptions are based on the existing CHHA Program's historical experience. Revenues are reflective of current payment rates as well as the recent implementation of the Medicaid Episodic Payment system

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements, estimated at \$2,422,923, which appears reasonable based on two months of third year expenses and will be provided through the existing operation.

The submitted budget indicates that the applicant will achieve incremental net revenue in the first and third years of operations of \$62,803 and \$203,736, respectively. Revenue is based on current payment rates for Certified Home Health Agencies. The submitted budget appears reasonable.

Presented as BFA Attachment A is the audited financial summary of Visiting Nurse Service of New York-Home Care II d/b/a Visiting Nurse Service of New York-Home Care, which shows the applicant has maintained a positive working capital position, a positive net asset position, and achieved an average net Loss of \$9,355,500 from operations for the period 2010 through 2011. Losses are related to declines in volume, as well as rate reductions in both Medicare and Medicaid. VNSNY Home Care (VNSNYHC) is planning to implement significant operational improvements to reach break-even financial operating results by 2015. The applicant indicates that over the course of the next three years, VNSNYHC will realize significant cost savings in reaching best practice benchmarks in utilization, productivity and administrative cost efficiencies. To mitigate losses, the organization is reviewing expenses and overhead, including administrative position eliminations, productivity, call center redesign, streamline of contract administration, and office space consolidation. In addition, VNSNY will be investing in new information technology that will facilitate the achievement of cost efficiency improvements. These technologies will enable more real-time utilization controls, caseload optimization and streamlined administrative functions.

Based on the preceding, it appears that the applicant has demonstrated the financial capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

<h2>Attachments</h2>

BFA Attachment A	Financial Summary for Visiting Nurse Service of New York-Home Care II d/b/a Visiting Nurse Service of New York-Home Care (2011 and 2010)
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Public Health and Health Planning Council

Project # 121217-C
Bethel Nursing Home Co., Inc.

County: Westchester (Ossining)
Purpose: Construction

Program: Certified Home Health Agency
Submitted: April 16, 2012

Executive Summary

Description

Bethel Nursing Home Co., Inc., an existing not-for-profit Long Term Home Health Care Program (LTHHCP) provider, is requesting to expand the current LTHHCP to include a Certified Home Health Agency to serve Bronx, New York, Putnam, Queens and Westchester counties. The LTHHCP currently serves Westchester County.

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 CHHA's. Bethel Nursing Home Co., 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.

DOH Recommendation

Disapproved as proposed. Contingent and conditional approval as amended by the Department.

Need Summary

Bethel Nursing Home's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary

Bethel Nursing Home Company, Inc., and Bethel Nursing Home Company, Inc., Long Term Home Health Care Program, are currently in compliance with all applicable codes, rules and regulations.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:	Revenues:	\$2,835,330
	Expenses:	<u>2,221,392</u>
	Net Income:	\$613,938

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 new incremental budgets to be re-evaluated for financial feasibility for all counties approved for establishment or expansion acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

April 11, 2013.

Need Analysis

Background

Bethel Nursing Home Company, Inc. is an existing not-for-profit corporation that operates an Article 28 residential health care facility and an Article 36 long term home health care program with approval to serve Westchester County. The applicant is proposing to expand the population served and the service area by establishing a certified home health agency (CHHA) to serve the downstate counties of Bronx, New York, Queens, and Westchester. The applicant has also requested approval to expand into the upstate county of Putnam which will be presented to the Public Health and Health Planning Council at a future meeting.

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 17th and 27th 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 applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made to the Public Health and Health Planning Council.

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 17th and 27th 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;
- 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.

Bethel Nursing Home Company, Inc. presented data in support of the criteria in 709.1(a) from numerous sources and described how they would meet the needs of the underserved. They utilized GAP analysis and presented normative criteria for age specific utilization rates; described patterns of in and out migration; described how they will conduct outreach and health education programs; and describe the availability of home care services within the proposed areas for each county in addition to how the CHHA would support the goals of MRT initiatives.

The applicant discussed their LTHHCP personalized plans of care focused on specific patient needs to reduce preventable admissions and readmissions to hospitals and nursing homes. They discussed their disease centered plans of care which they support through specialized programs, which include CHF; COPD; diabetes; and all common conditions affecting elderly individuals. These programs are overseen by nurses specializing in these fields. They describe how their use of IT systems effectively supports their patients with specific diseases and conditions.

The applicant elaborates on the streamlining of operations and monitoring/controlling utilization and costs in home care through their Health IT systems and collaboration and sharing of patient information with MLTCPs and healthcare providers, including their own affiliates. They describe their electronic charting, reporting, networking and communication tools in addition to their data analyses functions, clinical management and strategic benchmarking functions. They discuss controlling utilization through their existing systems and their Quality Assurance and Performance Improvement Programs in place to review utilization and referrals to determine if services are medically necessary or appropriate to meet the patient's needs.

The applicant identified well established relationships with healthcare institutions, social service agencies and other entities that will ensure that their CHHA program is well utilized and will provide high quality and coordinated care.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

This proposal seeks approval to expand the existing Bethel Nursing Home Company, Inc., Long Term Home Health Care Program (LTHHCP), with current approval to serve Westchester County, by adding Bethel Nursing Home Company, Inc., Certified Home Health Agency (CHHA), with approval to serve the downstate counties of Bronx, New York, Queens, and Westchester, and the upstate county of Putnam, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Bethel Nursing Home Company, Inc., is an existing not-for-profit voluntary corporation which operates a nursing home located at 17 Narragansett Avenue, Ossining, New York 10562 (Westchester County). The nursing home currently operates Bethel Nursing Home Company, Inc., Adult Day Health Care Program (ADHCP), and Bethel Nursing Home Company, Inc., Long Term Home Health Care Program (LTHHCP), located at 19 Narragansett Avenue, Ossining, New York 10562 (Westchester County). The LTHHCP is approved to serve Westchester County only.

Pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties, Bethel Nursing Home Company, Inc., Long Term Home Health Care Program seeks approval to expand its LTHHCP by adding Bethel Nursing Home Company, Inc., Certified Home Health Agency (CHHA), with approval to serve the downstate counties of Bronx, New York, Queens, and Westchester, and the upstate county of Putnam. The new CHHA will be located at the LTHHCP's current location at 19 Narragansett Avenue, Ossining, New York 10562 (Westchester County). The proposed CHHA plans to serve all five requested counties from this practice location in Westchester County.

Bethel Nursing Home Company, Inc., Certified Home Health Agency will provide the following home health care services: home health aide; medical social services; medical supplies, equipment, and appliances; nursing; nutritional services; occupational therapy; personal care; physical therapy; respiratory therapy; and speech language pathology.

The applicant has requested approval to serve Putnam County. A determination regarding the recommendation for approval or disapproval for the proposed CHHA to serve that upstate county will be presented to the Council at a future meeting. Therefore, this application has been amended by the Department to remove the request for that upstate county at this time.

Recommendation

From a programmatic perspective, disapproval as proposed and conditional approval as amended by the Department, is recommended.

<h2>Financial Analysis</h2>

Operating Budget

The applicant has submitted an incremental operating budget, in 2013 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Commercial	\$103,201	\$295,119
Medicaid	581,346	877,763
Medicare	<u>306,949</u>	<u>1,662,448</u>
Total Revenues:	\$991,496	\$2,835,330
Expenses:	<u>\$740,054</u>	<u>\$2,221,392</u>
Net Income:	\$251,442	\$613,938

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

	<u>Year One and Three</u>
Commercial Managed Care	10%
Medicare Fee-for-Service	54%
Medicaid Managed Care	34%
Charity Care	2%

Expenses and utilization assumptions are based on the historical experience of Bethel Nursing Home Co., Inc. Revenues are reflective of current payment rates.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$370,232 based on two months of third year expenses and will be provided from the proceeds of its recent sale of 35 residential health care facility beds for \$2,113,340. Presented as BFA Attachment A is the closing payment statement indicating the receipt of sufficient funds.

The submitted budget indicates a net income of \$251,442 and \$613,938 for the first and third years of operations, respectively. Revenue is based on current payment rates for certified home health agencies and the Medicaid episodic payment rates. The budget appears reasonable.

Presented as BFA Attachment B, a financial summary of Bethel Nursing Home Co., Inc. indicates that the facility has experienced negative working capital and negative net assets and generated a net income of \$210,749 for 2011. Presented as BFA Attachment C, a financial summary of Bethel Nursing Home Co., Inc. indicates that the facility has experienced negative working capital and a net loss of \$58,076 as of December 31, 2012.

The applicant has stated that the operating loss was due to prior year workers compensation cases, and the negative working capital is due to Related Party being listed as current liabilities. These are discretionary liabilities owed to the

facility's related parties and are not immediately due within the fiscal year. To improve operations, Bethel Nursing Home Co., Inc. has decertified 35 residential health care facility beds under approved CON 122138. The certification of the CHHA will also improve financial performance and contribute to a positive working capital position in the future.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Closing payment statement
BFA Attachment B	Financial Summary 2011, Bethel Nursing Home Co, Inc.
BFA Attachment C	Internal Financial Summary as of December 31, 2012, Bethel Nursing Home Co, Inc.



Public Health and Health Planning Council

Project # 121231-C Parker Jewish Institute for Health Care and Rehabilitation

County: Nassau (Lake Success)
Purpose: Construction

Program: Certified Home Health Agency
Submitted: April 17, 2012

Executive Summary

Description

Parker Jewish Institute for Health Care and Rehabilitation, an existing not-for-profit Long Term Home Health Care Program (LTHHCP) provider is requesting to expand the current LTHHCP to include a Certified Home Health Agency to serve Brooklyn, Queens, Nassau, Suffolk, New York, Bronx and Westchester counties. The LTHHCP currently serves Kings, Nassau and Queens Counties.

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 CHHA's. Parker Jewish Institute for Health Care & Rehabilitation submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

DOH Recommendation
Approval.

Need Summary

Parker Jewish Institute for Health Care and Rehabilitation's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary

Parker Jewish Institute for Health Care and Rehabilitation is currently in compliance with all applicable codes, rules and regulations.

Financial Summary

There are no project costs associated with this application.

Incremental Budget	Revenues:	\$5,804,880
	Expenses:	<u>5,577,017</u>
	Net Income:	\$227,863

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 conditional upon:

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

April 11, 2013.

Need Analysis

Background

Parker Jewish Institute for Health Care and Rehabilitation is an existing not-for-profit corporation which operates a residential health care facility and a long term home health care program (LTHHCP). The LTHHCP operated by Parker Jewish Institute for Health Care and Rehabilitation is currently authorized to serve patients in Kings, Queens and Nassau counties. The applicant proposes to establish a CHHA and serve patients in Bronx, Kings, New York, Queens, Nassau, Suffolk and Westchester 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 17th and 27th 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 applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made to the Public Health and Health Planning Council.

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 17th and 27th 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;
- 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.

Parker Jewish Institute for Health Care and Rehabilitation proposed to establish a CHHA that will be part of an established long term care system that contains a residential health care facility, an adult day health care program, an Alzheimer center, a hospice, a long term home health care program and has a controlling operational and ownership interest in the recently formed AgeWell MLTCP.

The applicant described how the proposed CHHA will operate within the applicant's existing long term care system to support several Medicaid Redesign initiatives. The applicant has a long standing case management model through their LTHHCP and is planning on using the CHHA to support the transition of their current LTHHCP patients to MLTCPs to ensure continuity of care. The applicants ability to have the proposed CHHA implement a care management model will help manage high risk cases and achieve cost effective care, appropriate utilization of services and continuity of care across the care continuum. The care management model will be aimed at restoration, independence and maintenance of the individuals' continuum of care. Individual care plans will be geared toward medication safety, fall prevention and assessment, advanced wound treatments, nutritional adequacy, behavioral health needs, as well as specific disease management pathways such as congestive heart failure, COPD, diabetes and asthma.

In addition, the applicant provided a county-by-county analysis of population characteristics which included future projections and trends. As part of the analysis they discussed the Medicaid population and estimated the number of individuals who will be eligible for managed care within each county. They discussed the ethnic makeup of each proposed county and presented and discussed by county PQI data relative to hospital admissions by race/ethnicity.

The applicant conducted an analysis of CHHA utilization by county for the under 65 and over 65 age groups and used the current service utilization rate to project future CHHA utilization by taking into account population growth and conversion of LTHHCP visits to CHHA visits. The analysis included an estimated percentage increase in CHHA visits through 2020 that demonstrated a need for additional CHHAs.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Parker Jewish Institute for Health Care and Rehabilitation is an existing not-for-profit corporation which operates a residential health care facility and a long term home health care program (LTHHCP) currently authorized to serve patients in Kings, Queens and Nassau counties. This proposal seeks approval to expand their population served by adding a certified home health agency (CHHA) to be known as Parker Jewish Institute for Health Care and Rehabilitation Certified Home Health Agency (CHHA) to serve Bronx, Kings, New York, Queens, Nassau, Suffolk and Westchester counties.

Parker Jewish Institute for Health Care and Rehabilitation is an existing not- for-profit corporation which operates a residential health care facility and a long term home health care program (LTHHCP). The LTHHCP operated by Parker Jewish Institute for Health Care and Rehabilitation is currently authorized to serve patients in Kings, Queens and Nassau counties.

The applicant proposes to establish a CHHA and serve patients in Bronx, Kings, New York, Queens, Nassau, Suffolk and Westchester counties. Parker Jewish Institute for Health Care and Rehabilitation will serve these counties from their existing office located at 1 Delaware Drive, STE 104, Lake Success, New York 11042.

Parker Jewish Institute for Health Care and Rehabilitation proposes to provide the following health care services: home health aide, medical social services, medical supply, equipment and appliances, nursing, occupational therapy, physical therapy, and speech language pathology services.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an incremental operating budget, in 2013 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid	\$942,883	\$3,275,714
Medicare	<u>743,814</u>	<u>2,529,166</u>
Total Revenues:	\$1,686,697	\$5,804,880
Expenses:	<u>2,673,117</u>	<u>5,577,017</u>
Net Income (Loss):	\$(986,420)	\$227,863

Utilization by pay source in the first and third years is as follows:

	<u>Year One and Year Three</u>
Medicare Managed Care	75%
Medicaid Managed Care	23%
Charity Care	2%

Expenses and utilization assumptions are based on the historical experience of Parker Jewish Institute for Health Care and Rehabilitation. Revenues are reflective of current payment rates.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$929,503 based on two months of third year expenses and will be provided through the existing operation. Presented as BFA Attachment A, is the financial summary of Parker Jewish Institute for Health Care and Rehabilitation, which indicates the availability of sufficient funds.

The submitted budget indicates a net loss of \$986,420 for the first year and a net income of \$227,863 for the second year. Revenue is based on current payment rates for certified home health agencies and the Medicaid episodic payment rates. The budget appears reasonable.

Presented as BFA Attachment A, a financial summary of Parker Jewish Institute for Health Care and Rehabilitation, indicates that the facility has generated negative working capital, maintained positive net assets and experienced a net income from operations of \$146,690 and \$4,025,285 for 2010 and 2011, respectively.

Presented as BFA Attachment B, an internal financial summary indicates that the facility has generated negative working capital, maintained positive net assets and experienced a net income of \$4,393,079 as of December 31, 2012. The applicant has stated the negative working capital was due to renovations done on patient bathrooms and administrative office space, upgrade of the sprinkler system, and the facility having paid off the remaining balance of its existing mortgage using cash reserves.

The facility will be closing on a construction loan of \$25,000,000 to assist with funding a portion of the mentioned projects, which will improve their cash reserves.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary, Parker Jewish Institute for Health Care and Rehabilitation (2011)
BFA Attachment B	Internal Financial Summary, Parker Jewish Institute for Health Care and Rehabilitation (December 31, 2012)



Public Health and Health Planning Council

Project # 121421-C Four Seasons Nursing and Rehabilitation Center LTHHCP

County: Kings (Brooklyn)
Purpose: Construction

Program: Certified Home Health Agency
Submitted: June 5, 2012

Executive Summary

Description

Parkshore Healthcare, LLC, d/b/a Four Seasons Nursing and Rehabilitation Center Long Term Home Health Care Program (LTHHCP), an existing Article 36 program, request approval to convert its LTHHCP to a general purpose certified home health agency (CHHA) servicing Bronx, Kings, Queens and Richmond Counties. The LTHHCP currently provides services to Kings County.

On January 25, 2012, the Department issued a Request for Applications (RFA) to establish new or expand existing certified home health agencies (CHHA) in New York State. LTHHCPs were informed to submit a response to the RFA if they were interested in expanding the population they serve. Subsequently, on May 10, 2012, the Department issued a letter stating that Chapter 56 of the Laws of 2012-13 authorized the Commissioner of Health to grant an expedited review of a Certificate of Need application (CON) submitted by an existing LTHHCP, requesting approval to become a general purpose CHHA. This CON is in response to the DOH letter.

DOH Recommendation
Approval.

Need Summary

Four Seasons Nursing and Rehabilitation Center's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary

Parkshore Health Care, LLC d/b/a Four Seasons Nursing and Rehabilitation Center is currently in compliance with all applicable codes, rules and regulations.

Financial Summary

There are no project costs associated with this application.

Incremental Budget	Revenues:	\$5,892,885
	Expenses:	<u>4,909,285</u>
	Net Income:	\$983,600

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 of this application.

Office of Health Systems Management

Approval conditional upon:

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

April 11, 2013.

Need Analysis

Background

Parkshore Health Care, LLC dba Four Seasons Nursing and Rehabilitation Center currently operates a residential health care facility and a long term home health care program with approval to serve Kings County. The applicant is requesting approval to convert their existing long term home health care program into a Certified Home Health Agency and to expand their service area into Bronx and Queens counties.

Chapter 56 of the Laws of 2012 authorized the Commissioner of Health to grant an expedited review of a certificate of need (CON) application submitted by an existing Long Term Home Health Care Plan (LTHHCP) requesting approval as a general purpose Certified Home Health Agency (CHHA). This authorization was subsequent to the Department issuing a Request for Applications (RFA) on January 25, 2012, to establish new or expand existing CHHAs in New York State.

Solicitation

On May 10, 2012, the Department issued a Dear Administrator Letter (DAL) outlining the process for LTHHCPs who were eligible for the expedited review process authorized by Chapter 56 of the Laws of 2012.

A June 11, 2012 clarification letter to the May 10, 2012 DAL letter informed potential applicants that the process to establish or expand existing CHHAs in NYS is based on the demonstration of need and or the ability of the organization to facilitate Medicaid Redesign Initiatives. The applicant was expected to address these criteria in their responses to the questions in CON Schedule 21.

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 applicants that were deferred of the opportunity to submit supplemental information for the Department to consider in the review of these CONs.

Review

The applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made to the Public Health and Health Planning Council.

The CON determination of need was based on the applicant's responses to CON Schedule 21 and any supplemental information requested by the Department. From this review, applicants were recommended in each county proposed based on how well their proposal addressed the review criteria.

Parkshore Health Care, LLC dba Four Seasons Nursing and Rehabilitation Center demonstrated the capacity to support Medicaid Redesign as well as demonstrated how the conversion of their LTHHCP into a CHHA and the expansion of the service area into additional counties will help support the goals of Medicaid Redesign.

The applicant's current LTHHCP is part of a continuum of care that has the ability to treat patients with chronic diseases from home and community based services to sub-acute care, ventilator-dependent and long term residential health care. They reported having contracts with eleven MLTCPs and have established strategic partnerships with several of the large managed long term care plans, including but not limited to, CenterLight Healthcare and Aetna Better Health.

Four Seasons Utilization Management is has been approved as a Utilization Management (UM) agent. Four Seasons Utilization Management has agreements with VNS Choice, CenterLight Health Care and Aetna. Four Seasons Utilization Management will enhance their role as a CHHA provider with these MLTCPs.

In addition, the applicant provided data and analysis specific to each county requested that demonstrates how the factors listed in Section 709.1(a) of Title 10 that translate into need for each county and how they will meet the health needs of members of medically underserved groups which have traditionally experienced difficulty in obtaining equal access to health services.

The application provided data showing the projected increase in the over 65 population as well as data regarding the disability and poverty levels of the population. They provided a gap analysis for each of the requested counties which indicated population demographics, race/ethnicity, population over age 65, Medicaid eligibility, health indicators, PQI and CHHA utilization rates.

The applicant compared information that addressed actual and anticipated utilization of home care services in the geographic service area proposed to the capacity in that service area. They elaborated on the specific strategies and controls that the proposed CHHA will use to monitor and control utilization and cost of home care services.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

This proposal seeks approval to convert the existing Parkshore Health Care, LLC d/b/a Four Seasons Nursing and Rehabilitation Center Long Term Home Health Care Program (LTHHCP), with current approval to serve Kings County, into Parkshore Health Care, LLC d/b/a Four Seasons Nursing and Rehabilitation Center Certified Home Health Care Agency (CHHA), requesting approval to serve Bronx, Kings, and Queens counties, pursuant to Dear Administrator Letter (DAL) HCBS 12-04 LTHHCP Opportunity to Become a General Purpose CHHA.

Parkshore Health Care, LLC d/b/a Four Seasons Nursing and Rehabilitation Center is an existing limited liability company which operates a residential health care facility and a long term home health care program (LTHHCP). Parkshore Health Care, LLC d/b/a Four Seasons Nursing and Rehabilitation Center LTHHCP is currently authorized to serve patients in Kings County.

Pursuant to Dear Administrator Letter (DAL) HCBS 12-04 LTHHCP Opportunity to Become a General Purpose CHHA, the applicant seeks approval to convert their LTHHCP into a CHHA, and to add Bronx and Queens counties to their approved geographic service area.

The new CHHA will ultimately replace the existing LTHHCP and will be named Four Seasons Nursing and Rehabilitation Center Certified Home Health Care Agency (CHHA). They will be located at the LTHHCP's current location at 1222 East 96th Street, Brooklyn, New York 11236

Parkshore Health Care, LLC d/b/a Four Seasons Nursing and Rehabilitation Center CHHA proposes to provide the following health care services: home health aide, medical social services, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, physical therapy, and speech language pathology services.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an incremental operating budget, in 2013 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Commercial	\$299,550	\$588,076
Medicare	1,196,389	2,348,737
Medicaid	<u>1,505,748</u>	<u>2,956,072</u>
Total Revenues:	\$3,001,687	\$5,892,885
Expenses:	\$2,687,784	\$4,909,285
Net Income:	\$313,903	\$983,600

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

	<u>Year One and Year Three</u>
Commercial Managed Care	10%
Medicare Fee-for-Service	54%
Medicaid Managed Care	34%
Charity Care	2%

Expenses and utilization assumptions are based on the historical experience of Four Seasons Nursing and Rehabilitation LTHHCP. Revenues are reflective of current payment rates.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$818,214 based on two months of third year expenses, and will be provided through the existing operation. Presented as BFA Attachment A, is the financial summary of Four Seasons Nursing and Rehabilitation Center, which indicates the availability of sufficient funds.

The submitted budget indicates a net income of \$313,903 and \$983,600 for the first and third years, respectively. Revenue is based on current payment rates for certified home health agencies and the Medicaid episodic payment rates. The budget appears reasonable.

Presented as BFA Attachment A, a financial summary of Four Seasons Nursing and Rehabilitation Center indicates that the facility has maintained positive working capital, positive member's equity and generated a net income of \$2,013,508 for 2011.

Presented as BFA attachment B, an internal financial summary as of November 30, 2012, indicates that the facility has maintained positive working capital, experienced negative member's equity and experienced a net loss of \$1,159,901. The applicant has stated that the losses were due to a multi-year revision of the facility's adult day health care program rates from April 2009 to August 2012. The revised rates resulted in a reduction of revenue of \$2,598,537 recorded in 2012.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A
BFA Attachment B

Financial Summary 2011, Four Seasons Nursing and Rehabilitation Center
Financial Summary as of November 30, 2012, Four Seasons Nursing and
Rehabilitation Center



Public Health and Health Planning Council

Project # 121440-C
Hillside Manor Nursing Center

County: Queens (Hollis)
Purpose: Construction

Program: Certified Home Health Agency
Submitted: June 20, 2012

Executive Summary

Description

Hillside Manor Nursing Center, an existing proprietary partnership Long Term Home Health Care Program (LTHHCP) provider is requesting to expand the current LTHHCP to include a Certified Home Health Agency to serve Queens, Bronx, New York and Richmond counties. The LTHHCP currently serves Queens County.

On January 25, 2012, the Department issued a Request for Applications (RFA) to establish new or expand existing certified home health agencies (CHHA) in New York State. LTHHCPs were informed to submit a response to the RFA if they were interested in expanding the population they serve. Subsequently, on May 10, 2012, the Department issued a letter stating that Chapter 56 of the Laws of 2012-13 authorized the Commissioner of Health to grant an expedited review of a Certificate of Need application (CON) submitted by an existing LTHHCP, requesting approval to become a general purpose CHHA. This CON is in response to the DOH letter.

DOH Recommendation
Approval.

Need Summary

Hillside Manor Nursing Center's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary

Hillside Manor Rehabilitation and Extended Care Center, LLC, and Hillside Manor Rehabilitation and Extended Care Center, LLC, d/b/a Hillside Manor Nursing Center Long Term Home Health Care Program, are currently in compliance with all applicable codes, rules and regulations.

Financial Summary

There are no project costs associated with this application.

Incremental Budget	Revenues:	\$10,399,016
	Expenses:	<u>9,002,677</u>
	Net Income:	\$1,396,339

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 of this application.

Office of Health Systems Management

Approval conditional upon:

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

April 11, 2013.

Need Analysis

Background

Hillside Manor Rehabilitation and Extended Care Center, LLC, dba Hillside Manor Nursing Center, is an existing limited liability company that operates an Article 28 residential health care facility and an Article 36 long term home health care plan currently approved to serve Queens County. The applicant is requesting approval to expand their population served by establishing a new certified home health agency, Hillside Manor Rehabilitation and Extended Care Center, LLC, dba Hillside Manor Nursing Center Certified Home Health Agency, to serve Bronx, Kings, New York, Queens and Richmond counties.

Chapter 56 of the Laws of 2012 authorized the Commissioner of Health to grant an expedited review of a certificate of need (CON) application submitted by an existing Long Term Home Health Care Plan (LTHHCP) requesting approval as a general purpose Certified Home Health Agency (CHHA). This authorization was subsequent to the Department issuing a Request for Applications (RFA) on January 25, 2012, to establish new or expand existing CHHAs in New York State.

Solicitation

On May 10, 2012, the Department issued a Dear Administrator Letter (DAL) outlining the process for LTHHCPs who were eligible for the expedited review process authorized by Chapter 56 of the Laws of 2012.

A June 11, 2012 clarification letter to the May 10, 2012 DAL letter informed potential applicants that the process to establish or expand existing CHHAs in NYS is based on the demonstration of need and or the ability of the organization to facilitate Medicaid Redesign Initiatives. The applicant was expected to address these criteria in their responses to the questions in CON Schedule 21.

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 applicants that were deferred of the opportunity to submit supplemental information for the Department to consider in the review of these CONs.

Review

The applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made to the Public Health and Health Planning Council.

The CON determination of need was based on the applicant's responses to CON Schedule 21 and any supplemental information requested by the Department. From this review, applicants were recommended in each county proposed based on how well their proposal addressed the review criteria.

Hillside Manor Rehabilitation and Extended Care Center, LLC dba Hillside Manor Nursing Center demonstrated the capacity to support Medicaid Redesign as well as demonstrated how expanding their population served by establishing a new certified home health agency and the expansion of the service area into additional counties will help support the goals of Medicaid Redesign.

Hillside Manor Rehabilitation and Extended Care Center, LLC has existing relationships with HRA in NYC and the NYC Dept of Health and Mental Hygiene as well as referral sources within the community. The applicant has indicated they are in the process of finalizing contract agreements with Elderplan, HHH Choices, Agewell and Hamaspik Choice and they intend to pursue additional MLTCP contracts. The applicant describes how converting the LTHHCP to a CHHA and enrolling patients into MLTCP they will be able to continue to reduce and control costs.

In addition, the applicant provided data and analysis specific to each county requested that demonstrates how the factors listed in Section 709.1(a) of Title 10 that translate into need for each county and how they will meet the health needs of members of medically underserved groups which have traditionally experienced difficulty in obtaining equal access to health services. They also said that by expanding the population served by the LTHHCP and establishing a new CHHA, they will be able to meet the needs of high risk patients, as well as better serve patients and improve health outcomes.

The application provided data showing the projected increase in the over 65 population as well as data regarding the disability and poverty levels of the population. The applicant provided a gap analysis for each of the requested counties which indicated population demographics, race/ethnicity, population over age 65, Medicaid eligibility, health indicators, PQI and CHHA utilization rates.

The applicant compared information that addressed actual and anticipated utilization of home care services in the geographic service area proposed to the capacity in that service area. They elaborated of how factors such as an aging population, converting LTHHCP visits to CHHA visits, and MLTCP mandatory enrollment will create a higher demand for CHHA services and increase CHHA utilization in the proposed service areas.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

This proposal seeks approval to expand the existing Hillside Manor Nursing Center Long Term Home Health Care Program (LTHHCP), with current approval to serve Queens County, by adding Hillside Manor Nursing Center Certified Home Health Agency (CHHA), with approval to serve Bronx, Kings, New York, Queens, and Richmond Counties, pursuant to Dear Administrator Letter (DAL) HCBS 12-04 LTHHCP Opportunity to Become a General Purpose CHHA.

Hillside Manor Rehabilitation and Extended Care Center, LLC, is an existing for-profit limited liability company which operates a nursing home located at 182-15 Hillside Avenue, Jamaica Estates, New York 11432 (Queens County). The nursing home currently operates Hillside Manor Rehabilitation and Extended Care Center, LLC, Adult Day Health Care Program (ADHCP), and Hillside Manor Rehabilitation and Extended Care Center, LLC, d/b/a Hillside Manor Nursing Center Long Term Home Health Care Program (LTHHCP), located at 188-11 Hillside Avenue, Hollis, New York 11423 (Queens County). The LTHHCP is approved to serve Queens County only.

Pursuant to Dear Administrator Letter (DAL) HCBS 12-04 LTHHCP Opportunity to Become a General Purpose CHHA, Hillside Manor Nursing Center Long Term Home Health Care Program seeks approval to expand its LTHHCP by adding Hillside Manor Nursing Center Certified Home Health Agency (CHHA), with approval to serve Bronx, Kings, New York, Queens, and Richmond Counties. The new CHHA will be located at the LTHHCP's current location of 188-11 Hillside Avenue, Hollis, New York 11423 (Queens County). The proposed CHHA plans to serve all five requested counties from this practice location in Queens County.

Hillside Manor Rehabilitation and Extended Care Center, LLC, d/b/a Hillside Manor Nursing Center Certified Home Health Agency will provide the following home health care services: home health aide; medical social services; medical supplies, equipment, and appliances; nursing; nutritional services; occupational therapy; physical therapy; and speech language pathology.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an incremental operating budget, in 2013 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Commercial	\$271,065	\$532,025
Medicaid	3,088,742	6,062,313
Medicare	1,938,481	3,804,678
Total Revenues:	\$5,298,288	\$10,399,016
Expenses:	<u>4,871,360</u>	<u>9,002,677</u>
Net Income:	\$426,928	\$1,396,339

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

	<u>Year One and Three</u>
Commercial Managed Care	5%
Medicare Fee-for-Service	54%
Medicaid Managed Care	39%
Charity Care	2%

Expenses and utilization assumptions are based on the historical experience of Hillside Manor Nursing Center. Revenues are reflective of current payment rates.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$1,500,446 based on two months of third year expenses and will be provided through the existing operation. Presented as BFA Attachment A, is the financial summary of Hillside Manor Rehabilitation and Extended Care Center and Affiliates, which indicates the availability of sufficient funds.

The submitted budget indicates a net income of \$426,928 and \$1,396,339 for the first and third years of operations, respectively. Revenue is based on current payment rates for certified home health agencies and the Medicaid episodic payment rates. The budget appears reasonable.

Presented as BFA Attachment A, a financial summary of Hillside Manor Rehabilitation and Extended Care Center and Affiliates, indicates that the facility has maintained positive working capital and equity and generated a net income of \$1,487,208 for 2011. Presented as BFA Attachment B, an internal financial summary as of November 30, 2012 indicates that the facility has maintained positive working capital and equity and generated a net income of \$1,142,192.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary 2011, Hillside Manor Rehabilitation and Extended Care Center and Affiliates
BFA Attachment B	Internal Financial Summary as of November 30, 2012, Hillside Manor Rehabilitation and Extended Care Center and Affiliates

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

April 11, 2013

**B. APPLICATIONS FOR ESTABLISHMENT AND
CONSTRUCTION OF HEALTH CARE FACILITIES**

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

CON Applications

Acute Care Services – Establish/Construct

Exhibit #11

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122213 E	Catholic Health Ministry Services, Inc. (Erie County)	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct

Exhibit #12

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122104 B	GoldStep Ambulatory Surgery Center, LLC (Kings County)	Contingent Approval
2.	122223 E	Hudson Valley Endoscopy Center, Inc. (Dutchess County)	Contingent Approval
3.	122280 B	Cortland ASC, LLC d/b/a Cortland Surgical Center (Cortland County)	Contingent Approval

Diagnostic and Treatment Center – Establish/Construct

Exhibit #13

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122013 B	The New York Foundling Bronx Health Care Center (Bronx County)	Contingent Approval

Dialysis Services – Establish/Construct**Exhibit #14**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122181 E	Dialysis Newco, Inc. d/b/a DSI Renal (Dutchess County)	Contingent Approval
2.	122319 E	St. Joseph’s Dialysis – Regional (Onondaga County)	Contingent Approval

Residential Health Care Facility – Establish/Construct**Exhibit #15**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122233 E	Batavia Health Care Center, LLC (Genesee County)	Contingent Approval
2.	122276 E	Livingston Hills Nursing and Rehabilitation Center, LLC (Columbia County)	Contingent Approval
3.	122298 E	Golden Hill Planning Corporation d/b/a Golden Hill Nursing and Rehabilitation Center (Ulster County)	Contingent Approval

Certificate of Dissolution**Exhibit #16**

	<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
1.	Community General Hospital of Greater Syracuse	Approval

HOME HEALTH AGENCY LICENSURES**Exhibit #17**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	2128-L	Achieve-ALP, LLC d/b/a Achieve Assisted Living Program (Sullivan County)	Contingent Approval



Public Health and Health Planning Council

Project # 122213-E
Catholic Health Ministry Services, Inc.

County: Erie (Buffalo)
Purpose: Establishment

Program: Acute Care Services
Submitted: November 6, 2012

Executive Summary

Description

Catholic Health System, Inc. (CHS) is an existing not-for-profit corporation formed in 1998 as a regional health care system. Sisters of Charity, which is a member of (CHS) obligated group, seeks approval of a merger of Sisters of Charity Hospital, Kenmore Mercy Hospital, Mercy Hospital of Buffalo, St. Francis Home of Williamsville, Niagara Homemaker Services, Inc., St. Vincent's Home for the Aged, McAuley-Seton Home Care Corporation, St. Elizabeth's Home of Lancaster, and Catholic Health System Infusion Pharmacy, Inc. Sisters of Charity Hospital of Buffalo is to be the surviving corporation under the new name of Catholic Health Ministry Services, Inc. CHS will be the sole member of Catholic Health Ministry Services, Inc. and continue as the active parent.

CHS obligated group is working with the Department of Health to maintain its current operating certificate numbers for the following entities:

- Sisters of Charity of Buffalo (Op. Cert. #1401013H)
- Kenmore Mercy Hospital (Op. Cert. #1404000H)
- Mercy Hospital Buffalo (Op. Cert. #140008H)

It should also be noted that the applicant proposes that the provider numbers would also remain the same for the stated facilities. Upon approval of the merger and filing the merger documents with the Secretary of State, the transition into a single corporation will be accomplished with no disruption in service delivery to the community. Each of the three hospitals will continue to separately credential and privilege a mirrored medical staff. It should also be noted that the billing and financial system will remain unchanged in

the short term and slowly migrate to a single platform in the future.

DOH Recommendation
Contingent approval.

Need Summary
There will be no Need recommendation for this project.

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
Anticipated benefits and efficiencies of this merger expected to result from this CON include:

- CHS wants to be agile as possible to respond to market changes and health care reform. CHS is committed to streamlined decision making and integrated and standardized clinical care to enhance patient experience.
- Merging long term care and home care into CHS services will eliminate silos of care and offers a continuum of care within an improved structure.
- Reducing the number of legal entities and streamlined decision making will allow CHS to move more fluidly to provide services in the new modalities that are expected as part of federal and state health care reform.

Development a single integrated health care delivery system will result in economies of scale and bring savings to the CHS system as a whole.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Applicant must submit a duly executed copy of the certificate of merger for Sisters of Charity Hospital of Buffalo, acceptable to the Department. [CSL]
2. Applicant must submit a duly executed copy of the by-laws of Catholic Health Ministry Services, Inc., acceptable to the Department. [CSL]
3. Applicant must submit duly executed copies of the Certificate of Assumed Name for the facilities and programs subject to the merger, acceptable to the Department. [CSL]
4. Applicant must submit a signed copy of the consolidation approval from the boards for the facilities and programs subject to the merger, acceptable to the Department. [CSL]
5. Applicant must submit a copy of the duly executed plan of merger, acceptable to the Department. [CSL]

Council Action Date

April 11, 2013.

Programmatic Analysis

Background

Program Proposal

Catholic Health System, Inc. (CHS), as the active parent of numerous licensed health care facilities and agencies in Western New York, is requesting approval to merge the majority of those facilities/agencies into one surviving entity and rename it Catholic Health Ministry Services, Inc. CHS will remain the active parent over Catholic Health Ministry Services.

The subject facilities/agencies are:

- Sisters of Charity Hospital of Buffalo, NY
- Sisters of Charity Hospital LTHHCP
- St. Catherine Laboure Health Care Center
- Mercy Hospital of Buffalo
- Mercy Hospital Skilled Nursing Facility
- Kenmore Mercy Hospital
- McAuley Residence
- McAuley Seton Home Care Corporation
- St. Francis Home of Williamsville, NY
- Mercy Home Care of Western New York

Upon completion of the project, each of the three hospitals will continue to separately credential and privilege mirror medical staff pursuant to the services provided at each hospital. Each hospital they will retain its distinct operating certificate and federal provider number. Billing and financial systems will eventually be migrated to a single platform.

Character and Competence

The directors and officers of Catholic Health Ministry Services, Inc. and Catholic Health Services, Inc. are:

Catholic Health Ministry Services

Li Lin	Chair
Brian Beitz	Vice Chair
Mark Sullivan	Secretary
David Macholz	Treasurer
Msgr. Robert E. Zapfel	
Sr. Mary Anne Brawley	
Joseph Gelormini, MD	
Richard Curran, MD	
David Durante, MD	
Mary Turkiewicz, MD	
Raquel Martin, DO	
Michael Edbauer, DO	
Cynthia Ann Zane	
Sherry Pomeroy	
Frances Crosby	
James Manzella	
Joseph McDonald	

Catholic Health System

Dennis Dombek	Chair
James Boldt	Vice Chair
Sr. Margaret Tuley	Secretary
William Buscaglia, Jr	Treasurer
Carlton Brock	
Li Lin	

Joseph McDonald
Kelli Arnold McLeod
John Notaro, MD
Linus Ormsby
Jack Quinn, Jr
Sr. Patricia Prinzing
Joseph Ralabate, MD
Sharon Randaccio
Arthur Russ
Cary Vastola, DO
Cynthia Ann Zane
Msgr. Robert E Zapfel

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 Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Drs. Martin and Ralabate disclosed one pending malpractice case, each. Dr. Notaro disclosed one settled malpractice case.

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.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Description of Obligated Group Members

The health care entities to be included in the obligated group over which CHS is currently the active parent are:

- Kenmore Mercy Hospital, an 18-bed community hospital located in Erie County, with a bed component comprised of 148 medical-surgical beds, 10 intensive care beds, 6 coronary care beds and 20 physical medicine and rehabilitation beds. Kenmore Mercy Hospital also provides the following outpatient services: acute renal dialysis, CT scanner, emergency department, nuclear medicine (therapy), pediatric, primary medical care, ambulatory surgery, cystoscopy, health fairs, occupational therapy, physical medicine and rehabilitation, social work service, audiology, dental, nuclear medicine (diagnostic), part time clinics, physical therapy and speech-language pathology;
- Mercy Hospital of Buffalo, a 389-bed acute care hospital located in Erie County, with a bed component comprised of 258 medical-surgical beds, 18 intensive care beds, 17 coronary care beds, 22 pediatric beds, 34 maternity beds, 25 physical medicine and rehabilitation beds and 15 neonatal beds. Mercy Hospital of Buffalo also provides the following outpatient services: acute renal dialysis, cardiac catheterization (adult), dental, health fairs, open heart surgery (adult), pediatric, podiatry, psychiatric, ambulatory surgery, CT scanner, emergency department, nuclear medicine (diagnostic), outpatient surgery, physical medicine and rehabilitation, prenatal, social work service, audiology, cystoscopy, family planning, occupational therapy, part time clinics, physical therapy, primary medical care and speech-language pathology;

- Sisters of Charity Hospital, a 413-bed acute care hospital located in Erie County, with a bed component comprised of 250 medical-surgical beds, 16 intensive care beds, 34 coronary care beds, 60 maternity beds, 15 physical medicine and rehabilitation beds and 38 special use beds.
- Sisters of Charity Hospital also provides the following outpatient services: acute renal dialysis, CT scanner, drug rehabilitation, methadone maintenance, occupational therapy, physical medicine and rehabilitation, prenatal, social work service, ambulatory surgery, cystoscopy, emergency department, nuclear medicine (diagnostic), part time clinics, physical therapy, primary medical care, speech-language pathology, audiology, dental, health fairs, nuclear medicine (therapy), pediatric, podiatry and psychology;
- St. Francis Home of Williamsville, a 142-bed skilled nursing facility located in Erie County;
- McAuley-Seton Home Care, a certified home health agency located in Erie County;
- St. Elizabeth's Home, an adult home located in Erie County.
- St. Vincent's Home, an adult home located in Erie County.
- Catholic Health System Infusion Pharmacy, Inc.
- Niagara Homemaker Services, Inc.

Presented as BFA Attachment A is an organizational chart of the organization after the proposed merger is approved.

CHS is currently the active parent of the listed organizations that will be merged into one operation as Catholic Health Ministry Services, Inc. (currently Sisters of Charity Hospital of Buffalo). The CEO of Catholic Health Ministry Services, Inc. will be charged with oversight of the units that will be consolidated into a single streamlined organization.

Each facility shall have (1) voting member entitled to vote as a constituent corporation. The articles of incorporation have been restated with no change to the fundamentals of operations.

Capability and Feasibility

There are no significant issues of capability or feasibility associated with this application. The applicant has stated that upon approval of this application by the Public Health and Health Planning Council, CHS will merge the facilities that it currently maintains active parent status of. 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 active parent and obligated group designations.

Presented as Attachments B is the 2010 and 2011 certified financial statements of Catholic Health System, Inc., which indicates an average positive working capital position, and an average positive net asset position. Also, CHS has achieved an average excess of revenues over expenses of \$20,679,000 for the period shown. Also, it should be noted that all of the stated facilities in this application are financially consolidated into CHS financial statements.

Presented as BFA Attachment C and D are the audited 2011 and 2012 year end un-audited financial statements for the Hospitals, Long Term Care Facilities and Home Care and Infusion Pharmacy facilities included in this application.

Hospitals

As shown the Acute Care Facilities, (Mercy Hospital, Sisters Hospital, and Kenmore Mercy Hospital, all have a positive working capital position and Sisters Hospital and Kenmore Mercy Hospital have a positive net asset position. Mercy Hospital has an average negative net asset position of \$49,232,500 for the period shown. This is due to long term obligations commitments on the balance sheet, but as the facility continues to achieve operating income, it will remain viable in paying off its long term debt. All the hospitals achieved an average excess of revenues over expenses.

Long Term Facilities

Presented as Attachment C and D are the audited 2011 and 2012 year end un-audited financial statements for the Long Term Care Facilities, which include: St. Francis Home; St. Elizabeth Home; and St. Vincent Home. All the facilities have an average negative working capital position. St. Elizabeth Home has an average positive net asset position and St. Francis Home and St. Vincent Home have an average negative net asset position. All three facilities had shown an average operating loss. St. Francis Home had an average operating loss of \$980,000; St. Elizabeth Home had an average operating loss of \$500,000 and St. Vincent Home had an average operating loss of \$207,500. The reason for the losses is due to increased salary demands, high Medicaid utilization rates and low reimbursement rates. In the short term, CHS has been able to provide stability to these facilities with support through its affiliates; however, CHS is currently reviewing the facilities and has indicated that the possibility of closing the facilities to assure system wide financial stability.

Home Care Agencies

Presented as BFA Attachment C and D are the audited 2011 and 2012 year end un-audited financial statements for the Home Care and Infusion Pharmacy.

The facilities consist of Mercy Home Care and McAuley Seton Home Care, which operate in tandem and Infusion Pharmacy. All the facilities had an average positive working capital position and an average positive net asset position. Infusion Pharmacy has achieved an average operating income of \$581,000. Mercy Home Care and McCauley together achieved an average operating income of \$1,771,000.

Presented as BFA Attachment D is the pro-forma of what Catholic Health Ministry Services, Inc. would look like if all the stated facilities were merged into one existing facility. Catholic Health Ministry Services indicates a positive working capital position and net asset position. Also, the facility achieved an operating income of \$21,452,000.

Therefore, 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.

<h2>Attachments</h2>

BFA Attachment A	Catholic Health System, Inc. Organizational Chart
BFA Attachment B	Financial Summary, Catholic Health System, Inc. and Subsidiaries
BFA Attachment C	Financial Summary, 2011 Financial Summary of Facilities comprising of Catholic Health Ministry Services, Inc.
BFA Attachment D	Financial Summary, 2012 (un-audited) Financial Summary of Facilities Comprising of Catholic Health Ministry Services, Inc.

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 11th day of April, 2013, 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 merge the current corporations of Catholic Health Systems, Inc. into a single surviving Corporation, Sisters of Charity Hospital of Buffalo, New York; entity to be called Catholic Health Ministry Services, 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:

122213 E

Catholic Health Ministry Services, Inc.

APPROVAL CONTINGENT UPON:

1. Applicant must submit a duly executed copy of the certificate of merger for Sisters of Charity Hospital of Buffalo, acceptable to the Department. [CSL]
2. Applicant must submit a duly executed copy of the by-laws of Catholic Health Ministry Services, Inc., acceptable to the Department. [CSL]
3. Applicant must submit duly executed copies of the Certificate of Assumed Name for the facilities and programs subject to the merger, acceptable to the Department. [CSL]
4. Applicant must submit a signed copy of the consolidation approval from the boards for the facilities and programs subject to the merger, acceptable to the Department. [CSL]
5. Applicant must submit a copy of the duly executed plan of merger, 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:

Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 122104-B GoldStep Ambulatory Surgery Center, LLC

County: Kings (Brooklyn)
Purpose: Establishment and Construction

Program: Ambulatory Surgery Center
Submitted: August 23, 2012

Executive Summary

Description

GoldStep Ambulatory Surgery Center, LLC, an existing limited liability company, requests approval for the establishment and construction of a multi-specialty freestanding Ambulatory Surgery Center to be located on the fourth and fifth floors in leased space at 3007 Farragut Road, Brooklyn, N.Y. The new surgery center will include two operating rooms, sufficient space for Pre-Op, Post-Op and Recovery Room, and administrative areas.

The proposed members of GoldStep Ambulatory Surgery Center, LLC consist of 3 individual members. Their proposed membership interests, are as shown below:

<u>Proposed Member</u>	<u>Membership Interest</u>
Yaroslav Goldberg	33.33%
Dmitry Stepankovsky	33.33%
Yevgeniy Stepankovskiy	33.34%

Presented as BFA Attachment A, are net worth statements for the proposed members who make up GoldStep Ambulatory Surgery Center, LLC.

The proposed members of GoldStep Ambulatory Surgery Center, LLC, Yevgeniy Stepanlovskiy and Yaroslav Goldberg, are also members of Be Well Primary Health Care Center, LLC located at 3007 Farragut Road, which was given final approval to move to this address on May 7, 2012, under CON 112190. The Diagnostic & Treatment Center, along with the

Ambulatory Care Center, will service the needs of the low income patients within the community.

DOH Recommendation

Contingent approval for a limited life of five years

Need Summary

GoldStep seeks to meet the ambulatory surgery needs of the 22,000 active patients who are served by the primary care center and projects that 1,500 ambulatory surgery procedures will be performed in the first year of operation.

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 \$121,765 in cash and a \$1,095,885 bank loan.

Budget:	Revenues:	\$ 2,329,000
	Expenses:	<u>1,804,410</u>
	Gain:	\$524,590

Subject to the noted contingencies, 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 review of this project.

Office of Health Systems Management

Approval with an expiration of the operating certificate five years from the date of its issuance 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 of Health, to prepare annual utilization reports on the facility's surgical activities, beginning in the second year of operation.
These reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who needed 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 a 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 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 a loan commitment for project costs that is acceptable to the Department of Health. [BFA]
7. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
8. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

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, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
6. The applicant shall complete construction by March 1, 2015. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

April 11, 2013.

Need Analysis

Background

GoldStep Ambulatory Surgery Center seeks CON approval to establish and construct a freestanding multi-specialty ambulatory surgery center to be located at 3007 Farragut Road, Brooklyn, 11210, in Kings County.

GoldStep Ambulatory Surgery Center proposes to establish an Article 28 multi-specialty ambulatory surgery center that will be located in the same building and have the same ownership as Be Well Primary Health Care Center, LLC.

Analysis

GoldStep Ambulatory Surgery Center projects that there will be 1,500 and 2,000 ambulatory surgeries performed during the first and third years of operation, respectively. Approximately 60 percent of Be Well Primary Health Care Center patients are covered by Medicaid/Medicaid Managed Care.

The anticipated hours of operation are 8:00 a.m. to 6:00 p.m. six days a week. However, the hours and days of operation may be modified to accommodate patient demand and convenience.

GoldStep Ambulatory Surgery Center proposes to offer the following specialty services:

- Gastroenterology;
- Podiatry;
- General Surgery;
- Urology; and
- GYN.

The physicians at GoldStep will ensure that its patients have access to timely screenings and early detection in order to reduce the progression of diseases.

GoldStep indicates that two percent of its operating budget will be directed toward charity care.

Currently, there are 13 ambulatory surgery centers in Kings County. However, none are located in the proposed zip code of the GoldStep ASC. The type of ambulatory surgery service and the number of cases performed at the centers are listed below.

<u>Distribution of Ambulatory Surgery Procedures at Existing Kings County Facilities.</u>			
<u>ASC Type</u>	<u>Facility</u>	<u>2010</u>	<u>2011</u>
Single - Gastroenterology	Digestive Diseases Diagnostic and Treatment Center	675	1,829
Single - Endoscopy	Endoscopic Ambulatory Specialty Center of Bay Ridge, Inc.	404	505
Single - Endoscopy	Endoscopic Diagnostic and Treatment Center, LLC	2,418	2,917
Single - Gastroenterology	Gastroenterology Care, Inc	NA	247
Multi - Specialty	All City Family Healthcare Center, Inc.	4,181	3,593
Multi - Specialty	Brooklyn Endoscopy and Ambulatory Surgery Center, LLC	3,876	4,990
Single - Ophthalmology	Sheepshead Bay Surgery Center	3,912	4,427
Single - Ophthalmology	Brooklyn Eye Surgery Center	4,647	4,566
Multi - Specialty	Millenium Ambulatory Surgery Center	NA	NA
Multi - Specialty	New York Center for Specialty Surgery	4,698	3,976
Single - Orthopedics	Beth Israel Amb-Surg Center-Bklyn Div	NA	934
Multi - Specialty	Brook Plaza Ambulatory Surgical Center Inc	8,356	8,463
Single - Endoscopy	Greater New York Endoscopy Surgical Center	5,491	6,792
	Total	38,658	43,239

Source: SPARCS, 2010 and 2011.

The members of the proposed center are committed to serving all persons in need outpatient surgical services without regard to race, sex, age, religion, creed, sexual orientation, source of payment, ability to pay, or other personal characteristics. The applicant understands that it must provide its fair share of charity care and proposes to do so.

Conclusion

The operation of the proposed ASC in the same building and under the same ownership as Be Well Primary Health Care Center will provide convenient access to surgical services, integrated into a seamless continuum of care, for an underserved, largely Medicaid-eligible population.

Recommendation

From a need perspective, contingent approval for limited life of five years is recommended.

<h2>Programmatic Analysis</h2>

Background

Proposed Operator	GoldStep Ambulatory Surgery Center, LLC
Site Address	3007 Farragut Rd, Brooklyn
Surgical Specialties	Multi-Specialty including: Gastroenterology Urology Gynecology General Podiatric
Operating Rooms	1
Procedure Rooms	1
Hours of Operation	Monday through Saturday from 8:00 am to 6:00 pm (Modified as necessary).
Staffing (1 st Year / 3 rd Year)	11 FTEs / 14 FTEs
Medical Director(s)	Anatole Barkan
Emergency, In-Patient and Backup Support Services Agreement and Distance	Maimonides Medical Center (4 miles) New York Methodist Hospital (4 miles) Kingsbrook Jewish Medical Center (3 miles) New York Community Hospital (2 miles)
On-call service	Live answering service 24 hours/7 days per week including non-operational hours.

Character and Competence

The members of the LLC are:

<u>Name</u>	
Yevgeniy Stepankovsky	33.33%
Dmitry Stepankovsky	33.33%
Yaroslav Goldber	33.33%

The members of the LLC are also the members of Be Well Primary Health Care Center, an existing diagnostic and treatment center. The applicant feels that the establishment of a separate corporation for the provision of ambulatory surgery services is the easiest way to adhere to the federal rules that ambulatory surgery centers be distinct entities.

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 Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion 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.

Integration with Community Resources

The center is affiliated with Be Well Primary Health Care Center through similar ownership. Be Well is a multi-service diagnostic and treatment center located in the same building and is in the process of applying for Medical Home certification through an accrediting organization. Additionally, the center intends to seek to affiliate with all developing Accountable Care Organizations and/or Medical Homes as they become available and will utilize electronic medical records and is planning to join the Brooklyn Healthcare Information Exchange.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant will lease approximately 2,586 square feet of space on the fourth and fifth floors of 3007 Farragut Road, Brooklyn, NY under the terms of the executed lease agreement summarized below:

- Date: August 21 , 2012
- Landlord: Don & Mills Properties, LLC
- Tenant: GoldStep Ambulatory Surgery Center, LLC
- Term: 10 Years with a 10 year renewal option
- Rental: Year 1-3, \$72,408(\$28.00 per sq. ft) per annum with a 3% increase each year after.
- Provisions: Tenant responsible for maintenance, utilities, insurance and taxes.

The applicant has indicated that the lease will be a non-arm's length lease arrangement. The proposed members of Goldstep Ambulatory Surgery Center, LLC own a total of 66.7% of Don & Mills Properties, LLC. Letters of opinion from licensed commercial real estate brokers have been submitted indicating rent reasonableness.

Total Project Cost and Financing

Total project costs for renovations and the acquisition of movable equipment is estimated at \$1,217,650, itemized as follows:

Renovation & Demolition	\$ 387,900
Design Contingency	38,790
Construction Contingency	38,790
Architect/Engineering Fees	20,000
Other Fees (Consulting)	20,000
Movable Equipment	703,520
Application Fee	2,000
Additional Processing Fee	<u>6,650</u>
Total Project Cost	<u>\$1,217,650</u>

Project costs are based on a construction start date of 3/1/2013 and a four month construction period. The applicant's financing plan appears as follows:

Equity	\$ 121,765
Bank Loan @ 5.0% over five years	1,095,885

A letter of interest has been submitted by TD Bank, N.A.

Operating Budget

The applicant has submitted an operating budget in 2013 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$1,746,750	\$2,329,000
Expenses:		
Operating	\$1,193,150	\$1,502,410
Interest	52,852	34,610
Depreciation and Rent	<u>267,390</u>	<u>267,390</u>
Total Expenses	\$1,513,392	\$1,804,410
Net Income	<u>\$233,358</u>	<u>\$524,590</u>
Utilization: (visits)	1,500	2,000
Cost Per Visit	\$1008.93	\$902.21

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

	<u>First and Third Years</u>
Commercial Insurance	20.0%
Medicare Fee-for-Service	5.0%
Medicare Managed Care	5.0%
Medicaid Fee-for-Service	5.0%
Medicaid Managed Care	55.0%
Self-Pay/Other	8.0%
Charity Care	2.0%

Expense and utilization assumptions are based on the historical experience of the proposed member physicians. The applicant has submitted physician referral letters in support of utilization projections.

Capability and Feasibility

Project cost will be satisfied by a loan from TD Bank, N.A. for \$1,095,885 at stated terms, with the remaining \$121,765 from proposed member's equity.

Working capital requirements, estimated at \$300,745, appear reasonable based on two months of third year expenses.

The applicant will finance \$150,000 via a loan at an interest rate 5.0% for a five year term, for which a letter of interest has been provided by TD Bank, N.A. The remainder, \$150,745, will be provided as equity by the proposed members. Presented as BFA Attachment A, is a summary of net worth statement of the proposed members of GoldStep Ambulatory Surgery Center, LLC, which indicates the availability of sufficient funds for the stated levels of equity. Presented as BFA Attachment B is the pro-forma balance sheet of GoldStep Ambulatory Surgery Center, LLC as of the first day of operation, which indicates positive member's equity position of \$271,765.

The submitted budget indicates a net income of \$233,358 and \$524,590 during the first and third years of operation, respectively. The budget appears reasonable.

Presented as BFA Attachment C is the financial summary of Be Well Primary Health Care Center for 2011 and the November 30, 2012 internal financials which indicates the center has maintained positive working capital, equity and a net profit from operations.

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.

Attachments

BFA Attachment A	Summary Net Worth Statement of Proposed Members of GoldStep Ambulatory Surgery Center, LLC
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary of Be Well Primary Health Care Center-2011 and November 30, 2012

Supplemental Information

Outreach

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

Facility: Beth Israel Medical Center
Kings Highway Division
3201 Kings Highway
Brooklyn, New York 11212

No response.

Facility: New York Community Hospital of Brooklyn
2525 Kings Highway
Brooklyn, New York 11215

The hospital sent a letter of support for the project and offered to enter into a transfer and affiliation agreement with the proposed ASC to serve as its backup hospital for emergency services and regular admissions.

Facility: Kings County Hospital Center
451 Clarkson Avenue
Brooklyn, New York 11203

Kings County responded with a letter of support for the project, stating that the proposed ASC would have no adverse effects on Kings County or its services. The hospital also stated that the applicant physicians are part of Kings County's Physician Referral Provider Network. The hospital commented further that the continued collaboration between the GoldStep physicians and Kings County was in keeping with the recommendations of the Workgroup on

Brooklyn Health System Redesign, which called for hospital affiliations/partnerships with physician networks, with a focus on clinical integration, prevention and coordination of care.

Facility: University Hospital of Brooklyn
445 Lenox Road
Brooklyn, New York 11228

No response.

Other Facilities:

Although not solicited for comments by the Department, the following hospitals submitted letters in support of the proposed ASC:

Kingsbrook Jewish Medical Center

New York Methodist Hospital of Brooklyn

Maimonides Medical Center

The Brooklyn Hospital Center.

Supplemental Information from Applicant

Need and Source of Cases: The applicant anticipates the main source of cases will be the clientele of the Be Well Primary Health Care Center, which is located in a low-income, underserved area of Brooklyn. In addition, the facility's convenient community location, its ease of use due to an absence of language barriers and its lack of scheduling backlogs will serve to attract other residents of the area as well.

Staff Recruitment and Retention: The applicant plans to attract additional staff through recruitment efforts directed at the general marketplace. To retain skilled staff and counter turnover, the facility will offer attractive compensation and benefits packages, continuing education opportunities, a promotion-from-within policy, and recognition and appreciation programs, all in an open work atmosphere that will encourage staff involvement and continuous improvement.

Office-Based Cases: The applicant estimates that approximately 40-50% of the procedures projected for the proposed facility are currently provided in both office-based settings and in non-hospital affiliated ambulatory surgery settings.

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 11th day of April, 2013, 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 multi-specialty ambulatory surgery center to be located at 3007 Farragut Road, Brooklyn, 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:

122104 B

GoldStep Ambulatory Surgery Center, LLC

APPROVAL CONTINGENT UPON:

Approval with an expiration of the operating certificate five years from the date of its issuance 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 of Health, to prepare annual utilization reports on the facility's surgical activities, beginning in the second year of operation.
These reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who needed 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 a 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 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 a loan commitment for project costs that is acceptable to the Department of Health. [BFA]
7. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
8. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

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, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
6. The applicant shall complete construction by March 1, 2015. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 122223-E
Hudson Valley Endoscopy Center, Inc.

County: Dutchess (Fishkill)
Purpose: Establishment

Program: Ambulatory Surgery Center
Submitted: November 9, 2012

Executive Summary

Description

Hudson Valley Endoscopy Center, Inc., an existing proprietary Article 28 diagnostic and treatment center is requesting approval for indefinite life. The original application, CON 082050, which was to add two new shareholders and sell additional shares to two existing shareholders, was approved by the Public Health Council on March 13, 2009, with a three-year limited life.

The facility, which is located at 400 Westage Business Center, Fishkill, continues to operate under the original lease expiring January 30, 2014. The applicant has provided an executed amendment to the lease extending the term for an additional ten years.

DOH Recommendation
Contingent approval.

Need Summary

Hudson Valley Endoscopy Center satisfied the Certificate of Need Project Number 082050 contingency to reach out to and serve Medicaid patients. The number of Medicaid patients at HVEC increased from 115 in 2009 to 193 in 2011, an increase of 67.8 percent. The number of total patients increased from 5,621 in 2009 to 5,724 in 2011, an increase of 1.8 percent.

The proposed project would grant permanent life certification to HVEC, allowing it to continue providing services to Medicaid clients and other patients.

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 associated with this application.

Incremental Budget	Revenues:	\$5,878,000
	Expenses:	<u>3,839,534</u>
	Net Income:	\$2,038,466

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 review of this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department of Health to prepare annual utilization reports on the facility's services, beginning in the second year of operation. These reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who needed 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 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 reporting the results. [RNR]
4. Submission of a statement from the applicant, acceptable to the Department, that the proposed ASC will service individuals regardless of their ability to pay or the source of payment. [RNR]
5. Submission of site control that is acceptable to the Department. [CSL]
6. Submission of Bylaws that is acceptable to the Department. [CSL]
7. Submission of a Shareholder's Agreement that is acceptable to the Department. [CSL]

Council Action Date

April 11, 2013.

Need Analysis

Background

Hudson Valley Endoscopy Center, Inc. (HVEC), an existing single-specialty ambulatory surgery center, seeks approval for permanent life certification to continue providing services specializing in Endoscopy surgeries. HVEC is located at 400 Westgate Business Center Drive, Fishkill, 12524, in Dutchess County. HVEC was approved for a change in stock ownership of HVEC for a three-year limited life until September 14, 2012 under Certificate of Need Project Number 082050.

Analysis

Hudson Valley Endoscopy Center's primary service area is Dutchess County. HVEC also sees patients from Ulster and Putnam Counties.

HVEC projects the number of Medicaid patients to be 472 in 2012 based on utilization through September, 2012. The number of total visits is projected to increase from 6,140 in the current year to 6,300 in the first year of permanent life operation and to 6,800 by year 3.

Data on Medicaid Mainstream Managed Care (MMMC) Eligibles and Enrolled in Dutchess County in December 2011 and September 2012 are presented below. During these periods, the number of MMMC Eligibles was 21,601. The number of MMMC enrolled increased from 84 percent to 96 percent from December 2011 to September 2012.

Dutchess County-Medicaid Mainstream Managed Care Eligibles and Enrolled (NYSDOH MMMC Monthly Files)

<u>Period</u>	<u>Total MMMC Eligibles</u>	<u>Total MMMC Enrolled</u>	<u>Percent Enrolled in MMMC</u>
December 2011	21,601	18,120	84%
September 2012	21,601	20,688	96%

NYSDOH Medicaid data indicate that in 2011, a total of 33,323 Dutchess County residents were Medicaid eligible. The applicant reports that of these 33,323 Medicaid Eligibles, only 26 percent were not eligible to enroll in either a Medicaid Managed Care or Family Health Plus product and, therefore remained in Medicaid-Fee-For-Service. With the implementation of the Medicaid Redesign Team recommendations, most of these Medicaid recipients will be required to enroll in MMC over the next two years. As a result, HVEC projects continued growth in the number of Medicaid patients that they serve.

HVEC's Medicaid utilization by Medicaid Managed Care Plans operating in Dutchess County increased from 2009 through 2011 as presented in the table below.

<u>Dutchess County-Number of Visits for MMC Plans Combined*</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012**</u>
Number of Visits	42	196	280	472
% Increase from the Previous Year	---	366.7%	42.9%	68.6%

*MVP Health Plan, Hudson Health Plan, and WellCare of New York & Fidelis combined.

**2012 Projections based on utilization through September 2012.

Hudson Valley Endoscopy Center is the only existing freestanding ambulatory surgery center specializing in endoscopy in Dutchess County. The type of ambulatory surgery service and number of cases at the ASCs in Dutchess County are listed below:

Existing Free-Standing Ambulatory Surgery Centers: Dutchess County, Source: SPARCS 2011.

<u>Type</u>	<u>Name</u>	<u>2011</u>
Ophthalmology	Central NY Eye Center	1,530
Multi Specialty	Dutchess ASC	3,893
Multi Specialty	HV Center at St. Francis, LLC	2,500
Endoscopy	HV Endoscopy Center	5,724
Total		13,647

The applicant has provided a statement that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws with consultation of the legal counsel. This statement is acceptable to the Department.

Conclusion

Utilization of the Hudson Valley Endoscopy Center by Medicaid patients has increased during past three years. Approval of the proposed permanent certification will enable HVEC to continue providing endoscopy ambulatory surgery services to Medicaid and other patients in Dutchess County and the surrounding areas.

Recommendation

From a need perspective, contingent approval of permanent certification is recommended

Programmatic Analysis

Background

Establish permanent life for Hudson Valley Endoscopy Center, Inc., a diagnostic and treatment center that is also federally certified as a single-specialty (gastroenterology) ambulatory surgery center

Character and Competence

The members of the LLC are:

Ravi Hotchandani, MD
 Vincent Marrone, MD
 Arthur Walczyk, MD
 Paul Burrows, MD
 Madhavi Gaddam, MD
 Farah Toyserkani, 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 Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Dr. Hotchandani disclosed one settled malpractice case, and Drs. Walczyk and Burrows disclosed one pending malpractice case each.

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, if any, citations were properly corrected with appropriate remedial action.

Compliance with Applicable Codes, Rules and Regulations

The center has been operating 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

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the current year and years one and three of operation subsequent to receiving a permanent life, which is summarized below:

	<u>Current Year (2012)</u>	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$5,610,009	\$5,740,500	\$5,878,000
Expenses:			
Operating	\$3,001,499	\$3,151,574	\$3,372,184
Capital	434,961	448,084	467,350
Total Expenses:	\$3,436,460	\$3,599,658	\$3,839,534
 Net Income:	 \$2,173,549	 \$2,140,842	 \$2,038,466
 Utilization (procedures)	 7,017	 7,199	 7,500
Cost per procedure	\$489.73	\$500.02	\$511.94

The applicant has stated the decline in net income is due to them conservatively anticipating the impact of the Affordable Care Act starting in 2014, along with projected increases in expenses.

Below is the projected year one and year three utilization from the original limited life application #082050, along with actual results.

	<u>Year One (2009)</u>	<u>Year Three (2011)</u>
Utilization (procedures)		
Projected	5,530	5,695
Actual	5,905	6,144

Utilization by payor source during the current year 2012, and the first and third years subsequent to receiving a permanent life is as follows:

	<u>Current Year (2012)</u>	<u>Year One and Three</u>
Commercial Manage Care	64.46%	60.00%
Medicare Fee-for-Service	21.52%	22.17%
Medicare Managed Care	5.57%	9.00%
Medicaid Fee-for-Service	0.13%	0.13%
Medicaid Managed Care	7.70%	8.00%
Private Pay/Other	0.56%	0.50%
Worker's Compensation	0.06%	0.20%

Expenses and utilization are based on the historical experience of Hudson Valley Endoscopy Center, Inc. in providing the existing services.

Below is the projected year three and actual year three (2011) utilization by payor source from the original limited life application #082050. Hudson Valley Endoscopy Center, Inc. has and is currently increasing Medicaid patients as requested by the Department of Health according to actual figures for 2011 and 2012.

	<u>Year Three (projected)</u>	<u>Year Three (2011)</u>
Commercial	74.00%	67.63%
Medicare Fe-for-Service	0.00%	25.00%
Medicare Manage Care	24.00%	2.00%
Medicaid Fee-for-Service	0.00%	0.10%
Medicaid Managed Care	2.00%	4.90%
Private Pay	0.00%	0.37%

Capability and Feasibility

There are no project costs associated with this application.

The submitted budget indicates a net income of \$2,140,842 and \$2,038,466 during the first and third years of operation, respectively, subsequent to receiving permanent life. Revenues are based on current reimbursement methodologies for ambulatory surgery centers. The budget appears reasonable.

Presented as BFA Attachment A, a financial summary of Hudson Valley Endoscopy Center, Inc. indicates the facility has maintained positive working capital and stockholder's equity and generated a net income of \$1,922,860 and \$1,627,500 for 2010 and 2011, respectively. Presented as BFA Attachment B, a financial summary of Hudson Valley Endoscopy Center, Inc. as of December 31, 2012, indicates the facility has maintained positive working capital and stockholder's equity and generated a net income of \$2,173,549.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary 2010-2011, Hudson Valley Endoscopy Center, Inc.
BFA Attachment B	Financial Summary as of December 31, 2012, Hudson Valley Endoscopy Center, Inc.

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 11th day of April, 2013, 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 certify indefinite life for a change in stock ownership of Hudson Valley Endoscopic Center (CON#082050), 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:

122223 E

FACILITY/APPLICANT:

Hudson Valley Endoscopy Center, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department of Health to prepare annual utilization reports on the facility's services, beginning in the second year of operation.
These reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who needed 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 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 reporting the results. [RNR]
4. Submission of a statement from the applicant, acceptable to the Department, that the proposed ASC will service individuals regardless of their ability to pay or the source of payment. [RNR]
5. Submission of site control that is acceptable to the Department. [CSL]
6. Submission of Bylaws that is acceptable to the Department. [CSL]
7. Submission of a Shareholder's Agreement that is 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:

Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 122280-B Cortland ASC, LLC d/b/a Cortland Surgical Center

County: Cortland (Cortland) **Program:** Ambulatory Surgery Center
Purpose: Establishment and Construction **Submitted:** December 14, 2012

Executive Summary

Description

Cortland ASC, LLC d/b/a/ Cortland Surgical Center, a limited liability company requests approval for the establishment and construction of a single specialty free-standing ambulatory surgery center to provide otolaryngology procedures. The center will be located in leased space on the second floor of an existing two-story building at 64 Pomeroy Street, Cortland. The new surgery center will include one procedure room, four recovery bays, sterilization and soiled workrooms and appropriate support space.

The sole proposed member of Cortland Surgical Center is Manoj K. Kumar, M.D., who specializes in otolaryngology. Upon approval of this application, Dr. Kumar's private practice will continue, and is located on the first floor of the building where the proposed center will be located.

DOH Recommendation

Contingent approval for a limited life of five years

Need Summary

It is projected that there will be 1,114 procedures performed in the first year of operation and that 23% of those cases will be for Medicaid patients.

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 of \$175,522 will be met with a \$35,000 bank loan, \$112,047 promissory note and \$28,475 of member's equity.

Incremental Budget	Revenues:	\$1,074,426
	Expenses:	<u>788,635</u>
	Net Income:	\$285,791

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

Recommendations

Health Systems Agency

The HSA recommends approval of this project.

Office of Health Systems Management

Approval with an expiration of the operating certificate five years from the date of its issuance 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 of Health to prepare annual utilization reports on the facility's services, beginning in the second year of operation. These reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who needed 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 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]
5. Submission of a statement from the applicant, acceptable to the Department, that the proposed ASC will service individuals regardless of their ability to pay or the source of payment. [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 bank loan for project costs that is acceptable to the Department of Health. [BFA]
8. Submission of an executed working capital loan that is acceptable to the Department of Health. [BFA]
9. Submission of an executed promissory note that is acceptable to the Department of Health. [BFA]
10. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

Approval conditional upon:

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

Council Action Date

April 11, 2013.

Need Analysis

Background

Cortland ASC, LLC seeks approval to establish and construct the Cortland Surgical Center to provide single-specialty ambulatory surgery specializing in otolaryngology services. The proposed surgery center will be located at 64 Pomeroy Street, Cortland, 13045, in Cortland County.

Cortland County does not have any freestanding single-specialty or freestanding multi-specialty ASCs.

Analysis

Cortland ASC, LLC is a single member limited liability company owned by Manoj K. Kumar, M.D. The proposed ASC will be located in the same building as that of his medical practice.

The service area includes zip codes 13045, 13077, 13101, 13803, 13141, 13158, and 13040 in Cortland County.

It is projected that there will be 1,114 procedures in the first year and 1,158 procedures in the third year.

Dr. Kumar currently performs most of his surgical services at Cortland Regional Medical Center (CRMC). CRMC provided a letter to Dr. Kumar on December 12, 2012 that it would not oppose an application to operate a one room, single-specialty ASC for ENT procedures.

In 2011, CRMC performed 2,573 ambulatory surgery procedures. A total of 1,758, 68.3%, were for residents of Cortland County.

The applicant has provided a statement that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws with consultation of the legal counsel. This statement is acceptable to the Department.

Conclusion

The proposed facility would serve a county where there are currently no freestanding ASC's, for otolaryngology or any other service. The location of the ASC in the same building as the applicant physician's medical practice would provide increased access to surgical services for his patients.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

The applicant proposes to establish a diagnostic and treatment center that will also be federally certified as an ambulatory surgery center.

Proposed Operator	Cortland ASC, LLC
Doing Business As	Cortland Surgical Center
Site Address	64 Pomeroy Street, Cortland
Surgical Specialties	Otolaryngology
Operating Rooms	1
Procedure Rooms	0
Hours of Operation	Initially one day per week, expanding to Monday through Friday from 7:00 am to 3:00 pm (And extended as necessary to accommodate patient needs).
Staffing (1 st Year / 3 rd Year)	5.5 FTEs / 5.5 FTEs
Medical Director(s)	Manoj K. Kumar
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Cortland Regional Medical Center < 2 miles and 5 minutes
On-call service	Access to the facility's on-call physician during hours when the facility is closed.

Character and Competence

The sole member of the LLC is Manoj K. Kumar, MD, who is a practicing physician. Dr. Kumar's current office based surgery practice is located at this site.

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 Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Integration with Community Resources

The facility will encourage patients to establish a relationship with a primary care physician if they do not have one. The center will reach out to primary care physicians and physician groups in the area to facilitate coordination of care for common patients. Additionally, it will consider becoming part of an Accountable Care Organization or Medical Home should one be developed in the area.

The facility will use an electronic medical record system and will consider participation in a 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. 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.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant will lease approximately 3,475 square feet of space on the second floor of a building located at 64 Pomeroy Street, Cortland from Akshay Properties, LLC under the terms of the executed lease summarized below:

Date: December 1, 2012
Landlord: Akshay Properties, LLC
Lessee: Cortland ASC, LLC
Term: 10 years with the option to renew for two additional terms of five years.
Rental: \$128,000/year (\$36.83/sq. ft.)
Provisions: The lessee will be responsible for maintenance, utilities, taxes and insurance.

The proposed member, Manoj K. Kumar, M.D., is a member of Akshay Properties, LLC. Therefore, the lease agreement is a non-arm's length agreement and letters of opinion from Licensed Commercial Real Estate Brokers have been submitted indicating rent reasonableness.

Equipment Purchase Agreement

An executed asset purchase agreement has been submitted by the applicant summarized below:

Date: December 1, 2012
Seller: Cortland ENT, P.C.
Buyer: Cortland ASC, LLC
Assets Purchased: Certain equipment used to equip and operate a surgical suite free and clear of all liens, security interests, claims and encumbrances.
Purchase Price: \$112,047
Payment: Promissory note payable over five years with a 2.4% interest rate.

The promissory note agreement will be between Cortland ASC, LLC and Cortland ENT, P.C. Presented as BFA Attachment A, is the financial summary for Cortland ENT, P.C., indicating sufficient funds are available.

Total Project Cost and Financing

Total project costs are estimated at \$175,522, itemized as follows:

Consultant Fees	\$25,000
Movable Equipment	147,572
Application Fee	2,000
Additional Processing Fee	<u>950</u>
Total Project Cost	\$175,522

The building's landlord will make all renovations and improvements to the center. The applicant's financing plan appears as follows:

Equity	\$28,475
Bank Loan (5yrs, 4.25%)	\$35,000
Promissory Note (5yrs, 2.4%)	\$112,047

A letter of interest from Tompkins Trust Company has been submitted by the applicant.

Operating Budget

The applicant has submitted and operating budget in 2013 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$1,033,102	\$1,074,426
Expenses:		
Operating	604,408	628,584
Capital	<u>161,887</u>	<u>160,051</u>
Total Expenses:	\$766,295	\$788,635
 Net Income:	 \$266,807	 \$285,791
 Utilization (procedures)	 1114	 1158
Cost per procedure	\$687.88	\$681.03

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

	<u>Year One and Three</u>
Commercial Fee-for-Service	51.1%
Commercial Managed Care	2.0%
Medicare Fee-for-Service	20.4%
Medicare Managed Care	2.0%
Medicaid Fee-for-Service	2.1%
Medicaid Managed Care	20.0%
Private Pay	0.4%
Charity Care	2.0%

Expenses and utilization assumptions are based on the historical experience of the existing private practice. Upon CON approval, the proposed member will continue to operate his private practice.

Capability and Feasibility

Total project cost of \$175,522 will be met through a \$35,000 bank loan at stated terms in which a letter of interest has been provided, an \$112,047 promissory note at stated terms and the remaining \$28,475 from proposed member's equity. Presented as BFA Attachment B, is the net worth statement of the proposed member, which indicates the availability of sufficient funds.

Working capital contributions are estimated at \$131,439 based on two months of third year expenses and will be satisfied with a working capital loan in the amount of \$65,000 at an interest rate of 4.25% for 5 years, for which a letter of interest has been provided by Tompkins Trust Company. The remainder, \$66,439, will be provided as equity by the proposed member. Presented as BFA Attachment C, is the pro-forma balance sheet of Cortland ASC, LLC as of the first day of operation, which indicates positive member's equity position of \$96,975.

The submitted budget indicates a net income of \$266,807 and \$285,791 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery centers. The budget appears reasonable.

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 approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary, Cortland ENT, P.C.
BFA Attachment B	Net Worth Statement of Proposed Member
BFA Attachment C	Pro-forma Balance Sheet

Supplemental Information

Outreach

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

Facility: Cortland Regional Medical Center
134 Homer Avenue
Cortland, New York 13045

No response.

Supplemental Information from Applicant

Need and Sources of Cases: The clientele of the proposed center will exclusively be patients of the applicant physician. Over 90 percent of the patients will be from Cortland County, and some 23 percent will be Medicaid patients. There are also no other freestanding ASCs in Cortland County to meet the demand for freestanding ASC services in that jurisdiction.

Staff Recruitment and Retention: The applicant expects that most of the proposed ASC's personnel will come from the applicant physician's medical practice. Additional staffing requirements will be handled through recruitment from accredited schools and training programs and through advertisements in local newspapers and professional publications. To retain skilled staff and counter turnover, the ASC will offer competitive salaries and benefits and will maintain good human resource and communication systems. In addition, the ASC will provide a positive work environment and flexible working hours.

Office-Based Cases: The applicant states that none of the procedures projected for the proposed ASC are currently performed in an office setting.

OHSM Comment

In the absence of comment from the area hospital, the Department finds no basis to consider reversal or modification of the recommendation for limited life approval of the proposed facility 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 11th day of April, 2013, 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 ambulatory surgery center to provide otolaryngology procedures, 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:

122280 B

FACILITY/APPLICANT:

Cortland ASC, LLC d/b/a Cortland Surgical Center

APPROVAL CONTINGENT UPON:

Approval with an expiration of the operating certificate five years from the date of its issuance 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 of Health to prepare annual utilization reports on the facility's services, beginning in the second year of operation.
These reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who needed 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 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]
5. Submission of a statement from the applicant, acceptable to the Department, that the proposed ASC will service individuals regardless of their ability to pay or the source of payment. [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 bank loan for project costs that is acceptable to the Department of Health. [BFA]
8. Submission of an executed working capital loan that is acceptable to the Department of Health. [BFA]
9. Submission of an executed promissory note that is acceptable to the Department of Health. [BFA]
10. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

APPROVAL CONDITIONAL UPON:

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

Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 122013-B The New York Foundling Bronx Health Care Center

County: Bronx (Bronx)

Program: Diagnostic and Treatment Center

Purpose: Establishment and Construction

Submitted: July 9, 2012

Executive Summary

Description

The New York Foundling (NYF) seeks approval to transition two of its existing five foster care health clinics to Article 28 Diagnostic and Treatment Centers, with the main site located in the Mott Haven section of the Bronx and an extension clinic on Staten Island. The clinics will provide primary care and dental care to children residing in the respective communities, including children who are in the care of foster care agencies in these areas.

Financial Summary

Project costs of \$659,798 will be met via equity.

Budget:

Revenues	\$369,164
Expenses	<u>369,164</u>
Excess of Revenues over Expenses	\$ 0

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

DOH Recommendation

Contingent approval.

Need Summary

New York Foundling is a licensed child welfare agency offering services in all five boroughs of New York City and Westchester and Rockland Counties. New York Foundling operates health care centers in each of their Regional Community Centers where they provide primary care services to the children who are in foster care. New York Foundling seeks to transition two of the existing five clinics to Article 28 Diagnostic and Treatment Centers.

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.

Recommendations

Health Systems Agency

There will be no HSA review 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 a written statement that the proposed D&TCs will serve all persons in need of the care without regard to their ability to pay or the source of payment. [RNR]
3. Submission of executed transfer and affiliation agreements, acceptable to the Department, with local acute care hospitals. [HSP]
4. Submission of an assumed name or d/b/a, if applicable, acceptable to the Department. [HSP]
5. The submission of State Hospital Code (SHC) Drawings, acceptable to the department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. Submission of site control that is acceptable to the Department. [CSL]
7. Submission of information for the member Sisters of Charity (pursuant to Schedule 14C) that is acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

April 11, 2013.

Need Analysis

Background

The New York Foundling Bronx Health Care Center (NYFBHCC) is seeking approval to establish and construct two Article 28 Diagnostic and Treatment Centers. The primary site will be located in the Mott Haven community at 170 Brown Place, Bronx, 10454, in Bronx County and the extension clinic will be at 119 Tompkins Avenue, Staten Island, 10304, in Richmond County.

The number of projected visits for the primary site and the extension clinic combined is as follows:

Current Year: 3,790
 First Year: 3,987
 Third year: 5,071

Analysis

The service areas of the two clinics are as follows:

- Bronx: 170 Brown Place, 10454 in the South Bronx/Mott Haven/ Tremont Area serving children and families from Community Districts 1, 2, 3, 4, 5, 6, zip codes 10454, 10451, 10455, 10453, 10457, 10459.
- Staten Island: 119 Tompkins Street, Staten Island, 10304 serving Community Districts 1 and 2, zip codes 10301, 10304, 10305.

The services to be offered at the two sites are:

- Family Planning O/P
- Dental O/P
- Medical Social Services O/P
- Nutritional O/P
- Optometry O/P
- Pediatrics O/P
- Physical Medicine and Rehabilitation
- Prenatal O/P
- Primary Medical Care O/P
- Psychology O/P
- Well Child

The primary site on Brown Place in Bronx County is in a Health Professional Shortage Area for Primary Care, Dental, and Mental Health Services for Medicaid Eligible clients.

The extension clinic site on Tompkins Avenue in Staten Island is also in a Health Professional Shortage Area for Primary Care and Dental Health Services for Medicaid Eligible clients.

Prevention Quality Indicators-PQIs

The table below provides information on the PQI rates for major condition categories for the identified zip codes in service areas in Bronx and Staten Island.

PQI Rates	Bronx Zip Codes	Staten Island	NYS
	10454, 10451, 10455, 10453, 10457, 10459	Zip Codes 10304, 10301, 10305	
All Acute	1,131	487	526
All Circulatory	1,467	425	456
All Diabetes	848	292	224
All Respiratory	1,368	483	357

All Above	4,873	1,690	1,563
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In the zip code of the main site in the Bronx, all PQI condition rates are significantly unfavorable and are more than double the State rates.

In the zip code of the extension site on in Staten Island, these rates are significantly unfavorable for all conditions except for the all acute category when compared with those for the State as a whole.

PQI Rates-Hospital Admissions per 100,000 Adult, Source: NYSDOH-PQI

PQI Rates	Zip Code 10454- Bronx Primary Site	Zip code 10304- Staten Island Extension Clinic	NYS
All Acute	1,307	523	526
All Circulatory	1,418	511	456
All Diabetes	946	314	224
All Respiratory	1,611	527	357
All Above	5,368	1,883	1,563

Conclusion

Because the proposed main D&T center in the Bronx and its extension site on Staten Island would each be located in a federally designated Health Professional Shortage Area (HPSA) with significantly unfavorable PQI indicators, the operation of these two sites would increase access to care in areas of high need, not only for the foster children that New York Foundling serves, but for other underserved groups in the service areas of the two clinics as well.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

Establish a diagnostic and treatment center with one extension clinic.

Proposed Operator	The New York Foundling Hospital	
Operator Type	Not-for-Profit	
Site Address	370 Brown Place Bronx	119 Tompkins Ave Staten Island
Services	Primary Care Dental Family Planning Nutrition Optometry Pediatrics	Prenatal Psychology Medical Social Services Physical Medicine & Rehab Well-Child
Medical Director(s)	Joseph Saccoccio	
Emergency, In-Patient and Backup Support Services Agreement	Expected to be provided by Staten Island University Hospital, Montefiore Medical Center, and Lincoln Hospital	

Character and Competence

The New York Foundling Hospital (NYF) has been in existence for over 140 years as a licensed child welfare agency offering services in all five boroughs of New York City, Westchester and Rockland Counties. They currently hold licenses to operate both residential and/or non-residential services from: New York State (NYS) Office of Children and

Family Services (residential treatment, foster boarding home and community based services); NYS Office for People With Developmental Disabilities (residential and community based services); NYS Office of Mental Health (Article 31 Community Based Mental Health Outpatient Clinic); NYS Office of Substance Alcohol and Substance Abuse Services (Article 32 Community Based Outpatient Clinic); and NYS Education Department/ NYC School Board for the operation of a Charter School.

The trustees are:

Robert E King, Jr	Chairperson
Sr. Jane Iannucelli	Vice Chairperson
Juanita O L Brown	Treasurer
Sr. Carol A Barnes	Secretary
John H Banks III	
Charles R Borrok	
Frank Brunckhorst	
Robert J Farrell	
Kenneth R Horner	
Sr. Vivienne Joyce	
G Michael LaBranche	
Jack P Makoujy	
Michael P McCooley	
David M Mullane	
Patricia A Mulvaney	
Steven J Musumeci	
Linda O'Neill	
Sr. Charlotte Raftery	
Andrew S Roffe	
Frank Villano	
Kathleen L Werner	

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 Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion 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.

- SVCMC - St Johns Queens was fined \$10,000 in 2007 based on an investigation of a wrong sided surgery. A pacemaker was to be replaced. The surgery commenced without reference to an x-ray or medical record and the incision was made on the wrong side of the chest.
- St. Vincents Hospital & Medical Center of New York was fined \$6,000 in 2007 based on the elopement of two psychiatric patients from the facility's ER. One subsequently committed suicide.
- St. Joseph's Medical Center (Yonkers) was fined \$48,000 in 2011 based on the care rendered in the ER to an unconscious patient with a head trauma. There was no treatment for a high blood alcohol level and a CT scan for head trauma was delayed for six hours. The patient was then transferred to another facility for critical care but died.

Staff also reached out to the other state agencies under which NYF runs licensed programs. All agencies responded positively regarding NYF's record as a provider.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$659,798, further broken down as follows:

Renovation and Demolition	\$407,000
Site Development	26,000
Design Contingency	2,800
Construction Contingency	37,000
Fixed Equipment	10,000
Architect/Engineering Fees	30,800
Construction Manager Fees	50,600
Moveable Equipment	90,000
CON Fee	2,000
Additional Processing Fee	<u>3,598</u>
Total Project Cost	\$659,798

Project costs are based on a June 1, 2013 construction start date and a four month construction period. The applicant will meet the total project cost via equity from operations.

Operating Budget

The applicant has submitted an operating budget, in 2012 dollars, for the first and third years for the Article 28 DTC, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$150,000	\$369,164
Expenses:		
Operating	\$146,293	\$361,750
Capital	<u>3,707</u>	<u>7,414</u>
Total Expenses	\$150,000	\$369,164
Excess of Revenues over Expenses	\$0	\$0
Utilization: (Visits)	1,000	2,000
Cost Per Visit	\$150.00	\$184.58

Expense and utilization assumptions are based on the applicant's historical experience with anticipated expansion of staff, based on an increase in the number of new consumers. They are further based on the time needed to coordinate health care services for children not directly under the auspices and in the care of New York Foundling.

The applicant has indicated that the increase in the cost per visit for year three is due to additional staffing that will be hired to attend to the increased visits and expanded hours of operation.

Utilization during the first and third years will be 100% Medicaid.

Capability and Feasibility

Project costs of \$659,798 will be met via equity.

Working capital requirements are estimated at \$61,527, which is equivalent to two months of third year expenses. The applicant will provide equity of \$61,527 from current operations to meet the working capital requirement. Presented as BFA Attachment A are the June 30, 2011 and June 30, 2012 certified financial statements of The New York Foundling

Hospital and Affiliate, which indicates the availability of sufficient funds for the equity contribution to meet the working capital contribution and the total project cost.

Presented as BFA Attachment B, is the pro-forma balance sheet of The New York Foundling Hospital and Affiliate as of the first day of operation as an Article 28 entity, which indicates a positive net asset balance of \$51,961,536. The submitted budget indicates a breakeven position during the first and third years, respectively. The budget appears reasonable.

As shown on Attachment A, the entity had an average positive working capital position and an average positive net asset position during the period through June 30, 2011 and through June 30, 2012. The entity incurred an average net loss of \$2,674,303 during the period through June 30, 2011 and through June 30, 2012. The applicant has indicated that the reasons for the losses are as follows: New York Foundling is a charity that has been in existence since 1869, and whose guiding principle is "Abandon No One".

The applicant implemented the following steps to improve operations: the Agency owns significant property holdings in NYC, including a 14-story building, and has entered into long term leases for six of the floors. Also, there will be increased revenues from NYC grants for services for youth, and changes to the operational use of several of the residential facilities that had low occupancy due to the diminishing number of children in foster care, and additional revenues from shifting the nature of services from residential to community based services. The applicant diminished its costs for 24 hours staffing and operational costs for facilities that provide housing and 24 hours, 7 days per week services. They are also in discussions with multiple foster care agencies providing health care services to the children under their auspices.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	June 30, 2011 and June 30, 2012 certified financial statements of The New York Foundling Hospital and Affiliates
BFA Attachment B	Pro-forma balance sheet as of the first day of operation

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 11th day of April, 2013, 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 at 170 Brown Place, Bronx and an extension clinic in Staten Island, 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:

122013 B

FACILITY/APPLICANT:

The New York Foundling Bronx Health
Care Center

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 a written statement that the proposed D&TCs will serve all persons in need of the care without regard to their ability to pay or the source of payment. [RNR]
3. Submission of executed transfer and affiliation agreements, acceptable to the Department, with local acute care hospitals. [HSP]
4. Submission of an assumed name or d/b/a, if applicable, acceptable to the Department. [HSP]
5. The submission of State Hospital Code (SHC) Drawings, acceptable to the department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. Submission of site control that is acceptable to the Department. [CSL]
7. Submission of information for the member Sisters of Charity (pursuant to Schedule 14C) that is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 122181-E

**Dialysis Newco, Inc.
d/b/a DSI Renal**

**County: Dutchess (Poughkeepsie)
Purpose: Establishment**

**Program: Dialysis Services
Submitted: October 16, 2012**

Executive Summary

Description

Dialysis Newco, Inc. d/b/a DSI Renal, requests approval to become the new operator of FMS-Dutchess Dialysis Center, a 26-station chronic renal dialysis center located at 2585 South Road, Poughkeepsie. The center currently operates as an extension clinic of FMS-Southern Manhattan Dialysis Center, which is operated by New York Dialysis Services, Inc.

Dialysis Newco, Inc. is a for-profit business corporation which is wholly-owned by Dialysis HoldCo, LLC, which is wholly-owned by Dialysis Parent, LLC. Dialysis Parent, LLC has four corporate members:

Frazier Healthcare VI, LP	(39.5%)
New Enterprises Associates 13, LP	(39.5%)
Juggernaut Fund, L.P.	(7.0%)
QIC Private Capital PTY Ltd.	(14.0%)

The facility will be renamed DSI Dutchess Dialysis.

DOH Recommendation
Contingent approval.

Need Summary

There will be no change in stations or services upon approval of this application. The facility currently operates 24 freestanding dialysis stations, and is the only dialysis facility in Dutchess County. There is currently a need for 49 additional stations in Dutchess County.

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 associated with this application.

Budget:	<i>Revenues:</i>	\$ 9,713,918
	<i>Expenses:</i>	<u>8,861,156</u>
	<i>Gain/(Loss):</i>	\$ 852,762

Subject to the noted contingencies, 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 an executed transfer and affiliation agreement, acceptable to the Department of Health, with a local acute care hospital. [HSP]
2. Submission of an assumed name or d/b/a, acceptable to the Department. [HSP]
3. Submission of an executed Sublease Agreement that is acceptable to the Department. [BFA]
4. Submission of an executed Bill of Sale that is acceptable to the Department. [BFA]
5. Submission of the executed Assignment and Assumption Agreement that is acceptable to the Department. [BFA]
6. Submission of the executed Transition Services Agreement that is acceptable to the Department. [BFA]
7. Submission of a completed CON Schedule 3B, acceptable to the Department. [CSL]
8. Submission of a photocopy of a Certificate of Assumed Name, acceptable to the Department. [CSL]
9. Submission of a photocopy of a Certificate of Incorporation of DSI Dutchess Dialysis, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the Bylaws of DSI Dutchess Dialysis, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of the Lease Agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of the Articles of Organization of Dialysis Holdco, LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of the Operating Agreement of Dialysis Holdco, LLC, acceptable to the Department. [CSL]
14. Submission of a photocopy of the Articles of Organization of Dialysis Parent, LLC, acceptable to the Department. [CSL]
15. Submission of a photocopy of the Operating Agreement of Dialysis Parent, LLC, acceptable to the Department. [CSL]
16. Submission of a photocopy of the Partnership Agreement of Frazier Healthcare VI, LP, acceptable to the Department. [CSL]
17. Submission of a photocopy of the Partnership Agreement of New Enterprises Associates 13, LP, acceptable to the Department. [CSL]
18. Submission of a photocopy of the Certificate of Incorporation of QIC Private Capital Pty Ltd., acceptable to the Department. [CSL]
19. Submission of a photocopy of the Excluded IF License Agreement, acceptable to the Department. [CSL]
20. Submission of a photocopy of the Bill of Sale, acceptable to the Department. [CSL]
21. Submission of a photocopy of the Assignment and Assumption Agreement, acceptable to the Department. [CSL]
22. Submission of a photocopy of the Transition Services Agreement, acceptable to the Department. [CSL]
23. Submission of a photocopy of the Partial Assignment and Assumption Agreement, acceptable to the Department. [CSL]
24. Submission of a photocopy of a Certificate of Amendment to the Certificate of Incorporation of New York Dialysis Services, Inc., acceptable to the Department. [CSL]

Council Action Date

April 11, 2013.

Need Analysis

Background

Dialysis Newco, Inc. d/b/a DSI Renal seeks approval to enter into an asset purchase agreement with FMS-Dutchess Dialysis Center. The center currently operates as an extension clinic of FMS-Southern Manhattan Dialysis Center, which is operated by New York Dialysis Services, Inc, and is located at 2585 South Road, Poughkeepsie, 12601, in Dutchess County. The facility currently has 24 stations. The new facility will be called DSI Dutchess Dialysis.

Analysis

The 2010 population in Dutchess County was 297,999. The percentage of the population age 65 and over was 13.9 percent, and the nonwhite population was 25.8%. These are the two population groups most in need of end stage renal dialysis.

Ages 65 and Over:	13.9%	State Average:	13.7%
Nonwhite:	25.8%	State Average:	42.0%

Source: U.S. Census 2010

Capacity

The Department's methodology to estimate capacity for chronic dialysis stations is specified in Part 709.4 of Title 10 and is as follows:

One free standing station represents 702 treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which can accommodate 15 patients per week (2.5 x 6 x 15 x 52 weeks). This projected 702 treatments per year is based on a potential 780 treatments x 52 weeks x 90% utilization rate = 702.

One hospital based station is calculated at 499 treatments per year per station. This is the result of 2.0 shifts per day x 6 days per week x 52 weeks x 80% utilization rate. One hospital based station can treat 3 patients per year.

Per Department policy, hospital-based stations can treat fewer patients per year. Statewide, the majority of stations are free standing, as are the majority of applications for new stations. As such, when calculation the need for additional stations, the Department bases the projected need on establishing additional free standing stations.

There is currently 1 facility with 24 free standing dialysis stations operating in Dutchess County. This project will not add any net new Free Standing Station to the system.

Based upon the department's and need methodology, existing dialysis stations could treat a total of 108 patients annually.

Projected Need

	2011		2016	
	Total Patients Treated	Total Residents Treated	Projected Total Patients Treated	Projected Residents Treated
	235	280	273	325
Free Standing Stations Needed	53	63	73	61
Existing Stations	24	24	24	24
w/Approval of This CON	0	0	0	0
Need Without Approval	29	39	39	49
Need With Approval	29	39	39	49

***FS – Free Standing*

****Based upon a conservative estimate of a three percent annual increase*

The data in the first row, "Free Standing Stations Needed," comes from the DOH methodology of each station being able to treat 4.5 patients. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information System (HFIS). "Unmet Need" comes from subtracting needed stations from existing stations. "Total Patients Treated" is from IPRO data from 2011.

Conclusion

The proposed asset purchase agreement will help ensure the continued operation of Dutchess Dialysis, to be called DSI Dutchess Dialysis. The freestanding facility currently operates 24 dialysis stations and is the only dialysis facility in Dutchess County, where there remains a need for 49 additional stations.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Establish a to-be-formed corporation as the new operator of Dutchess Dialysis Center, currently operated as an extension clinic of FMS-Southern Manhattan Dialysis Center, by New York Dialysis Services, Inc. No changes in services or staffing levels are anticipated concurrent with this proposal.

Character and Competence

Dialysis Newco, Inc. is a for-profit business corporation which is wholly owned by Dialysis HoldCo, LLC, which is wholly owned by Dialysis Parent, LLC. Dialysis Parent, LLC has four corporate members. The Officers and Directors of the to-be-formed corporation are the current Officers and Directors of Dialysis Newco, Inc.:

<u>Name</u>	
Craig Goguen	President, Chief Executive Officer
Robert Lefton	Vice President, Director
Jay Yalowitz	Executive Vice President, Secretary
Judy Lefkowitz	Director
Jason Gunter	Director

Dialysis Newco, Inc. was formed as a result of a anti-trust determination that Fresenius Medical Care needed to divest themselves of some chronic renal dialysis centers in certain markets due to their acquisition of another dialysis provider. Since 2011 Dialysis Newco has acquired the operations of over 80 dialysis centers nation-wide.

Staff from the Division of Hospitals and Diagnostic & Treatment Centers 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 and all related entities were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Hospitals and Diagnostic & Treatment Centers performed internet searches on the proposed managers and all related corporate entities and found nothing of concern. Staff also checked a random sample of affiliated dialysis centers via the CMS Dialysis Facility Compare website and found no pattern of substandard care.

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 of which are summarized below:

<i>Date:</i>	February 1, 2012
<i>Seller:</i>	Fresenius Medical Holdings, Inc.
<i>Buyer:</i>	Dialysis Newco, Inc, d/b/a DSI Renal
<i>Assets Acquired:</i>	All assets used in operation of the facility; tangible property, equipment; inventory and supplies; assignable contracts, licenses and permits, prepayments, phone numbers, financial books and records; cash, trade secrets, goodwill and intellectual property of Seller's Business; and any amounts payable under any insurance policies.
<i>Excluded Assets:</i>	Cash in bank on Effective Date, accounts receivable for services provided prior to effective date, any rights relating to Fresenius.
<i>Assumed Liabilities:</i>	Those relating to acquired assets.
<i>Excluded Liabilities:</i>	Any of the debts, obligations or liabilities of seller's business or sellers of any nature whatsoever.
<i>Purchase Price:</i>	\$16,395,032 to seller at closing.

The Asset Purchase Agreement was executed to purchase 53 sites throughout the United States. The FMS-Dutchess Dialysis Center is the only site in New York State under this agreement. Each site has its own proposed Bill of Sale and Assignment and Assumption based on the Asset Purchase Agreement. The other 52 sites have been purchased and closed upon as of this date.

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

Transition Services Agreement

Fresenius Medical Holdings, Inc. and Dialysis Newco, Inc. d/b/a DSI Renal will enter into a transition agreement based on the executed asset purchase agreement. The terms of the draft transition agreement are summarized as follows:

<i>Contractor:</i>	Fresenius Medical Holdings, Inc.
<i>Purchaser:</i>	Dialysis Newco, Inc. d/b/a DSI Renal
<i>Terms:</i>	As specified for each service rendered by Contractor.
<i>Provisions/Fees:</i>	Third Party Services relating to the business over a nine month period at actual costs, Accounting and Financial services over a six month period at \$30,000 per month, Billing and Collection services over a twelve month period at \$10,000 per month, Employee Leasing over a 90 day period at payroll register costs, Clinical Quality and Utilization Controls over a nine month period at \$.70 per treatment, Information Services Support and Clinical Database Feeds over nine month period at \$2.00 per treatment, Regulatory Affairs over nine month period at \$50,000 payable based on completion of relevant findings and Regional Clinical and Operational Support over 90 days at \$25,000 per month.

At the end of the term of the Employee leasing arrangement, Purchaser may offer employment to the shared employees.

Sublease Agreements

The facility operates in an existing building located at 2685 South Road in Poughkeepsie. The site is owned by Mid-Hudson Associates. The terms of the proposed sublease agreement for the main site is summarized below:

- Date:* September 4, 2007
- Landlord:* Mid-Hudson Associates
- Tenant:* New York Dialysis Services, Inc. d/b/a Dutchess Dialysis Center
- Subtenant:* Dialysis NEWCO, Inc. d/b/a DSI Dutchess Dialysis
- Premises:* 14,628 sq. ft. located at 2685 South Road in Poughkeepsie, New York
- Rent:* \$117,024 a year (\$8 per sq. ft.) with a 3% increase on the first of each year of the lease.
- Term:* 10 years with two, five year options to renew.
- Provisions:* The Lessee shall be responsible for taxes, maintenance, insurance and utilities.

The lease was amended on December 29, 2011, to change New York Dialysis Services, Inc. d/b/a Dutchess Dialysis Center as tenant and to increase square footage space by 9,000 square feet with a total approximate space of 23,628 square feet. The lease was extended until October 31, 2021, with an adjusted rent of \$108,000 per year beginning June of 2012, and a 1.5% increase per year.

Operating Budget

The applicant has submitted first and third year estimated operating budgets, in 2013 dollars, which is summarized below:

	<u>First Year</u>	<u>Three Year</u>
Revenues	\$9,454,701	\$9,713,918
Expense:		
Operating	\$8,231,240	\$8,396,688
Depreciation and Interest	455,316	464,468
Total Expenses	\$8,686,556	\$8,861,156
 Excess Income over Expenses	 <u>\$768,145</u>	 <u>\$852,762</u>
 Utilization (Visits)	 31,301	 31,348
 Cost per Treatment	 \$277.53	 \$282.67

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

	<u>Years One and Three</u>
Medicaid Fee-for-Service	2.17%
Medicare Fee-for-Service	71.23%
Commercial Fee-for-Service	15.66%
Other*	10.94%

**Other represents Medicare Advantage and Medicaid Risk Payors.*

Expense and utilization assumptions are based on the historical experience of the existing dialysis center and extension clinic.

Capability and Feasibility

There are no project costs associated with this application.

The working capital requirement is estimated at \$1,476,859, based on two months of third year expenses. Working capital will be provided through DSI Renal.

Presented as BFA Attachment B, is the Financial Summary of DSI Renal, which indicates sufficient funds available for estimated working capital. Presented as BFA Attachment C, is the pro-forma balance sheet of DSI Dutchess Dialysis as of the first day of operations.

The submitted budget projects a net income of \$768,145 and \$852,762 during the first and third years, respectively. Revenues are based on prevailing reimbursement methodologies and contracted rates for dialysis services. The budget appears reasonable.

As shown on BFA Attachment B, Financial Summary of DSI Renal, Dialysis Newco, Inc. d/b/a DSI Renal was in operations for three months of 2011. The consolidated entity had positive Earnings before Income Taxes and Distribution Adjustments (EBITDA) of \$2,926,551 from operations for the three month period and as of September of 2012, the applicant has maintained a positive working capital position and a positive stockholder's position, and maintained a net profit from operations.

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 approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Organizational Chart for Dialysis Newco, Inc.
BFA Attachment B	Financial Summary of DSI Renal, Unaudited 2011 and as of September 30, 2012
BFA Attachment C	Pro-forma Balance Sheet
BFA Attachment D	Financial P & L Summary for Dutchess Dialysis Center as of December 31, 2011 and October 31, 2012

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 11th day of April, 2013, 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 Dialysis Newco, Inc. as the new owner of Dutchess Dialysis Center currently operating as an extension clinic of FMS-Southern Manhattan Dialysis 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:

122181 E

Dialysis Newco, Inc. d/b/a DSI Renal

APPROVAL CONTINGENT UPON:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department of Health, with a local acute care hospital. [HSP]
2. Submission of an assumed name or d/b/a, acceptable to the Department. [HSP]
3. Submission of an executed Sublease Agreement that is acceptable to the Department. [BFA]
4. Submission of an executed Bill of Sale that is acceptable to the Department. [BFA]
5. Submission of the executed Assignment and Assumption Agreement that is acceptable to the Department. [BFA]
6. Submission of the executed Transition Services Agreement that is acceptable to the Department. [BFA]
7. Submission of a completed CON Schedule 3B, acceptable to the Department. [CSL]
8. Submission of a photocopy of a Certificate of Assumed Name, acceptable to the Department. [CSL]
9. Submission of a photocopy of a Certificate of Incorporation of DSI Dutchess Dialysis, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the Bylaws of DSI Dutchess Dialysis, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of the Lease Agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of the Articles of Organization of Dialysis Holdco, LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of the Operating Agreement of Dialysis Holdco, LLC, acceptable to the Department. [CSL]
14. Submission of a photocopy of the Articles of Organization of Dialysis Parent, LLC, acceptable to the Department. [CSL]
15. Submission of a photocopy of the Operating Agreement of Dialysis Parent, LLC, acceptable to the Department. [CSL]
16. Submission of a photocopy of the Partnership Agreement of Frazier Healthcare VI, LP, acceptable to the Department. [CSL]
17. Submission of a photocopy of the Partnership Agreement of New Enterprises Associates 13, LP, acceptable to the Department. [CSL]
18. Submission of a photocopy of the Certificate of Incorporation of QIC Private Capital Pty Ltd., acceptable to the Department. [CSL]
19. Submission of a photocopy of the Excluded IF License Agreement, acceptable to the Department. [CSL]
20. Submission of a photocopy of the Bill of Sale, acceptable to the Department. [CSL]
21. Submission of a photocopy of the Assignment and Assumption Agreement, acceptable to the Department. [CSL]
22. Submission of a photocopy of the Transition Services Agreement, acceptable to the Department. [CSL]
23. Submission of a photocopy of the Partial Assignment and Assumption Agreement, acceptable to the Department. [CSL]
24. Submission of a photocopy of a Certificate of Amendment to the Certificate of Incorporation of New York Dialysis Services, Inc., 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:

Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 122319-E
St. Joseph's Dialysis – Regional

County: Onondaga (Syracuse)
Purpose: Establishment

Program: Dialysis Services
Submitted: December 31, 2012

Executive Summary

Description

SJLS, LLC d/b/a St. Joseph Dialysis, an existing proprietary diagnostic and treatment center at 973 James Street, Syracuse, with four extension sites within Onondaga County, wishes to transfer 25% membership from Liberty Syracuse to New York Dialysis Services, Inc. (NYDS). This application will not involve the addition of any dialysis stations, and no other changes in the operator are contemplated as part of this application. In addition, it is proposed that the existing administrative services agreement between Liberty Syracuse LLC and Liberty Dialysis LLC be assigned to SJLS, LLC and NYDS, respectively, subsequent to which NYDS will provide administrative services to SJLS, LLC. Ownership of SJLC, LLC before and after the proposed change of ownership, is as follows:

<u>Current</u>		<u>Proposed</u>	
Liberty Syracuse, LLC	25%	New York Dialysis Services, Inc	25%
S J Management Company of Syracuse, Inc.	60%	S J Management Company of Syracuse, Inc.	60%
Salil Gupta	7%	Salil Gupta	7%
Pawan Rao, M.D.	5%	Pawan Rao, M.D.	5%
Balakrishman Balagurumuthy, M.D.	3%	Balakrishman Balagurumuthy, M.D.	3%

New York Dialysis Services, Inc. is a wholly owned subsidiary of Fresenius Medical Care Holdings, Inc.

SJLS, Inc. will continue to have site control under its present leases.

DOH Recommendation
 Contingent approval.

Need Summary
 There will be no Need review of this project.

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 associated with this application.
 The total purchase price of \$1.00 will be met with equity from New York Dialysis Services, Inc.

Budget:	Revenues:	\$17,644,462
	Expenses:	<u>14,918,440</u>
	Net Income:	\$2,726,022

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

Recommendations

Health Systems Agency

There is no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed assignment of the administrative services agreement, that is acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the executed Consent to Assignment and Amendment of Lease, acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed Assignment and Assumption Agreement to the Independent Vendor Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Amended and Restated Operating Agreement of SJLS, LLC, acceptable to the Department. [CSL]
5. Submission of evidence of the adoption of the submitted Bylaws of New York Dialysis Services, Inc., acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]

Council Action Date

April 11, 2013.

Programmatic Analysis

Background

Establish a New York Dialysis Services, Inc. (NYDS) as the 25% member of SJLS, LLC d/b/a St. Joseph's Dialysis, which is an existing chronic renal dialysis diagnostic and treatment center, with four chronic renal dialysis center extension clinics. There are no other changes in services or sites proposed concurrent with this application.

Character and Competence

The current 25% member, Liberty Syracuse, LLC, is selling their membership interest to NYDS. The other members will remain the same, with the same membership interests. Upon approval, the members of the SJLS, LLC will be:

New York Dialysis Services, Inc.	25.00%
S.J. Management Company of Syracuse, Inc.	60.00%
Safil Gupta	7.00%
Pawan Rao, MD	5.00%
Balakrishnan Balagurumurthy, MD	3.00%

NYDS is an established article 28 provider that operates over 30 dialysis centers in New York State. NYDS is a subsidiary of Fresenius Medical Care Holdings (FMCH).

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted for the officers and Directors of NYDS, 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 Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated New York State 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.

FMCH disclosed four lawsuits and investigations. One involves possible improper laboratory tests. A second involves a subsidiary supply company. The third is investigating the relationship between retail pharmacies and outpatient dialysis facilities and the reimbursement of medications provided to ESRD patients. The fourth involves labeling and warnings for dialysate concentrate products. Each disclosure involves multiple parties with overlapping authority. At this time there are no findings.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that the facility conforms to generally accepted standards of practice. 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

Operating Budgets

The applicant has submitted an incremental operating budget, in 2013 dollars for the first and third years of operation, summarized below:

	<u>Years One and Three</u>
Revenues:	\$17,644,462
Expenses:	
Operating:	\$13,525,708
Capital:	<u>1,392,732</u>
Total Expenses:	\$14,918,440
Net Income:	\$2,726,022
Utilization(treatments)	56,268
Cost per treatment	\$265.13

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

	<u>Years One and Three</u>
Commercial Fee for Service	7.7%
Medicare Fee for Service	79.5%
Medicare Managed Care	1.6%
Medicaid Fee for Service	3.7%
Medicaid Managed Care	0.5%
Private Pay/Other	7.0%

Expenses and utilization are based on the historical experience of SJLS, Inc.

Capability and Feasibility

There are no project costs associated with this application.

The transfer price of \$1.00 will be met with equity from New York Dialysis Services, Inc.

At the time Liberty Syracuse LLC acquired its interest in SJLS, LLC, the Article 28 operator, Mark Caputo, was the CEO of Liberty Dialysis, LLC. Liberty Dialysis, LC entered into an agreement to provide administrative/consulting services to the SJLS, LC. Consistent with the representative governance model, Mr. Caputo also entered into an option agreement pursuant to which he agreed to sell his ownership in Liberty Syracuse LLC to Liberty Dialysis, LLC for nominal consideration if it was determined that Liberty Dialysis, LC could legally purchase such ownership interest.

On February 28, 2012, Fresenius acquired Liberty Dialysis Holdings, Inc., which mainly provides dialysis services in 263 clinics located throughout the United States. The total consideration for this acquisition was approximately \$2.1 billion dollars. As part of this acquisition, Liberty Dialysis, LLC proposes to assign its interests in the option agreement to New York Dialysis Services, Inc. a subsidiary of Fresenius ("NYDS"). NYDS will then replace Mark Caputo as the sole member of liberty Syracuse LLC for \$1.00. The applicant indicates that it was never contemplated that Mr. Caputo would receive fair market value for his ownership interest in Liberty Syracuse LLC because his role in that entity was not materially tied to his investment, but rather was intended to ensure that Liberty Dialysis , LLC could legally participate in the operation of SJLS, LLC.

The submitted budget indicates a net income of \$2,726,022 for the first and third years. Revenue is based on SJLS', Inc. experience in the operation of the dialysis centers and on current reimbursement rates. The budget appears reasonable.

As shown on BFA Attachment A, 2011 and 2010 financial summary of New York Dialysis Services, Inc. indicates that the corporation has experienced average negative working capital, stockholders' equity and net loss of \$5,413,612.

NYDS indicates that the 2010 losses were related to increased union labor costs and renegotiations of the commercial insurance contracts. For 2011, approximately \$3 million was related to renegotiation of commercial insurance contracts, \$800,000 in write-offs and \$4 million in higher labor costs related to union contracts. The applicant has stated that losses experienced by New York Dialysis Services, Inc. will be supported by Fresenius Medical Holdings, Inc., as needed. In 2012, the organization has been able to renegotiate union contracts that will yield an estimated \$4 million in cost savings.

As shown on BFA attachment B, New York Dialysis Services, maintained net income of \$2,033,563 as of November 30, 2012.

As shown on BFA Attachment C, a financial summary of Fresenius Medical Care Holdings, Inc. indicates that the corporation has maintained positive working capital and equity and generated net income of \$1,177,262,000 for 2011. As shown on BFA Attachment D, an internal financial summary of Fresenius Medical Care Holdings, Inc indicates that the corporation has maintained positive working capital and equity and generated a net income of \$1,025,639,000 as of September 30, 2012.

As shown on BFA Attachment E, a financial summary of SJLS, LLC indicates that the facility has maintained positive working capital and member's equity and experienced average income from operations of \$3,421,477 for 2010 and 2011. As shown on BFA Attachment F, internal financial summary of SJLS, LLC for 2012, indicates that the corporation has maintained positive working capital and equity and generated a net income of \$5,232,404.

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 approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary - Audited - 2011 and 2010, New York Dialysis Services, Inc.
BFA Attachment B	Financial Summary - Audited - as of November 30, 2012, - New York Dialysis Services, Inc.
BFA Attachment C	Financial Summary - Audited - 2010-2011, Fresenius Medical Care Holdings, Inc.
BFA Attachment D	Financial Summary - Internal - as of September 30, 2012, - Fresenius Medical Care Holdings, Inc.
BFA Attachment E	Financial Summary - Audited- 2010 and 2011, SJLS, LLC
BFA Attachment F	Financial Summary - Internal- 2012 SJLS, LLC

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 11th day of April, 2013, 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 25 percent interest from existing member Liberty Syracuse, LLC to new member New York Dialysis Services, 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:

122319 E

FACILITY/APPLICANT:

St. Joseph's Dialysis – Regional

APPROVAL CONTINGENT UPON:

1. Submission of an executed assignment of the administrative services agreement, that is acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the executed Consent to Assignment and Amendment of Lease, acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed Assignment and Assumption Agreement to the Independent Vendor Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Amended and Restated Operating Agreement of SJLS, LLC, acceptable to the Department. [CSL]
5. Submission of evidence of the adoption of the submitted Bylaws of New York Dialysis Services, Inc., acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, 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:

Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 122233-E Batavia Health Care Center, LLC

County: Genesee (Batavia)
Purpose: Establishment

Program: Residential Health Care Facility
Submitted: November 15, 2012

Executive Summary

Description

Batavia Health Center, LLC, is seeking approval to acquire 100% membership interest in Batavia Nursing Home, LLC, an existing proprietary LLC and 62-bed residential health care facility (RHCF) located in Batavia.

Ownership of Batavia Nursing Home, LLC operation before and after the change in ownership is as follows:

<u>Current</u>		<u>Proposed</u>	
Batavia Nursing Home, LLC		Batavia Health Center, LLC	
Marc Korn	50%	Justin Wood	25%
Jeffrey Lapides	50%	Jill Madden	45%
		Gerald J. Wood III	30%

Ownership of Batavia Nursing Home, LLC Realty before and after the change in ownership is as follows:

<u>Current</u>		<u>Proposed</u>	
Geriatric Realty Corp.		Batavia Realty, LLC	
Marc Korn	50%	Justin Wood	10%
Jeffrey Lapides	50%	Jill Madden	45%
		Gerald Wood	30%
		Gerald J. Wood III	15%

On May 25, 2012, Batavia Nursing Home, LLC entered into Bankruptcy under Chapter 11 of the United States Bankruptcy Court in the Western District of New York, whereas the highest successful bidder, Gerald Wood, purchased the Assets of the Nursing Home and the realty for \$2,525,000. Gerald Wood has ownership only in the real property, not the operation. Gerald Wood III, who is the son of Gerald Wood, is a proposed member of the operation and became sole receiver of Batavia Nursing Home effective August 1, 2012.

Gerald J. Wood III and Justin Wood each have a 3% ownership interest in Mohawk Valley Health Care Center, a 120-bed RHCF with

a 38-slot Adult Day Home Care Program, located in Ilion, New York. Their ownership of this facility became effective on December 22, 2010.

DOH Recommendation
Contingent approval.

Need Summary

Batavia Nursing Home did not report occupancy in 2009, 2010, or 2011 and is currently being operated under receivership. The receiver does not have past records documenting utilization but has reported that Batavia Nursing Home has been operating at over 95% since August, 2012. This was supported by a Department of Health survey completed in January 2013 that showed utilization of 98.4%. There will be no changes to beds or services as a result of this project.

Approval is recommended.

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.

From a programmatic perspective, approval is recommended.

Financial Summary

The purchase price for the operations and real property is \$2,525,000 and will be paid from proposed member's equity.

There are no project costs associated with this application.

Budget:	Revenues:	\$4,824,400
	Expenses:	<u>\$4,498,600</u>
	Gain:	\$325,800

Subject to the noted contingencies, 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 review of this project.

Office of Health Systems Management

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
3. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - a. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - b. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - c. Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
 - i. Information on activities relating to a-c above; and
 - ii. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - iii. Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period. [RNR]

4. Submission of an executed lease agreement that is acceptable to the Department of Health. [BFA]
5. Submission of an executed Asset Purchase Agreement that is acceptable to the Department of Health. [BFA]
6. Submission of proof of executed assignments acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of Batavia Health Center, LLC acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed first Amended and Restated Operating Agreement of Batavia Health Care Center LLC, acceptable to the Department. [CSL]
9. Submission of evidence of site control, acceptable to the Department. [CSL]
10. Submission of evidence of the transfer of the operational assets of Batavia Nursing Home, LLC to the applicant, acceptable to the Department. [CSL]
11. Submission of a photocopy of a sample membership certificate of Batavia Health Center, LLC, acceptable to the Department. [CSL]

Council Action Date

April 11, 2013.

Need Analysis

Background

Batavia Nursing Home is a 62 bed residential health care facility located at 275 State Street, Batavia, 14020, in Genesee County. Batavia Nursing Home, LLC is seeking approval to transfer 100% ownership to Batavia Health Care Center, LLC.

Batavia Nursing Home failed to report occupancy for 2009, 2010, or 2011. The Department completed a survey in January 2013 and found utilization of 98.4%.

Table 1: RHCf – Batavia Nursing Home/Genesee County Occupancy

<u>Facility/County/Region</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Batavia Nursing Home	Did Not Report	Did Not Report	Did Not Report
Genesee	94.58%	92.67%	92.42%

There is an unmet need of 57 RHCf beds in Genesee County. The overall RHCf bed occupancy for the county is 92.42%.

Table 2: RHCf Need – Genesee

2016 Projected Need	545
Current Beds	488
Beds Under Construction	0
Total Resources	488
Unmet Need	57

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patients admissions is at least 75% of the planning area percentage of health Systems Agency percentage, whichever is applicable.

Batavia Nursing Home did not report for 2009 or 2010. The 75 percent planning averages for Genesee County for three years were 5.98 percent (2009) and 14.42 percent (2010).

Conclusion

Batavia Nursing Home has been operated by a receiver since August, 2012. The most recent Department of Health survey conducted in January 2013 indicates that utilization is 98.4%. The receiver is a member of Batavia Health Care Center, LLC and will continue to improve operations of this facility, which is a needed community resource.

Recommendation

From a need perspective, contingent approval is recommended.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The change in ownership and real property will be effectuated in accordance with an executed asset purchase agreement, the terms of which are summarized below:

Date: March 13, 2012

Seller: Batavia Nursing Home, LLC and Geriatric Realty Corp. and Melanie L. Cyganowski, Esq, as bankruptcy trustee for sellers

Buyer : Robert W. Hurlbut

Purchased Assets: The real estate and all assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents;

Excluded Assets: Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.

Purchase Price: \$1,800,000 for the operating interest and the real property interest

Due to the bidding process at the Bankruptcy Court proceedings, Gerald Wood out bid Robert Hurlbut for Batavia Nursing Home, LLC for \$2,525,000. The Asset Purchase Agreement was then assigned from Robert Hurlbut to Gerald Wood, who in turn assigned the operations to the proposed members who make up Batavia Health Care Center, LLC.

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.

Lease Agreement

The applicant will continue to occupy the premises under a draft lease agreement, the terms of which are summarized below:

Premises: A 62-bed nursing home located at 257 State St., Batavia, New York.

Lessor: Batavia Realty, LLC

Lessee: Batavia Health Care Center, LLC

Term: 30 years

Rental: \$300,000/year (\$25,000 per month)

Provisions: Triple Net.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the first year subsequent to change in ownership:

Revenues:	
Medicaid	\$2,607,000
Medicare	1,001,400
Private Pay/Other	<u>1,216,000</u>
 Total Revenues	 \$4,824,400

Expenses:	
Operating	\$4,030,100
Capital	<u>468,500</u>
Total Expenses	<u>\$4,498,600</u>
Net Income	<u>\$ 325,800</u>
Utilization: (patient days)	22,000
Occupancy	97.22%

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

- The capital component of the Medicaid rate is based on the return of, and return on, equity reimbursement methodology.
- Expenses include lease rental.
- Medicaid rates are based on 2013 Medicaid pricing rates with no trend..
- Overall utilization is projected at 97.22%, while utilization by payor source is expected as follows:

Medicaid	75.0%
Medicare	9.0%
Private Pay/Other	16.0%
- Breakeven occupancy is projected at 90.65%.

Capability and Feasibility

There are no project costs associated with this application.

The purchase price of the operations and the real property will be financed by proposed members' equity of \$2,525,000. Presented as BFA Attachment A, is the net worth of the proposed members, which shows sufficient equity. An affidavit from each applicant member has been submitted to the Department of Health, which states that he or she is willing to contribute resources disproportionate to ownership percentages.

Working capital requirements are estimated at \$749,767, based on two months of the first year expenses, but the proposed members will be starting with working capital of \$800,000, which will be satisfied from the proposed member's equity. Presented as BFA Attachment A, is the net worth of the proposed members, which shows sufficient equity.

The submitted budget indicates that a net income of \$325,800 would be maintained during the first year following change in ownership. Presented as BFA Attachment C, is the pro-forma balance sheet of Batavia Health Center, LLC, which indicates positive members' equity of \$2,375,000 as of the first day of operations. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with a cost-based capital component payment methodology, to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

As shown on BFA Attachment B, Batavia Nursing Home, LLC had positive working capital, net asset position and a net profit of \$163,025 from August through December 31, 2012. Prior to August 2012, Batavia Nursing Home, LLC did not maintain proper financial records, and the facility's last certified financial statements were completed in 2008.

As shown on BFA Attachment D, Mohawk Valley Health Care Center maintained positive working capital, net assets and a net income from operations in 2011 and 2012.

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	Personal Net Worth Statement
BFA Attachment B	Financial Summary- Batavia Nursing Home, LLC
BFA Attachment C	Pro-forma Balance Sheet
BFA Attachment D	Financial Summary-Mohawk Valley Health Care Center

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 11th day of April, 2013, 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 100 percent ownership of Batavia Nursing Home, LLC to Batavia Health Care Center, LLC, 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:

122233 E

Batavia Health Care Center, LLC

APPROVAL CONTINGENT UPON:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
3. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - a. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - b. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - c. Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
 - i. Information on activities relating to a-c above; and
 - ii. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - iii. Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period.

[RNR]

4. Submission of an executed lease agreement that is acceptable to the Department of Health. [BFA]
5. Submission of an executed Asset Purchase Agreement that is acceptable to the Department of Health. [BFA]
6. Submission of proof of executed assignments acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of Batavia Health Center, LLC acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed first Amended and Restated Operating Agreement of Batavia Health Care Center LLC, acceptable to the Department. [CSL]
9. Submission of evidence of site control, acceptable to the Department. [CSL]
10. Submission of evidence of the transfer of the operational assets of Batavia Nursing Home, LLC to the applicant, acceptable to the Department. [CSL]
11. Submission of a photocopy of a sample membership certificate of Batavia Health Center, 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:

Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 122276-E
Livingston Hills Nursing and Rehabilitation Center, LLC

County: Columbia (Livingston)
Purpose: Establishment

Program: Residential Health Care Facility
Submitted: December 12, 2012

Executive Summary

Description

Livingston S and V Operations, LLC d/b/a Livingston Hills Nursing and Rehabilitation Center, a limited liability company formed to pursue this CON, is requesting approval to be established as the new operator of Livingston Hills Nursing & Rehabilitation Center, LLC an existing 120-bed proprietary residential health care facility (RHCF) located at 2781 Route 9, Livingston, NY (Columbia County).

Ownership of the operations before and after the requested change is as follows:

Current Operator

Livingston Hills Nursing & Rehabilitation Center, LLC

Livingston Ventures, LLC	100%
Mark Friedman	25%
Neal Einhorn	25%
Miriam Minzer	25%

Raphael Yenowitz	25%
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Proposed Operator

Livingston S and V Operations, LLC d/b/a Livingston Hills Nursing and Rehabilitation Center

Jeffrey Vegh	15%
Daniella Schwartz	42%
Elaine Zinberg	5%
LowCo/Livingston Hills, LLC	28%
Ilana Lowy	1%
Lauren Lowy	99%
MarBar Capital I, LLC	10%
Barry Weiss	50%
Mark Weiss	50%

DOH Recommendation
 Contingent approval.

Need Summary

Utilization at Livingston Hills Nursing and Rehabilitation Center was 93.09% in 2011, which was slightly higher than that of Columbia County, which was 92.64%. There will be no change in services or capacity as a result of this project.

Program Summary

No negative information has been received concerning the character and competence of the applicants identified as new members.

Financial Summary

Livingston S and V Operations, LLC d/b/a Livingston Hills Nursing and Rehabilitation Center will acquire the RHCF operating interest from Livingston Hills Nursing & Rehabilitation Center, LLC for the assumption of specific assets and liabilities. The assumed assets will have the same value as the assumed liabilities. The real property will continue to be owned by Livingston Hills Realty, LLC, a party related to the current operator. There are no project costs associated with this proposal.

Budget:	Revenues:	\$ 9,305,018
	Expenses:	<u>\$ 9,128,348</u>
	Gain/ (Loss)	\$ 176,670

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

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - Submit an annual report for two years to the DOH, which demonstrates substantial progress in the implementation of the plan. The plan should include but not be limited to:
 - Information on activities relating to a-c above; and
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - Other factors as determined by the applicant to be pertinent. [RNR]

The DOH reserves the right to require continued reporting beyond the two-year period. [RNR]

3. Submission of an executed lease assignment and assumption agreement that is acceptable to the Department of Health. [BFA]
4. Submission of a working capital commitment that is acceptable to the Department of Health. [BFA]
5. Submission of a copy of the executed amended and restated lease between Livingston Hills Realty LLC and Livingston Hills Nursing & Rehabilitation Center, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of the executed Certificate of Amendment to the Articles of Organization of Livingston S and V Operations LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Operating Agreement of S and V Operations LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the Assignment and Pledge of Membership Interests as referenced in Article IX of the Operating Agreement of S and V Operations LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Operating Agreement of Lowco/Livingston Hills, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of the Amended and restated Operating Agreement of MarBar Capital I LLC, acceptable to the Department. [CSL]

Approval conditional upon:

1. Submission of an executed Closing Statement, along with a copy of the Buyer's payment to the seller and buyers assumed liabilities, which conforms to the specified terms, which are acceptable to the Department of Health. [BFA]

Council Action Date

April 11, 2013.

Need Analysis

Background

Livingston S and V Operations LLC, doing business as Livingston Hills Nursing and Rehabilitation Center, proposes to be established as the operator of Livingston Hills Nursing and Rehabilitation Center, a 120 residential health care facility located at 2781 Route 9, Livingston, 12541, in Columbia County.

Analysis

Livingston Hills Nursing and Rehabilitation Center utilization for 2009, 2010, and 2011 is shown in Table 1 below:

Table 1: Livingston Hills Nursing and Rehabilitation Center/ Columbia County

Facility/County	% Occupancy 2009	% Occupancy 2010	% Occupancy 2011
Livingston Hills Nursing	93.62%	92.31%	93.09%
Columbia County	92.29%	91.68%	92.64%

There is currently no bed need in Columbia County.

Table 2: RHCF Need – Columbia County

2016 Projected Need	667
Current Beds	648
Beds Under Construction	19
Total Resources	667
Unmet Need	0

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patients admissions is at least 75% of the planning area percentage of health Systems Agency percentage, whichever is applicable.

Livingston Hills Nursing and Rehabilitation Center was above the 75 percent planning area average for 2009 and 2010. The facility reported Medicaid admissions of 20.28 percent and 41.39 percent in 2009 and 2010 respectively. The 75 percent planning area averages for Columbia County for these years were 16.89 percent (2009) and 28.3 percent (2010).

Conclusion

This project will allow Livingston Hills Nursing and Rehabilitation Center to continue offering residential health care facility services to the residents of Columbia County. There will be no change in services or capacity.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

	<u>Existing</u>	<u>Proposed</u>
Facility Name	Livingston Hills Nursing & Rehabilitation Center	Same
Address	2781 Route 9 P.O. Box 95 Livingston, NY 12541 (Columbia County)	Same
RHCF Capacity	120	Same
ADHCP Program Capacity	N/A	Same
Type Of Operator	Limited Liability Corporation	Limited Liability Corporation
Class Of Operator	Proprietary	Proprietary
Operator	Livingston Hills Nursing & Rehabilitation Center, LLC	Livingston S and V Operations LLC d/b/a Livingston Hills Nursing & Rehabilitation Center <u>Members:</u> Jeffrey Vegh 15% Daniella Schwartz 42% Elaine Zinberg 5% *LowCo/Livingston Hills LLC 28% *MarBar Capital I, LLC 10% 100% <u>*Members:</u> LowCo/Livingston Hills LLC •Ilana Lowy (1%) 0.28% •Lauren Lowy (99%) 27.72% 28.00% MarBar Capital I, LLC •Barry Weiss (50%) 5.00% •Mark Weiss (50%) 5.00% 10.00%

Character and Competence

Residential Health Care Facilities

- Forest Manor Health Care Center (NJ) 12/2010 to present

• Individual Background Review

Daniella (Deutsch) Schwartz lists her current employment as VP of Operations of Davco Silver LTD. She was employed in a part-time capacity while attending college (2003 to May 2012), and became full time in June 2012 to present. Davco Silver LTD is in the wholesale jewelry industry and is located in Ozone Park, New York. Ms. Schwartz discloses no ownership interest in health care facilities.

Lauren Lowy lists employment as an Intern at Schwartz & Perry (Law Firm) for summer 2012, and as Extern at the California Court of Appeal, Second Appellate District, Division Four for Justice Norman L. Epstein the summer of 2012. Ms. Lowy discloses no ownership interest in health care facilities.

Ilana Lowy holds current Life Insurance Licenses in Texas, California, Maryland, New Jersey and New York. She lists her current employment, since 2008, as an Agent with MassMutual Financial Group at the North Texas Financial Agency in Fort Worth, Texas. Ms. Lowy discloses no ownership interest in health care facilities.

Elaine (Greenberg) Zinberg is a dentist in good standing in New York. She lists her current employment, since 1986, as the Administrator of the medical practice of Morton Zinberg, M.D., F.A.A.D. Dr. Zinberg discloses no ownership interest in health care facilities.

Mark Weiss lists his current employment, since January 2010, as Owner/Operator of Palace Kosher, Inc., a catering/food business located on Staten Island NY. He is a licensed EMT in good standing and volunteers at Hatzolah of Staten Island, a volunteer ambulance corps. Mr. Weiss discloses no ownership interest in health care facilities.

Barry Weiss lists his current employment, since January 1990, as Managing Member/Head of Sales Department of JB Pest Control LLC located on Staten Island NY. Mr. Weiss holds current Commercial Pesticide Applicator licenses in New York and New Jersey. Mr. Weiss discloses no ownership interest in health care facilities.

Jeffrey Vegh holds an active Nursing Home Administrator license in both the states of New York and New Jersey, and is considered to be in good standing for both licenses. He lists current employment as Managing Member at Forest Manor Health Care Center, located in Hope NJ, since December 2010. Prior to this ownership interest, Mr. Vegh was the nursing home administrator of Forest Manor Health Care Center from February 2007 through December 2009 and nursing home administrator at Bayview Nursing and Rehabilitation Center from July 2003 through February 2007. Mr. Vegh discloses the following ownership interest :

- Forest Manor Health Care Center (NJ) - 12/2010 to present

Character and Competence Analysis:

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations for Forest Manor Health Care Center for the period identified above, results in a conclusion of substantially high level of care since there were no enforcements.

Project Review-Analysis

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

Purchase/Sale Agreement for The Operations

The applicant has submitted an executed agreement to purchase the RHCF operating interest, the terms of which are summarized below:

Date:	October 1, 2012
Seller:	Livingston Hills Nursing & Rehabilitation Center, LLC
Purchaser:	Livingston S and V Operations, LLC d/b/a Livingston Hills Nursing and Rehabilitation Center
Assets Transferred Operations:	Rights, title and interest in as-is condition of the Basic Assets that relates to the nursing home business and operations including: lease, leasehold improvements, furniture, fixtures and equipment, inventory supplies and personal property, contracts, business and trade names, security deposits, menus, policies and procedures manuals, computer software, telephone numbers, copies of financial records, patients records, employee records, goodwill, transferable licenses and permits, Medicare and Medicaid provider numbers, provider agreements, rate increases that relate to the period subsequent to the contract date, accounts receivables (but in no greater value then the accounts payable account), marketable securities, deposits

The current lease arrangement between the landlord, Livingston Hills Realty, LLC and the current operator Livingston Hill Nursing & Rehabilitation Center, LLC is a non-arm's length agreement. Whereas the assignment and assumption of the lease between Livingston Hill Nursing & Rehabilitation Center, LLC and Livingston S & V Operations, LLC will be an arm's length transaction. Currently, Medicaid capital reimbursement is based on the return of and return on equity methodology, which will not be altered upon the change in ownership. Based on 2012 Nursing Home Consolidated Capital (Schedule VI – Property), all of the historical costs under the return of and return on capital have been reimbursed.

Operating Budget

The applicant has provided an operating budget, in 2013 dollars, for the first year subsequent to change in ownership. The budget is summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid	\$180.25	\$5,415,867
Medicare	450.58	2,794,956
Private Pay	241.70	<u>1,094,195</u>
Total Revenues:		<u>\$9,305,018</u>
Expenses:		
Operating		\$8,150,890
Capital		<u>977,458</u>
Total Expenses:		<u>\$9,128,348</u>
Net Income:		<u>\$176,670</u>
Utilization (resident days)		40,775
Occupancy		93.09%

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

- Medicaid revenues are based on the actual 2012 rates.
- Medicare and private revenues are based on the actual rates trended to 2013.
- Overall utilization is projected at 93.09%. Utilization for the four years from 2008 through 2011 averaged 92.96%.
- Utilization by payor source is anticipated as follows:

Medicaid Fee-for-Service	73.7%
Medicare Fee-for-Service	15.2%
Private/Other	11.1%
- Breakeven utilization is projected at 91.32%.

Capability and Feasibility

Livingston S and V Operations, LLC d/b/a Livingston Hills Nursing and Rehabilitation Center proposed to acquire the RHCF operating interest from Livingston Hills Nursing & Rehabilitation Center, LLC for the assumption of specific assets and liabilities. The real property will continue to be owned by Livingston Hills Realty, LLC; a related party to the current operator.

Working capital is estimated at \$1,521,392 and is based on two months of the first year expenses; approximately half, or \$760,697 will be satisfied from members equity. The remaining \$760,695 will be satisfied through a five year loan at 5.6% from Capital One Bank. Review of BFA Attachment A, summary of net worth reveals sufficient resources for working capital equity.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with cost-based capital component payment

methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility.

At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

Review of BFA Attachment B a pro-forma balance sheet for Livingston S and V Operations, LLC d/b/a Livingston Hills Nursing and Rehabilitation Center shows operations will start off with \$760,697 in member's equity.

The submitted budget indicates \$176,670 in net income would be generated in the first year after the change in ownership. The following is a comparison of 2011 historical and projected revenue and expense:

Projected Income	\$ 9,305,018
Projected Expense	<u>9,128,348</u>
Projected Net Income	\$176,670
Annual 2011 Income	\$9,058,529
Annual 2011 Expense	<u>8,878,266</u>
Annual 2011 Net Income (Loss)	\$180,263
Incremental Net Income (Loss)	<u>(\$3,593)</u>

It is estimated that incremental net revenues from all payors will increase approximately \$246,489 as a result of changes to the following rates: Medicare revenues increasing \$133,093 as the results of trending to 2013 rates; Medicaid revenues are expected to increase \$71,311 as the results of a slight increase in the average daily rate, going from \$177.89 per patient day to \$180.25 per patient day, and private pay revenues are expected to increase approximately \$42,085. Utilization and payor source are not expected to change from the 2011 historical data. Operating expenses increased \$250,082, primarily a \$253,733 increase in lease expenses with a slight net decrease of \$3,651 in other operating expenses. The budget appears reasonable.

As shown on BFA Attachment C, Livingston Hills Nursing & Rehabilitation Center, LLC shows the RHCF generated \$750,581 in net income for the year ending 2012, as reported on the December 31, 2012 internal financial statement. Part of the \$377,447 increase in revenues between 2012 and 2011 was a positive prior year Medicaid adjustment of \$713,967. During 2012, utilization averaged 90.40% down from the prior year of 93.09%, but rebounded back in December 2012 to 94.47% and according to the DOH website as of January 13, 2013, utilization was at 95%.

For the periods shown 2010 through 2012, Livingston Hills Nursing & Rehabilitation Center, LLC had an average net income of \$419,035, an average positive net asset position of \$174,829 and average negative working capital of \$1,196,456. According to the Pro-forma balance sheet, the negative working capital should be eliminated after the proposed sale.

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

From a financial perspective, 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, Livingston S and V Operations, LLC d/b/a Livingston Hills Nursing and Rehabilitation Center
BFA Attachment C	Financial Summary, Livingston Hills Nursing & Rehabilitation Center, LLC

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 11th day of April, 2013, 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 Livingston S and V Operations, LLC d/b/a Livingston Hills Nursing and Rehabilitation Center, as the operator of Livingston Hills Nursing and Rehabilitation 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:

122276 E

FACILITY/APPLICANT:

Livingston Hills Nursing and Rehabilitation
Center, LLC

APPROVAL CONTINGENT UPON:

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - Submit an annual report for two years to the DOH, which demonstrates substantial progress in the implementation of the plan. The plan should include but not be limited to:
 - Information on activities relating to a-c above; and
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - Other factors as determined by the applicant to be pertinent. [RNR]

The DOH reserves the right to require continued reporting beyond the two-year period.

[RNR]

3. Submission of an executed lease assignment and assumption agreement that is acceptable to the Department of Health. [BFA]
4. Submission of a working capital commitment that is acceptable to the Department of Health. [BFA]
5. Submission of a copy of the executed amended and restated lease between Livingston Hills Realty LLC and Livingston Hills Nursing & Rehabilitation Center, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of the executed Certificate of Amendment to the Articles of Organization of Livingston S and V Operations LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Operating Agreement of S and V Operations LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the Assignment and Pledge of Membership Interests as referenced in Article IX of the Operating Agreement of S and V Operations LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Operating Agreement of Lowco/Livingston Hills, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of the Amended and restated Operating Agreement of MarBar Capital I LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. Submission of an executed Closing Statement, along with a copy of the Buyer's payment to the seller and buyers assumed liabilities, which conforms to the specified terms, which are acceptable to the Department of Health. [BFA]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 122298-E

Golden Hill Planning Corporation d/b/a Golden Hill Nursing and Rehabilitation Center

County: Ulster (Kingston)
Purpose: Establishment

Program: Residential Health Care Facility
Submitted: December 20, 2012

Executive Summary

Description
 Golden Hill Health Care Center, operated by the County of Ulster, is seeking approval for a change in ownership of its 280-bed residential health care facility (RHCF) located in Kingston, New York. In October, 2011, the County of Ulster established Golden Hill Local Development Corporation (LDC), to assist the county with the sale of the RHCF. The county granted the LDC a purchase option with the express purpose of allowing the LDC to sell the facility without the need to go back to the full legislature. The LDC is authorized to enter into a Purchase and Sale Agreement.

The appointed board members of the LDC are Michele Iannuzzi Sucich, M.D.; Jeanette Provenzano, County Legislature; Dare Thompson, member of Legislature, President, League of Women Voters; Michael Bernholz, President of Hudson Valley Appraisal Corporation; Marshall Beckman, Deputy County Executive; James Hanson, Deputy Budget Officer, County Executive's Office, and Robert Sudlow, Deputy County Executive and President of the LDC. Ownership of the operation and real estate before and after the requested change is as follows:

<u>Current Operation</u>	<u>Proposed</u>	<u>% Ownership</u>
Golden Hill Local Development Corporation d/b/a Golden Hill Health Care Center	Golden Hill Planning Corporation d/b/a Golden Hill Nursing and Rehabilitation Center	
	Martin Farbenblum	5.000%
	Edward Farbenblum	39.498%
	Anthony Bacchi, M.D.	30.000%
	Tibor Lebovich	18.668%
	Alexander Berger	5.834%

Yuliya Vinokurova, M.D.	1.000%
<u>Real Property</u>	
Golden Hill Local Development Corporation	
Golden Hill Acquisition, LLC	
Martin Farbenblum	5.000%
Edward Farbenblum	39.498%
Anthony Bacchi, M.D.	30.000%
Tibor Lebovich	18.668%
Alexander Berger	5.834%
Yuliya Vinokurova, M.D.	1.000%

Edward Farbenblum, Martin Farbenblum, Tibor Lebovich, and Anthony Bacchi have ownership interests in the following RHCFs: Nassau Extended Care Facility, a 280-bed RHCF, located in Hempstead, Park Ave. Extended Care Facility, a 240-bed RHCF, located in Long Beach, Townhouse Center for Rehabilitation and Nursing, a 280-bed RHCF, located in Uniondale. Edward Farbenblum, Martin Farbenblum, Tibor Lebovich, Anthony Bacchi, Yuliya Vinokurova and Alexander Berger have ownership interests in Susquehanna Nursing and Rehabilitation Center, a 160-bed RHCF, located in Johnson City. Martin Farbenblum and Anthony Bacchi have ownership interests in Golden Gate Rehabilitation and Health Care Center a 238-bed RHCF, located in Staten Island, Eastchester Rehabilitation and Health Care Center, a 200-bed RHCF, located in Bronx, Baypark Center for Nursing and Rehabilitation, a 480-bed RHCF, located in Bronx, White Plains Center for

Nursing, an 88-bed RHCF, located in White Plains, and The Hamptons Center for Rehabilitation and Nursing, a 280-bed RHCF, located in Southampton. Martin Farbenblum has ownership interests in Woodmere Rehabilitation and Health Care Center, a 336-bed RHCF, located in Woodmere and Spring Creek Rehabilitation and Nursing Care Center, a 188-bed RHCF, located in Brooklyn. Martin Farbenblum, Tibor Lebovich and Anthony Bacchi have ownership interests in Avalon Gardens Rehabilitation Health Care Center, a 353-bed RHCF, located in Smithtown, Bayview Nursing and Rehabilitation Center, a 185-bed RHCF, located in Island Park, and Throgs Neck Extended Care Facility, a 205-bed RHCF, located in Bronx.

DOH Recommendation
Contingent approval.

Need Summary

Golden Hill Nursing and Rehabilitation Center's utilization was 96.1% in 2011. This was slightly higher than the RHCF bed occupancy rate for Ulster County as a whole, which was 95.8%. There is an unmet need of 79 new beds for Ulster County if overall

utilization exceeds the 97% planning optimum. There will be no changes in capacity or services as a result of this change of ownership.

Program Summary

No negative information has been received concerning the character and competence of the applicants identified as new members.

Financial Summary

The total purchase price for the operations and real property of Golden Hill Health Care Center is \$11,250,000, \$250,000 for the operating interests and \$11,000,000 for the real property interests. The purchase price will be met with a bank loan of \$9,000,000, with the remaining \$2,250,000 from proposed members' equity.

Total Budget:	Revenues:	\$23,500,249
	Expenses:	<u>22,862,179</u>
	Net Income:	\$638,070

Subject to noted contingencies, 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 of this application..

Office of Health Systems Management

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - Submit an annual report for two years to the DOH, which demonstrates substantial progress in the implementation of the plan. The plan should include but not be limited to:
 - Information on activities relating to a-c above; and
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
3. Submission of an executed bank loan for the purchase price that is acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan that is acceptable to the Department of Health. [BFA]
5. Submission of an executed Lease Agreement that is acceptable to the Department of Health. [BFA, CSL]
6. Submission of a photocopy of the fully executed proposed Certificate of Amendment of the Certificate of Incorporation of the operating entity, Golden Hill Planning Corporation, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's Amended and Restated Bylaws, acceptable to the Department. [CSL]
8. Submission of evidence of Golden Hill Local Development Corporation's ability to transfer facility assets as described in the Purchase and Sale Agreement, acceptable to the Department. [CSL]

Council Action Date

April 11, 2013.

Need Analysis

Background

Golden Hill Planning Corporation, d/b/a Golden Hill Nursing and Rehabilitation Center, seeks to be established as the operator of Golden Hill Health Care Center, a 280 bed residential health care facility located at 99 Golden Hill Drive, Kingston, 12401, in Ulster County.

Analysis

Golden Hill Nursing and Rehabilitation Center utilization was higher than that of Ulster County for 2009 and 2010 and 2011, as shown in Table 1 below:

Table 1: RHCF – Golden Hill Nursing and Rehabilitation Center /UlsterCounty

<u>Facility/County</u>	<u>% Occupancy 2009</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>
Golden Hill Nursing and Rehabilitation Center	97.2%	96.7%	96.1%
Ulster County	95.0%	95.2%	95.8%

Golden Hill Nursing and Rehabilitation Center was at or above the 97% planning optimum for 2009 but was slightly lower for 2010 and 2011.

Ulster County has an unmet need for 79 beds according to 2016 projections. The county currently has an overall RHCF bed occupancy rate of 95.2%.

Table 2: RHCF Need – Ulster County

2016 Projected Need	1,078
Current Beds	999
Beds Under Construction	0
Total Resources	999
Unmet Need	79

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patients admissions is at least 75% of the planning area percentage of health Systems Agency percentage, whichever is applicable.

Golden Hill Nursing and Rehabilitation Center was above the 75 percent planning average for 2009 and 2010. The facility reported Medicaid admissions of 17.4 percent and 23.5 percent in 2009 and 2010, respectively. The 75 percent planning averages for Ulster County for these years were 8.48 percent (2009) and 20.18 percent (2010).

Conclusion

Golden Hill Nursing and Rehabilitation Center's utilization was 96.1% in 2011. This was slightly higher than the occupancy for Ulster County, which was 95.8%. Given the occupancy level and the unmet need of 79 beds for Ulster County, it is critical that the 280 beds remain available. Since there is no proposed change in capacity or services, approval of this application will allow Golden Hill Nursing and Rehabilitation Center to continue providing residential health care facilities services for the residents of Ulster County.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

	<u>Existing</u>	<u>Proposed</u>
Facility Name	Golden Hill Health Care Center	Golden Hill Nursing and Rehabilitation Center
Address	99 Golden Hill Drive Kingston, NY 12401	Same
RHCFCapacity	280	Same
ADHC Program Capacity	N/A	Same
Type Of Operator	County	Corporation
Class Of Operator	Public	Proprietary
Operator	County of Ulster	Golden Hill Planning Corporation d/b/a Golden Hill Nursing and Rehabilitation Center Shareholders: Martin Farbenblum 5.000% Edward Farbenblum 39.498% Anthony Bacchi, M.D. 30.000% Tibor Lebovich 18.668% Alexander Berger 5.834% Yuliya Vinokurova, M.D. 1.000%

Character and Competence

Residential Health Care Facilities

- Avalon Gardens Rehabilitation & Healthcare Center 01/2003 to present
- Bay Park Center for Nursing and Rehabilitation 01/2005 to present
- Bayview Nursing and Rehabilitation Center 01/2003 to present
- Eastchester Rehabilitation and Health Care Center 01/2003 to present
- Fort Tryon Center for Rehabilitation & Nursing 01/2003 to 12/2009
- Franklin Center for Rehabilitation & Nursing 01/2003 to 12/2009
- Golden Gate Rehabilitation and Health Care Center 01/2003 to present
- Nassau Extended Care Facility 01/2004 to present
- Nathan Miller Center for Nursing (closed) 01/2004 to 12/2009
- Park Avenue Extended Care Facility 01/2004 to present
- Split Rock Rehabilitation and Health Care Center 01/2003 to 12/2009
- Spring Creek Rehabilitation and Nursing Care Center 01/2009 to present
- Susquehanna Nursing & Rehabilitation 01/2005 to present
- The Hamptons Center for Rehabilitation and Nursing 01/2006 to present
- Throgs Neck Extended Care Facility 01/2004 to present
- Townhouse Extended Care Center 01/2003 to present
- White Plains Center for Nursing 01/2004 to present
- Woodmere Rehabilitation and Health Care Center 01/2003 to present

Diagnostic and Treatment Centers

- Privilege Care Diagnostic and Treatment Center 01/2008 to present

Individual Background Review

Alexander Berger lists his current employment as Principal/Owner of Firegem LLC in Long Beach NY, since 2005. Firegem LLC is a jewelry manufacturer. Mr. Berger has ownership interest in one health care facility as follows:

- Susquehanna Nursing & Rehabilitation 01/2005 to present

Anthony Bacchi, M.D. lists himself as a Partner in Magna Enterprises, LLC since 1999. The business is an investment company located in Roslyn, New York. Dr. Bacchi holds a New York State physician license, currently in good standing. He has extensive health care facility interests as follows:

- Avalon Gardens Rehabilitation & HCC 01/2003 to present
- Bay Park Center for Nursing and Rehabilitation 01/2005 to present
- Bayview Nursing and Rehabilitation Center 01/2003 to present
- Eastchester Rehabilitation and Health Care Center 01/2003 to present
- Fort Tryon Center for Rehabilitation & Nursing 01/2003 to 12/2009
- Golden Gate Rehabilitation and Health Care Center 01/2003 to present
- Nassau Extended Care Facility 01/2004 to present
- Nathan Miller Center for Nursing (closed) 01/2004 to 12/2009
- Franklin Center for Rehabilitation & Nursing 01/2003 to 12/2009
- Park Avenue Extended Care Facility 01/2004 to present
- Split Rock Rehabilitation and Health Care Center 01/2003 to 12/2009
- Susquehanna Nursing & Rehabilitation 01/2005 to present
- The Hamptons Center for Rehabilitation and Nursing 01/2006 to present
- Throgs Neck Extended Care Facility 01/2004 to present
- Townhouse Extended Care Center 01/2004 to present
- White Plains Center for Nursing 01/2004 to present

Edward O. Farbenblum is an attorney in good standing. His current employment, since September 2011, is Vice-President at Pinetree Group, Inc., a real estate company in New York, NY. Mr. Farbenblum was involved in a civil suit in 2012, in regards to a non-healthcare business investment, which was settled in August, 2012 for minimal considerations. He has several health care facility interests as follows:

- Nassau Extended Care Facility 01/2008 to present
- Park Avenue Extended Care Facility 01/2004 to present
- The Hamptons Center for Rehabilitation and Nursing 01/2006 to present
- Susquehanna Nursing & Rehabilitation 01/2005 to present
- Townhouse Extended Care Center 01/2003 to present
- Privilege Care D&TC 01/2008 to present

Martin Farbenblum holds a New York Physician Assistant license, currently in good standing. He is employed as a Managing Partner of Magna Enterprises, LLC since 1999. Mr. Farbenblum was involved in a civil suit in 2012, in regards to a non-healthcare business investment, which was settled in August 2012 with minimal considerations. He has extensive health care facility interests listed as follows:

- Avalon Gardens Rehabilitation & HCC 01/2003 to present
- Bay Park Center for Nursing and Rehabilitation 01/2005 to present
- Bayview Nursing and Rehabilitation Center 01/2003 to present
- Eastchester Rehabilitation and Health Care Center 01/2003 to present
- Fort Tryon Center for Rehabilitation & Nursing 01/2003 to 01/2009
- Golden Gate Rehabilitation and Health Care Center 01/2003 to present
- Nassau Extended Care Facility 01/2004 to present
- Nathan Miller Center for Nursing (closed) 01/2004 to 12/2009
- Franklin Center for Rehabilitation & Nursing 01/2003 to 12/2009
- Park Avenue Extended Care Facility 01/2004 to present
- Split Rock Rehabilitation and Health Care Center 01/2003 to 12/2009
- Susquehanna Nursing & Rehabilitation 01/2005 to present
- Throgs Neck Extended Care Facility 01/2004 to present
- Townhouse Extended Care Center 01/2004 to present
- White Plains Center for Nursing 01/2004 to present
- Spring Creek Rehabilitation and Nursing Care Center 01/2009 to present
- Woodmere Rehabilitation and Health Care Center 01/2003 to present

Tibor Lebovich is retired with last employment shown, from 1984 to 2006, as President at Continental J.C., Inc. Mr. Lebovich lists health care facility interests as follows:

- Avalon Gardens Rehabilitation & HCC 01/2004 to present
- Bayview Nursing and Rehabilitation Center 01/2004 to present
- Nassau Extended Care Facility 01/2009 to present
- Park Avenue Extended Care Facility 01/2009 to present
- Susquehanna Nursing & Rehabilitation 01/2005 to present
- Throgs Neck Extended Care Facility 01/2009 to present
- Townhouse Extended Care Center 01/2009 to present

Yuliya Vinokurova is a physician with license in good standing. Dr. Vinokurova has been in private practice since 2006, and employed at Brooklyn Community Medical, P.C. since 2010. He has ownership interest in one health care facility as follows:

- Susquehanna Nursing & Rehabilitation 01/2005 to present

Character and Competence- Analysis:

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of Avalon Gardens Rehabilitation and Health Care Center for the indicated period, 01/2003 to present, reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued April 21, 2009 for surveillance findings on May 23, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(1)&(2) - Quality of Care: Accidents.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued July 16, 2012 for surveillance findings on July 29, 2011. Multiple deficiencies were found under 10 NYCRR 415.12 - Quality of Care: Practical Potential and 10 NYCRR 415.26 - Administration.

A review of Bay Park Center for Nursing and Rehabilitation for the indicated period, 01/2005 to present, reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued March 2, 2011 for surveillance findings on December 18, 2009. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care: Highest Practicable Potential and 10 NYCRR 415.12(i)(1) - Quality of Care: Nutrition Status.
- The facility was fined \$18,000 pursuant to a Stipulation and Order issued May 30, 2012 for surveillance findings on February 16, 2011. Multiple deficiencies were found under 10 NYCRR 415.4(b)(1)(i) - Free from Abuse; 10 NYCRR 415.4(b) - Development of Abuse Policies; 10 NYCRR 415.12(h)(2) - Quality of Care: Accidents; 10 NYCRR 415.12(i)(1) - Quality of Care: Nutrition; and 10 NYCRR 415.26(c)(1)(iv) - Nurse Aide Competency.

A review of Bayview Nursing and Rehabilitation Center for the indicated period, 01/2003 to present, reveals the following:

- The facility was fined \$7,000 pursuant to a Stipulation and Order issued September 29, 2005 for surveillance findings on November 16, 2004. Deficiencies were found under 10 NYCRR 415.5(h)(2) - Quality of Care: Environment; 10 NYCRR 415.12 - Quality of Care; 10 NYCRR 415.12(c)(1) - Quality of Care: Pressure Sores; and 10 NYCRR 415.12(h)(2) - Quality of Care: Accidents.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued June 3, 2007 for surveillance findings on December 2, 2005. Deficiencies were found under 10 NYCRR 415.11(c)(3) - Comprehensive Care Plans.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued December 16, 2007 for surveillance findings on December 7, 2010. Deficiencies were found under 10 NYCRR 415.12(c)(1) - Quality of Care: Pressure Sores.

A review of Eastchester Rehabilitation and Health Care Center for the indicated period, 01/2003 to present, reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued August 9, 2008 for surveillance findings on January 15, 2008. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) - Resident Behavior and Facility Practices: Staff Treatment of Residents.

A review of Golden Gate Rehabilitation and Health Care Center for the indicated period, 01/2003 to present, reveals the following:

- The facility was fined \$20,000 pursuant to a Stipulation and Order issued July 9, 2009 for surveillance findings on June 27, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(2) - Quality of Care: Accidents and 10 NYCRR 415.26 - Organization and Administration.
- The facility was fined \$10,000 pursuant to Stipulation and Order issued December 16, 2011 for surveillance findings on November 22, 2010. Deficiencies were found under 10 NYCRR 415.12(c)(2) - Quality of Care: Pressure Sores.

A review of Split Rock Rehabilitation and Health Care Center for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to Stipulation and Order issued March 19, 2007 for surveillance findings on December 5, 2005. Deficiencies were found under 10 NYCRR 415.4(b) - Resident Behavior and Facility Practices: Staff Treatment of Residents; 10 NYCRR 415.11(c) - Resident Assessment and Care Planning: Comprehensive Care Plans, and 10 NYCRR 415.12(k)(6) - Quality of Care: Special Needs.

A review of Susquehanna Rehabilitation and Health Care Center, LLC for the period identified above reveals the following:

- The facility was fined \$1,500 pursuant to Stipulation and Order NH-07-08 issued February 13, 2007 for surveillance findings on September 25, 2006. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents.

A review of The Hamptons Center for Nursing for the period identified above reveals the following:

- The facility was fined \$3,000 pursuant to Stipulation and Order issued June 12, 2007 for surveillance findings on February 9, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care, 415.12(a)(2) Quality of Care: Activities of Daily Living and 415.12(j) Quality of Care: Hydration.
- The facility was fined \$8,000 pursuant to Stipulation and Order issued April 26, 2009 for surveillance findings on April 21, 2008. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) – Resident Behavior and Facility Practices: Staff Treatment of Residents, 415.12 Quality of Care, 415.12(h)(2) Quality of Care: Accidents, and 415.26 Organization and Administration.
- The facility was fined \$10,000 pursuant to Stipulation and Order issued May 24, 2011 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 - Provide Care/Services for Highest Well Being.

A review of the operations of Nathan Miller Center for Nursing for the noted period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order on November 4, 2009 for surveillance findings on November 24, 2008. Deficiencies were found under 10 NYCRR 415.29 Physical Environment.

The review of operations of Nathan Miller Center for Nursing results in a conclusion of substantially consistent high level of care since there were no repeat enforcements. Nathan Miller Center for Nursing closed on February 7, 2011.

A review of operations for the Avalon Gardens Rehabilitation and Health Care Center, Bay Park Center for Nursing and Rehabilitation, Bayview Nursing and Rehabilitation Center, Eastchester Rehabilitation and Health Care Center, Golden Gate Rehabilitation and Health Care Center, Split Rock Rehabilitation and Health Care Center, Susquehanna Nursing & Rehabilitation, and The Hamptons Center for Rehabilitation and Nursing, for the period identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for the Fort Tyron Center for Rehabilitation & Nursing, Franklin Center for Rehabilitation and Nursing, Spring Creek Rehabilitation and Nursing Care Center, Nassau Extended Care Facility, Park Avenue Extended Care Facility, Throgs Neck Extended Care Facility, White Plains Center for Nursing, Woodmere Rehabilitation and Health Care Center and Townhouse Extended Care Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the operations for Privilege Care Diagnostic and Treatment Center for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review-Analysis

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

Purchase and Sale Agreement

The change in ownership of operations and real property will be effectuated in accordance with an executed purchase and sale agreement, the terms of which are summarized as follows:

- Date: November 30, 2012
- Seller: Golden Hill Local Development Corporation
- Buyer: Operations Golden Hill Planning Corporation
- Buyer: Real Property Golden Hill Acquisition, LLC
- Assets Transferred: All of the personal property assets of every kind, nature and description, tangible and intangible, used for or in connection with the operation of the Facility.
- Excluded Assets: Cash and cash equivalents, including investments in marketable securities, certificates of deposit, bank accounts, temporary investments; all account receivable arising out of or relating to all periods ending prior to the closing date; all personal property and possessions of residents of the Facility; all claims, rights, interests and proceeds with respect to amount overpaid by County to any third party; rights to settlements and retroactive adjustments; all records or other materials that County, Corporation or their affiliates are required by law to retain in its possession; all manuals, policies and information that does not pertain to the operations of the Facility; rights of payment or for the recovery of money available to or being pursued by the County; rights to tax refunds or claims under or proceed of insurance policies; all trade names, trademarks and service marks, copyrights, symbols, logos, domain names, email addresses and any other business names that are proprietary to County; all employee benefit plans and funds and accounts of all employee retirement, deferred compensation, health, welfare or benefit plans and programs, and any contracts or agreements related to and any Facility asset that would revert to the employer upon the termination of any employee benefit plan; electronic funds transfer accounts of the Facility into which payments are made on account of patient accounts receivable and all information necessary to access such accounts and rights that accrue to County under all of County's contracts and agreements.
- Assumed Liabilities: Future payment and performance of only the contract solely to the extent arising out of periods after the closing date.
- Excluded Liabilities: All of the County and/or seller's liabilities and obligations, including all liabilities arising out of or relating to the facility assets prior to the closing date.
- Purchase Price: Operations \$250,000 due at closing.
- Purchase Price: Real Property \$11,000,000
- Purchase Terms: \$1,000,000 down payment upon the execution of the agreement, \$625,000 deposit after completion of the survey, title and environmental requirements, \$625,000 deposit after completion of easements, subdivision process requirements, with the remaining \$8,750,000 due at closing.

The applicant has provided a letter of interest from Signature Bank stating available financing of \$9,000,000 at 5.25% for a term of ten years, with a 25 year amortization, with the remaining balance of \$2,250,000 to be paid with equity from proposed members. The applicant has submitted an affidavit stating the resulting balloon payment at the end of the ten year term will be funded by the members should acceptable financing not be available. Presented as BFA Attachment A, is the net worth statements of the proposed members, which indicates available resources. Martin Farbenblum has submitted an affidavit stating he will contribute resources disproportionate to ownership percentages.

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.

Lease Agreement

The applicant has submitted a draft lease agreement, the terms of which are summarized below:

Landlord: Golden Hill Acquisition, LLC
 Lessee: Golden Hill Planning Corporation d/b/a Golden Hill Nursing and Rehabilitation Center
 Premises: Buildings, structures, fixtures and other improvements located at 99 Golden Hill Drive, Kingston.
 Term: 26 years with the option to renew for an additional term of ten years
 Rental: \$654,666/year

Provisions: The tenant will be responsible for utilities, repairs, maintenance and insurance.

The lease agreement is between related parties and is therefore a non-arm's length agreement. The applicant has submitted letters of opinion from Licensed Commercial Real Estate brokers indicating rent reasonableness. The lease payments are equal to debt service on the mortgage.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the first year subsequent to change in ownership:

Revenues:	\$23,500,249
Expenses:	
Operating	\$22,107,491
Capital	754,688
Total Expenses:	\$22,862,179
Net Income:	\$638,070
Utilization: (patient days)	98,231
Occupancy:	96.12%

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

- Expenses include lease rental.
- Medicare and private pay assume current rates of payment.
- Medicaid rate is based on the facilities 2012 Medicaid rate with no trend to 2013.
- The capital component of the Medicaid rate is based on the return of and return on equity reimbursement methodology.
- Utilization by payor source for year one is expected as follows:

Medicare Fee-for-Service	11%
Medicaid Fee-for-Service	76%
Private Pay	13%

- The increase in budgeted Medicare utilization from 2012 is due to the proposed new members planning on improving the facility's rehabilitation program and development of outreach programs to the local hospital.
- Breakeven occupancy is projected at 93.5%.

Capability and Feasibility

The total purchase price of \$11,250,000 for the operations and realty will be met with a bank loan of \$9,000,000 at stated terms, with the remaining \$2,250,000 from proposed members' equity. As shown on BFA Attachment A, the net worth statements of the proposed members indicate available resources.

Working capital requirements are estimated at \$3,810,364, based on two months of first year expenses. The applicant will finance \$1,905,182 of working capital at an interest rate of 5.25% over 5 years, for which a letter of interest has been provided by Signature Bank. The remaining \$1,905,182 will be provided as equity from the proposed members. Presented as BFA Attachment B, is the pro-forma balance sheet of Golden Hill Nursing and Rehabilitation Center as of the first day of operation, which indicates positive member's equity of \$4,200,502.

The submitted budget indicates a net income of \$638,070 for the first year subsequent to change in ownership. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with a cost-based capital component payment methodology, to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility.

At this point in time it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

Review of Attachment C, financial summary of Golden Hill Health Care Center indicates the facility maintained average positive working capital and equity and experienced a negative average net income of \$9,950,650 for 2010-2011. As of December 31, 2012, the facility maintained positive working capital and equity and experienced a net loss of \$2,065,111. The applicant has stated that Ulster County has funded the operating losses, but has entered into the proposed asset purchase agreement with Golden Hill Planning Corporation to avoid further losses. The proposed new owners will not be encumbered by the various allocations that make up a substantial part of the facility's operating budget and contribute to the facility's operating loss. To improve operations, the proposed new owners will plan to do the following without interruption of patient care:

- Reduce nursing salaries to be in accordance with comparable salaries in the region with a savings of approximately \$969,000.
- Reduce the facility's activity staff with a savings of approximately \$54,000.
- Reduce housekeeping with a savings of approximately \$530,000.
- Reduce fringe benefits from 73.5% to 34.7%
- Reduce administrative expenses approximately \$1,058,028 with the elimination of county allocations.

Review of BFA Attachments D and E, financial summaries of Susquehanna Nursing and Rehabilitation Center and Nassau Extended Care Facility, indicate that these facilities have maintained average positive working capital and equity and generated positive net income for the periods shown.

Review of BFA Attachment F, financial summary of Park Avenue Extended Care Facility, indicates that the facility has maintained positive working capital and equity and generated a net income of \$10,171 in 2010, and experienced a net loss of \$199,014 in 2011. As of September 30, 2012, the facility has maintained positive working capital and equity and generated a net income of \$922,889. The applicant has stated that the net loss experienced in 2011 was due to a negative retroactive Medicaid adjustment of \$514,029 to the facility's adult day health care program.

Review of BFA Attachment G, financial summary of Townhouse Center for Rehabilitation and Nursing, indicates that the facility has maintained positive working capital and equity and generated a net income of \$296,373 in 2012, and experienced a net loss of \$238,135 in 2011. As of October 31, 2012, the facility has maintained positive working capital and equity and generated a positive net income of \$246,033. The applicant has stated that the net loss experienced in 2011 was due to a retroactive rate recoupment of \$710,000, and the facility increasing expenses in

nursing and therapies over 2010 due to taking higher case mix residents. The case mix was not reflected in the facility's Medicaid rate until 2012.

Review of BFA Attachment H, financial summary of Golden Gate Rehabilitation and Health Care Center, indicates that the facility has experienced negative working capital, maintained positive equity and generated a net income of \$878,279 in 2010. The facility maintained positive working capital, positive equity and generated net income of \$451,520 in 2011. As of November 30, 2012, the facility has maintained positive working capital, positive equity and generated a net income of \$445,682. The applicant has stated that the negative working capital was due to Medicare Part B liabilities of \$1,339,061 that are reflected as current liabilities under Due to Third Party Payors. These funds are generally estimated from year to year and are not necessarily collected from the facility on an annual basis. Review of BFA Attachment I, financial summary of Woodmere Rehabilitation and Health Care Center, indicates that the facility maintained positive working capital and positive equity for the period shown. The facility generated a net income of \$821,044 and \$986,386 in 2010 and 2011, respectively. As of November 30, 2012, the facility experienced a net loss of \$569,459, which the applicant indicates is due to a retroactive Medicaid rate adjustment.

Review of BFA Attachment J, financial summary of Spring Creek Rehabilitation and Nursing Care Center indicates that the facility has maintained positive working capital and experienced negative equity in 2010, and maintained positive equity in 2011. The facility generated net income of \$1,631,980 and \$2,971,506 in 2010 and 2011, respectively. As of November 30, 2012, the facility has maintained positive working capital, positive equity and generated a net income of \$202,013.

Review of BFA Attachment K, financial summary of Eastchester Rehabilitation and Health Care Center indicates that the facility has maintained positive working capital, positive equity and generated positive net income for the period shown.

Review of BFA Attachment L, financial summary of Avalon Gardens Rehabilitation and Health Care Center, indicates that the facility has experienced average negative working capital, maintained average positive equity and generated average net income of \$972,109 for 2010-2011. As of August 30, 2012, the facility has experienced negative working capital, maintained positive equity and generated a net income of \$317,681. The applicant has stated the negative working capital is due to the facility having 100 empty beds during the first two years under the new operator, start-up expenses associated with its pediatric unit and extensive repairs made to the facility. The members will fund working capital as necessary.

Review of BFA Attachment M, financial summary for Bayview Nursing and Rehabilitation Center, indicates that the facility has experienced average negative working capital, maintained average positive equity and generated an average net income of \$1,357,877 for 2010-2011. As of December 31, 2012, the facility has experienced negative working capital, maintained positive equity and experienced a net income of \$348,624. The applicant has stated the negative working capital is due to Medicare Part B liabilities.

Review of BFA Attachment N, financial summary for Throgs Neck Extended Care Facility, indicates that the facility has experience average negative working capital, maintained average positive equity and generated an average positive net income of \$106,643 for 2010-2011. As of October 31, 2012, the facility has experienced negative working capital, maintained positive equity and experienced positive net income of \$1,382,161. The applicant has stated the negative working capital is due to accrued payroll benefits that are not incurred by the facility until the employees actually take their vacation and sick time, loans payable to related parties, which are not being required for payment and Medicare Part B liabilities.

Review of BFA Attachment O, financial summary for Bay Park Center for Nursing and Rehabilitation, indicates that the facility has experienced average negative working capital and equity and experienced an average net loss of \$411,688 for 2010-2011. As of November 30, 2011, the facility has experienced negative working capital, negative equity and generated a net income of \$1,145,537. The applicant has indicated the negative working capital is due to accrued liabilities of over \$6,000,000 for each fiscal year that is related to the added rent being accrued from its related party landlord. An agreement has been made with the related party landlord to remove the accrued rent payment as a liability to the facility. Also contributing to the negative working capital was the accrued Medicaid liability that was paid in 2012.

Review of BFA Attachment P, financial summary of White Plains Center for Nursing Care, indicates that the facility has experience average negative working capital, maintained average positive equity and generated an average net income of \$ 758,969 for 2010-2011. As of November 30, 2012, the facility experienced negative working capital, maintained a positive equity and generated a net income of \$687,901. The applicant has stated that the negative working capital in 2010 was due to various loans payable that were paid down in 2011, and in 2011 and 2012 Medicare Part B liabilities that are reflected as current liability under Due to Third Party Payors, which are not collected from the facility on an annual basis.

Review of BFA Attachment Q, financial summary of The Hamptons Center for Rehabilitation and Nursing, indicates the facility experienced average negative working capital and equity and maintained an average positive net income of \$2,389,432 for 2010-2011. As of November 30, 2012, the facility experienced negative working capital and negative equity and generated a net income of \$2,178,764. The applicant has stated that the negative working capital and equity are due to significant start-up expenses.

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 approval is recommended

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary, Golden Hill Health Care Center
BFA Attachment D	Financial Summary, Susquehanna Nursing and Rehabilitation Center
BFA Attachment E	Financial Summary, Nassau Extended Care Facility
BFA Attachment F	Financial Summary, Park Ave. Extended Care Facility
BFA Attachment G	Financial Summary, Townhouse Center for Rehabilitation and Nursing
BFA Attachment H	Financial Summary, Golden Gate Rehabilitation and Health Care Center
BFA Attachment I	Financial Summary, Woodmere Rehabilitation and Health Care Center
BFA Attachment J	Financial Summary, Spring Creek Rehabilitation and Nursing Care Center
BFA Attachment K	Financial Summary, Eastchester Rehabilitation and Health Care Center
BFA Attachment L	Financial Summary, Avalon Gardens Rehabilitation and Health Care Center
BFA Attachment M	Financial Summary, Bayview Nursing and Rehabilitation Center
BFA Attachment N	Financial Summary, Throgs Neck Extended Care Facility
BFA Attachment O	Financial Summary, Bay Park Center for Nursing and Rehabilitation
BFA Attachment P	Financial Summary, White Plains Center for Nursing Care
BFA Attachment Q	Financial Summary, The Hamptons Center for Rehabilitation and Nursing

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 11th day of April, 2013, 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 Golden Hill Planning Corporation d/b/a Golden Hill Nursing and Rehabilitation Center as the operator of Golden Hill 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:

122298 E

FACILITY/APPLICANT:

Golden Hill Planning Corporation d/b/a Golden Hill Nursing and Rehabilitation Center

APPROVAL CONTINGENT UPON:

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - Submit an annual report for two years to the DOH, which demonstrates substantial progress in the implementation of the plan. The plan should include but not be limited to:
 - Information on activities relating to a-c above; and
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period.

[RNR]

3. Submission of an executed bank loan for the purchase price that is acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan that is acceptable to the Department of Health. [BFA]
5. Submission of an executed Lease Agreement that is acceptable to the Department of Health. [BFA, CSL]
6. Submission of a photocopy of the fully executed proposed Certificate of Amendment of the Certificate of Incorporation of the operating entity, Golden Hill Planning Corporation, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's Amended and Restated Bylaws, acceptable to the Department. [CSL]
8. Submission of evidence of Golden Hill Local Development Corporation's ability to transfer facility assets as described in the Purchase and Sale Agreement, 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:

Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council
FROM: James E. Dering, General Counsel *JED*
DATE: March 7, 2013
SUBJECT: Proposed Dissolution of Community General Hospital of Greater Syracuse

Community General Hospital of Greater Syracuse ("Community General") requests Public Health and Health Planning Council approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law §1002(c) and §1003, as well as 10 NYCRR Part 650.

Community General was formed in 1965 under the Membership Corporations Law and operated a hospital until 2011, when Community General ceased operations and surrendered its operating certificate to the Department. Therefore, there is no longer a reason for Community General to exist. Pursuant to Community General's Plan of Dissolution, if approved by the Supreme Court, Community General's remaining assets will be transferred to The State University of New York Upstate Medical University pursuant to an asset purchase agreement.

Attached are a copy of the duly executed proposed Certificate of Dissolution, a letter from Community General's attorney explaining the need for the proposed dissolution, a proposed Plan of Dissolution, and a proposed Verified Petition seeking the Supreme Court's approval of Community General's Certificate of Dissolution.

The Certificate of Dissolution is in legally acceptable form.

Attachments

BOND SCHOENECK & KING

One Lincoln Center | Syracuse, NY 13202-1355 | bsk.com

RODERICK C. MCDONALD, ESQ.
rmcdonald@bsk.com
P: 315.218.8163
F: 315.218.8463

February 28, 2013

VIA UPS OVERNIGHT DELIVERY

Michael M. Stone, Esq.
Assistant Counsel
Bureau of House Counsel
NYS Department of Health
Corning Tower, 24th Floor
Empire State Plaza
Albany, New York 12237-0031

RECEIVED

MAR 1 2013

NYS DEPARTMENT OF HEALTH
DIVISION OF LEGAL AFFAIRS
BUREAU OF HOUSE COUNSEL

Re: *Dissolution of Community General Hospital of Greater Syracuse*

Dear Mr. Stone:

We represent Community General Hospital of Greater Syracuse ("Community General"), and I am writing regarding its planned dissolution. Community General is a Type B, New York Not-for-Profit Corporation that was formed with the approval of the New York State Department of Health (the "DOH"). Pursuant to New York Not-for-Profit Corporation Law Section 1002(c), Community General must obtain the DOH's approval prior to filing a Certificate of Dissolution with the New York State Department of State.

Pursuant to an Asset Purchase Agreement (the "APA"), approved by a June 30, 2011, court order, Community General sold substantially all of its assets to the State University of New York, through The State University of New York Upstate Medical University ("SUNY Upstate"). Community General ceased operations as a hospital as of July 7, 2011 and has been in the process of winding down its affairs for the past twenty months.

There is a public need for the dissolution of Community General because Community General no longer operates a hospital or any other facility that may serve a public purpose, and it does not have the capacity to do so. Instead it is essentially a corporate shell that has continued in existence to complete the winding up of its affairs following the sale of its assets to SUNY Upstate. Community General's dissolution will serve a public purpose because upon its dissolution, all of its remaining assets will be transferred to SUNY Upstate and used to provide health care services to the greater Syracuse and upstate New York community. Community General's continued existence creates additional administrative expenses that will result in a reduction in the amount of assets that can be transferred to SUNY Upstate. Therefore, there is a public need for an expeditious dissolution of Community General.

2122848.1 2/28/2013

Michael Stone, Esq.
February 28, 2013
Page 2

Pursuant to 10 N.Y.C.R.R. §650.1, enclosed for your review and submission to the Public Health and Health Planning Council for approval, please find the following:

1. The verified petition that Community General proposes to submit to the supreme court containing the following information required by 10 N.Y.C.R.R. §650.1:
 - a. Documents and data showing the public need for dissolution;
 - b. The proposed disposition of Community General's assets; and
 - c. The proposed Plan of Dissolution and Distribution of Assets of Community General Hospital of Greater Syracuse.
2. The proposed Certificate of Dissolution of Community General Hospital of Greater Syracuse.
3. A separate copy of the proposed Plan of Dissolution and Distribution of Assets of Community General Hospital of Greater Syracuse.
4. A copy of the Attorney General's Statement of No Objection to the dissolution of Community General.

As noted above, there is a public need for the expeditious dissolution of Community General. Accordingly, we respectfully request that this matter be processed at the March 21, 2013 meeting of the Committee on Establishment and Project Review and the April meeting of the Public Health and Health Planning Council.

Thank you for your consideration. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

BOND, SCHOENECK & KING, PLLC



Roderick C. McDonald, Esq.

RCM/srl
Enclosures

cc: Colleen Frost (*w/ enclosures*)
Thomas P. Quinn, President, Community General Hospital (*w/o enclosures*)

**CERTIFICATE OF DISSOLUTION
OF
COMMUNITY GENERAL HOSPITAL OF GREATER SYRACUSE**

Under Section 1003 of the Not-for-Profit Corporation Law

The undersigned, the President of Community General Hospital of Greater Syracuse (the "Corporation"), hereby certifies as follows:

1. The name of the Corporation is:

Community General Hospital of Greater Syracuse

2. The Certificate of Consolidation of the Corporation was filed by the Department of State on March 17, 1965.

3. The names and addresses of the directors of the Corporation are as follows:

<u>Name</u>	<u>Address</u>
James Getman	120 Madison Street MONY Tower II – 18 th Fl. Syracuse, New York 13202
David Halleran, M.D.	4900 Broad Road Syracuse, New York 13215
Pamela E. Johnson	4900 Broad Road Syracuse, New York 13215
Thomas P. Quinn	4900 Broad Road Syracuse, New York 13215

4. The names, titles and addresses of the officers of the corporation are as follows:

<u>Name</u>	<u>Title</u>	<u>Address</u>
James Getman	Treasurer	120 Madison Street MONY Tower II – 18 th Fl. Syracuse, New York 13202
David Halleran, M.D.	Secretary	4900 Broad Road Syracuse, New York 13215

Pamela E. Johnson	Assistant Treasurer	4900 Broad Road Syracuse, New York 13215
Thomas P. Quinn	President	4900 Broad Road Syracuse, New York 13215
Paul Bess	Assistant Treasurer	4900 Broad Road Syracuse, New York 13215

5. At the time of dissolution, the Corporation is a Type B not-for-profit corporation.

6. The Corporation holds no assets for distribution which are legally required to be used for a particular purpose.

7. The Corporation elects to dissolve.

8. The dissolution of the Corporation pursuant to the Plan of Dissolution and Distribution of Assets of the Corporation was authorized by the Unanimous Written Consent of the Board of Directors and the written consent of the Sole Member of the Corporation.

9. The Corporation has assets and liabilities at the time of dissolution. Prior to the delivery of this Certificate of Dissolution to the New York State Department of State for filing, the Plan of Dissolution and Distribution of Assets of the Corporation shall have been approved by a justice of the supreme court, and a copy of such order shall be attached hereto.

~~10. The Plan of Dissolution and Distribution of Assets filed with the Attorney General included a statement that at the time of dissolution the Corporation has assets and liabilities.~~

11. Prior to the delivery of this Certificate of Dissolution to the New York State Department of State for filing, it shall have been approved by the Department of Health through the Public Health and Health Planning Council and by the Attorney General, and a copy of such approvals shall be attached hereto.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution this 7 of March, 2013.



Thomas P. Quinn, President

**PLAN OF DISSOLUTION
AND DISTRIBUTION OF ASSETS**

OF

COMMUNITY GENERAL HOSPITAL OF GREATER SYRACUSE

A New York Not-for-Profit Corporation

The Board of Directors (the "Board") of Community General Hospital of Greater Syracuse (the "Corporation"), by unanimous written consent, after duly considering the advisability of voluntarily dissolving the 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 dissolution, and the Board having adopted, by unanimous written consent, a plan for a voluntary dissolution of the Corporation, does hereby resolve that the Corporation be dissolved in accordance with the following plan (the "Plan"):

1. The Corporation is a Type B Not-For-Profit Corporation formed on March 17, 1965.

2. Upon resolution of the Board adopting this Plan, the Board shall submit the Plan to a vote of the sole member of the Corporation for approval.

3. The dissolution of the Corporation must be approved by the Department of Health and such approval shall be attached to the Certificate of Dissolution of the Corporation. No other approval of the dissolution of the Corporation is required by any governmental agency or officer.

4. The Corporation has assets. The Corporation and the State University of New York, through The State University of New York Upstate Medical University (the "Distributee") are parties to a certain Asset Purchase Agreement dated as of June 29, 2011 (the "Asset Purchase Agreement") which was approved by a June 30, 2011, Court Order. Pursuant to Section 2.2(g) of the Asset Purchase Agreement, upon the Corporation's dissolution all of its assets must be distributed to the Distributee. Other than the contractual requirements of the Asset Purchase Agreement, the Corporation's assets are not legally required to be used for any particular purpose. The Corporation's assets shall be distributed to the Distributee, pursuant to the Assignment of Assets and Assumption of Liabilities agreement attached as Exhibit A hereto. The assets of the Corporation are as follows:

Fair Market Value

Cash and equivalents	\$2,646,420
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5. All assets owned by the Corporation subject to any unpaid liabilities of the Corporation shall be distributed to the Distributee, which is of substantially similar

purpose as the Corporation and which qualifies as an exempt organization pursuant to § 501(c)(3) of the Internal Revenue Code of 1986, as amended. Further, all assets of the Corporation, if any, that shall exist or arise after the Asset Purchase Agreement or the dissolution of the Corporation, shall be the sole and absolute property of the Distributee.

6. The Corporation has liabilities of \$1,477,919 and a description of those liabilities is as follows:

Estimated expenses of "winding-up"	12,000
Accrued Unemployment	17,000
Unknown liabilities	<u>1,448,919</u>
Total	<u>\$ 1,477,919</u>

7. Within two hundred seventy days after the date that an Order Approving the Plan of Dissolution and Distribution of Assets is signed by the Court, the Corporation shall carry out this Plan.

8. The proper officers of the Corporation shall execute and file a Certificate of Dissolution, in accordance with Section 1003 of the Not-for-Profit Corporation Law.

CERTIFICATION

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

I, Thomas P. Quinn, as President of Community General Hospital of Greater Syracuse, hereby certify under penalties of perjury that the Board of Directors of the Corporation, by unanimous written consent, have duly consented to the dissolution of the Corporation and approved of the Plan of Dissolution and, that the sole member of the Corporation, by written consent, has consented to the dissolution of the Corporation and approved the Plan of Dissolution.

Date: January ____, 2013

Thomas P. Quinn, President

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

In the Matter of the Application of

CGH HEALTH SERVICES, COMMUNITY GENERAL
HOSPITAL OF GREATER SYRACUSE, CGH OFFICE
BUILDING AND CGH PROPERTIES

verified petition

Index No.

Petitioners,

For an Order approving the Plan of Dissolution of CGH
Health Services, Community General Hospital of Greater
Syracuse, CGH Office Building and CGH Properties
pursuant to Section 1002 of the Not-for-Profit Corporation
Law.

TO: THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA

Petitioners, CGH Health Services ("Health Services"), Community General Hospital of
Greater Syracuse ("Community General" or the "Hospital"), CGH Office Building ("Office
Building") and CGH Properties ("Properties"), by Thomas P. Quinn, the President of
each Petitioner, for their Verified Petition herein, each respectfully alleges:

Introduction

1. From 1963 until it ceased operations on July 6, 2011, Community General provided quality medical care to the Central New York community.
2. On June 30, 2011, the Court entered an Order (the "Order", a true and complete copy of which is attached hereto as Exhibit 1) authorizing Health Services, Community General and Office Building to sell substantially all of their assets, pursuant to Sections 510 and 511 of the Not-for-Profit Corporation Law, to the State University of New York, through The State University of New York Upstate Medical University

("SUNY-Upstate") under the terms of an Asset Purchase Agreement dated as of June 29, 2011 (the "APA", a true and complete copy which is attached hereto as Exhibit 2).

3. Pursuant to the APA, SUNY-Upstate purchased substantially all of Community General's operational assets and all of its real property in return for assuming certain of Community General's liabilities (the sale of assets and assumption of liabilities pursuant to the APA is hereinafter referred to as the "Transaction"). Further, pursuant to the APA, Community General agreed to transfer any assets to SUNY-Upstate that are remaining after payment of liabilities retained by Community General.

4. Since acquiring the assets of Community General, Health Services and Office Building, SUNY-Upstate has operated those assets under SUNY-Upstate's existing license, as part of one hospital, with two campuses and a total of 715 inpatient beds.

5. Petitioners obtained the Order and entered into the APA in the face of a severe financial crisis as the first step in a two step process of dissolution. A merger of Community General into SUNY-Upstate was not possible because SUNY-Upstate could not at that time assume all of Community General's liabilities. The APA was the only viable option to avoid the disastrous result of Community General closing its facilities, which would severely impact the availability of medical care in central New York and result in the loss of over 1,100 jobs.

6. Pursuant to the APA, Community General retained liabilities which needed to be addressed before Petitioners could dissolve. This provided SUNY-Upstate with a definitive amount of liabilities (approximately \$59,300,000) which it would assume as

consideration under the APA for receiving Petitioner's assets (valued at approximately \$58,500,000).

7. During the eighteen months from the closing of the APA to the time of this Petition, Community General has addressed the liabilities it retained under the APA. Community General retained cash and accounts receivable which it has used to satisfy accounts payable and other liabilities, as described in detail below. At the time of this Petition, Community General has exhausted the accounts receivable asset while paying all existing accounts payable and essentially reducing that liability to zero.

8. The APA provided that after the Petitioners addressed their remaining liabilities, all remaining assets would be transferred to SUNY-Upstate. Therefore, the Petitioners have approval to transfer assets to SUNY-Upstate, and are only seeking this Court's approval of their dissolution.

9. Petitioners have provided for all existing and all potential liabilities that may arise after their dissolution through pre-paid insurance coverage and through an Assignment of Assets and Assumption of Liabilities agreement by and between Community General and SUNY-Upstate dated as of December __, 2012 (the "Assignment and Assumption Agreement", a true and complete copy of which is attached hereto as Exhibit 3).

10. The Petitioners submit this Petition for an Order approving the Plans of Dissolution of Health Services, Community General, Office Building and Properties pursuant to Section 1002 of the Not-for-Profit Corporation Law, to complete the process of winding up and dissolving the Petitioners. Petitioners have ceased operations, wound up their activities, satisfied or provided for known liabilities, and are ready to

dissolve and distribute their remaining assets pursuant to their respective Plans of Dissolution, as described in greater detail below.

11. The Transaction preserved Community General's assets and an important institution in the Central New York community for quality medical care. At this point, Petitioners' continued existence only serves as a waste of resources and assets that could be better used to promote the Petitioners' purpose of advancing high quality, safe, compassionate and cost effective health care. In short, the Transaction has been successfully and substantially completed, and upon approval of this Petition, all of the remaining assets of the Petitioners can be distributed to SUNY-Upstate to further the Petitioners' mission. SUNY-Upstate has the administrative resources to manage the Petitioners' remaining assets and resolve any remaining liabilities. Dissolving the Petitioners will eliminate unnecessary administrative expense and save total costs by terminating the need to administer the legacy Petitioner entities.

The Petitioners

12. Community General is a New York not-for-profit corporation formed on March 17, 1965 under the Membership Corporations Law (attached as Exhibit 4 is a copy of Community General's Certificate of Consolidation), having its principal office, operations and governing board at 4900 Broad Road, in the County of Onondaga, City of Syracuse and State of New York. Community General was formed for the purposes of establishing, operating, staffing and maintaining a general hospital. See Ex. 3 at § 8. Its Certificate of Consolidation was last amended on May 30, 2003; a copy of the Amendment is attached as Exhibit 5. Community General is a Type B corporation. Attached as Exhibit 6 is a copy of its Certificate of Type of Not-For-Profit Corporation,

dated May 31, 1972. Community General's Bylaws are annexed hereto as **Exhibit 7**, and a list of Community General's directors and officers is set forth in **Exhibit 8**.

13. Health Services is a New York not-for-profit corporation formed on May 16, 1985. A copy of its Certificate of Incorporation is attached hereto as **Exhibit 9**. Health Services' Certificate of Incorporation was last amended December 6, 1989. A copy of the Amendment is attached hereto as **Exhibit 10**. As the sole member of Community General, Office Building and Properties, Health Services is the corporate "parent" entity for Community General and its affiliates. A list of Health Services' directors and officers is set forth in **Exhibit 11**.

14. Office Building is a New York not-for-profit corporation formed on August 21, 1984. A copy of its Certificate of Incorporation is attached hereto as **Exhibit 12**. Its Certificate of Incorporation was last restated on May 8, 1990; a copy of the Restated Certificate of Incorporation is attached hereto as **Exhibit 13**. Office Building was established to hold title to property on behalf of its sole member, Health Services, and collect income and distribute the entire amount, less expenses, to Health Services for the ultimate benefit of Community General. A list of Office Building's directors and officers is set forth in **Exhibit 14**.

15. Properties is a New York not-for-profit corporation formed on July 22, 1985. A copy of its Certificate of Incorporation is attached hereto as **Exhibit 15**. Its Certificate of Incorporation was last restated on May 8, 1990; a copy of the Restated Certificate of Incorporation is attached hereto as **Exhibit 16**. Like Office Building, Properties was established to hold title to rental property and collect income therefrom for the ultimate benefit of Community General. Properties was not a petitioner with

respect to the Order because it did not own any assets that were transferred to SUNY-Upstate as part of the Transaction. Since the Transaction, Properties has transferred the nominal amount of cash it held to Community General, and Properties currently has no assets. A list of CGH Properties' directors and officers is set forth in Exhibit 17.

The Asset Purchase Agreement

16. Pursuant to the APA, SUNY-Upstate acquired (other than the excluded assets discussed below) all of Petitioners' real property and equipment, including the main hospital building and related structures, all assets used in the operation of the facilities, and all businesses conducted therein; plus \$10,000,000 in cash from the proceeds of a \$13,600,000 loan (the "Loan") from the Dormitory Authority of the State of New York ("DASNY"); and an assignment of Community General's approved grant funds of \$3,600,000 pursuant to the Health Care Efficiency and Affordability Law for New Yorkers ("HEAL") (collectively, the "Purchased Assets").

17. In return, SUNY-Upstate assumed certain specified liabilities, including: government payer (*i.e.*, Medicare, Medicaid and TRICARE) liabilities; certain accounts payable; substantially all of Community General's contracts; certain employee obligations (such as accrued paid time off and sick leave); Community General's pension plan; and the obligation to repay the \$13,600,000 Loan from DASNY. SUNY-Upstate also assumed several categories of Community General's unknown liabilities.

18. Pursuant to the APA, SUNY-Upstate did not assume all liabilities of Community General. Liabilities left behind as "Excluded Liabilities" included, *inter alia*: tax obligations, bond and mortgage-related debt, Community General's flexible spending account plans, self-insured health plan claims, medical malpractice and

general liability claims, employee liabilities (such as severance pay), workers' compensation claim liabilities and certain excluded contracts (as set forth in Section 2.4 of the APA and Schedules 2.4, 2.4(g), and 2.4(q) to the APA, which Schedules are attached hereto as Exhibits 18-20). At the time of the Transaction, Petitioners and SUNY-Upstate estimated that approximately \$30,586,000 would be required to provide for all of the Excluded Liabilities left with Community General to satisfy.

19. Accordingly, in order to provide for the anticipated Excluded Liabilities, Community General retained cash and accounts receivable estimated to be worth approximately \$31,671,000, as set forth in Section 2.2(g) and Schedule 2.2(g) to the APA, which Schedule is attached hereto as Exhibit 21 (the "Excluded Assets"). Thus, Community General retained assets estimated to be worth over one million dollars more than the estimated amount of the Excluded Liabilities.

20. Pursuant to the APA, Community General agreed to transfer any assets remaining after payment of the Excluded Liabilities to SUNY-Upstate. See Section 2.2(g) of the APA.

Stipulation and Modified Order

21. Pursuant to the APA, SUNY-Upstate assumed Community General's obligations under a multi-year contract for the maintenance and upgrading of the information system used at the Hospital (the "Allscripts Contract"). Subsequently, in early 2012, SUNY-Upstate negotiated to buyout the Allscripts Contract for a payment of \$3,800,000 (plus additional amounts not relevant here).

22. At the time, approximately six (6) months had passed since the Transaction closing, and it had become apparent that the value of the assets retained

by Community General far exceeded the amount required to provide for the Excluded Liabilities retained by Community General. Accordingly, SUNY-Upstate requested that Community General make the \$3,800,000 buyout payment directly to Allscripts on behalf of SUNY-Upstate, as an advance against the remainder that was due to be transferred to SUNY-Upstate at the end of Petitioners' dissolution process.

23. Community General obtained a Stipulation and Modified Order, dated March 23, 2012, (the "Modified Order", a true and complete copy of the Modified Order is attached hereto as Exhibit 22) authorizing payment of the \$3,800,000 buyout amount.

Plans of Dissolution

24. Since closing the Transaction, Community General has worked diligently to satisfy all known liabilities. Community General is the only Petitioner currently owning assets. The other Petitioners either had no assets at the time of the Transaction or have since transferred all of their assets to Community General in accordance with the APA and the Order. Therefore, further discussion of Petitioners' remaining assets will refer to Community General.

25. According to Community General's unaudited balance sheet as of November 30, 2012, it has assets of approximately \$2,846,073 and total remaining liabilities, including "unidentified liabilities", of approximately \$1,577,571, a copy of the November 30, 2012, unaudited balance sheet and cash flow is attached hereto as Exhibit 23. The following cash flow shows Community General's beginning cash balance at the time of the APA, increased by receipts, decreased by expenditures, and the resulting ending balance:

(1) Cash at time of Sale (beginning cash)	\$3,613,853
(2) Transferred from CGH Office Building and CGH Properties	\$812,775
(3) Patient accounts receivable collected	\$16,082,518
(4) Collected from affiliates	\$99,769
(5) Received from Workers' Compensation Letter of Credit resolution	\$405,768
(6) Received from resolution of other accounts receivable and prepaid expenses	\$453,807
(7) Payment to Excellus and other third parties	(\$2,567,947)
(8) Payment of accounts payable	(\$12,304,470)
(9) Distributed pursuant to Stipulation and Modified Order	(\$3,800,000)
(10) Ending Cash Balance	\$2,796,073

26. All parenthetical number references in the following description of the above cash flow correspond to the parenthetical numbers used in the same. At the closing of the APA, (1) Community General had \$3,613,853 in cash on hand.

27. Pursuant to the APA, the property owned by CGH Office Building was transferred to SUNY-Upstate, activity in CGH Office Building and CGH Properties was resolved and (2) remaining cash of \$812,775 was transferred to Community General.

28. An asset retained by Community General under the APA was patient accounts receivable, and (3) Community General has collected approximately \$16,082,518 from these accounts receivable.

29. The APA did not assume that Community General would have any amounts due to it from its affiliates. However, due to the timing of the APA, there was approximately \$100,000 due to Community General from Community General Foundation and CGH Office Building, and (4) Community General has collected \$99,769 from these affiliates.

30. Community General had a letter of credit securing its obligations for retroactive premiums that it might owe to Travelers Insurance ("Travelers") under workers' compensation policies issued to Community General by Travelers. The letter

of credit was in the amount of \$410,000 and was fully cash collateralized. By the terms of the worker's compensation policies, as of the closing of the APA the maximum amount Community General could owe Travelers was approximately \$106,000. Community General paid Travelers the maximum amount and Travelers released the letter of credit, this generated the increased cash of (5) \$405,768 which was released to Community General.

31. Community General retained non-patient accounts receivable and prepaid expenses as assets under the APA. Since the APA (6) Community General collected \$453,807 through the resolution of these accounts receivable and prepaid expenses.

32. Under the APA, Community General retained liability to repay advances to the Excellus health insurance company and a potential liability to Medicare related to an excluded employee. Community General satisfied both these liabilities with payments totaling (7) \$2,567,947.

33. Another liability retained by Community General was its existing accounts payable plus any expenses arising after the APA. Community General paid (8) \$12,304,470 to resolve these accounts payable and post-Transaction expenses. This total consisted of: post-Transaction expenses (\$795,578, including \$642,956 paid to SUNY-Upstate for administrative services); accounts payable (\$7,071,115); payroll liabilities (\$2,769,142); accrued legal expenses (\$400,000); accrued audit expenses (\$98,519); accrued unemployment expenses (\$1,083,053); and other miscellaneous deductions and unidentified income (\$87,063).

34. Pursuant to the distribution approved in the March 23, 2012, Stipulation and Modified Order, (9) \$3,800,000 was distributed to SUNY-Upstate.

35. The above description of the cash flow of Community General following the closing of the APA shows the transition from a cash balance of \$3,613,853, to (10) a cash balance of \$2,796,073. When the cash balance is combined with \$50,000 held in trust for Alliance Bank pursuant to a mortgage guaranty, Community General is left with total assets of \$2,846,073.

36. The Petitioners' only other assets consist of accounts receivable. Petitioners have current patient accounts receivable totaling \$4,612,213, however, due to the dwindling returns over the past several months on existing accounts receivable, Petitioners are accounting for contractual and uncollectibility allowances in the amount of \$4,612,213. In other words, for accounting purposes, Petitioners are considering the patient accounts receivable asset to be zero and are stating their total assets as \$2,846,073.

37. Under the Petitioners' approved Plans of Dissolution, Petitioners would distribute all of their remaining assets to SUNY-Upstate as provided in the APA. In return, SUNY-Upstate would assume the Petitioners' remaining liabilities, including "unidentified liabilities" as provided in the Assignment and Assumption Agreement.

38. The provision for unidentified liabilities is based on the understanding that during the winding-up phase unforeseen liabilities would appear. Unidentified liabilities were estimated to be \$1,300,000 under the APA. On July 7, 2011, Petitioners established an accrual account of \$500,000 for unidentified liabilities, and amounts recognized as expenses during 2012 were netted against this accrual account as a means of establishing a base line for potential future liabilities. Through this process of

netting bottom line expense amounts to the accrual account the account's balance has increased and is currently \$1,377,161.

39. Petitioners remaining liabilities consist of accrued or estimated accounts payable attributable to winding up and completing the dissolution of the entities that have not been attributed to "unidentified liabilities" (\$160,000) and accrued unemployment liabilities (\$30,000), see Ex. 20. The total of these "known" liabilities is \$190,000. When the known liabilities are combined with the accrued unknown liabilities, the Petitioners have total liabilities of \$1,567,161. Based on Petitioners having remaining assets of \$2,846,073 and estimated remaining liabilities of \$1,567,161, Petitioners have remaining net assets of \$1,278,912.

40. Under the Plans of Dissolution, all of the Petitioners' assets would be distributed to SUNY-Upstate and SUNY-Upstate would also assume liability for all of Petitioners' existing and potential liabilities up to the amount of the assets received pursuant to the Assignment and Assumption Agreement. As stated above, this would result in an estimated net transfer of assets to SUNY-Upstate of \$1,280,000. Further, SUNY-Upstate would be granted rights to any residual cash receipts related to the Petitioners' remaining accounts receivable.

41. Under the APA, Petitioners agreed to indemnify and hold harmless SUNY-Upstate against payment of legitimate malpractice claims. Petitioners have pre-paid tail insurance policies that will provide SUNY-Upstate with malpractice coverage in satisfaction of Petitioners' indemnification obligations. This coverage will last until all applicable statutes of limitations expire with respect to any legitimate malpractice claim that may arise.

42. To the extent the tail insurance policies are not sufficient to cover Petitioners' indemnification obligation, the only resources the Petitioners would have to satisfy this responsibility would be their cash on hand. By distributing their assets, or cash, to SUNY-Upstate now, Petitioners will preserve the maximum amount of this asset for SUNY-Upstate's use by eliminating unnecessary administrative costs. At the same time, SUNY-Upstate will have possession of the total assets which Petitioners would have had available in the event they were required to indemnify SUNY-Upstate for a malpractice claim. By distributing all of their assets to SUNY-Upstate now, Petitioners are satisfying their indemnification obligations by providing SUNY-Upstate with the maximum indemnification coverage that the Petitioners will ever have available.

43. The primary goal of the Plans of Dissolution is efficiency and cost savings. During the Transaction, the majority of Petitioners' employees, including administrative employees, became employees of SUNY-Upstate. These administrative employees continued to administer the separate assets and liabilities retained by Petitioners. This expense was recorded and charged to Petitioners as described above. In short, SUNY-Upstate is administering what remains of the Petitioners with the added expense of maintaining four additional non-functioning entities, and separately accounting for those entities. Petitioners respectfully submit that by approving their dissolution and the distribution of their assets to SUNY-Upstate now, SUNY-Upstate will be able to achieve the maximum potential use of the Petitioners assets through administrative efficiencies.

44. Further, under the APA, all of the Petitioners' remaining assets will eventually be transferred to SUNY-Upstate. Therefore, this Court only needs to consider whether existing and potential creditors have been adequately provided for in

approving the Petitioners' dissolution. As outlined above, Petitioners have satisfied existing creditors with assets retained under the APA and have provided for any potential creditors through pre-paid tail insurance policies and through the Assignment and Assumption Agreement. Petitioners respectfully submit that all existing and potential creditors have been provided for and this Court should approve the Petitioners' respective Plans of Dissolution.

The Court Should Grant the Petition

45. The Plan of Dissolution of CGH Health Services, a copy of which is attached as **Exhibit 24**, has been authorized by a resolution of the Board of Directors of Petitioner CGH Health Services, in accordance its By-Laws, dated December __, 2012, a copy of which is attached as **Exhibit 25**. Pursuant to that Resolution, the Board of Directors of CGH Health Services authorized said Petitioner to enter into the Plan of Dissolution. As sole Member of the other Petitioners, Community General, CGH Office Building and CGH Properties, CGH Health Services is empowered to approve Plans of Dissolution on their behalf as well.

46. In accordance with Community General's By-Laws, the Plan of Dissolution and Distribution of Assets of Community General, a copy of which is attached as **Exhibit 26**, has been authorized by a resolution of the Board of Directors of Community General dated December __, 2012, a copy of which is attached as **Exhibit 27**, and approved by a resolution of the sole Member of Petitioner Community General dated December __, 2012, a copy of which is attached as **Exhibit 28**. Pursuant to that Resolution, the sole member of Community General authorized said Petitioner to enter into the Plan of Dissolution.

47. In accordance with CGH Office Building's By-Laws, the Plan of Dissolution of CGH Office Building, a copy of which is attached as Exhibit 29, has been authorized by a resolution of the Board of Directors of CGH Office Building dated December __, 2012, a copy of which is attached as Exhibit 30, and approved by a resolution of its sole member CGH Services, dated December __, 2012, a copy of which is attached as Exhibit 31. Pursuant to that Resolution, the sole member of CGH Office Building authorized said Petitioner to enter into the Plan of Dissolution.

48. In accordance with CGH Properties' By-Laws, the Plan of Dissolution of CGH Properties, a copy of which is attached as Exhibit 32, has been authorized by a resolution of the Board of Directors of CGH Properties dated December __, 2012, a copy of which is attached as Exhibit 33, and approved by a resolution of its sole member CGH Services, dated December __, 2012, a copy of which is attached as Exhibit 34. Pursuant to that Resolution, the sole member of CGH Properties authorized said Petitioner to enter into the Plan of Dissolution

49. Approval of the Plans of Dissolution serves the interests of the Petitioners by providing the maximum use of their remaining assets in furtherance of their charitable purposes through costs savings and administrative efficiencies. The Petitioners' continued existence will only cause more of their assets to be used to administer entities that have long ceased operations. The Petitioners sole purpose following the Order was to wind-up their affairs in preparation for dissolution, with the court approved plan of distributing all remaining assets to SUNY-Upstate. The Petitioners have provided for existing and potential creditors and their continued existence is no longer required.

50. Accordingly, Petitioners respectfully request that the Court grant the Petition.

51. No previous application for the relief prayed for herein has been made. WHEREFORE, Petitioners pray that this Court grant an Order, pursuant to Section 1002 of the Not-For-Profit Corporations Law, approving the Plans of Dissolution and permitting Petitioners to distribute all of their assets as set forth herein, and granting such other and further relief as may be just and proper.

CGH HEALTH SERVICES

By: _____
Name: Thomas P. Quinn
Title: President

CGH OFFICE BUILDING

By: _____
Name: Thomas P. Quinn
Title: President

CGH PROPERTIES

By: _____
Name: Thomas P. Quinn
Title: President

**COMMUNITY GENERAL HOSPITAL OF
GREATER SYRACUSE**

By: _____
Name: Thomas P. Quinn
Title: President

BOND, SCHOENECK & KING, PLLC

By: _____
Frank J. Patyi, Esq.
One Lincoln Center
Syracuse, New York 13202
(315) 218-8000
ATTORNEYS FOR PETITIONERS

STATE OF NEW YORK)
) ss.:
COUNTY OF ONONDAGA)

Thomas P. Quinn, being duly sworn, disposes and says: That he is the President of CGH Health Services, Community General Hospital of Greater Syracuse, CGH Office Building, and CGH Properties; that he has read the foregoing Not-for-Profit Corporation Law Section 1002 Petition and knows the contents thereof, that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Sworn to before me this
___ day of _____, 2012

Notary Public

LIST OF EXHIBITS TO PETITION OF CGH Health Services, Community General Hospital OF GREATER SYRACUSE, AND CGH Office Building, VERIFIED BY THOMAS P. QUINN, PRESIDENT

- 1) June 30, 2011, Order approving the sale of the assets of CGH Health Services, Community General Hospital of Greater Syracuse, and CGH Office Building pursuant to Sections 510 and 511 of the Not-for-Profit Corporation Law
- 2) Asset Purchase Agreement By and Among Community General Hospital of Greater Syracuse, CGH Office Building, CGH Properties, CGH Health Services and The State University of New York Upstate Medical University, dated as of June 30, 2011 ("APA")
- 3) Assignment of Assets and Assumption of Liabilities by and between Community General Hospital of Greater Syracuse and The State University of New York dated as of December __, 2012
- 4) Certificate of Consolidation of General Hospital of Syracuse and Community General Hospital of Greater Syracuse, into Community-General Hospital of Greater Syracuse, dated November 12, 1964 and filed on March 17, 1965
- 5) Certificate of Amendment of the Certificate of Consolidation of Community General Hospital of Greater Syracuse, dated November 20, 2002 and filed May 30, 2003
- 6) Certificate of Type of Not-For-Profit Corporation of Community-General Hospital of Greater Syracuse, dated May 31, 1972
- 7) Bylaws of Community General Hospital of Greater Syracuse
- 8) List of Directors and Officers of Community General Hospital of Greater Syracuse as of December 2012
- 9) Certificate of Incorporation of CGH Health Services, dated April 29, 1985 and filed May 16, 1985
- 10) Certificate of Amendment of the Certificate of Incorporation of CGH Health Services, dated November 7, 1989, and filed on December 6, 1989
- 11) List of Directors and Officers of CGH Health Services as of December 2012
- 12) Certificate of Incorporation of CGH Office Building, dated August 15, 1984 and filed on August 21, 1984
- 13) Restated Certificate of Incorporation of CGH Office Building, dated April 16, 1990 and filed on May 8, 1990
- 14) List of Directors and Officers of CGH Office Building as of December 2012
- 15) Certificate of Incorporation of CGH Properties, dated August 21 1984
- 16) Restated Certificate of Incorporation of CGH Properties, dated April 16, 1990 and filed on May 8, 1990
- 17) List of Directors and Officers of CGH Properties as of December 2012
- 18) APA Schedule 2.4 "Excluded Liabilities"
- 19) APA Schedule 2.4(g) "Malpractice Claims and Potential Liabilities"
- 20) APA Schedule 2.4(q) "Excluded Accounts Payable"
- 21) APA Schedule 2.2(g) "Excluded Assets for Payment of Excluded Liabilities"
- 22) March 23, 2012, Stipulation and Modified Order
- 23) November 30, 2012, unaudited balance sheet and cash flow statement for Community General Hospital of Greater Syracuse

- 24) Plan of Dissolution of CGH Health Services
- 25) Resolution of the Board of Directors of CGH Health Services approving the Plan of Dissolution of CGH Health Services
- 26) Plan of Dissolution and Distribution of Assets of Community General Hospital of Greater Syracuse
- 27) Resolution of the Board of Directors of Community General Hospital of Greater Syracuse adopting the Plan of Dissolution of Community General Hospital of Greater Syracuse
- 28) Resolution of the Sole Member of Community General Hospital of Greater Syracuse approving the Plan of Dissolution of Community General Hospital of Greater Syracuse
- 29) Plan of Dissolution of CGH Office Building
- 30) Resolution of the Board of Directors of CGH Office Building adopting the Plan of Dissolution of CGH Office Building
- 31) Resolution of the Sole Member of CGH Office Building approving the Plan of Dissolution of CGH Office Building
- 32) Plan of Dissolution of CGH Properties
- 33) Resolution of the Board of Directors of CGH Properties adopting the Plan of Dissolution of CGH Properties
- 34) Resolution of the Sole Member of CGH Properties approving the Plan of Dissolution of CGH Properties

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 11th day of April, 2013, approves the filing of the Certificate of Dissolution of Community General Hospital of Greater Syracuse, dated March 7, 2013.

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Achieve-ALP, LLC
d/b/a Achieve Assisted Living Program
Address: Liberty
County: Sullivan
Structure: Limited Liability Company
Application Number: 2128-L

Description of Project:

Achieve-ALP, LLC, d/b/a Achieve Assisted Living Program, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This application is requesting approval to establish a licensed home care services agency (LHCSA) associated with a new Assisted Living Program (ALP). This LHCSA will be associated with Achieve-ALP.

The members of Achieve-ALP, LLC d/b/a Achieve Assisted Living Program comprise the following individuals:

Eliezer Scheiner, 45.005%
CEO, TL Management, LLC
(nursing home management company)

Sandra Ostreicher, 45.005%
Unemployed
Affiliation: Ocean Promenade Care Center
(2002 – present)

Eliezer Jay Zelman, NHA, 9.99%
Administrator, Achieve Rehabilitation and
Nursing Facility

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 Eliezer Jay Zelman, NHA license #04362, 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 Sullivan County from an office located at 170 Lake Street, Liberty, New York 12754.

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	Housekeeper	

A review of the operations of the following residential health care facility was performed as part of this review:

Ocean Promenade Care Center (2002 – present)

Ocean Promenade Care Center was fined eight thousand dollars (\$8,000.00) pursuant to a stipulation and order dated February 20, 2008 for surveillance findings of June 21, 2004 and

September 13, 2004. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents, and 415.26 and Organization and Administration.

Ocean Promenade Care Center was fined four thousand dollars (\$4,000.00) pursuant to a stipulation and order dated November 19, 2012 for surveillance findings of February 24, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accidents and Supervision and 415.26 Administration.

The information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facility reviewed has 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: January 14, 2013

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 11th day of April, 2013, 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.

<u>NUMBER:</u>	<u>FACILITY:</u>
1940-L	Allcare Homecare Agency, Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)
2053-L	Lavin Home Care, Inc. d/b/a Home Instead Senior Care (Suffolk, Nassau and Queens Counties)
2043-L	Bushwick Economic Development Corp. (Kings, New York, Queens, and Richmond Counties)
2084-L	Renewal Care Partners, LLC (Bronx, Westchester, Kings, Queens, New York and Richmond Counties)
2027-L	Westchester Family Care, Inc. (Westchester, Rockland, Putnam and Dutchess Counties)
2128-L	Achieve-ALP, LLC d/b/a Achieve Assisted Living Program (Sullivan County)

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

April 11, 2013

**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

HOME HEALTH AGENCY LICENSURES

Exhibit #18

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1940-L	Allcare Homecare Agency, Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties) Ms. Regan - Interest	Contingent Approval
2053-L	Lavin Home Care, Inc. d/b/a Home Instead Senior Care (Suffolk, Nassau and Queens Counties) Ms. Regan - Interest	Contingent Approval
2043-L	Bushwick Economic Development Corp. (Kings, New York, Queens, and Richmond Counties) Ms. Regan - Interest	Contingent Approval
2084-L	Renewal Care Partners, LLC (Bronx, Westchester, Kings, Queens, New York and Richmond Counties) Ms. Regan - Interest	Contingent Approval

2027-L

Westchester Family Care, Inc.
(Westchester, Rockland, Putnam
and Dutchess Counties)
Ms. Regan - Interest

Contingent Approval

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Allcare Homecare Agency, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 1940-L

Description of Project:

Allcare Homecare 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:

Felix Raytsin – 90 Shares President, EDPSI (employment agency)	Natalia Nevidomsky – 90 shares School Director, EDP School
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Gail Verny, HHA – 20 Shares
Sales Manager, Technical Recruiter,
Evolutionary Data Progressive Systems, Inc.

The Board of Directors of Allcare Homecare Agency, Inc. comprises the following individuals:

Felix Raytsin – President (Previously Disclosed)	Natalia Nevidomsky – Vice President (Previously Disclosed)
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Gail Verny, HHA – Secretary
(Previously Disclosed)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the home health aide named above on the New York State Home Care Registry revealed that the individual is certified as a HHA, and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 1601 Voorhies Avenue, 2nd Floor, Brooklyn, New York 11235:

Bronx	Kings	New York	Queens
Richmond	Westchester		

The applicant proposes to provide the following health care services:

Nursing	Personal Care	Home Health Aide	Homemaker
Housekeeper	Physical Therapy	Occupational Therapy	Speech-Language Pathology
Nutrition	Medical Social Services	Respiratory Therapy	Audiology

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 11, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Lavin Home Care, Inc. d/b/a Home Instead Senior Care
Address: Hauppauge
County: Suffolk
Structure: For-Profit Corporation
Application Number: 2053-L

Description of Project:

Lavin Home Care, Inc. d/b/a Home Instead Senior Care, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Lavin Home Care, Inc. has proposed to operate as a Franchisee of Home Instead Senior Care.

The applicant has authorized 200 shares of stock, which are owned as follows:

James Lavin, Esq. – 10 Shares
Owner/Operator, Lavin Senior Care, Inc. d/b/a Home Instead Senior Care (companion care company)

190 shares remain unissued.

The Board of Directors of Lavin Home Care, Inc. d/b/a Home Instead Senior Care comprises the following individual:

James Lavin, Esq. – Chair
(Previously Disclosed)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A Certificate of Good Standing was received for James Lavin.

The applicant proposes to serve the residents of the following counties from an office located at 900 Route 111, Suite 280, Hauppauge, New York 11788.

Suffolk Nassau Queens

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Physical Therapy	Occupational Therapy	Respiratory Therapy	Speech-Language Pathology
Nutrition	Audiology	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: March 8, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Bushwick Economic Development Corp.
Address: Brooklyn
County: Kings
Structure: Not-For-Profit Corporation
Application Number: 2043-L

Description of Project:

Bushwick Economic Development Corp., 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 Bushwick Economic Development Corp. comprises the following individuals:

Maurice Douglas – Chairman
Retired

Rufina George – 1st Vice-Chairperson
School Aide, New York City Board of Education

Cynthia Dowdy – 2nd Vice Chairperson
Counselor, Board of Education P.S. 299
Assistant Director, Salvation Army Gains
Afterschool Program

Cetanis B. LeVerne – Secretary
Legal Secretary, Nixon Peabody

Mary Littlejohn – Treasurer
Retired

Alice Branch, RN – Chaplin
Retired

Affiliations:

- Audrey Johnson Day Care Center
(1990-Present)
- John Coker Day Care Center
(1990-Present)

- Audrey Johnson Day Care Center
(1969-Present)
- John Coker Day Care Center
(1980-Present)

Eunice Miller – Sergeant at Arms
Retired

Steven Anderson – Member
Retired

Joan Foskey – Member
Retired

Evelyn Nyman, CSW – Member
Retired

Lenworth Stephenson – Member
Owner, Zeen, Inc.
Owner, Grant Associates

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 a 61 Cooper Street, Brooklyn, New York 11207

Kings
New York

Queens
Richmond

The applicant proposes to provide the following health care services:

Nursing

Personal Care

Housekeeper

A 10 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Audrey Johnson Day Care Center
- John Coker Day Care Center

The information provided by the Office of Children Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the NYC Department of Health and Mental Hygiene 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.

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 8, 2013

Division of Home & Community Based Care
Character and Competence Staff Review

Name of Agency: Renewal Care Partners, LLC
Address: New York
County: New York
Structure: Limited Liability Company
Application Number: 2084-L

Description of Project:

Renewal Care Partners, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The members of the Renewal Care Partners, LLC comprises the following individuals:

Joe Fisher – 50%	Patrick A. O'Brien – 50%
Managing Partner, Renewal Companion Care, LLC	Managing Partner, Renewal Companion Care, 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 proposes to serve the residents of the following counties from an office located at 440 West End Avenue #14A, New York, New York 10024:

Bronx	Kings	New York
Westchester	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 4, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Westchester Family Care, Inc.
Address: Pelham Manor
County: Westchester
Structure: For-Profit Corporation
Application Number: 2027-L

Description of Project:

Westchester Family Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Eric T. Johnson owns 7 shares and Ralph Delgais owns 3 shares. The remaining 190 shares are unissued.

The Board of Directors of Westchester Family Care, Inc. comprises the following individuals:

Eric T. Johnson, Chairman, Treasurer Manager, Fairfield Family Care (CT) (non- medical companion care agency)	Ralph Delgais, Vice Chairman Office Manager, Fairfield Family Care (CT) (non- medical companion care agency) Owner/Operator, Quality Enterprises (printing)
Denice Filc, R.N., Secretary Case Manager, Stamford Hospital (CT)	

The applicant proposes to serve the residents of the following counties from an office located at 7 The Hamlet, Pelham Manor, New York 10803:

Westchester Rockland Putnam Dutchess

The applicant proposes to provide the following health care services:

Nursing	Personal Care	Home Health Aide
Homemaker	Housekeeper	

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

Ralph Delgais disclosed that he plead guilty to Grand Larceny in the 3rd Degree on March 6, 1985 and was sentenced to 5 years probation. The Department's recommendation for approval has been made after consideration of the statutory factors found in the New York State Correction Law Sections 752 and 753.

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 26, 2013

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 11th day of April, 2013, 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.

<u>NUMBER:</u>	<u>FACILITY:</u>
1940-L	Allcare Homecare Agency, Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)
2053-L	Lavin Home Care, Inc. d/b/a Home Instead Senior Care (Suffolk, Nassau and Queens Counties)
2043-L	Bushwick Economic Development Corp. (Kings, New York, Queens, and Richmond Counties)
2084-L	Renewal Care Partners, LLC (Bronx, Westchester, Kings, Queens, New York and Richmond Counties)
2027-L	Westchester Family Care, Inc. (Westchester, Rockland, Putnam and Dutchess Counties)
2128-L	Achieve-ALP, LLC d/b/a Achieve Assisted Living Program (Sullivan County)

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

April 11, 2013

**B. APPLICATIONS FOR ESTABLISHMENT AND
CONSTRUCTION OF HEALTH CARE FACILITIES**

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

CON Applications

Residential Health Care Facility – Establish/Construct

Exhibit #19

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122215 E	Excel at Woodbury for Rehabilitation and Nursing, LLC (Nassau County) Mr. Fensterman – Abstained at EPRC	Contingent Approval
2.	122251 E	Rosewood Rehabilitation and Nursing Center (Rensselaer County) Mr. Fensterman – Abstained at EPRC	Contingent Approval

**Downstate Request for Applications – Certified Home Health Agencies –
Establish/Construct**

Exhibit #20

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	121232 E	Amber Court at Home, LLC (Nassau County) Ms. Hines- Abstained at EPRC	Contingent Approval
2.	121260 E	Constellation Home Care (Nassau County) Ms. Hines – Opposed at EPRC	Contingent Approval



Public Health and Health Planning Council

Project # 122215-E
Excel at Woodbury for Rehabilitation and Nursing, LLC

County: Nassau (Woodbury)
Purpose: Establishment

Program: Residential Health Care Facility
Submitted: November 6, 2012

Executive Summary

Description

Excel at Woodbury for Rehabilitation and Nursing, LLC, a limited liability company formed to pursue this CON, is requesting approval to be established as the new operator of Frederick E. White and Jeffrey H. White d/b/a Woodbury Center for Health Care, an existing 123-bed proprietary residential health care facility (RHCF) located at 8533 Jericho Turnpike, Woodbury, New York (Nassau County).

Ownership of the operations before and after the requested change is as follows:

<u>Current Operator</u>		<u>Proposed Operator</u>	
Frederick E. White and Jeffrey H. White d/b/a Woodbury Center for Health Care (A Partnership)		Excel at Woodbury for Rehabilitation and Nursing, LLC	
	<u>Membership</u>		<u>Membership</u>
Frederick E. White	45%	Issac Laufer	50%
Jeffrey H. White	55%	Max Lebowitz	25%
		Chaim Lebowitz	25%

The proposed members of Excel at Woodbury for Rehabilitation and Nursing, LLC have ownership interests in six other RHCF facilities located in New York State. They include the following: Forest Manor Care Center, Inc. d/b/a Glen Cove Center for Nursing and Rehabilitation; Montclair Care Center, Inc. d/b/a Marquis Rehabilitation & Nursing Center; Sutton Park Center for Nursing and Rehabilitation, LLC; Treetops Rehabilitation and Care Center, LLC d/b/a North Westchester Restorative Therapy and Nursing Center; Suffolk Restorative Therapy and Nursing, LLC d/b/a Momentum at South Bay for Rehabilitation and Nursing; and East Rockaway Center, LLC d/b/a Lynbrook Restorative Therapy and Nursing. Presented as BFA Attachments D through I are the

2009 through 2011 financial summaries for the above noted six RHCF's.

DOH Recommendation
Contingent approval.

Need Summary

Utilization at the Woodbury Center for Health Care was 86.73% in 2011. It is expected that the owners of Excel at Woodbury for Rehabilitation and Nursing, LLC will increase occupancy by investing in the physical plant of this facility and performing needed renovations.

Program Summary

No negative information has been received concerning the character and competence of the applicants.

Financial Summary

Excel at Woodbury for Rehabilitation and Nursing, LLC will acquire the RHCF operating assets from Frederick E. White and Jeffrey H. White d/b/a Woodbury Center for Health Care, a proprietary partnership for \$1,500,000 plus the assumption of certain assets and liabilities. The funding will be as follows: \$500,000 from members' equity and Excel at Woodbury for Rehabilitation and Nursing, LLC will enter into a \$1,000,000 promissory note which will be paid over eight years at a 5% interest rate. There are no project costs associated with this proposal.

Budget:	Revenues:	\$13,577,200
	Expenses:	<u>\$13,387,793</u>
	Gain/ (Loss)	\$ 189,407

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

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application..

Office of Health Systems Management

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to at least maintain the facility's current level of access by Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implementation of the plan. The plan should include but not be limited to:
 - Information on activities relating to a-c above; and
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
3. Submission of an executed promissory note that is acceptable to the Department of Health. [BFA]
4. Submission of an executed consulting agreement that is acceptable to the Department of Health. [BFA, LTC]
5. Submission of a photocopy of the fully executed proposed Assignment and Assumption of Lease between Woodbury Center for Health Care, Assignor, and Woodbury Real Estate Holding Co., LLC, Assignee, acceptable to the Department. [CSL, BFA]
6. Submission of a photocopy of the fully executed proposed Sublease between Woodbury Real Estate Holding Co., LLC, as Landlord, and the applicant as Tenant, acceptable to the Department. [CSL], [BFA]

Council Action Date

April 11, 2013.

Need Analysis

Background

Woodbury Center for Health Care, an existing 123 bed residential health care facility located at 8533 Jericho Turnpike, Woodbury, 11797, in Nassau County seeks to enter into an asset purchase agreement with Excel at Woodbury for Rehabilitation and Nursing, LLC.

Analysis

Woodbury Center for Health Care's utilization has steadily decreased from 2009 to 2011 and was lower than that for Nassau County and the Long Island Region in each of those years, as shown in Table 1 below:

Table 1: RHC/ Nassau County / Woodbury Center for Health Care

<u>Facility/County/Region</u>	<u>% Occupancy 2009</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>
Woodbury Center for Health Care	91.58%	89.06%	86.73%
Nassau County	94.03%	92.29%	91.35%
Long Island Region	94.8%	93.4%	92.3%

Table 2: RHC Need – Long Island Region

2016 Projected Need	16,962
Current Beds	16,000
Beds Under Construction	-415
Total Resources	15,585
Unmet Need	1,377

Although utilization at Woodbury has been lower than that for the Long Island Region, Excel intends to perform needed renovations and improvements to the physical plant, which will make the facility more attractive to patients and is expected to result in higher occupancy.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patients admissions is at least 75% of the planning area percentage of health Systems Agency percentage, whichever is applicable.

Woodbury Center for Health Care was above the 75 percent planning average for 2009 and 2010. The facility reported Medicaid admissions of 17.96 percent and 40.66 percent in 2009 and 2010 respectively. The 75 percent planning averages for Nassau County for those years were 8.69 percent (2009) and 14.01 percent (2010).

Conclusion

Based on the Department's need methodology, Nassau County has a projected unmet 2016 need of 1,377 beds. The current occupancy level in the county is 91.35%. Utilization at the Woodbury Center for Health Care is lower, at 86.73% in 2011. It is expected that the new owners of Excel at Woodbury for Rehabilitation and Nursing, LLC will increase occupancy by investing in the physical plant and performing needed renovations, making the facility a more attractive option for new residents. In addition, approval of this application is expected to improve the financial stability of this facility. Therefore, given the need in the county and the proposed improvements to the facility, approval of this application is recommended.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

	<u>Existing</u>	<u>Proposed</u>
Facility Name	Woodbury Center for Health Care	Excel at Woodbury for Rehabilitation and Nursing, LLC
Address	8533 Jericho Turnpike Woodbury, NY 11797	Same
RHCF Capacity	123	Same
AHDC Program Capacity	N/A	Same
Type Of Operator	Partnership	Limited Liability Company
Class Of Operator	Proprietary	Proprietary
Operator	Woodbury Center for Healthcare <u>Members</u> Jeffrey H. White.....55% Frederick E. White.....45%	Excel at Woodbury for Rehabilitation and Nursing, LLC <u>Members</u> Issac Laufer.....50.0% Max Lebowitz.....25.0% Chaim Lebowitz.....25.0%

Character and Competence

Residential Health Care Facilities

- Glen Cove Center for Nursing and Rehabilitation 02/2003 to present
- Long Island Care Center 02/2003 to present
- Lynbrook Restorative Therapy and Nursing 01/2011 to present
- Marquis Rehabilitation and Nursing Center 02/2003 to present
- Momentum at South Bay for Rehabilitation and Nursing 11/2010 to present
- North Westchester Restorative Therapy and Nursing Center 01/2006 to present
- Sutton Park Center for Nursing and Rehabilitation 02/2003 to present

Individual Background Review

Issac Laufer is currently employed as the Director of the Long Island Care Center, Marquis Rehabilitation and Nursing Center, and Sutton Park Center for Nursing and Rehabilitation. He is also employed as the Executive Director of the North Westchester Restorative Therapy and Nursing Center, the Lynbrook Restorative Therapy and Nursing, and Momentum at South Bay for Rehabilitation and Nursing. Mr. Laufer discloses the following health facility interests:

- Glen Cove Center for Nursing and Rehabilitation 02/2003 to present
- Lynbrook Restorative Therapy and Nursing 01/2011 to present
- Marquis Rehabilitation and Nursing Center 02/2003 to present
- Momentum at South Bay for Rehabilitation and Nursing 11/2010 to present
- North Westchester Restorative Therapy and Nursing Center 01/2006 to present
- Sutton Park Center for Nursing and Rehabilitation 02/2003 to present

Max Lebowitz has been the owner of Mochan Painting Supplies of Brooklyn, Inc. since 1979. Mr. Lebowitz reports a business related civil action concerning property damage, of which the insurance company settled in 1999. Mr. Max Lebowitz discloses ownership interest in the following health care facilities:

- North Westchester Restorative Therapy and Nursing Center 01/2011 to present
- Lynbrook Restorative Therapy and Nursing 01/2011 to present
- Momentum at South Bay for Rehabilitation and Nursing 11/2010 to present

Chaim Lebowitz lists current employment as the Owner/Manager of Git Leb, LLC, since March 2000. Git Leb, LLC is a real estate and construction company located in Brooklyn, New York. Mr. Chaim Lebowitz discloses ownership interest in the following health care facilities:

- Lynbrook Restorative Therapy and Nursing 01/2011 to present
- Momentum at South Bay for Rehabilitation and Nursing 01/2011 to present

Character and Competence-Analysis:

A review of Glen Cove Center for Nursing and Rehabilitation for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order issued October 27, 2005 for surveillance findings on February 15, 2005. Deficiencies were found under 10 NYCRR 415.11(c)(3)(i) - Resident Assessment and Care Planning: Comprehensive Care Plans.

A review of Sutton Park Center for Nursing and Rehabilitation for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued August 20, 2007 for surveillance findings on November 29, 2006. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued October 28, 2009 for surveillance findings on September 26, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued April 30, 2010 for surveillance findings on June 18, 2009. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.27 Quality Assessment and Assurance.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued October 19, 2010 for surveillance findings on October 7, 2009. Deficiencies were found under 10 NYCRR 415 Quality of Care.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued May 24, 2011 for surveillance findings on January 19, 2010. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sores.

A review of operations for Long Island Care center, Lynbrook Restorative Therapy and Nursing, Marquis Rehabilitation and Nursing Center, Momentum at South Bay for Rehabilitation and Nursing, and North Westchester Restorative Therapy and Nursing Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for the Glen Cove Center for Nursing and Rehabilitation and Sutton Park Center for Nursing and Rehabilitation for the period identified above, results in a conclusion of substantially consistent high level of care, since there were no repeat enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. The applicant has submitted a draft consulting agreement with Frederick E. White to provide consulting and transitional services as well as marketing and public relations for a ten (10) year term.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Purchase/Sale Agreement for the Operations

The applicant has submitted an executed agreement to purchase the RHCF operating interest, the terms of which are summarized below:

Date: September 1, 2012
Seller: Frederick E. White and Jeffrey H. White d/b/a Woodbury Center for Health Care, (A Partnership)
Purchaser: Excel at Woodbury for Rehabilitation and Nursing, LLC
Assets Transferred: Rights, title and interest in assets of the business including: cash and cash equivalents, accounts receivable, equipment, machinery and all tangible business personal property used in the operation of the business, contracts relating to the business, deposits, prepayments, resident deposits, permits, inventory, computer software, business name, provider agreements and provider numbers, policies and procedures manuals, telephone numbers, residents records, employee records, prior five years of the business's financial records, domain names and rights.
Operations:
Excluded Assets: Partnerships books and records.
Assumed Liabilities: Any liability solely arising out of or relating to employment of any Employee by seller prior to the effective date, NAMI Audits (Net Monthly Income of Medicaid recipients), DOH Property Audits (Department of Health), OMIG Audits (Office of the Medicaid Inspector General), PRI Audits (Patient Review Instruments), and sellers' membership in the Health Insurance Trust of New York, and those accruing on or after the effective date of September 1, 2012,
Purchase Price: \$1,500,000
Payment of Purchase Price: \$ 250,000 escrow deposit at agreement signing
\$ 250,000 due at closing
\$1,000,000 promissory note (eight years at 5%).

The purchase price is proposed to be satisfied as follows:

Equity – members of Excel at Woodbury for Rehabilitation and Nursing, LLC will contribute	\$500,000
Promissory Note – Excel at Woodbury for Rehabilitation and Nursing, LLC (5%, 8-year terms)	<u>1,000,000</u>
Total	\$1,500,000

Presented as BFA Attachment A is the proposed members' net worth summaries for Excel at Woodbury for Rehabilitation and Nursing, LLC, which reveals sufficient resources to meet the equity requirements.

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. There are no outstanding Medicaid and Assessment liabilities as of February 8, 2013.

Consulting Agreement

The applicant has submitted a draft consulting agreement, the terms of which are summarized below:

Receiving Services: Excel at Woodbury for Rehabilitation and Nursing, LLC (Excel at Woodbury) an 123 bed RHCf located at 8533 Jericho Turnpike, Woodbury, New York 11797

Provider of Services: Frederick E. White

Services Provided: Will provide consulting services, including providing information and briefing of the Company’s personnel, the operation of Woodbury Center for Health Care, and other transition assistance, and marketing and public relations.

Term: Ten years

Consulting Fee: \$200,000 per year

Lease Agreement and Medicaid Capital Reimbursement

The applicant has submitted an executed lease agreement, the terms of which are summarized below:

Date: August 31, 2012

Premises: An 123-Bed RHCf located at 8533 Jericho Turnpike, Woodbury, New York 11797

Owner/Landlord: 8533 Jericho Turnpike Realty Co., Inc.

Lessee: Frederick E. White and Jeffrey H. White d/b/a Woodbury Center for Health Care, (A Partnership)

Assignor: Frederick E. White and Jeffrey H. White d/b/a Woodbury Center for Health Care, (A Partnership)

Assignee: Woodbury Real Estate Holding Co., LLC

Sub-Landlord: Woodbury Real Estate Holding Co., LLC

Sub-Lessee: Excel at Woodbury for Rehabilitation and Nursing, LLC

Term: Forty years – expiring on July 31, 2052

Rent: August 1 2012 – July 31, 2019 rent is \$500,000 per year
 August 1 2019 – July 31, 2024 rent is \$550,000 per year
 August 1 2024 – July 31, 2029 rent is \$600,000 per year
 August 1 2029 – July 31, 2034 rent is \$650,000 per year
 August 1 2034 – July 31, 2039 rent is \$700,000 per year
 August 1 2039 – July 31, 2052 rent is \$750,000 per year

Provisions: Triple net lease

The current lease arrangement between the landlord, 8533 Jericho Turnpike Realty Co., Inc. and the current operator Frederick E. White and Jeffrey H. White d/b/a Woodbury Center for Health Care, (A Partnership) is a non-arm’s length agreement. Whereas the assignment and assumption of the lease between Frederick E. White and Jeffrey H. White d/b/a Woodbury Center for Health Care, (A Partnership) and Woodbury Real Estate Holding Co., LLC will be an arm’s length transaction. The sub-lease agreement between the sub-landlord, Woodbury Real Estate Holding Co., LLC and the sub-lessee is a non-arm’s length agreement.

Currently, Medicaid capital reimbursement is based on the return of and return on equity methodology, which will not be altered upon the change in ownership. Based on 2012 Nursing Home Consolidated Capital (Schedule VI – Property), all of the historical costs under the return of and return on capital have been reimbursed.

Operating Budget

The applicant has provided an operating budget, in 2012 dollars, for the first year subsequent to change in ownership. The budget is summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid	\$237.11	\$6,561,600
Medicare	604.71	3,746,800
Commercial	461.30	952,600
Private Pay	410.04	2,201,900
Other Income *		<u>114,300</u>
Total Revenues:		\$13,577,200
Expenses:		
Operating		\$12,762,400
Capital		<u>625,393</u>
Total Expenses:		\$13,387,793
Net Income:		<u>\$189,407</u>
Utilization (resident days)		41,304
Occupancy		92%

* Other income is made up of cash discounts, rebates on purchases and income from rentals

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

- Medicaid revenues are based on actual 2012 rates. Actual 2013 rate is comparable to 2012.
- Medicare rates are projected based on the full federal rates for the Medicare Prospective Payment System in effect for 2011 and trended by 2.5%
- Same geographical area and trended by 2.5%.
- Overall utilization is projected at 92%. Utilization for the six years from 2006 through 2011 averaged 92.66%.
- Utilization by payor source is anticipated as follows:

Medicaid Fee-for-Service	67.0%
Medicare Fee-for-Service	15.0%
Commercial Fee-for-Service	5.0%
Private/Other	13.0%
- Breakeven utilization is projected at 90%.

Capability and Feasibility

Excel at Woodbury for Rehabilitation and Nursing, LLC proposes to acquire the RHC operating assets from Frederick E. White and Jeffrey H. White d/b/a Woodbury Center for Health Care, a proprietary partnership for \$1,500,000 plus the assumption of certain assets and liabilities. The funding will be as follows: \$500,000 from members' equity and the remainder will come from a \$1,000,000 promissory note at the above stated terms entered into by Excel at Woodbury for Rehabilitation and Nursing, LLC. The real property will continue to be owned by 8533 Jericho Turnpike Realty Co., Inc., a related party to the current operator. There are no project costs associated with this proposal.

Working capital is estimated at \$2,231,299 and is based on two months of the first year expenses, which will be satisfied from the members' equity. Review of BFA Attachment A, summary of net worth reveals sufficient resources to meet both working capital and members' equity requirements for this project.

Presented as BFA Attachment B, is the pro-forma balance sheet for Excel at Woodbury for Rehabilitation and Nursing, LLC, which shows that operations will start off with \$1,473,688 in member's equity. It is noted that assets include \$1,500,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, the net asset position would be a negative member's equity position of \$26,312.

The submitted budget indicates \$189,407 in net income would be generated in the first year after the change in ownership. The following is a comparison of 2011 historical revenue and expense and projected revenue and expense:

Projected Income	\$ 13,577,200
Projected Expense	<u>13,387,793</u>
Projected Net Income	\$189,407
Annual 2011 Income	\$12,417,364
Annual 2011 Expense	<u>12,947,495</u>
Annual 2011 Net Income (Loss)	(\$530,131)
Incremental Net Income (Loss)	<u>\$719,538</u>

It is estimated that incremental net revenue for all payors will increase approximately \$1,159,836 as the results of the following: Medicare revenues increasing by \$436,507 as the results of utilization going from 14.49% to 15.00% with the average daily rate going from \$590.44 per day to \$604.71 per day; Medicaid revenues are expected to decrease \$17,315 as the result of a decline in the average daily rate, going from \$250.47 per patient day in 2011 to \$237.11 per patient day in 2012, while the average number of daily Medicaid patients increased by 3.85; private pay revenues are expected to increase approximately \$480,307 as the result of an rate increase, going from \$333.67 per day to \$410.04 on a very small increase in utilization; and revenues from commercial payors are expected to increase by \$260,337 going from \$369.60 per patient day to \$461.30 per patient day on a slight increase in utilization. The applicant states their private pay rate is low compared to other facilities in their geographic area and needs to be raised. The applicant expects the average daily commercial payor rate to increase as the facility admits patients with higher acuity. Operating and capital expenses are expected to increase by \$41,825 and \$398,473, respectively. The increase in capital expenses is primarily due to a \$338,933 increase in rent and interest expense of \$59,540. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with cost-based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

As shown on BFA Attachment C, Frederick E. White and Jeffrey H. White d/b/a Woodbury Center for Health Care generated an average loss of \$238,733, which according to the applicant, was the result of a decline in occupancy, going from an average of 96.2% between 2006 and 2008, to an average of 89.12% between 2009 and 2011. For the years from 2009 through 2011, the RHCF had an average positive working capital position of \$131,530, and had an average positive net asset position of \$277,704.

As shown on BFA Attachment D, Forest Manor Care Center, Inc. d/b/a Glen Cove Center for Nursing and Rehabilitation, for the years from 2009 through 2011, the RHCF generated an average operating surplus of \$2,533,821, had an average positive working capital position of \$9,254,206, and had an average positive net asset position of \$6,369,184.

As shown on BFA Attachment E, Montclair Care Center, Inc., d/b/a Marquis Rehabilitation & Nursing Center, for the years from 2009 through 2011 the RHCF generated an average operating surplus of \$956,623, had an average positive net asset position of \$4,055,535 and its working capital position turned to a positive \$608,336 in 2011.

As shown on BFA Attachment F, Sutton Park Center for Nursing and Rehabilitation, LLC, for the years from 2009 through 2011, the RHCF generated an average operating surplus of \$1,370,975, had an average positive net asset position of \$1,753,714 and its working capital position turned to a positive \$1,009,893 in 2011.

As shown on BFA Attachment G, Treetops Rehabilitation and Care Center, LLC d/b/a North Westchester Restorative Therapy and Nursing Center, for the years from 2009 through 2011, the RHCF generated an average operating surplus of \$2,634,659, and the net assets turned to a positive \$897,180 in 2011. The working capital was a negative \$2,629,976 at the end of 2011, but the applicant has been working to rectify this situation.

As shown on BFA Attachment H, Suffolk Restorative Therapy and Nursing, LLC d/b/a Momentum at South Bay for Rehabilitation and Nursing, ownership started on November 7, 2010, and therefore the following results are only for 2011 activity; the RHCf had a operating surplus of \$347,996, had a negative working capital position of \$3,425,691, and had a positive net asset position of \$938,639.

As shown on BFA Attachment I, East Rockaway Center, LLC d/b/a Lynbrook Restorative Therapy and Nursing, ownership started on January 1, 2011, and therefore the following results are only for 2011 activity; the RHCf had a operating surplus of \$3,927,484, had a positive working capital position of \$1,802,880, and had a positive net asset position of \$3,927,484.

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.

From a financial perspective, 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, Excel at Woodbury for Rehabilitation and Nursing, LLC
BFA Attachment C	Financial Summary Frederick E. White and Jeffrey H. White d/b/a Woodbury Center for Health Care
BFA Attachment D	Financial Summary, Forest Manor Care Center, Inc. d/b/a Glen Cove Center for Nursing and Rehabilitation
BFA Attachment E	Financial Summary, Montclair Care Center, Inc. d/b/a Marquis Rehabilitation & Nursing Center
BFA Attachment F	Financial Summary, Sutton Park Center for Nursing and Rehabilitation, LLC
BFA Attachment G	Financial Summary, Treetops Rehabilitation and Care Center, LLC d/b/a North Westchester Restorative Therapy and Nursing Center
BFA Attachment H	Financial Summary, Suffolk Restorative Therapy and Nursing, LLC d/b/a Momentum at South Bay for Rehabilitation and Nursing
BFA Attachment I	Financial Summary, East Rockaway Center, LLC d/b/a Lynbrook Restorative Therapy and Nursing

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 11th day of April, 2013, 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 ownership of Woodbury Center for Health Care to Excel at Woodbury for Rehabilitation and Nursing, LLC, 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:

122215 E

Excel at Woodbury for Rehabilitation and
Nursing, LLC

APPROVAL CONTINGENT UPON:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to at least maintain the facility's current level of access by Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implementation of the plan. The plan should include but not be limited to:
 - Information on activities relating to a-c above; and
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period.
[RNR]
3. Submission of an executed promissory note that is acceptable to the Department of Health. [BFA]
4. Submission of an executed consulting agreement that is acceptable to the Department of Health. [BFA, LTC]
5. Submission of a photocopy of the fully executed proposed Assignment and Assumption of Lease between Woodbury Center for Health Care, Assignor, and Woodbury Real Estate Holding Co., LLC, Assignee, acceptable to the Department. [CSL, BFA]
6. Submission of a photocopy of the fully executed proposed Sublease between Woodbury Real Estate Holding Co., LLC, as Landlord, and the applicant as Tenant, acceptable to the Department. [CSL], [BFA]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 122251-E Rosewood Rehabilitation and Nursing Center

County: Rensselaer (Rensselaer)
Purpose: Establishment

Program: Residential Health Care Facility
Submitted: November 29, 2012

Executive Summary

Description

Rosewood Care, LLC, doing business as Rosewood Rehabilitation and Nursing Center, requests approval to be established as the operator of Rosewood Rehabilitation and Nursing Center, an 80-bed residential health care facility located at 284 Troy Road, Rensselaer, New York.

The current and the proposed ownership of Rosewood Rehabilitation and Nursing Center is as follows:

<u>Current</u>	<u>Proposed</u>
Rosewood Operating, LLC	Rosewood Care, LLC
<u>Members:</u>	<u>Members:</u>
Louis Gellis 9.9%	Louis Gellis 25%
Bent Philipson 90.1%	Ruth Hirsch 37.5%
	Inter Ocean Family, LLC 37.5%

The members and ownership percentages of Inter Ocean Family, LLC area as follows: Abraham Fischhoff (18%); Benjamin Fischhoff (10%); Donald Fischhoff (18%); Barbara Gold (18%); Meryl Maybruch (18%) and Regina Weinstock (18%).

The sole member of Rosewood Operations, LLC at the time the Asset Purchase Agreement was executed was Bent Philipson, with a 100% membership interest. However, on August 3, 2012, the Department approved the transfer of 9.9% of Rosewood Operating, LLC to Louis Gellis, reducing Bent Philipson's membership interest to 90.1%.

DOH Recommendation
Contingent approval.

Need Summary

Rosewood Rehabilitation and Nursing Center's utilization was above the Department of Health's 97% planning optimum for 2009 and 2010 but decreased slightly to 96.4% in 2011. Utilization at Rosewood Rehabilitation was above that of Rensselaer County for each year. Rosewood Care, LLC plans to implement an outreach program with the goal of achieving the 97% planning optimum. There will be no change in beds or services.

Program Summary

No negative information has been received concerning the character and competence of the applicants identified as new members. No changes in the program or physical environment are proposed in this application.

Financial Summary

The purchase price of \$750,000 will be financed at an interest rate of 5.60% for a five year term.

Budget:

Revenues	\$7,425,095
Expenses	<u>7,183,997</u>
Net Income	\$241,098

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.

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the
 - Implementation of the plan. The plan should include but not be limited to:
 - Information on activities relating to a-c above; and
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period. [RNR]

3. Submission of a loan commitment that is acceptable to the Department of Health. [BFA]
4. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA], [CSL]
5. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
6. The Articles of Organization for Rosewood Care, LLC must include a provision stating how the limited liability company (LLC) will be managed and providing that neither the management structure nor the provision setting forth such structure may be deleted, modified or amended without the prior approval of the New York State Department of Health. [CSL]
7. The Articles of Organization for Rosewood Care, LLC must include a provision setting forth the location of the principal office of the LLC, which must be the same address as the facility. [CSL]
8. The Articles of Organization for Rosewood Care, LLC must include a provision providing that, notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of New York State Department of Health membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law. The Articles of Organization incorrectly cite section 2802-a(4)(b) of the Public Health Law. [CSL]
9. The Certificate of Amendment of the Articles of Organization submitted for Rosewood Care, LLC adds a sixth, seventh, and eighth paragraph; however, the original Articles only include a first through fourth paragraph, and do not contain a fifth paragraph. The applicant must amend the Articles of Organization to number the paragraphs sequentially, or explain the discrepancy. [CSL]
10. The Operating Agreement for Rosewood Care, LLC must be executed. [CSL]
11. The Operating Agreement for Rosewood Care, LLC must include a provision stating how the LLC will be managed and providing that neither the management structure nor the provision setting forth such structure may be deleted, modified or amended without the prior approval of the New York State Department of Health. [CSL]
12. The Operating Agreement for Rosewood Care, LLC must include a provision stating that the power and purposes of the LLC are limited to the ownership and operation of the Article 28 facility specifically named and the location of the facility by street address, city, town, village or locality and county. [CSL]

13. The Operating Agreement for Rosewood Care, LLC must include a provision stating that, notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of New York State Department of Health membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law. [CSL]
14. The Articles of Organization for Inter-Ocean Family, LLC must include a provision providing that, notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of New York State Department of Health membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law. The Articles of Organization incorrectly cite section 2802-a(4)(b) of the Public Health Law. [CSL]
15. The Operating Agreement for Inter-Ocean Family, LLC must be executed. [CSL]
16. The Operating Agreement for Inter-Ocean Family, LLC must include a provision stating that all members must be natural persons and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health. [CSL]

Council Action Date

April 11, 2013.

Need Analysis

Background

Rosewood Care, LLC d/b/a Rosewood Rehabilitation and Nursing Center proposes to become established as the operator of Rosewood Rehabilitation and Nursing Center, an 80 bed residential health care facility located at 284 Troy Road, Rensselaer, 12144, in Rensselaer County.

Analysis

Rosewood Rehabilitation and Nursing Center's utilization is higher than Rensselaer County for 2009, 2010, and 2011 as shown in Table 1 below:

Table 1: RHCF – Rosewood Rehabilitation and Nursing Center/ Rensselaer County

<u>Facility/County</u>	<u>% Occupancy 2009</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>
Rosewood Rehabilitation and Nursing Center	97.5%	97.0%	96.4%
Rensselaer County	94.6%	95.8%	94.9%

Rosewood was above the 97% planning optimum for 2009 and 2010 but was slightly below for 2011.

Rensselaer County is currently in excess of 219 beds per Table 2.

Table 2: RHCF Need – Rensselaer County

2016 Projected Need	1,025
Current Beds	1,244
Beds Under Construction	0
Total Resources	1,244
Unmet Need	-219

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patients admissions is at least 75% of the planning area percentage of Health Systems Agency percentage, whichever is applicable.

Medicaid admissions at Rosewood Rehabilitation and Nursing Center were above the 75 percent planning average for 2009 and 2010. The facility reported Medicaid admissions of 12.89 percent and 19.57 percent in 2009 and 2010, respectively. The 75 percent planning averages for Rensselaer County for these years were 8.94 percent (2009) and 12.36 percent (2010).

Conclusion

Approval of this application will allow the community to maintain a long term care resource that has met the Department's planning optimum for utilization of residential health care facility beds for two of the previous three reporting years. Rosewood Care, LLC will work with health care facilities in the area to increase utilization upon project approval.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

	<u>Existing</u>	<u>Proposed</u>
Facility Name	Rosewood Rehabilitation and Nursing Center	Same
Address	284 Troy Road Rensselaer, NY 12144	Same
RHCF Capacity	80	Same
ADHC Program Capacity	N/A	Same
Type Of Operator	Limited Liability Company	Limited Liability Company
Class Of Operator	Proprietary	Proprietary
Operator	Rosewood Operating, LLC d/b/a Rosewood Rehabilitation and Nursing Center Membership: Bent Philipson 90.10% Louis Gellis 9.90%	Rosewood Care, LLC d/b/a Rosewood Rehabilitation and Nursing Center Membership: Louis Gellis 25.00% Ruth Hirsch 37.50% Inter-Ocean Family, LLC 37.50% Abraham Fishoff (18%) Benjamin Fishoff (10%) Donald Fishoff (18%) Barbara Gold (18%) Meryl Maybruch (18%) Regina Weinstock-Cukier (18%)

Character and Competence

Residential Health Care Facilities

▪ Bay Park Center for Nursing and Rehabilitation	01/2009 to present
▪ Eastchester Rehabilitation and Health Care Center	01/2003 to present
▪ Golden Gate Rehabilitation and Health Care Center	01/2003 to present
▪ Nassau Extended Care Facility	07/2004 to present
▪ Park Avenue Extended Care Facility	07/2004 to present
▪ The Hamptons Center for Rehabilitation and Nursing	05/2008 to present
▪ Throgs Neck Extended Care Facility	07/2004 to present
▪ Townhouse Extended Care Center	07/2004 to present
▪ White Plains Center for Nursing	10/2004 to present
▪ Rosewood Rehabilitation and Nursing Center	08/2012 to present

Individual Background Review

Louis Gellis is a licensed nursing home administrator in good standing, employed as the Administrator of Rosewood Rehabilitation and Nursing Center, since January 16, 2012. He has an ownership interest in the following health care facility:

- Rosewood Rehabilitation and Nursing Center 08/2012 to present

Ruth Hirsch lists current employment as Admissions Director at White Plains Center for Nursing Care since March 2005. Ms. Hirsch has several health care facility interests with dates of ownership, as follows:

- Eastchester Rehabilitation and Health Care Center 01/2003 to present
- Golden Gate Rehabilitation and Health Care Center 01/2003 to present
- Nassau Extended Care Facility 07/2004 to present
- Park Avenue Extended Care Facility 07/2004 to present
- The Hamptons Center for Rehabilitation and Nursing 05/2008 to present
- Throgs Neck Extended Care Facility 07/2004 to present
- Townhouse Extended Care Center 07/2004 to present
- White Plains Center for Nursing 10/2004 to present

Abraham Fishoff lists current employment as CFO/CEO of City Lights Charity Foundation, since 1997, located in Brooklyn, New York. Mr. Fishoff has several health care facility interests with dates of ownership, as follows:

- Nassau Extended Care Facility 08/2009 to present
- Park Avenue Extended Care Facility 08/2009 to present
- Townhouse Extended Care Center 08/2009 to present
- Throgs Neck Extended Care Facility 08/2009 to present

Benjamin Fishoff is retired, having been previously employed as President of Inter-Ocean Industries, Inc, an import-export electronics business. Mr. Fishoff has several health care facility interests with dates of ownership, as follows:

- Golden Gate Rehabilitation and Health Care Center 01/2003 to 12/2001
- Bay Park Center for Nursing and Rehabilitation 12/2009 to present
- Nassau Extended Care Facility 08/2009 to present
- Park Avenue Extended Care Facility 08/2009 to present
- The Hamptons Center for Rehabilitation and Nursing 05/2008 to present
- Throgs Neck Extended Care Facility 08/2009 to present
- Townhouse Extended Care Center 08/2009 to present

Donald Fishoff lists his employment as President at Inter-Ocean Industries, Inc., located in Monsey, NY, since 1992. He owns interests in several nursing homes with dates of ownership as follows:

- Nassau Extended Care Facility 08/2009 to present
- Park Avenue Extended Care Facility 08/2009 to present
- Townhouse Extended Care Center 08/2009 to present
- Throgs Neck Extended Care Facility 08/2009 to present

Barbara (Fishoff) Gold states that she has not been employed within the past ten year period. Ms. Gold lists no ownerships currently, or in the past, of any health care facilities.

Meryl (Fishoff) Maybruch states that she is retired with her last employment at Inter-Ocean Industries, Inc.. Ms. Maybruch lists ownership in several health care facilities, with dates of ownership as follows:

- Eastchester Rehabilitation and Health Care Center 09/2003 to present
- Townhouse Extended Care Center 10/2011 to present
- Park Avenue Extended Care Facility 09/2011 to present
- Throgs Neck Extended Care Facility 09/2011 to present

Regina Weinstock-Cukier lists her current employment as Accounts Payable Administrator with Sentosa Care LLC, a health care consulting company, since 2004. She has several health care facility interests, with dates of ownership as follows:

- Eastchester Rehabilitation and Health Care Center 09/2003 to present
- Townhouse Extended Care Center 10/2011 to present
- Park Avenue Extended Care Facility 09/2011 to present
- Throgs Neck Extended Care Facility 09/2011 to present
- Bay Park Center for Nursing and Rehabilitation 01/2009 to present
- Nassau Extended Care Facility 09/2011 to present

Character and Competence Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of Bay Park Center for Nursing and Rehabilitation for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued March 2, 2011 for surveillance findings on December 18, 2009. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care: Highest Practicable Potential and 10 NYCRR 415.12(i)(1) - Quality of Care: Nutrition Status.
- The facility was fined \$18,000 pursuant to a Stipulation and Order issued May 30, 2012 for surveillance findings on February 16, 2011. Multiple deficiencies were found under 10 NYCRR 415.4(b)(1)(i) - Free from Abuse; 10 NYCRR 415.4(b) - Development of Abuse Policies; 10 NYCRR 415.12(h)(2) - Quality of Care: Accidents; 10 NYCRR 415.12(i)(1) - Quality of Care: Nutrition; and 10 NYCRR 415.26(c)(1)(iv) - Nurse Aide Competency.

A review of Eastchester Rehabilitation and Health Care Center for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued August 9, 2008 for surveillance findings on January 15, 2008. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) - Resident Behavior and Facility Practices: Staff Treatment of Residents.

A review of Golden Gate Rehabilitation and Health Care Center for the period identified above reveals the following:

- The facility was fined \$20,000 pursuant to a Stipulation and Order issued July 9, 2009 for surveillance findings on June 27, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(2) - Quality of Care: Accidents and 10 NYCRR 415.26 - Organization and Administration.
- The facility was fined \$10,000 pursuant to Stipulation and Order issued December 16, 2011 for surveillance findings on November 22, 2010. Deficiencies were found under 10 NYCRR 415.12(c)(2) - Quality of Care: Pressure Sores.

A review of The Hamptons Center for Nursing for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order issued May 24, 2011 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 - Provide Care/Services for Highest Well Being.

A review of operations for the Bay Park Center for Nursing and Rehabilitation, Eastchester Rehabilitation and Health Care Center, Golden Gate Rehabilitation and Health Care Center, and The Hamptons Center for Rehabilitation and Nursing for the period identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for the Park Avenue Extended Care Facility, Throgs Neck Extended Care Facility, White Plains Center for Nursing, Nassau Extended Care Facility and Townhouse Extended Care Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review-Analysis

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 applicant has submitted an executed asset purchase agreement, the terms of which are summarized below:

- Date: May 1, 2012
- Seller: Rensselaer Operating, LLC
- Purchaser: Rosewood Care, LLC
- Assets Acquired: The business and operation of the Facility, except for the Excluded Assets; all leasehold improvements, furniture, fixtures, equipment, furnishings, appliances, tools, instruments, machinery, computers, computer equipment and hardware, office equipment which are aged in connection with the operation of the Facility; all inventory, supplies and other articles of personal property; resident assets and funds held in trust; the name "Rosewood Rehabilitation and Nursing Center" and any all other trade names, logos, trademarks and service marks associated with the Facility and the Acquired Assets; all security deposits and prepayments for future services held by Seller; all insurance policies, to the extent

assumed by Buyer; all menus, policy and procedures manuals and computer software; all telephone numbers, fax numbers and, email addresses and domain names used by the Facility; copies of all financial books and records in Seller's possession relating to the Facility; all resident/patient records relating to the Facility; all employee and payroll records; goodwill; copies of all other books and records relating to the Facility; the Transferred Benefit Plans; Seller's Medicare and Medicaid provider numbers and provider reimbursement agreements under the Medicare Program, Medicaid Program and any other third party payor programs provided the same are transferrable and assumed by Buyer and to the extent assignable, all licenses and permits held or owned by Seller relating to the ownership or operation of the Facility and the Acquired Assets.

Excluded Assets: All retroactive rate increases resulting from rate appeals, audits or otherwise, with respect to third party payments, from any source, which become effective at any time for services rendered by the Facility prior to the Contract Date; cash, cash equivalents and securities at the Contract Date; the Purchase Price, including the Down payment and Monthly Payments and all accounts receivable of any kind relating to services rendered by the Facility prior to the Contract Date and the proceeds and collections thereof.

Assumed Liabilities: Buyer shall unconditionally assume at the Closing only the following liabilities of the Seller: all liabilities of Seller relating to the use, ownership and operation of the Facility on and after the Contract date, including, but not limited to all taxes relating to periods on or after the Contract Date, all accounts and trade payables relating to the operation of the facility on or after the Contract Date; all amounts due Medicare, Medicaid and other third party payors, as a result of audits, rate changes or otherwise, relating to services rendered on or after the Contract Date, and all cash receipts assessments relating to all revenue received on and after the Contract Date relating to the services rendered by the Facility on or after the Contract Date, but not cash receipts assessments relating to revenue for services rendered prior to the Contract Date.

Excluded Liabilities: Buyer shall not assume the following liabilities: ownership and operation of the Acquired Assets and/or the facility, and/or the use and occupancy of the Premises prior to the Contract Date; cash receipts assessments due on or after the Contract Date relating to revenue received by the Facility for services provided by the Facility prior to the Contract Date; long term, short term or other debts and obligations of Seller accruing or arising prior to the Contract Date under any of the Assumed Contracts; taxes, interest and penalties, if any, due and payable by Seller for periods prior to the Contract Date and professional liabilities claims for acts or omissions of Seller that are based on acts or omissions occurring prior to the Contract Date.

Purchase Price: \$750,000
Payment of Payable upon execution of this Agreement.
Purchase Price:

The applicant will finance the purchase price at an interest rate of 5.60% for a five year term.

The applicant has submitted an affidavit from the applicant, 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 it interest, without releasing the transferor of its liability and responsibility. Currently, the facility does not have any outstanding liabilities.

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the nursing home site, which is summarized below:

Premises: The nursing home located at 284 Troy Road, Rensselaer, New York
 Lessor: 284 Troy Road, LLC
 Lessee: Rosewood Care, LLC
 Term: 25 years
 Rental: Net basic rent is \$325,000 with annual increases of \$5,000.

The applicant has submitted an affidavit indicating that the lease arrangement is an arms length lease arrangement.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the first year subsequent to the change in operator, which is summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid Fee-for-Service	\$193.18	\$3,858,760
Medicare Fee-for-Service	\$483.71	1,849,092
Private Pay	\$450.60	<u>1,717,243</u>
Total Revenues		\$7,425,095
Expenses:		
Operating	\$235.29	\$6,624,741
Capital	<u>19.86</u>	<u>559,256</u>
Total Expenses	\$255.15	\$7,183,997
Net Income		\$241,098
Utilization: (patient days)		28,156
Occupancy		96.08%

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

- Payor rates are based on actual reimbursement rates.
- Breakeven utilization is projected at 93.51%.

Utilization, by payor source during the first year subsequent to the change in operator is as follows:

Medicaid Fee-for-Service	70.94%
Medicare Fee-for-Service	15.52%
Private Pay	13.54%

Expense assumptions are based on the facility's current expenses trended to 2013. Utilization assumptions are based on the facility's utilization by payer.

Capability and Feasibility

The purchase price for the acquisition of the operating interests is \$750,000, which will be financed via a \$750,000 loan at an interest rate of 5.60% for a five year term and a ten year amortization. The applicant submitted an affidavit indicating that they will pay off the balloon payment when it becomes due, through personal financial resources.

Working capital requirements are estimated at \$1,197,332, which is equivalent to two months of first year expenses. The applicant will finance \$598,666 at an interest rate of 5.60% for a five year term. The remainder, \$598,666, will be provided by the members of Rosewood Care, LLC. Attachment A indicates the availability of sufficient funds to meet the working capital requirement and the balloon payment. The applicant provided an affidavit from Ruth Hirsch indicating that she is willing to contribute resources disproportionate to ownership percentages. Presented as BFA Attachment C, is the pro-forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$598,731 as of the first day of operation.

The submitted budget indicates a net income of \$241,098 during the first year subsequent to the change in operator. Revenues are based on current reimbursement rates. The applicant anticipates that the Medicaid Managed Care rate will be similar to their current fee-for-service rate. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with a cost based capital component payment methodology to a negotiated reimbursement methodology.

Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on the project.

Presented as BFA Attachment B, is the financial summary of Rosewood Rehabilitation and Nursing Center from 9/1/2010 through 2011. As shown, the facility had an average negative working capital position and an average negative net asset position. Also, the facility incurred an average net loss of \$84,840 during the period. The applicant indicates that the loss from 9/1/2010 through 12/31/2010, was the result of the facility transitioning from receivership, and the new operator had not instituted all of the proposed changes to the facility.

Presented as BFA Attachment F, are the October 31, 2012 internal financial statements of Rosewood Nursing and Rehabilitation Center. As shown on Attachment F, the facility had a positive working capital position and a positive net asset position through October 31, 2012. Also, the facility achieved a net income of \$145,348 through October 31, 2012.

Presented as BFA Attachment D, is the financial summary of White Plains Center for Nursing. As shown on Attachment D, the facility had an average negative working capital position and an average positive net asset position from 2009 through 2011. Also, the facility achieved an average net income of \$769,263 from 2009 through 2011.

Presented as BFA Attachment E, is the financial summary of Townhouse Extended Care Facility. As shown on Attachment E, the facility had an average positive working capital position and an average positive net asset position from 2009 through 2011. Also, the facility incurred an average net loss of \$18,698 from 2009 through 2011. The loss in 2011 resulted when the facility increased its expenses in nursing and therapies by \$1,499,403 over 2010 expenses due to taking higher case mix residents. The facility improved operations by increasing its case mix.

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-	Personal Net Worth Statements
BFA Attachment B-	Financial Summary- Rosewood Rehabilitation and Nursing Center
BFA Attachment C-	Pro-forma Balance Sheet
BFA Attachment D-	Financial Summary- White Plains Center
BFA Attachment E-	Financial Summary- Townhouse Extended Care Facility
BFA Attachment F-	October 31, 2012 Internal Financial Statement of Rosewood Rehabilitation and Nursing Center

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 11th day of April, 2013, 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 Rosewood Care, LLC d/b/a Rosewood Rehabilitation for Nursing Center as the operator of Rosewood Rehabilitation and Nursing 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:

122251 E

Rosewood Rehabilitation and Nursing Center

APPROVAL CONTINGENT UPON:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the
 - Implementation of the plan. The plan should include but not be limited to:
 - Information on activities relating to a-c above; and
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period.

[RNR]

3. Submission of a loan commitment that is acceptable to the Department of Health. [BFA]
4. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA], [CSL]
5. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
6. The Articles of Organization for Rosewood Care, LLC must include a provision stating how the limited liability company (LLC) will be managed and providing that neither the management structure nor the provision setting forth such structure may be deleted, modified or amended without the prior approval of the New York State Department of Health. [CSL]
7. The Articles of Organization for Rosewood Care, LLC must include a provision setting forth the location of the principal office of the LLC, which must be the same address as the facility. [CSL]
8. The Articles of Organization for Rosewood Care, LLC must include a provision providing that, notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of New York State Department of Health membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law. The Articles of Organization incorrectly cite section 2802-a(4)(b) of the Public Health Law. [CSL]

9. The Certificate of Amendment of the Articles of Organization submitted for Rosewood Care, LLC adds a sixth, seventh, and eighth paragraph; however, the original Articles only include a first through fourth paragraph, and do not contain a fifth paragraph. The applicant must amend the Articles of Organization to number the paragraphs sequentially, or explain the discrepancy. [CSL]
10. The Operating Agreement for Rosewood Care, LLC must be executed. [CSL]
11. The Operating Agreement for Rosewood Care, LLC must include a provision stating how the LLC will be managed and providing that neither the management structure nor the provision setting forth such structure may be deleted, modified or amended without the prior approval of the New York State Department of Health. [CSL]
12. The Operating Agreement for Rosewood Care, LLC must include a provision stating that the power and purposes of the LLC are limited to the ownership and operation of the Article 28 facility specifically named and the location of the facility by street address, city, town, village or locality and county. [CSL]
13. The Operating Agreement for Rosewood Care, LLC must include a provision stating that, notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of New York State Department of Health membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law. [CSL]
14. The Articles of Organization for Inter-Ocean Family, LLC must include a provision providing that, notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of New York State Department of Health membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law. The Articles of Organization incorrectly cite section 2802-a(4)(b) of the Public Health Law. [CSL]
15. The Operating Agreement for Inter-Ocean Family, LLC must be executed. [CSL]
16. The Operating Agreement for Inter-Ocean Family, LLC must include a provision stating that all members must be natural persons and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 121232-E
Amber Court at Home, LLC

County: Nassau (Westbury)
Purpose: Establishment

Program: Certified Home Health Agency
Submitted: April 17, 2012

Executive Summary

Description

Amber Court at Home, LLC, an existing limited liability company, requests approval to establish an Article 36 Certified Home Health Agency (CHHA) to serve New York, Richmond, Queens, Kings, Bronx, Nassau and Suffolk counties. The CHHA will be operated from a main office, and a branch office; both in leased space. The main office is to be located at 3400 Brush Hollow Road, Westbury, New York 11590, and the branch office will be located at 1800 Waring Avenue, Bronx, New York 10469.

The members of Amber Court at Home, LLC currently operate a licensed home care service agency (LHCSA), and three adult care facilities (ACF) with assisted living program (ALP) beds within the service area of the proposed CHHA. Amber Court at Home, LLC members and their ownership interest are as follows: Alfred Schonberger with 16.67%, Judith Schonberger with 16.67%, Robert Snyder with 33.33%, and Raphael Weiss with 33.33%.

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 CHHA's. Amber Court at Home, LLC submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

DOH Recommendation
Contingent approval.

Need Summary
Amber Court at Home's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary
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	Revenues:	\$ 6,577,713
	Expenses:	<u>\$ 4,279,054</u>
	Gain:	\$2,298,659

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 of this application.

Office of Health Systems Management

Approved contingent upon:

1. Submission of executed building leases that is acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of an executed and dated Certificate of Amendment of the Articles of Organization of Amber Court at Home LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of an executed and dated Operating Agreement of Amber Court at Home LLC, acceptable to the Department. [CSL]

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. [CHA]

Council Action Date

April 11, 2013.

Need Analysis

Background

Amber Court at Home, LLC is requesting approval to establish a new Certified Home Health Agency to serve Bronx, Kings, New York, Queens, Richmond, Nassau and Suffolk 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 17th and 27th 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 applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made to the Public Health and Health Planning Council.

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 17th and 27th 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;
- 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.

Amber Court at Home, LLC will support the MRT initiatives by avoiding unnecessary admission and readmissions to hospital and nursing homes and utilizing OBQI plans, thereby improving patient outcomes. The applicant has the support of GuildNet (MLTCP) and they state that they will work closely with other providers including MLTCPs to implement an individualized and disease centered plan of care for each patient which will enable them to focus on the core health issues of each patient, and enable the patient to maintain/improve his/her health at home.

Amber Court at Home is committed to utilizing the lowest level of care appropriate for the patient for the purpose of minimizing utilization of high-cost hospital admissions and RHCF placements. They state that on an organization-wide basis, hospitalization percentages for Amber Courts' ALP clients have decreased since they implemented Quality Assurance initiatives. These initiatives include physician and patient involvement and development of the care plan; a CMS pilot program for patients and families regarding goals of care and palliative care, avoiding hospitalizations and nursing home placement when feasible, and the utilization of nurse practitioners. They provide letters of support from several hospitals and demonstrate their development of relationships and partnerships with a multitude of named providers. They include their relationships with the Human Resources Administration (HRA) in NYC and the various county health departments as well as their linkages with community service organizations.

The applicant describes its Performance Improvement Program that will continually monitor, assess and improve the quality and appropriateness of patient care and adequacy of meeting patient needs, on an ongoing basis. Together with their MLTCP and provider partners Amber Court at Home will employ a care management model that aims to achieve cost effective care, appropriate utilization of services without impediment or jeopardy to a member's treatment plan or ability to remain safely in the community, and continuity and quality of care at the appropriate level across the care continuum.

The applicant provided relevant data regarding health status indicators and demographics of the aging population for the counties they propose to serve. The applicant included a gap analysis and demonstrates need for all counties requested through their proposal specifically for the aging population (65+). The applicant demonstrated public need using the criteria of 709.1(a) and provided supporting data. They also provided a great deal of data indicating current and projected populations of each county. The applicant describes how they will meet the health needs of members of underserved groups which have traditionally experienced difficulties in obtaining access to health services. They compare actual utilization of home care services in the geographic service area proposed to be served to the capacity in that service area and described patterns of in and out-migration.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

This proposal seeks to establish a Certified Home Health Agency (CHHA) to serve the counties of Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk Counties, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Amber Court at Home, LLC, is a for-profit limited liability company requesting approval to become established as a CHHA under Article 36 of the Public Health Law, with approval to serve Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk Counties. The LLC will have no parent or subsidiary corporations within its own corporate organizational structure. However, the LLC will be affiliated with the following providers based on additional ownership interests of the individual LLC members, as disclosed below: Amber Court of Brooklyn (Adult Care Facility and Assisted Living Program), Amber Court of Pelham Gardens (Adult Care Facility and Assisted Living Program), Amber Court of Westbury (Adult Care Facility and Assisted Living Program), Amber Court of Elizabeth (New Jersey Adult Care Facility and Assisted Living Program), Amber Court of Suffolk County (proposed but not yet approved Adult Care Facility and Assisted Living Program), and ALJUD Licensed Home Care Services, LLC (Licensed Home Care Services Agency).

The applicant proposes to operate the CHHA from a main parent office practice site located at 3400 Brush Hollow Road, Westbury, New York 11590 (Nassau County), in space that will be leased from Amber Court of Westbury Adult Care Facility and Assisted Living Program, and an additional branch office practice site located at 1800 Waring Avenue, Bronx, New York 10469 (Bronx County), in space that will be leased from Amber Court of Pelham Gardens Adult Care Facility and Assisted Living Program. The applicant proposes to provide the following home health care services:

- Nursing
- Physical Therapy
- Medical Social Services
- Medical Supplies, Equipment, and Appliances
- Home Health Aide
- Occupational Therapy
- Nutritional Services
- Personal Care
- Speech Language Pathology

The LLC members and managers, and the percentage of membership/ownership interest for each, is as follows:

<p>Raphael Weiss (33.3%) Certified Assisted Living Administrator (New Jersey) Administrator, Amber Court of Westbury (ACF/ALP)</p> <p>- Affiliations: Amber Court of Elizabeth (New Jersey ACF/ALP), Amber Court of Suffolk County (proposed ACF/ALP)</p>	<p>Robert Snyder (33.3%) Administrator, Amber Court of Pelham Gardens (ACF/ALP)</p> <p>- Affiliations: Amber Court of Elizabeth (New Jersey ACF/ALP), Amber Court of Suffolk County (proposed ACF/ALP)</p>
<p>Judith Schonberger (16.7%) Director, ALJUD Management (ACF Consulting Firm)</p> <p>- Affiliations: Amber Court of Pelham Gardens (ACF/ALP), Amber Court of Brooklyn (ACF/ALP), Amber Court of Westbury (ACF/ALP), Amber Court of Suffolk County (proposed ACF/ALP), ALJUD Licensed Home Care Services, LLC (LHCSA)</p>	<p>Alfred Schonberger (16.7%) Executive Director, ALJUD Management (ACF Consulting Firm) President of Sales and Consulting, Jet Hardware Manufacturing Corporation (Manufacturing)</p> <p>- Affiliations: Amber Court of Pelham Gardens (ACF/ALP), Amber Court of Brooklyn (ACF/ALP), Amber Court of Westbury (ACF/ALP), Amber Court of Suffolk County (proposed ACF/ALP), ALJUD Licensed Home Care Services, LLC (LHCSA), Aishel Avraham Residential Health Care Facility (RHCF now known as Keser Nursing and Rehabilitation Center, Inc.), Maimonides Medical Center (Hospital)</p>

All of the above LLC members are also the LLC managers.

A search of the above named individuals, and their employers and affiliations, revealed no matches on either the NYS OMIG Medicaid Disqualified Provider List, or the US DHHS Office of the Inspector General Exclusion List. The New Jersey Department of Health and Senior Services indicates no issues with the certification of the Assisted Living Administrator associated with this application.

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

Amber Court of Pelham Gardens (ACF/ALP),
Amber Court of Brooklyn (ACF/ALP),
Amber Court of Westbury (ACF/ALP),
Amber Court of Suffolk County (proposed not yet approved ACF/ALP),
ALJUD Licensed Home Care Services, LLC (LHCSA),
Maimonides Medical Center (Hospital),
Aishel Avraham Residential Health Care Facility - 2002 through 2005
(RHCF now known as Keser Nursing and Rehabilitation Center, Inc.)

The Division of Hospitals and Diagnostic and Treatment Centers has indicated that the hospital 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.

The Division of Adult Care Facilities/Assisted Living Services has indicated that the adult care facilities/assisted living programs have 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.

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 specified affiliation period.

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

The State of New Jersey has indicated that the adult care facility/assisted living program within its jurisdiction 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.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted two letters of interest to lease, for the following proposed sites, the terms of which are summarized below:

Premises:	1,000 gross square feet located at 3400 Brush Hollow Road, Westbury, New York 11590
Landlord:	Amber Court of Westbury
Lessee:	Amber Court at Home, LLC
Term:	5 years with a renewable five year term
Rent	\$20,000 per year (\$20 per sq. ft.)
Provisions:	Utilities, taxes, and maintenance

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

Premises: 1,000 gross square feet located at 1800 Waring Avenue, Bronx, New York 10469
 Landlord: Amber Court of Pelham Gardens
 Lessee: Amber Court at Home, LLC
 Term: 5 years with a renewable five year term
 Rent: \$20,000 per year (\$20 per sq. ft.)
 Provisions: Utilities, taxes, and maintenance

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

Operating Budget

The applicant has submitted the first and third year's operating budgets, in 2013 dollars, as summarized below:

Description	<u>First Year</u>	<u>Third Year</u>
Medicaid	\$723,310	\$2,522,976
Medicare	1,010,365	3,524,246
Commercial	152,086	530,491
Total Revenues	\$1,885,761	\$6,577,713
Total Expenses	\$1,398,733	\$4,279,054
Net Income or (Loss)	\$487,028	\$2,298,659

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

	<u>First Year</u>	<u>Third Year</u>
Medicaid Manage Care	34%	34%
Medicare Fee-for-Service	54%	54%
Commercial Manage Care	10%	10%
Charity Care	2%	2%

The average Medicaid episodic payment is expected to be \$4,166.39 after taking into consideration the average case mix of .697292 and adjusting for the Long Island Wage Index Factor of 1.078872. The applicant expects to have approximately 173.6 Medicaid episodes in first year and 605.5 episodes by the third year.

Medicare average episodic payment of \$3,662.88 was based upon the experiences from similar CHHA's in the downstate region. The applicant expects to have approximately 275.8 Medicare episodes in the first year and 962 Medicare episodes in the third year.

Commercial revenue projections were based on the historical fee for service averages from the downstate region of \$105.88 per visit.

Capability and Feasibility

There are no project costs associated with this application.

The working capital requirement is estimated at \$713,176, which appears reasonable based upon two months of third year expenses, and will be provided from the members personal resources. Presented as BFA Attachment A is the members' net-worth statement, which indicates they have sufficient liquid resources for this purpose. Presented as BFA Attachment B, is the Pro-forma Balance Sheet for Amber Court at Home, LLC, which shows that the facility will start off with \$713,176 in equity.

The budget projects a first year and third year operating surplus of \$487,028, and \$2,298,659, respectively. Revenues are based on current payment methodologies. The submitted budget appears reasonable.

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
BFA Attachment B

Members Net-Worth Statement
Pro-forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 11th day of April, 2013, 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 establish a certified home health agency (CHHA) to serve all five boroughs in New York City, Nassau and Suffolk Counties, 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

APPLICANT/FACILITY

121232 E

Amber Court at Home, LLC

APPROVAL CONTINGENT UPON:

1. Submission of executed building leases that is acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of an executed and dated Certificate of Amendment of the Articles of Organization of Amber Court at Home LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of an executed and dated Operating Agreement of Amber Court at Home LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONED 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. [CHA]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 121260-E Constellation Home Care

County: Nassau (Lynbrook)
Purpose: Establishment

Program: Certified Home Health Agency
Submitted: April 19, 2012

Executive Summary

Description

Constellation Home Care, a to be formed LLC, is requesting to establish a Certified Home Health Agency, to serve Bronx, Queens, New York, Nassau, Suffolk, Westchester county's. The establishment of this new CHHA will serve the short term needs of those requiring episodic care and assist in managing and co-coordinating the care of frail New Yorkers, especially dual eligibles. In addition, the CHHA will meet the key objective to assist in the transition of dual eligibles to managed long-term care programs in support of the initiatives of the New York Medicaid Redesign Team to improve the efficiency of the health care system, decrease fragmentation and provide greater care coordination to those who are frail, elderly and/or disabled. The CHHA will provide the following services: skilled nursing, physical therapy, speech pathology, occupational therapy, medical social services, nutritionists, respiratory therapy and home health aids.

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 CHHA's. Constellation Home Care, LLC submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

The ownership of Constellation Home Care, LLC and ownership percentages are as follows:

<u>Member</u>	<u>Membership Interest</u>
Marvin J. Ostreicher	16.67%
Michelle B. Ostreicher	16.67%
Michael Lopiansky	16.67%
Llana Ostreicher	16.67%
Shayna Steg	16.67%
Barry Bokow	16.67%

DOH Recommendation
Contingent approval.

Need Summary

Constellation Home Care's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary

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 application.

Budget	Revenues:	\$16,671,696
	Expenses:	<u>16,378,441</u>
	Net Income:	\$ 293,255

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.

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application..

Office of Health Systems Management

Approval contingent upon:

1. Submission and satisfactory review of the enforcement history of the healthcare facilities/agencies for each entity affiliated with this CON application located in Connecticut and Vermont. [CHA]
2. Submission of a fully executed operating agreement that is acceptable to the Department of Health. [BFA, CSL]
3. Submission of an executed lease agreement that is acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of the applicant's fully executed proposed Articles of Organization, acceptable to the Department. [CSL]
5. Submission of a photocopy of the proposed lease agreement between Stauderman Reality, LLC, as landlord, and the applicant, as tenant, acceptable to the Department. [CSL]

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. [CHA]

Council Action Date

April 11, 2013.

Need Analysis

Background

Constellation Home Care is a proposed limited liability company requesting approval to establish an Article 36 Certified Home Health Agency to serve the counties of Bronx, New York, Queens, Nassau, Suffolk and Westchester.

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 17th and 27th 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 applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made to the Public Health and Health Planning Council.

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 17th and 27th 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;
- 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.

Constellation Home Care is part of National HealthCare Associates (NHC) with an extensive network of nursing homes and other health care services in New York and Connecticut. NHC is an integrated continuing care health care system with significant resources devoted to care and disease management, health information technology, protocols for avoiding unnecessary hospital admissions and readmissions, and extensive relationships with many managed care organizations, hospitals, and physicians throughout the proposed service area.

The applicant discussed how the proposed CHHA would support Medicaid Redesign initiatives. This provider has the unique ability to serve adult populations with severe mental illness. The Connecticut based CHHA has demonstrated experience serving this population and they plan on targeting this population for their proposed NY based CHHA. The application focuses on how the CHHA can serve this population, the need for such services in the proposed counties, and how providing such services through their CHHA fits into the managed care model being implemented through MRT.

The applicant has existing and potential contracts with multiple MLTCPs and Managed Care Organizations that operate in the proposed service areas. The applicant discussed how the proposed CHHA will enhance care coordination, ensure continuity of home health services for individuals receiving care, improve patient choice and access, be cost effective and efficient, and improve quality outcomes.

The applicant provided demographic data for each county proposed and provided a gap analysis for each of these counties. They provided statistics on the dual eligible population and described the population characteristics of the proposed service areas. The applicant discussed the diversity of the population, poverty levels, insurance status, living arrangements and the disability levels in the proposed counties. They discussed the utilization patterns of home care services and other related services such as nursing home occupancy rates, availability of ALP beds, and ER utilization rates. Provided PQI stats for each county and projected future population growth and CHHA utilization patterns.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

This proposal seeks to establish a Certified Home Health Agency (CHHA) to serve the counties of Bronx New York, Queens, Nassau, Suffolk and Westchester, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Constellation Home Care is a proposed limited liability company requesting approval to become established as a CHHA under Article 36 of the Public Health Law, with approval to serve the counties of Bronx, New York, Queens, Nassau, Suffolk and Westchester,.

The applicant proposes to operate the CHHA from an office located at 46 Stauderman Avenue, Lynbrook, New York 11563. The applicant proposes to provide the following health care services:

- Nursing
- Physical Therapy
- Respiratory Therapy
- Speech Language Pathology
- Personal Care
- Nutritional
- Home Health Aide
- Occupational Therapy
- Audiology
- Medical Social Services
- Medical Supplies, Equipment, and Appliances

The Members of Constellation Home Care, LLC will be as follows:

Marvin J. Ostreicher, NHA (NY, NJ) – 16.67%
Supervisor of Operations, Blair Care Center, Inc.
Supervisor of Operations, Bloomfield Health Care Center of Connecticut, LLC
Supervisor of Operations, Catskill Crossings
Supervisor of Operations, Glens Falls Crossings
Supervisor of Operations, Huntington Hills Center for Health and Rehabilitation
Supervisor of Operations, Maple View Manor of Connecticut, LLC
Supervisor of Operations, Marlborough Health Care Center, Inc.
Supervisor of Operations, Milford Health Care Center, Inc.
Supervisor of Operations, Poughkeepsie Crossings
Supervisor of Operations, Regency House of Wallingford, Inc.
Supervisor of Operations, Riverside Health Care Center, Inc.
Supervisor of Operations, Ross Health Care Center Inc.
Supervisor of Operations, Sands Point Center for Health and Rehabilitation
Supervisor of Operations, Utica Crossings
Supervisor of Operations, Water's Edge Center for Health and Rehabilitation

Affiliations:

- Cambridge Manor of Fairfield, LLC (2001 – present)
- Maple View Manor of Connecticut, LLC (1999 – present)
- Regency House of Wallingford, Inc. (1991 – present)
- Bloomfield Health Care Center of Connecticut, LLC (1999 – present)
- Water's Edge Center for Health and Rehabilitation (1980 – present)
- Riverside Health Care Center, Inc. (1980 – present)
- Marlborough Health Care Center, Inc. (1984 – present)
- Milford Health Care Center, Inc. (1984 – present)

Affiliations Continued:

- Ludlowe Center for Health and Rehabilitation, LLC (2006 – present)
- New Milford Crossing, LLC (2008 – present)
- Bristol Crossings, LLC (2008 – present)
- Sterling Manor, Inc. (1991 – Feb. 2009)
- Constellation Health Services, LLC (2008 – present)
- Ross Health Care Center, Inc. (1996 – present)
- Belair Care Center, Inc. (1996 – present)
- River Manor Care Center (1995 – 2010)
- Sands Point Center for Health and Rehabilitation (1986 – present)
- Montclair Care Center, Inc. d/b/a Marquis Rehabilitation and Nursing Center (1998 – present)
- Forest Manor Care Center, Inc. d/b/a Glen Cover Center for Nursing and Rehabilitation (1998 – present)
- Rutland Crossings, LLC d/b/a The Pines at Rutland Center for Nursing and Rehabilitation (2008 – present)
- Brattleboro Crossings, LLC d/b/a Pine Heights at Brattleboro Center for Nursing

Barry Bokow – 16.67%

Vice President, National Health Care Associates

Affiliations:

- Cambridge Manor of Fairfield, LLC (2001 – present)
- New Milford Crossings, LLC (2008 – present)
- Bristol Crossings, LLC (2008 – present)
- Regency House of Wallingford, Inc. (1991 – present)
- Ludlowe Center for Health and Rehabilitation, LLC (2006 – present)

- Sterling Manor, Inc. (1991 – Feb. 2009)
- Constellation Health Services, LLC (2008 – present)
- Rutland Crossings, LLC d/b/a The Pines at Rutland Center for Nursing and Rehabilitation (2008 – present)
- Brattleboro Crossings, LLC d/b/a Pine Heights at Brattleboro Center for Nursing and Rehabilitation (2008 – present)
- Huntington Hills Center for Health and Rehabilitation (2001 – present)

Michelle B. Ostreicher – 16.67%

Member, Tiferes Investors

Affiliations:

- KFG Operating I, LLC d/b/a Hopkins Center for Rehabilitation and Healthcare (3/24/11 – 01/01/13)

Llana G. Ostreicher – 16.67%

Unemployed

Michael Lopiansky – 16.67%

Chief Executive Officer – Picsee, Inc.

Shayna K. Steg – 16.67%

Unemployed

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 Marvin Ostreicher's NHA license # 02455 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 New Jersey Nursing Home Administrators License Board has indicated that Marvin Ostreicher's NHA license #421 is active and good standing.

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

- Cambridge Manor of Fairfield, LLC
- Maple View Manor of Connecticut, LLC
- Regency House of Wallingford, Inc.
- Bloomfield Health Care Center of Connecticut, LLC
- Water's Edge Center for Health and Rehabilitation
- Riverside Health Care Center, Inc.
- Marlborough Health Care Center, Inc.
- Milford Health Care Center, Inc.
- Ludlowe Center for Health and Rehabilitation, LLC (2006 – present)
- New Milford Crossing, LLC (2008 – present)
- Bristol Crossings, LLC (2008 – present)
- Sterling Manor, Inc. (1991 – Feb. 2009)
- Constellation Health Services, LLC (2008 – present)
- Ross Health Care Center, Inc.
- Belair Care Center, Inc.
- River Manor Care Center (1995 – 2010)
- Sands Point Center for Health and Rehabilitation
- Montclair Care Center, Inc. d/b/a Marquis Rehabilitation and Nursing Center

- Forest Manor Care Center, Inc. d/b/a Glen Cover Center for Nursing and Rehabilitation
- Rutland Crossings, LLC d/b/a The Pines at Rutland Center for Nursing and Rehabilitation (2008 – present)
- Brattleboro Crossings, LLC d/b/a Pine Heights at Brattleboro Center for Nursing and Rehabilitation (2008 – present)
- Huntington Hills Center for Health and Rehabilitation
- KFG Operating I, LLC d/b/a Hopkins Center for Rehabilitation and Healthcare (3/24/11 – 01/01/13)

The Bureau of Quality Assurance and Surveillance for Nursing Homes has indicated the following:

KFG Operating, 1 LLC d/b/a Hopkins Center for Rehabilitation and Healthcare was fined four thousand dollars (\$4,000) pursuant to a stipulation and order dated August 24, 2012 for surveillance findings of April 11, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and 415.26 Administration.

Forest Manor Care Center, Inc. d/b/a Glen Cove Center for Nursing and Rehabilitation was fined one thousand dollars (\$1,000) pursuant to a stipulation and order dated October 27, 2005 for surveillance findings of February 15, 2005. Deficiencies were found under 10 NYCRR 415.11(c)(3)(i) Resident Assessment and Care Planning: Comprehensive Care Plans.

Ross Health Care Center, Inc. was fined ten thousand dollars (\$10,000) pursuant to a stipulation and order dated March 1, 2011 for surveillance findings of June 14, 2010. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.

Huntington Hills Center for Health and Rehabilitation was fined four thousand dollars (\$4,000) pursuant to a stipulation and order dated March 23, 2009 for surveillance findings of July 30, 2008. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.15(a) Medical Services: Medical Director.

The Information provided by the Bureau of Quality Assurance for Nursing Homes 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.

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.

Recommendation

From a programmatic perspective, contingent approval is recommended.

<h2>Financial Analysis</h2>

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Fee-for-Service	\$2,031,819	\$2,596,451
Medicaid - Medicare	1,853,525	9,497,905
Medicare-Fee-for-Service	1,209,208	4,035,324
Medicare - Medicaid	142,358	456,816
Private Pay	<u>27,180</u>	<u>85,200</u>
Total Revenues:	\$5,264,090	\$16,671,696
Expenses:	<u>\$5,413,104</u>	<u>\$16,378,441</u>
Net Income:	(\$149,014)	\$293,255

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

	<u>Year One</u>	<u>Year Three</u>
Medicare Managed Care	7.2%	7.2%
Medicare Fee-for-Service	44.6%	44.6%
Medicaid Managed Care	22.1%	35.4%
Medicaid Fee-for-Service	22.2%	8.9%
Private Pay	1.4%	1.4%
Charity Care	2.5%	2.5%

Utilization assumptions are based on the applicant's review of the current regional utilization for CHHA services. Expenses are based upon projected utilization and on current salaries in the area for CHHA services.

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:	3,000 sq. ft., located at 46 Stauderman Avenue, Lynbrook, NY
Owner/landlord:	Stauderman Realty, LLC
Lessee:	Constellation Home Care, LLC
Term:	5 years- with renewable 5 year term.
Rent:	\$48,000 per year payable in \$4,000 monthly installments. (\$16.00 per square foot.)
Provisions:	Triple Net lease

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$2,729,700 based on two months of third year expenses and will be provided by Marvin Ostreicher. Presented as BFA Attachment B, is applicant's net worth statement, indicating sufficient funds. Presented as BFA attachment A is the Pro Forma balance statement of Constellation Home Care, LLC as of the first day of operation, which indicates a positive net asset balance position of \$2,729,700.

The submitted budget indicates a net income of (\$149,014) and \$293,255 for the first and third years of operations, respectively. The first year operating loss will be funded through working capital. Revenue is based on current payment rates for certified home health agencies, which includes the recent implementation of the Medicaid Episodic Payment System. The budget appears reasonable.

Based on the preceding, 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
BFA Attachment B

Pro-forma Balance Statement- Constellation Home Care
Personal Net Worth Statement

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 11th day of April, 2013, 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 establish a certified home health agency (CHHA) to serve Bronx, Queens, New York, Nassau, Suffolk and Westchester Counties, 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

APPLICANT/FACILITY

121260 E

Constellation Home Care

APPROVAL CONTINGENT UPON:

1. Submission and satisfactory review of the enforcement history of the healthcare facilities/agencies for each entity affiliated with this CON application located in Connecticut and Vermont. [CHA]
2. Submission of a fully executed operating agreement that is acceptable to the Department of Health. [BFA, CSL]
3. Submission of an executed lease agreement that is acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of the applicant's fully executed proposed Articles of Organization, acceptable to the Department. [CSL]
5. Submission of a photocopy of the proposed lease agreement between Stauderman Reality, LLC, as landlord, and the applicant, as tenant, acceptable to the Department. [CSL]

APPROVAL CONDITIONED 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. [CHA]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

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

April 11, 2013

**B. APPLICATIONS FOR ESTABLISHMENT AND
CONSTRUCTION OF HEALTH CARE FACILITIES**

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Residential Health Care Facility – Establish/Construct

Exhibit #21

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122261 E	St. Marks Brooklyn Associates LLC d/b/a Crown Heights Center for Nursing and Rehabilitation (Kings County) Mr. Fensterman – Abstained at ERPC	Contingent Approval



Public Health and Health Planning Council

Project # 122261-E St. Marks Brooklyn Associates LLC d/b/a Crown Heights Center for Nursing and Rehabilitation

County: Kings (Brooklyn)
Purpose: Establishment

Program: Residential Health Care Facility
Submitted: December 4, 2012

Executive Summary

Description

St. Marks Brooklyn Associates LLC d/b/a Crown Heights Center for Nursing and Rehabilitation, is seeking approval to become the new operator of Marcus Garvey Residential Rehab Pavilion, an existing 295-bed, not-for-profit Corporation, residential health care facility (RHCF) located in Brooklyn.

St. Marks Brooklyn Associates, LLC ownership of the operation after the requested change is as follows:

<u>Current Operator</u>	<u>Proposed Operator</u>
Marcus Garvey Manor Nursing Home Company Inc. (100%)	St. Marks Brooklyn Associates, LLC
	Jack Basch (20%)
	Joel Landau (40%)
	Solomon Rubin (20%)
	Marvin Rubin (20%)

Jack Basch is sole member of St. Marks Brooklyn Associates, LLC and was granted receivership by the Department of Health on December 24, 2012, and will be transferring a portion of his membership interest to three additional members upon final approval of this CON application by the Public Health and Health Planning Council.

Jack Basch currently has 25% membership interest in Elmhurst Care Center for Rehabilitation & Nursing Care, a 240 bed RHCF located in Elmhurst.

Solomon Rubin currently has a 20% membership interest in Hamilton Park Multicare, a 150-bed RHCF located in Brooklyn.

Ruby Weston Manor d/b/a as Linden Center for Nursing Rehabilitation, 240-bed RHCF located in Brooklyn, is currently under receivership and was contingently approved by the Public Health and Planning Council in February 2012

under CON 112031. Once final approval is given, Jack Basch and Marvin Rubin will have 25% and 15% membership interest, respectively.

DOH Recommendation
Contingent approval.

Need Summary

Marcus Garvey Nursing Home's utilization was 64.3% in 2009 and 2010 and was not reported in 2011. However, the facility reported an occupancy rate of 95.6% for January, 2013. This is attributable to Marcus Garvey's accommodation of residents displaced from other RHCFs by Hurricane Sandy, which struck the New York City area in late October, 2012. There will be no change in services or bed capacity as a result of this change in ownership.

Program Summary

No negative information has been received concerning the character and competence of the applicants.

Financial Summary

The purchase price for the operating assets is \$5,000,000. The purchase price will be paid by \$1,250,000 in cash and a \$3,750,000 mortgage at 5.6% over a 10 year term with a 20 year amortization. The members of St. Marks Brooklyn Associates LLC have submitted an affidavit stating that they will fund the balloon payment should acceptable financing not be available at the time the loan comes due after the 10-year period.

There are no project costs associated with this proposal.

Budget:	Revenues:	\$21,102,465
	Expenses:	<u>\$20,695,689</u>
	Gain:	\$ 406,776

Subject to the noted contingencies, 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 review of this project.

Office of Health Systems Management

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implementation of the plan. The plan should include but not be limited to:
 - Information on activities relating to a-c above
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions
 - Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
3. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
4. Submission of an executed and dated building lease that is acceptable to the Department of Health. [BFA, CSL]
5. Submission of a loan commitment for the purchase price that is acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of an executed and dated Certificate of Amendment of the Articles of Organization of St. Marks Brooklyn Associates L.L.C., acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed and dated Operating Agreement of St. Marks Brooklyn Associates L.L.C., acceptable to the Department. [CSL]
8. Submission of the legal description of the premises conveyed by the Agreement for the Sale of Real Property, acceptable to the Department. [CSL]
9. Submission of an executed and dated, proposed Certificate of Amendment to the Certificate of Incorporation or certificate of Dissolution of Marcus Garvey Residential Rehab Pavilion, Inc., acceptable to the Department. [CSL]

Council Action Date

April 11, 2013.

Need Analysis

Background

St. Marks Brooklyn Associates LLC, doing business as Crown Heights Center for Nursing and Rehabilitation, seeks approval to be established as the new operator of Marcus Garvey Nursing Home Company Inc., a voluntary not for profit, 295-bed residential health care facility located at 810-20 St. Marks Avenue Brooklyn, 11213, in Kings County.

Analysis

Marcus Garvey Nursing Home's utilization was lower than that of Kings County and the New York City Region for 2009 and 2010, as shown in Table 1 below:

Facility/County/Region	% Occupancy 2009	% Occupancy 2010	% Occupancy 2011
Marcus Garvey Nursing Home Company	64.3%	64.3%	Did not report
Kings County	93.7%	93.6%	94.6%
NYC Region	95.0%	94.9%	94.8%

Marcus Garvey Nursing Home's low utilization has been attributed to quality of care issues. Marcus Garvey was designated as a Special Focus Facility by the Center for Medicine and Medicaid Services (CMS), which identifies nursing homes with quality of care compliance failures. A receiver has been appointed to address these quality issues.

The population over the age of 65 in Kings County is expected to grow by 16.9 percent from 2010 to 2020 according to Cornell University's population projections. The growth is expected to increase need for RHCF beds in the Kings County area.

Crown Heights intends to increase utilization at Marcus Garvey by accepting hospitalized patients on alternate level of care status on a priority basis and to conduct staff training and recruitment as appropriate. Additionally, an interdisciplinary care team will be established to develop a treatment plan that provides the necessary programs to help residents maintain a high quality of life and to elevate their sense of usefulness to themselves and the community.

The 2016 projected bed need for the New York City Region is 7,657. The region has an overall occupancy of 94.8%.

2016 Projected Need	51,071
Current Beds	43,065
Beds Under Construction	349
Total Resources	43,065
Unmet Need	7,657

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient admissions is at least 75% of the planning area percentage or Health Systems Agency percentage, whichever is applicable.

Marcus Garvey Nursing Home Company was above the 75 percent planning average for 2009 and 2010. The facility reported Medicaid admissions of 49.72 percent and in 2009. The 75 percent planning averages for Kings County for these years were 14.97 percent (2009) and 33.03 percent (2010).

Conclusion

Approval of this application is expected to enhance the quality of care offered at Marcus Garvey, increase occupancy and improve financial stability. This will enable the facility to remain a source of needed RHCf care for the community.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

	<u>Existing</u>	<u>Proposed</u>
Facility Name	Marcus Garvey Nursing Home Company Inc	Crown Heights Center for Nursing and Rehabilitation
Address	810-20 St. Marks Avenue Brooklyn, NY. 11213	Same
RHCF Capacity	295	Same
ADHC Program Capacity	0	Same
Type Of Operator	Not-for-profit (Voluntary)	Proprietary
Class Of Operator	Corporation	LLC
Operator	Marcus Garvey Manor Nursing Home Company Inc.	St. Marks Brooklyn Associates LLC
		<u>Managing Members</u>
		Joel Landau.....40%
		Jack Basch.....20%
		Solomon Rubin.....20%
		Marvin Rubin.....20%

Character and Competence

Residential Health Care Facilities

- Elmhurst Care Center, Inc. (03/2003 to present)
- Bezalel Rehabilitation and Nursing Center (03/2003 to present)
- Ruby Weston Manor (12/2011 to present)
- Hopkins Center for Rehabilitation and Healthcare (03/2012 to present)
- Hamilton Park Nursing and Rehabilitation Center (08/2009 to present)

Residential Health Care Facility Receivership

- Marcus Garvey Residential Rehabilitation Pavilion (12/2012 to present)

New Jersey Residential Health Care Facilities

- Norwood Terrace Health Center (03/2003 to present)

Licensed Home Care Services Agency (LHCSA)

- True Care, Inc. (03/2011 to present)

Diagnostic Laboratory

- Shiel Medical Laboratory, Inc. (03/2003 to present)

Individual Background Review

Joel Landau is the Director of Care to Care, LLC, a radiology benefit management company. He is also the owner of The Intelimed Group, a medical contracting and credentialing company and E-Z Bill, a medical billing company. He is a notary public, licensed by the Department of State in New York State. Mr. Landau discloses no health facility ownership interests.

Jack Basch is the president of Shiel Medical Laboratory, Inc., a diagnostic test lab in Brooklyn, New York. He also serves as a consultant for the Elmhurst Care Center, Inc. Mr. Basch discloses the following ownership interests:

- Elmhurst Care Center, Inc. (01/1999 to present)
- Bezalel Rehabilitation and Nursing Center (1989 to present)
- Ruby Weston Manor (12/2011 to present)
- Marcus Garvey Nursing Home Company, Inc. (12/2012 to present)
- Shiel Medical Laboratory (1994 to present)

Solomon Rubin is the controller for the Grandell Rehabilitation and Nursing Center and the Beach Terrace Care Center. Solomon Rubin discloses the following ownership interests:

- Hamilton Park Nursing and Rehabilitation Center (08/2009 to present)
- Ruby Weston Manor (01/2012 to present)
- Norwood Terrace Health Center (02/2000 to present)

Marvin Rubin is a manager at the Hamilton Park Nursing and Rehabilitation Center. Marvin Rubin discloses the following ownership interests:

- Ruby Weston Manor (02/2012 to present)
- Hopkins Center for Rehabilitation and Healthcare (03/2012 to present)
- True Care, Inc. (03/2011 to present)

Character and Competence-Analysis:

A review of operations for the Elmhurst Care Center, Inc., Bezalel Rehabilitation and Nursing Center, Ruby Weston Manor, Hopkins Center for Rehabilitation and Healthcare, Hamilton Park Nursing and Rehabilitation Center, and the Marcus Garvey Nursing Home Company, Inc. for the period identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations the Norwood Terrace Health Center in Plainfield, New Jersey for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the licensed home care services agency True Care, Inc. reveals that a substantially consistent high level of care has been provided since there were no enforcements.

A review of the diagnostic test laboratory Shiel Medical Laboratory, Inc. indicates there are no issues with its license.

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 and sale agreement, the terms of which are summarized below:

Date:	October 22, 2012
Seller:	Marcus Garvey Residential Rehab Pavilion, Inc.
Purchaser :	St. Marks Brooklyn Associates LLC
Purchased Assets:	All assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents;
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Assumed Liabilities:	Those associated with purchased assets including any liabilities resulting from the receivership agreement.
Purchase Price:	\$5,000,000 for the operating interest.
Payment of Purchase Price:	A total deposit of \$134,000 paid to the pension fund and in the event additional amounts become due to the Pension Fund between the executed date and receivership date, buyer shall fund up to an additional \$250,000. \$2,000,000 to be held in escrow at execution with the remaining balance to be paid at closing.

Prior to and as a condition of the closing, Marcus Garvey Residential Rehab Pavilion, Inc. will sell to St. Marks Avenue Property, LLC the owned real property for \$13,000,000. This agreement has also been executed. The members and membership interests of St. Marks Avenue Property, LLC are identical to the members of St. Marks Brooklyn Associates, LLC.

The proposed members have 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 interest, without releasing the transferor of its liability and responsibility.

Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Premises:	A 295-bed RHCf located at 810-20 St. Marks Avenue, Brooklyn
Landlord:	St. Marks Avenue Property LLC
Tenant:	St. Marks Brooklyn Associates LLC
Terms:	25 years commencing on the execution of the lease
Rental:	Base rent equal to the interest and amortization on the amount of the mortgage covering the premises. \$316,406 per year (\$26,367.17 per month)
Provisions:	Tenant is responsible for taxes, insurance, utilities and maintenance

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

Following is a summary of the submitted operating budget for the RHCF, presented in 2013 dollars, for the first year subsequent to change in ownership:

	Total
Revenues:	
Medicaid	\$14,929,977
Medicare	5,099,598
Private Pay	<u>1,072,890</u>
Total Revenues	\$21,102,465
Expenses:	
Operating	\$19,920,830
Capital	<u>774,859</u>
Total Expenses	<u>\$20,695,689</u>
Net Income	<u>\$406,776</u>
Utilization: (patient days)	
Occupancy	92.0%

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

- The capital component of the Medicaid rate is based on return on, return of equity.
- Expenses include lease rental.
- Medicaid revenues include assessment revenues.
- Medicaid rates are based on 2012 Medicaid pricing rates with no trend to 2013.
- Overall utilization is projected at , while utilization by payor source is expected as follows:

Medicaid	86.8%
Medicare	9.8%
Private Pay	3.4%

Significant Year One Expense Changes:

<u>Expense</u>	<u>Current Year</u> <u>(2011)</u>	<u>Year One</u>	<u>(Savings)/Dis-Savings</u>
Administrative	\$2,076,977	\$1,186,988	(\$889,989)
Assessments	\$2,092,260	-0-	(\$2,092,260)
Nursing	\$6,530,547	\$6,916,563	\$386,016
Salaries			
			Net Savings: (\$2,596,233)

- Breakeven occupancy is projected at 90.2%.

Capability and Feasibility

The purchase price of the operations will be financed by a loan from Skyline Capital of \$3,750,000 at an interest rate of 5.6% for 10 years, with a 20 year amortization with the remaining \$1,250,000 from the members of St. Marks Brooklyn Associates, LLC and the purchase price of the real property will be financed by a loan from Skyline Capital of \$9,750,000 at an interest rate of 5.6% for 30 years, with the remaining \$3,250,000 from the members of St. Marks Avenue Property, LLC equity. Presented as BFA Attachment B, is the net worth statement of proposed members which shows sufficient equity. Letters of interest have been submitted by Skyline Capital.

The members of St. Marks Brooklyn Associates LLC have submitted an affidavit stating that they will fund the balloon payment should acceptable financing not be available at the time the loan comes due after the 10-year period. Presented as BFA Attachment E, is the interest and amortization schedule for the ten year term.

Working capital requirements are estimated at \$3,449,282, based on two months of the first year expenses, which \$1,724,641 will be satisfied from the proposed members' equity and the remaining \$1,724,641 will be satisfied through a loan from Skyline Capital at 5.6% over 5 years. A letter of interest has been supplied by the bank. An affidavit from Jack Basch, an applicant member, states that he is willing to contribute resources disproportionate to his ownership percentages to cover necessary equity contributions. Presented as BFA Attachment B, is the net worth of proposed members which shows sufficient equity.

The submitted budget indicates that a net income of \$406,776 would be maintained during the first year following change in ownership. The projected budget of the facility is based on an increase in the census and additional nursing staff to address increased occupancy. The facility in the past had serious resident care deficiencies that have resulted in a loss of occupancy. The first two complete months' occupancy for the facility since the appointment of the receiver has averaged 94.1% compared to a first year budgeted occupancy of 92%. The introduction of Jack Basch, as receiver, has restored the facility's reputation in the community and allow referral agencies to admit patients to Marcus Garvey knowing that the quality of care issues have been corrected. Therefore, the applicant appears to have already dealt with the utilization issue and has demonstrated that the projected utilization is achievable. The operational losses have also been corrected through the projected budget by an approximate reduction of \$1,000,000 in unnecessary overhead expenses in administration, finance and housekeeping and an approximate reduction of \$2,000,000 in prior year revenue assessment expenses, which were a one-time accrual in 2011. Presented as BFA Attachment C, is the pro-forma balance sheet of St. Marks Brooklyn Associates, LLC d/b/a Crown Heights Center for Nursing and Rehabilitation, which indicates positive members' equity of \$2,974,641 as of the first day of operations. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with a cost-based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

As shown on BFA Attachment D, the facility experienced negative working capital, experienced positive net assets and a net loss from operations in 2010-2011 of \$2,686,470 and \$524,959, respectively. In 2012, Marcus Garvey Residential Rehab Pavilion, Inc. went into voluntary receivership due to the facility's ongoing financial difficulties and submitted a plan of action to DOH to reduce operating expenses and stabilize financial operations.

As stated in the Asset Purchase Agreement, the receiver has been infusing additional capital into the facility to meet payroll and union benefit obligations. There is no 2012 balance sheet available, only an income statement as of October 31, 2012, which shows an operational loss of \$2,248,156.

BFA Attachments F, Financial Summary of Elmhurst Care Center, shows the facility has maintained positive working capital, positive equity and net income from operations for the periods shown with the exception of a net loss from operations as of October 31, 2012. The reason for the \$462,789 net loss is due to the recording of a \$1,408,000 retroactive recoupment due to third party payors.

BFA Attachments G, Financial Summary of Hamilton Park Multicare, LLC shows the facility has experienced negative working capital, maintained positive equity and net income from operations for the periods shown with the exception of a net loss from operations for 2010. The negative working capital is due to salaries and benefits accrued in that year, but not paid until incurred along with estimated third party liabilities. The \$493,178 net operating loss is reduced by \$1,000,000 non-operating revenue, resulting in a total net income of \$506,822 from the sale of the facility's Long Term Home Health Care Program (LTHHCP) to Personal Touch Home Care. The transfer of the LTHHCP from Hamilton Park Multicare, LLC has allowed the facility to eliminate its operating losses.

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 approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Organizational Chart of proposed entities
BFA Attachment B	Net Worth of Proposed Members
BFA Attachment C	Pro-forma Balance Sheet,
BFA Attachment D	Financial Summary, Marcus Garvey Residential Rehab Pavilion
BFA Attachment E	Interest and Amortization Schedule
BFA Attachment F	Financial Summary, Elmhurst Care Center, Inc.
BFA Attachment G	Financial Summary, Hamilton Park Multicare, LLC

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 11th day of April, 2013, 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. Marks Brooklyn Associates, LLC d/b/a Crown Heights Center for Nursing and Rehabilitation as the new operator of Marcus Garvey Nursing Home Company, 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:

122261 E

FACILITY/APPLICANT:

St. Marks Brooklyn Associates, LLC d/b/a/
Crown Heights Center for Nursing and
Rehabilitation

APPROVAL CONTINGENT UPON:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implementation of the plan. The plan should include but not be limited to:
 - Information on activities relating to a-c above
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions
 - Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
3. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
4. Submission of an executed and dated building lease that is acceptable to the Department of Health. [BFA, CSL]
5. Submission of a loan commitment for the purchase price that is acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of an executed and dated Certificate of Amendment of the Articles of Organization of St. Marks Brooklyn Associates L.L.C., acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed and dated Operating Agreement of St. Marks Brooklyn Associates L.L.C., acceptable to the Department. [CSL]
8. Submission of the legal description of the premises conveyed by the Agreement for the Sale of Real Property, acceptable to the Department. [CSL]
9. Submission of an executed and dated, proposed Certificate of Amendment to the Certificate of Incorporation or certificate of Dissolution of Marcus Garvey Residential Rehab Pavilion, Inc., 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:

Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237