

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

January 30, 2014
10:00 a.m.

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

I. COMMITTEE ON CODES, REGULATIONS AND LEGISLATION

Angel Gutiérrez, M.D., Chair

Exhibit #1

For Emergency Adoption

13-08 Amendment of Subpart 7-2 of Title 10 NYCRR - Children's Camps

For Adoption

13-25 Section 405.4 of Title 10 NYCRR -Definition of Pediatric Sepsis
Update

13-20 Amendment of Section 400.21 and Repeal of Sections 405.43 and 700.5
of Title 10 NYCRR – Advance Directives

II. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Jeffrey Kraut, Chair

A. Applications for Construction of Health Care Facilities

Acute Care Services - Construction

Exhibit # 2

	<u>Number</u>	<u>Applicant/Facility</u>
1.	132187 C	Winthrop-University Hospital (New York County)
2.	132207 C	New York Presbyterian Hospital – Columbia Presbyterian Center (New York County)

Ambulatory Surgery Centers - Construction

Exhibit # 3

	<u>Number</u>	<u>Applicant/Facility</u>
1.	132199 C	NYU Hospitals Center (New York County)
2.	132205 C	Strong Memorial Hospital (Monroe County)
3.	132210 C	Cayuga Medical Center at Ithaca (Tompkins County)

Residential Health Care Facilities – Construction

Exhibit # 4

	<u>Number</u>	<u>Applicant/Facility</u>
1.	131309 C	Jamaica Hospital Nursing Home Co. Inc. (Queens County)
2.	132267 C	Linden Center for Nursing and Rehabilitation (Kings County)

Upstate Request For Applications - Certified Home Health Agencies - Construction

Exhibit # 5

	<u>Number</u>	<u>Applicant/Facility</u>
1.	132354 C	Alpine Home Health Care, LLC (Bronx County)

Downstate Request For Applications - Certified Home Health Agencies - Construction

Exhibit # 6

	<u>Number</u>	<u>Applicant/Facility</u>
1.	121223 C	Excellent Home Care Services, LLC (Kings County)
2.	121259 C	Americare Certified Special Services Inc. (Kings County)

B. Applications for Establishment and Construction of Health Care Facilities/Agencies

Ambulatory Surgery Centers - Establish/Construct

Exhibit # 7

<u>Number</u>	<u>Applicant/Facility</u>
1. 112086 B	1504 Richmond, LLC d/b/a Richmond Surgery Center (Richmond County)
2. 132134 B	Moshenyat, LLC d/b/a Moshenyat Gastroenterology Center (Kings County)

Diagnostic and Treatment Centers - Establish/Construct

Exhibit # 8

<u>Number</u>	<u>Applicant/Facility</u>
1. 131284 B	Lasante Health Center, Inc. (Kings County)
2. 132080 B	Broadway Community Health Center, Inc. (New York County)

Dialysis Services- Establish/Construct

Exhibit # 9

<u>Number</u>	<u>Applicant/Facility</u>
1. 132178 E	Big Apple Dialysis Management, LLC (Kings County)

Residential Health Care Facilities - Establish/Construct

Exhibit # 10

<u>Number</u>	<u>Applicant/Facility</u>
1. 131036 E	Little Neck Nursing Home (Queens County)
2. 131159 E	Morningside Acquisition I, LLC d/b/a Morningside House Nursing Home (Bronx County)
3. 131348 E	Shore View Nursing & Rehabilitation Center, LLC (Kings County)
4. 132071 E	Steuben Operations Associates, LLC d/b/a Steuben Center for Rehabilitation and Healthcare (Steuben County)

5. 132166 E Williamsburg Services, LLC
d/b/a Bedford Center for Nursing and Rehabilitation
(Kings County)

Certified Home Health Agencies – Establish/Construct

Exhibit # 11

- | <u>Number</u> | <u>Applicant/Facility</u> |
|---------------|--|
| 1. 132115 E | Visiting Nurse Service of New York Home Care
(Kings County) |
| 2. 132264 E | Visiting Nurse Service of New York Home Care
(Kings County) |

Upstate Request For Applications - Certified Home Health Agencies – Establish/Construct

Exhibit # 12

- | <u>Number</u> | <u>Applicant/Facility</u> |
|---------------|---|
| 1. 131224 E | Visiting Nurse Service of New York Home Care
(Dutchess County) |
| 2. 131225 E | Visiting Nurse Service of New York Home Care
(Oneida County) |
| 3. 132353 E | Alpine Home Health Care, LLC
(Erie County) |

C. Certificates

Restated Articles of Organization

Exhibit # 13

Applicant

1. The Plastic Surgery Center of Westchester , LLC

Certificate of Incorporation

Exhibit # 14

Applicant

1. Montefiore Foundation, Inc.

D. Home Health Agency Licensures

Home Health Agency Licensures

Exhibit # 15

<u>Number</u>	<u>Applicant/Facility</u>
1565 L	Anne M. Chambers d/b/a Health Beat (Nassau, Queens, and Westchester Counties)
1646 L	F & H Homecare, Inc. d/b/a Visiting Angels (Bronx County)
1657 L	Gentle Care Home Services of NY, Inc. (Bronx, Kings, New York, Queens, and Richmond Counties)
1709 L	Gentle Touch Home Care Agency, Inc. (Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester Counties)
2140 L	Hardings Beach, LLC d/b/a Home Instead Senior Care (Monroe County)
2092 L	Igbans Home Care Services, Inc. (Bronx, Kings, Nassau, New York, Queens, and Richmond Counties)
1928 L	Marina Homecare Agency of NY, Inc. (Dutchess, Nassau, Orange, Putnam, Queens, Rockland, Suffolk, Sullivan, Ulster and Westchester Counties)
2139 L	Westchester Homecare, Inc. d/b/a FirstLight HomeCare of Westchester (Westchester County)
2224 L	Foster Nurses Agency USA, Inc. (Bronx, Kings, Nassau, New York, Queens and Richmond Counties)
2213 L	Genesee Region Home Care of Ontario County, Inc. d/b/a Home Care Plus (See exhibit for Counties to be served)

III. COMMITTEE ON PUBLIC HEALTH

Dr. Jo Ivey Boufford, Chair

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

January 30, 2014

COMMITTEE ON CODES, REGULATIONS AND LEGISLATION

Angel Gutiérrez, M.D., Chair

Exhibit #1

For Emergency Adoption

13-08 Amendment of Subpart 7-2 of Title 10 NYCRR - Children's
Camps

For Adoption

13-25 Section 405.4 of Title 10 NYCRR -Definition of Pediatric Sepsis
Update

13-20 Amendment of Section 400.21 and Repeal of Sections 405.43
and 700.5 of Title 10 NYCRR – Advance Directives

SUMMARY OF EXPRESS TERMS

The Department is amending 10 NYCRR Subpart 7-2 Children's Camps as an emergency rulemaking to conform the Department's regulations to requirements added or modified as a result of Chapter 501 of the Laws of 2012 which created the Justice Center for the Protection of Persons with Special Needs (Justice Center). Specifically, the revisions:

- amend section 7-2.5(o) to modify the definition of "adequate supervision," to incorporate the additional requirements being imposed on camps otherwise subject to the requirements of section 7-2.25
- amend section 7-2.24 to address the provision of variances and waivers as they apply to the requirements set forth in section 7-2.25
- amend section 7-2.25 to add definitions for "camp staff," "Department," "Justice Center," and "Reportable Incident"

With regard to camps with 20 percent or more developmentally disabled children, which are subject to the provisions of 10 NYCRR section 7-2.25, add requirements as follows:

- amend section 7-2.25 to add new requirements addressing the reporting of reportable incidents to the Justice Center, to require screening of camp staff, camp staff training regarding reporting, and provision of a code of conduct to camp staff
- amend section 7-2.25 to add new requirements providing for the disclosure of information to the Justice Center and/or the Department and, under certain circumstances, to make certain records available for public inspection and copying

- amend section 7-2.25 to add new requirements related to the investigation of reportable incidents involving campers with developmental disabilities
- amend section 7-2.25 to add new requirements regarding the establishment and operation of an incident review committee, and to allow an exemption from that requirement under appropriate circumstances
- amend section 7-2.25 to provide that a permit may be denied, revoked, or suspended if the camp fails to comply with the regulations, policies or other requirements of the Justice Center

Pursuant to the authority vested in the Public Health and Health Planning Council by Section 225 of the Public Health Law, subject to the approval by the Commissioner of Health, Subpart 7-2 of the State Sanitary Code, as contained in Chapter 1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows, to be effective upon filing with the Secretary of State.

SUBPART 7-2

Children's Camps

(Statutory Authority: Public Health Law §§ 201, 225, 1390, 1394, 1395, 1399-a;

L. 2012, ch. 501)

Subdivision (o) of section 7-2.5 is amended to read as follows:

(o) The camp operator shall provide adequate supervision. *Adequate supervision* shall mean:

(1) supervision such that a camper is protected from any unreasonable risk to his or her health or safety, including physical or sexual abuse or any public health hazard; [and]

(2) as a minimum, there shall exist visual or verbal communications capabilities between camper and counselor during activities and a method of accounting for the camper's whereabouts at all times[.]; and

(3) at camps required to comply with section 7-2.25 of this Subpart, protection from any unreasonable risk of experiencing an occurrence which would constitute a reportable incident as defined in section 7-2.25(h)(4) of this Subpart.

Section 7-2.24 is amended to read as follows:

Variance; waiver.

(a) *Variance* - in order to allow time to comply with certain provisions of this Subpart, an operator may submit a written request to the permit-issuing official for a variance from a specific provision(s) when the health and safety of the children attending the camp and the public will not be prejudiced by the variance, and where there are practical difficulties or unnecessary hardships in immediate compliance with the provision. An operator must meet all terms of an approved variance(s) including the effective date, the time period for which the variance is granted, the requirements being varied and any special conditions the permit-issuing official specifies. The permit-issuing official shall consult with the State Department of Health and shall obtain approval from the State Department of Health for the proposed decision, prior to granting or denying a variance request for requirements in section 7-2.25 of this Subpart.

(b) *Waiver* - in order to accept alternative arrangements that do not meet certain provisions of this Subpart but do protect the safety and health of the campers and the public, an operator may submit a written request to the permit-issuing official for a

waiver from a specific provision of this Subpart. Such request shall indicate justification that circumstances exist that are beyond the control of the operator, compliance with the provision would present unnecessary hardship and that the public and camper health and safety will not be endangered by granting such a waiver. The permit-issuing official shall consult with a representative of the State Department of Health prior to granting or denying a waiver request. An operator must meet all terms of an approved waiver(s), including the condition that it will remain in effect indefinitely unless revoked by the permit-issuing official or the facility changes operators. The permit-issuing official shall consult with the State Department of Health, and shall obtain the approval of the State Department of Health for the proposed decision, prior to granting or denying a waiver request related to the requirements in section 7-2.25 of this Subpart.

New subdivisions (h)-(m) of section 7-2.25 are added to read as follows:

(h) Definitions. The following definitions apply to Section 7-2.25 of this Subpart.

- (1) *Camp Staff* shall mean a director, operator, employee or volunteer of a children's camp; or a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a children's camp pursuant to contract or other arrangement that permits such person to have regular and substantial contact with individuals who are cared for by the children's camp.
- (2) *Department* shall mean the New York State Department of Health.

(3) *Justice Center* shall mean the Justice Center for the Protection of People with Special Needs, as established pursuant to Section 551 of the Executive Law.

(4) *Reportable Incident* shall include those actions incorporated within the definitions of “physical abuse,” “sexual abuse,” “psychological abuse,” “deliberate inappropriate use of restraints,” “use of aversive conditioning,” “obstruction of reports of reportable incidents,” “unlawful use or administration of a controlled substance,” “neglect,” and “significant incident” all as defined in Section 488 of the Social Services Law.

(i) Reporting.

(1) In addition to the reporting requirements of section 7-2.8(d), a camp operator subject to section 7-2.25 of this Subpart and all camp staff falling within the definition of “mandated reporter” under section 488 of the Social Services Law shall immediately report any reportable incident as defined in section 7-2.25(h)(4) of this Subpart and Section 488 of the Social Services Law, where such incident involves a camper with a developmental disability, to the permit-issuing official and to the Justice Center’s Vulnerable Persons’ Central Register. Such report shall be provided in a form and manner as required by the Justice Center.

(j) Employee Screening, Training, and Code of Conduct

(1) Prior to hiring anyone who will or may have direct contact with campers, or approving credentials for any camp staff, the operator shall follow the procedures established by the Justice Center in regulations or policy, to verify that such person is not on the Justice Center's staff exclusion list established pursuant to section 495 of the Social Services Law. If such person is not on the Justice Center's staff exclusion list, the operator shall also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment as required by section 424-a of the Social Services Law. Such screening is in addition to the requirement that the operator similarly verify that a prospective camp staff is not on the sexual abuse registry, as required by section 7-2.5(1) of this Subpart.

(2) A camp operator must ensure that camp staff, and others falling within the definition of mandated reporter under Section 488 of the Social Services Law who will or may have direct contact with campers having a developmental disability, receive training regarding mandated reporting and their obligations as mandated reporters. A camp operator shall ensure that the telephone number for the Justice Center's hotline for the reporting of reportable incidents is conspicuously displayed in areas accessible to mandated reporters and campers.

(3) The camp operator shall ensure that all camp staff and others falling within the definition of "custodian" under Section 488 of the Social Services Law are

provided with a copy of the code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. Such code of conduct shall be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands such code of conduct.

(k) Disclosure of information

(1) Except to the extent otherwise prohibited by law, the camp operator shall be obliged to share information relevant to the investigation of any incident subject to the reporting requirements of this Subpart with the permit-issuing official, the State Department of Health, and the Justice Center. The permit-issuing official, the department and the Justice Center shall, when required by law, or when so directed by the department or the Justice Center and except as otherwise prohibited by law, be permitted to share information obtained in their respective investigations of incidents subject to the reporting requirements of section 7-2.25 (i) of this Subpart.

(2) Except as otherwise prohibited by law, the operator of a camp not otherwise subject to Article Six of the Public Officers Law shall make records available for public inspection and copying to the extent required by subdivision six of Section 490 of the Social Services Law and regulations of the Justice Center.

(1) Incident Management.

(1) The camp operator shall cooperate fully with the investigation of reportable incidents involving campers with developmental disabilities and shall provide all necessary information and access to conduct the investigation. The camp operator shall promptly obtain an appropriate medical examination of a physically injured camper with a developmental disability. The camp operator shall provide information, whether obtained pursuant to the investigation or otherwise, to the Justice Center and permit-issuing official upon request, in the form and manner requested. Such information must be provided in a timely manner so as to support completion of the investigation subject to the time limits set forth in this subdivision.

(2) Unless delegated by the Justice Center to a delegate investigatory agency as defined in subdivision seven of Section 488 of the Social Services Law, incidents of abuse or neglect, as defined in subdivision eleven of Section 488 of the Social Services Law, shall be investigated by the Justice Center. With regard to all other reportable incidents, as defined in Section 488 of the Social Services Law, the permit-issuing official shall initiate a prompt investigation of an allegation of a reportable incident, which shall commence no later than five business days after notification of such an incident, unless the Justice Center agrees that it will undertake such investigation. Additional time for completion of the investigation

may be allowed, subject to the approval of the department, upon a showing of good cause for such extension. At a minimum, the investigation of any reportable incident shall comply with the following:

- (i) Investigations shall include a review of medical records and reports, witness interviews and statements, expert assessments, and the collection of physical evidence, observations and information from care providers and any other information that is relevant to the incident. Interviews should be conducted by qualified, objective individuals in a private area which does not allow those not participating in the interview to overhear. Interviews must be conducted of each party or witness individually, not in the presence of other parties or witnesses or under circumstances in which other parties or witnesses may perceive any aspect of the interview. The person alleging the incident, or who is the subject of the incident, must be offered the opportunity to give his/her version of the event. At least one of the persons conducting the interview must have an understanding of, and be able to accommodate, the unique needs or capabilities of the person being interviewed. The procedures required by this Subparagraph (i) may be altered if, and only to the extent necessary to, comply with an applicable collective bargaining agreement.
- (ii) All evidence must be adequately protected and preserved.

(iii) Any information, including but not limited to documents and other materials, obtained during or resulting from any investigation shall be kept confidential, except as otherwise permissible under law or regulation, including but not limited to Article 11 of the Social Services Law.

(iv) Upon completion of the investigation, a written report shall be prepared which shall include all relevant findings and information obtained in the investigation and details of steps taken to investigate the incident. The results of the investigation shall be promptly reported to the department, if the investigation was not performed by the department, and to the Justice Center.

(v) If any remedial action is necessary, the permit-issuing official shall establish a plan in writing with the camp operator. The plan shall indicate the camp operator's agreement to the remediation and identify a follow-up date and person responsible for monitoring the remedial action. The plan shall be provided, and any measures taken in response to such plan shall be reported, to the department and to the Justice Center.

(vi) The investigation and written report shall be completed and provided to the department and the Justice Center within 45 days of when the incident was first reported to the Justice Center. For purposes of this

section, “complete” shall mean that all necessary information has been obtained to determine whether and how the incident occurred, and to complete the findings referenced in paragraph (1)(2)(iv) of this subdivision.

- (3) (i) The camp shall maintain a facility incident review committee, composed of members of the governing body of the children’s camp and other persons identified by the camp operator, including some members of the following: camp administrative staff, direct support staff, licensed health care practitioners, service recipients, the permit-issuing official or designee and representatives of family, consumer and other advocacy organizations, but not the camp director. The camp operator shall convene a facility incident review panel to review the timeliness, thoroughness and appropriateness of the camp's responses to reportable incidents; recommend additional opportunities for improvement to the camp operator, if appropriate; review incident trends and patterns concerning reportable incidents; and make recommendations to the camp operator to assist in reducing reportable incidents. The facility incident review panel shall meet at least annually, and also within two weeks of the completion of a written report and remedial plan for a reportable incident.
- (ii) Pursuant to paragraph (f) of subdivision one of section 490 of the Social Services Law and regulations of the Justice Center, a camp operator may seek an

exemption from the requirement to establish and maintain an incident review committee. In order to obtain an exemption, the camp operator must file an application with the permit-issuing official, at least sixty days prior to the start of the camp operating season, or at any time in the case of exemptions sought within the first three months following the effective date of this provision. The application must provide sufficient documentation and information to demonstrate that that compliance would present undue hardship and that granting an exemption would not create an undue risk of harm to campers' health and safety. The permit-issuing official shall consult with the State Department of Health (department), and shall not grant or deny an application for an exemption unless it first obtains department approval for the proposed decision. An operator must meet all terms of an approved exemption(s), including the condition that it will remain in effect for one year unless revoked by the permit-issuing official, subject to department approval, or the facility changes operators. Any application for renewal shall be made within 60 days prior to the start of the camp's operating season. The procedure set forth in this Subparagraph (ii) shall be used instead of the general procedures set forth in section 7-2.24 of this Subpart.

(m) In addition to the requirements specified by subdivisions (d) and (g) of section 7-2.4 of this Subpart, a permit may be denied, revoked, or suspended if the children's camp fails to comply with regulations, policies, or other requirements of the Justice Center. In

considering whether to issue a permit to a children's camp, the permit-issuing official shall consider the children's camp's past and current compliance with the regulations, policies, or other requirements of the Justice Center.

Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Article 13-B of the PHL sets forth sanitary and safety requirements for children's camps. PHL Sections 225 and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health including children's camps.

Legislative Objectives:

In enacting to Chapter 501 of the Laws of 2012, the legislature established the New York State Justice Center for the Protection of People with Special Needs (Justice Center) to strengthen and standardize the safety net for vulnerable people that receive care from New York's Human Services Agencies and Programs. The legislation includes children's camps for children with developmental disabilities within its scope and requires the Department of Health to promulgate regulations approved by the Justice Center pertaining to incident management. The proposed amendments further the legislative objective of protecting the health and safety of vulnerable children attending camps in New York State (NYS).

Needs and Benefits:

The legislation amended Article 11 of Social Services law as it pertains to children's camps as follows. It:

- included overnight, summer day and traveling summer day camps for children with developmental disabilities as facilities required to comply with the Justice Center requirements.
- defined the types of incident required to be reported by children's camps for children with developmental disabilities to the Justice Center Vulnerable Persons' Central Registry.
- mandated that the regulations pertaining to children's camps for children with developmental disabilities are amended to include incident management procedures and requirements consistent with Justice Center guidelines and standards.
- required that children's camps for children with developmental disabilities establish an incident review committee, recognizing that the Department could provide for a waiver of that requirement under certain circumstances
- required that children's camps for children with developmental disabilities consult the Justice Center's staff exclusion list (SEL) to ensure that prospective employees are not on that list and to, where the prospective employee is not on

that list, to also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment (SCR) to determine whether prospective employees are on that list.

- required that children’s camps for children with developmental disabilities publicly disclose certain information regarding incidents of abuse and neglect if required by the Justice Center to do so.

The children’s camp regulations, Subpart 7-2 of the SSC are being amended in accordance with the aforementioned legislation.

Compliance Costs:

Cost to Regulated Parties:

The amendments impose additional requirements on children’s camp operators for reporting and cooperating with Department of Health investigations at children’s camps for children with developmental disabilities (hereafter “camps”). The cost to affected parties is difficult to estimate due to variation in salaries for camp staff and the amount of time needed to investigate each reported incident. Reporting an incident is expected to take less than half an hour; assisting with the investigation will range from several hours to two staff days. Using a high estimate of staff salary of \$30.00 an hour, total staff cost would range from \$120 to \$1600 for each investigation. Expenses are nonetheless expected to be minimal statewide as between 40 and 50 children’s camps for children with developmental disabilities operate each year, with combined reports of zero to two

incidents a year statewide. Accordingly, any individual camp will be very unlikely to experience costs related to reporting or investigation.

Each camp will incur expenses for contacting the Justice Center to verify that potential employees, volunteers or others falling within the definition of “custodian” under section 488 of the Social Services Law (collectively “employees”) are not on the Staff Exclusion List (SEL). The effect of adding this consultation should be minimal. An entry level staff person earning the minimum wage of \$7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the Justice Center, within a few hours.

Similarly, each camp will incur expenses for contacting the Office of Children and Family Services (OCFS) to determine whether potential employees are on the State Central Registry of Child Abuse and Maltreatment (SCR) when consultation with the Justice Center shows that the prospective employee is not on the SEL. The effect of adding this consultation should also be minimal, particularly since it will not always be necessary. An entry level staff person earning the minimum wage of \$7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the OCFS, within a few hours. Assuming that each employee is subject to both screens, aggregate staff time required should not be more than six to eight hours. Additionally, OCFS imposes a \$25.00 screening fee for new or prospective employees.

Camps will be required to disclose information pertaining to reportable incidents to the Justice Center and to the permit issuing official investigating the incident. Costs

associated with this include staff time for locating information and expenses for copying materials. Using a high estimate of staff salary of \$30.00 an hour, and assuming that staff may take up to two hours to locate and copy the records, typical cost should be under \$100.

Camps must also assure that camp staff, and certain others, who fall within the definition of mandated reporters under section 488 of the Social Services Law receive training related to mandated reporting to the Justice Center, and the obligations of those staff who are required to report incidents to the Justice Center. The costs associated with such training should be minimal as it is expected that the training material will be provided to the camps and will take about one hour to review during routine staff training. Camps must also ensure that the telephone number for the Justice Center reporting hotline is conspicuously posted for campers and staff. Cost associated with such posting is limited, related to making and posting a copy of such notice in appropriate locations.

The camp operator must also provide each camp staff member, and others who may have contact with campers, with a copy of a code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. The code must be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands it. The cost of providing the code, and obtaining and filing the required employee acknowledgment,

should be minimal, as it would be limited to copying and distributing the code, and to obtaining and filing the acknowledgments. Staff should need less than 30 minutes to review the code.

Camps will also be required to establish and maintain a facility incident review committee to review and guide the camp's responses to reportable incidents. The cost to maintain a facility incident review committee is difficult to estimate due to the variations in salaries for camp staff and the amount of time needed for the committee to do its business. A facility incident review committee must meet at least annually, and also within two weeks after a reportable incident occurs. Assuming the camp will have several staff members participate on the committee, an average salary of \$50.00 an hour and a three hour meeting, the cost is estimated to be \$450.00 dollars per meeting. However, the regulations also provide the opportunity for a camp to seek an exemption, which may be granted subject to Department approval based on the duration of the camp season and other factors. Accordingly, not all camps can be expected to bear this obligation and its associated costs.

Camps are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Finally, the regulations add noncompliance with Justice Center-related requirements as a ground for denying, revoking, or suspending a camp operator's permit.

Cost to State and Local Government:

State agencies and local governments that operate children's camps for children with developmental disabilities will have the same costs described in the section entitled "Cost to Regulated Parties." Currently, it is estimated that five summer day camps that meet the criteria are operated by municipalities. The regulation imposes additional requirements on local health departments for receiving incident reports and investigations of reportable incidents, and providing a copy of the resulting report to the Department and the Justice Center. The total cost for these services is difficult to estimate because of the variation in the number of incidents and amount of time to investigate an incident. However, assuming the typically used estimate of \$50 an hour for health department staff conducting these tasks, an investigation generally lasting between one and four staff days, and assuming an eight hour day, the cost to investigate an incident will range \$400.00 to \$1600. Zero to two reportable incidents occur statewide each year, so a local health department is unlikely to bear such an expense. The cost of submitting the report is minimal, limited to copying and mailing a copy to the Department and the Justice Center.

Cost to the Department of Health:

There will be routine costs associated with printing and distributing the amended Code. The estimated cost to print revised code books for each regulated children's camp in NYS is approximately \$1600. There will be additional cost for printing and distributing training materials. The expenses will be minimal as most information will be

distributed electronically. Local health departments will likely include paper copies of training materials in routine correspondence to camps that is sent each year.

Local Government Mandates:

Children’s camps for children with developmental disabilities operated by local governments must comply with the same requirements imposed on camps operated by other entities, as described in the “Cost to Regulated Parties” section of this Regulatory Impact Statement. Local governments serving as permit issuing officials will face minimal additional reporting and investigation requirements, as described in the “Cost to State and Local Government” section of this Regulatory Impact Statement. The proposed amendments do not otherwise impose a new program or responsibilities on local governments. City and county health departments continue to be responsible for enforcing the amended regulations as part of their existing program responsibilities.

Paperwork:

The paperwork associated with the amendment includes the completion and submission of an incident report form to the local health department and Justice Center. Camps for children with developmental disabilities will also be required to provide the records and information necessary for LHD investigation of reportable incidents, and to retain documentation of the results of their consultation with the Justice Center regarding whether any given prospective employee was found to be on the SEL or the SCR.

Duplication:

This regulation does not duplicate any existing federal, state, or local regulation. The regulation is consistent with regulations promulgated by the Justice Center.

Alternatives Considered:

The amendments to the camp code are mandated by law. No alternatives were considered.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Federal Standards:

Currently, no federal law governs the operation of children's camps.

Compliance Schedule:

The proposed amendments are to be effective upon filing with the Secretary of State.

Contact Person:

Katherine Ceroalo
New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm. 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.state.ny.us

Regulatory Flexibility Analysis
for Small Business and Local Government

Types and Estimated Number of Small Businesses and Local Governments:

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. About 30% of summer day camps are operated by municipalities (towns, villages, and cities). Typical regulated children's camps representing small business include those owned/operated by corporations, hotels, motels and bungalow colonies, non-profit organizations (Girl/Boy Scouts of America, Cooperative Extension, YMCA, etc.) and others. None of the proposed amendments will apply solely to camps operated by small businesses or local governments.

Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties," "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

Other Affirmative Acts:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in “Cost to Regulated Parties” “Local Government Mandates,” and “Paperwork” sections of the Regulatory Impact Statement.

Professional Services:

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Compliance Costs:**Cost to Regulated Parties:**

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in “Cost to Regulated Parties” and “Paperwork” sections of the Regulatory Impact Statement.

Cost to State and Local Government:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in the

“Cost to Regulated Parties” section of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in “Cost to State and Local Government” and “Local Government Mandates” portions of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

Minimizing Adverse Economic Impact:

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department’s ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Small Business Participation and Local Government Participation:

No small business or local government participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the regulations, and training will be provided to affected entities with regard to the new requirements.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. Currently, there are seven day camps and ten overnight camps operating in the 44 counties that have population less than 200,000. There are an additional four day camps and three overnight camps in the nine counties identified to have townships with a population density of 150 persons or less per square mile.

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Other Compliance Requirements:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Professional Services:

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Compliance Costs:**Cost to Regulated Parties:**

The costs imposed on camps in rural areas are no different from those imposed on camps generally, as described in “Cost to Regulated Parties” and “Paperwork” sections of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that involve capital improvements.

Minimizing Adverse Economic Impact on Rural Area:

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized, and no impacts are expected to be unique to rural areas.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Rural Area Participation:

No rural area participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the routine regulations, and training will be provided to affected entities with regard to the new requirements.

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a (2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types and assisting with the investigation of new reportable incidents are expected to be completed by existing camp staff, and should not be appreciably different than that already required under current requirements.

Emergency Justification

Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs (“Justice Center”), in order to coordinate and improve the State's ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations as a “state oversight agency.” These regulations will assure proper coordination with the efforts of the Justice Center.

Among the facilities covered by Chapter 501 are children's camps having enrollments with 20 percent or more developmentally disabled campers. These camps are regulated by the Department and, in some cases, by local health departments, pursuant to Article 13-B of the Public Health Law and 10 NYCRR Subpart 7-2. Given the effective date of Chapter 501 and its relation to the start of the camp season, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such camps. Absent emergency promulgation, such persons would be denied initial coordinated protections until the 2014 camp season. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will also occur

pursuant to the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to sections 201 and 225 of the Public Health Law.

Promulgating the regulations on an emergency basis will ensure that campers with special needs promptly receive the coordinated protections to be provided to similar individuals cared for in other settings. Such protections include reduced risk of being cared for by staff with a history of inappropriate actions such as physical, psychological or sexual abuse towards persons with special needs. Perpetrators of such abuse often seek legitimate access to children so it is critical to camper safety that individuals who that have committed such acts are kept out of camps. The regulation provides an additional mechanism for camp operators to do so. The regulations also reduce the risk of incidents involving physical, psychological or sexual abuse towards persons with special needs by ensuring that such occurrences are fully and completely investigated, by ensuring that camp staff are more fully trained and aware of abuse and reporting obligations, allowing staff and volunteers to better identify inappropriate staff behavior and provide a mechanism for reporting injustice to this vulnerable population. Early detection and response are critical components for mitigating injury to an individual and will prevent a perpetrator from hurting additional children. Finally, prompt enactment of the proposed regulations will ensure that occurrences are fully investigated and evaluated by the camp, and that measures are taken to reduce the risk of re-occurrence in the future. Absent emergency adoption, these benefits and protections will not be available to campers

with special needs until the formal rulemaking process is complete, with the attendant loss of additional protections against abuse and neglect, including physical, psychological, and sexual abuse.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 2800 and 2803 of the Public Health Law, Section 405.4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subparagraph (ii) of paragraph (8) of subdivision (a) of Section 405.4 is amended to read as follows:

405.4 Medical staff.

(a) Medical staff accountability. The medical staff shall be organized and accountable to the governing body for the quality of medical care provided to all patients.

* * *

(8) Definitions. For the purposes of this section, the following terms shall have the following meanings:

* * *

(ii) for adults, severe sepsis shall mean sepsis plus at least one sign of hypoperfusion or organ dysfunction; for pediatrics, severe sepsis shall mean sepsis plus one of the following: cardiovascular organ dysfunction or acute respiratory distress syndrome (ARDS) or two or more organ dysfunctions [or acute respiratory distress syndrome]; and

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (“PHL”) Section 2800 provides that “hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state . . ., the department of health shall have the central, comprehensive responsibility for the development and administration of the state’s policy with respect to hospital related services . . .”

PHL Section 2803 authorizes the Public Health and Health Planning Council (“PHHPC”) to adopt rules and regulations to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State by promoting the efficient provision and proper utilization of high quality health services at a reasonable cost.

Needs and Benefits:

Sepsis is a range of clinical conditions caused by the body’s systemic response to an infection and affects about 750,000 people in the U.S. each year. The mortality rate is alarming – between 20 percent and 50 percent – and the rate largely depends on how quickly patients are diagnosed

and treated with powerful antibiotics to battle the bacteria racing through their systems.

In New York State the number of **severe** sepsis cases increased from 26,001 in 2005 to 43,608 in 2011 - an increase of 68%. Similarly, the number of sepsis cases in New York State increased from 71,049 in 2005 to 100,073 in 2011, an increase of 41%. Sepsis mortality is significant and ranges widely from one hospital to another. In New York, sepsis mortality ranges between 15% and 37%. A patient may have a greater chance of dying from sepsis if care is provided by an institution ill-prepared to deal with this illness or from providers not thoroughly trained in identifying and treating sepsis.

In response to these alarming statistics regulations were enacted effective May 1, 2013 to require all hospitals licensed to operate in New York State to have in place and implement evidence-based protocols for the early identification and treatment of severe sepsis and septic shock.

The Sepsis regulations as originally drafted included a definition of pediatric severe sepsis that was not exactly consistent with the current international definition. This amendment will refine the definition to assure complete consistency. The original wording was as follows:

“for pediatrics, severe sepsis shall mean sepsis plus two organ dysfunctions or acute respiratory distress syndrome.”

Proposed revised wording is:

“for pediatrics, severe sepsis shall mean sepsis plus one of the following: cardiovascular organ dysfunction or acute respiratory distress syndrome (ARDS) or two or more organ dysfunctions”

There is no known opposition to this change. Physicians who specialize in pediatrics and pediatric critical care requested that this change be made to assure absolute consistency with established definitions and avoid any possible confusion on the part of hospitals and clinicians.

COSTS:

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

Existing Sepsis regulations that require all hospitals to submit evidence-based protocols for the early identification and treatment of sepsis to NYSDOH not later than December 31, 2013 are unchanged. There are no costs associated with this change. There is no impact on consumers or providers. This change assures consistency in definitions but in no way alters the intent or impact of the current regulations.

Costs to Local and State Government:

There is no fiscal impact to State or local government as a result of this regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health associated with this definition change.

Local Government Mandates:

Hospitals operated by State or local government will be affected and be subject to the same requirements as any other hospital licensed under PHL Article 28.

Paperwork:

There is no additional paperwork associated with this change in wording.

Duplication:

These regulations do not duplicate any State or Federal rules and assure consistency with established and clinically accepted definitions in use throughout the Nation.

Alternative Approaches:

There are no viable alternatives. Physicians who specialize in pediatrics and pediatric critical care requested that this change be made to assure absolute consistency with established definitions and avoid any possible confusion on the part of hospitals and clinicians.

Federal Requirements:

Currently there are no federal requirements regarding the adoption of sepsis protocols or for reporting adherence to protocols or risk adjusted mortality.

Compliance Schedule:

These regulations will take effect upon publication of a Notice of Adoption in the New York *State Register*.

Contact Person:

Katherine Ceroalo
New York State Department of Health
Bureau of House Counsel
Regulatory Affairs Unit
Corning Tower Building, Room 2438
Empire State Plaza
Albany, New York 12237
518-473-7488
518-473-2019-FAX
REGSQNA@health.state.ny.us

**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESS AND LOCAL GOVERNMENTS**

No regulatory flexibility analysis is required pursuant to Section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

**STATEMENT IN LIEU OF
RURAL AREA FLEXIBILITY ANALYSIS**

No rural area flexibility analysis is required pursuant to Section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

JOB IMPACT STATEMENT

Pursuant to the State Administrative Procedure Act (SAPA) section 201-a(2)(a), a Job Impact Statement for this amendment is not required because it is apparent from the nature and purposes of the proposed rules that they will not have a substantial adverse impact on jobs and employment opportunities.

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to approval by the Commissioner of Health by Sections 2803, 2993 and 2994-t of the Public Health Law, sections 405.43 and 700.5 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York are hereby repealed, and section 400.21 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York is hereby amended effective upon the publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 405.43 is repealed.

Section 700.5 is repealed.

Section 400.21 is amended to read as follows:

§ 400.21 Advance directives

(a) Statement of purpose. [Recent advances in medical technology have brought forth a multitude of choices about medical treatment. Advances in emergency medical services have expanded the capacity of the health care system to save the lives of victims who previously would not have survived acute trauma. New drugs and new surgical techniques may prolong life, but may not necessarily halt the spread of progressive or degenerative illness. Life support systems can maintain unconscious patients for months or even years. Decisions about medical treatment based on the availability of this burgeoning medical technology are deeply personal. They reflect basic values, personality traits and religious attitudes. An adult's capacity to tolerate pain, disfigurement or dependency must be considered.] The New York State Health Care Proxy Law allows an adult to designate another adult, such as a trusted friend or loved one who knows

the person and his/her wishes, to make [these] treatment decisions if the adult becomes incapacitated and is unable to do so. The Health Care Proxy Law guarantees an adult's right to self-determination and the expression of this right through another adult. Advance directives [like the Health Care Proxy] also allow an adult to express his or her preference regarding health care treatment, including a desire to continue or to refuse treatment and life supports. In the absence of a health care proxy, [adults who express their wishes orally or in writing concerning life-sustaining treatment in a clear and convincing manner are entitled, based on decisions of both the United States Supreme Court and the New York State Court of Appeals, to have those wishes recognized] the Family Health Care Decisions Act allows a surrogate (a family member or close friend) to make treatment decisions on behalf of a patient, in accordance with the patient's wishes, if known, or if the patient's wishes are not known, in accordance with the patient's best interests. Facilities must ensure that all adult patients/residents are informed of their rights and are supported and protected as they exercise their right to formulate written or oral instructions regarding their health care in the event such adults become incapacitated and are unable to direct their own health care.

(b) Definitions. The following words or phrases shall have the following meanings:

(1) An advance directive means a type of written or oral instruction relating to the provision of health care when an adult becomes incapacitated, including but not limited to a health care proxy, a consent [pursuant to Article 29-B of the Public Health Law] to the issuance of an order not to resuscitate or other medical orders for life-sustaining treatment (MOLST) recorded in a

patient's/resident's medical record, and a living will.

(2) A health care proxy means a document created pursuant to Article 29-C of the Public Health Law which delegates the authority to another adult known as a health care agent to make health care decisions on behalf of the adult when that adult is incapacitated.

(3) A living will means a document which contains specific instructions concerning an adult's wishes about the type of health care choices and treatments that an adult does or does not want to receive[, but which does not designate an agent to make health care decisions].

(4) A health care agent or agent means an adult to whom authority to make health care decisions is delegated under a health care proxy.

(5) An adult means any person who is 18 years of age or older, or is the parent of a child, or has married.

(6) Medical orders for life-sustaining treatment (MOLST) means medical orders to provide, withhold or withdraw life-sustaining treatment. The MOLST form is an alternative form authorized by the Commissioner under subdivision six of section twenty-nine hundred ninety-four-dd of the public health law. The MOLST form and guidance and checklists for using the MOLST form for any patient in any setting are posted on the department's website.

(c) Facility compliance. The facility shall ensure compliance with the requirements of law

governing advance directives, including but not limited to Articles [29-B and] 29-C, 29-CC and 29-CCC of the Public Health Law.

(d) Policies and procedures. The facility shall be responsible for developing, implementing and maintaining written policies and procedures addressing advance directives and shall:

(1) [furnish] make the following material available to each adult patient/resident, or if the adult patient/resident lacks capacity, to the family member or other adult who speaks on the patient's/resident's behalf at or prior to the time of admission to the facility as an inpatient or an outpatient and to each member of the facility's staff who provides patient/resident care. A facility need not provide these items more than once to an outpatient receiving services on a recurring basis:

(i) the description of State law prepared by the department entitled ["Planning in Advance for your Medical Treatment,"] "Deciding About Health Care: A Guide for Patients and Families," which summarizes the rights, duties and requirements of Articles [29-B and] 29-C, 29-CC and 29-CCC [and the right of an adult to formulate advance directives as expressed in final decisions of courts of competent jurisdiction]; and

(ii) the pamphlet prepared by the department entitled "Health Care Proxy: Appointing your Health Care Agent [-]in New York State[']s Proxy Law," containing a sample health care proxy form[; and

(iii) a summary of the facility's policy regarding the implementation of these rights];

(2) ensure that there is documentation in each adult's medical record indicating whether or not

the adult has executed a health care proxy under Article 29-C of the Public Health Law, or whether the adult has provided written or oral advance instructions about treatment to facility staff responsible for the patient's care or to facility employees upon admission;

(3) assess advance directives other than those described in Articles [29-B and] 29-C, 29-CC and 29-CCC of the Public Health Law. Nothing herein shall be construed to require that a facility must or may not seek a court determination that any individual advance directive has been expressed in a clear and convincing manner;

(4) provide in-service education to staff involved in the provision of care including medical staff concerning the facility's policies and procedures concerned with advance directives;

(5) provide (individually or with others) education to the community on issues concerning advance directives;

(6) ensure that an adult is not discriminated against in the provision of care or otherwise discriminated against based on whether or not the adult has executed an advance directive; and

(7) in addition, a nursing home shall:

(i) educate adult residents about the authority delegated under a health care proxy, what a proxy may include or omit, and how a proxy is created, revoked, or changed as requested by the resident;

(ii) ensure that each resident who creates a proxy while residing at the facility does so voluntarily; and

(iii) designate one or more individuals to educate the residents, respond to questions and assist residents in creating, revoking or changing a proxy.

(e) Medical orders for life-sustaining treatment (MOLST). To implement a patient's wishes regarding cardiopulmonary resuscitation (CPR) and other life-sustaining treatment, facilities may, if appropriate, utilize the department approved MOLST form for patients with serious health conditions who:

(1) want to avoid or receive any or all life-sustaining treatment; or

(2) can reasonably be expected to die within one year.

(f) Rights to be publicized. The facility shall post in a public place in the facility the rights, duties and requirements of this section. Such statement may be included in any other statement of patient's/resident's rights required to be posted.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of this regulation is contained in Public Health Law (PHL) Sections 2803, 2993 and 2994-t. PHL Section 2803 authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law, and to establish minimum standards governing the operation of health care facilities. PHL Sections 2993 and 2994-t authorize the Commissioner in consultation with the Commissioners of the Offices of Mental Health (OMH) and People With Developmental Disabilities (OPWDD) to establish such regulations as may be necessary for the implementation of Article 29-C (Health Care Agents and Proxies) and Article 29-CC (Family Health Care Decisions Act) respectively.

Legislative Objectives:

The legislative intent of PHL Article 28 is to provide for the protection and promotion of the health of the inhabitants of the State of New York by delivering high quality hospital and related services in a safe and efficient manner at a reasonable cost. The intent of PHL Article 29-C is to establish a decision making process to allow competent adults to appoint an agent to decide about health care treatment in the event they lose decision-making capacity. PHL Article 29-CC establishes a decision-making process applicable to decisions in general hospitals and nursing homes whereby a surrogate is selected and empowered to make health care decisions for patients who lack capacity to make their own health care decisions and who have not otherwise appointed an agent to make health care decisions pursuant to Article 29-C or provided clear and convincing

evidence of their treatment wishes.

Needs and Benefits:

While the Health Care Proxy Law in PHL Article 29-C outlines health care agent and proxy provisions to allow someone to designate another adult to make treatment decisions if he/she becomes incapacitated and is unable to do so, the Family Health Care Decisions Act in Article 29-CC would fill the gap by establishing a decision making process where a surrogate is selected and empowered to make such decisions for incapacitated individuals who have not otherwise appointed an agent pursuant to the Health Care Proxy Law, or provided clear and convincing evidence of their treatment wishes. This amendment will conform the regulations to the Public Health Law as amended by Chapter 8 of the Laws of 2010, which added the Family Health Care Decisions Act (FHCDA – Article 29-CC), made Article 29-B no longer applicable to PHL Article 28 facilities and added a new PHL Article 29-CCC, which provides authority for Medical Orders for Life-Sustaining Treatment (MOLST).

Costs:

This proposal will not increase costs to the Department or to the facilities required to comply. These amendments merely update the regulation to reflect current practice and to conform to statutory changes.

Local Government Mandates:

This regulation does not impose any new programs, services, duties, or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

Facilities must be responsible for developing, implementing and maintaining written policies and procedures addressing advance directives and furnish to each adult patient/resident or family member or other adult who speaks on the patient's behalf if the patient/resident lacks capacity:

(1) the description of the State law "Deciding About Health Care: A Guide for Patients and Families," and (2) the pamphlet prepared by the Department entitled "Health Care Proxy: Appointing your Health Care Agent in New York State." Facilities must also ensure that there is documentation in each adult's medical record indicating whether or not the adult has executed a health care proxy under PHL Article 29-C, or whether the adult has provided written or oral advance instructions about treatment to facility staff responsible for the patient's care or to facility employees upon admission. Facilities may utilize the Department approved form for Medical Orders for Life-Sustaining Treatment (MOLST) to implement a patient's wishes regarding cardiopulmonary resuscitation (CPR) and other life sustaining treatment. Facilities must provide information about MOLST to patients with serious health conditions who: (1) want to avoid or receive any or all life-sustaining treatment, or (2) can reasonably be expected to die within one year.

Duplication:

This regulation does not duplicate any other state or federal law or regulation.

Alternatives:

The current regulation is out of date. This proposal updates the regulation to reflect current practice and statutory changes.

Federal Standards:

This regulatory amendment does not exceed any minimum standards of the federal government.

Compliance Schedule:

The proposed rule will become effective upon publication of a Notice of Adoption in the State Register.

Contact Person:

Katherine Ceroalo
NYS Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
ESP, Tower Building, Room 2438
Albany, NY 12237
(518) 473-7488
(518) 473-2019 FAX
REGSQNA@health.state.ny.us

REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Pursuant to section 202-b of the State Administrative Procedure Act, a regulatory flexibility analysis is not required. The proposed rule will not impose an adverse economic impact on any of the facilities and will not impose a negative impact on local governments. These provisions will not impose any additional recordkeeping, reporting and other compliance requirements on any party since the proposal simply updates already existing advance directive requirements.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

RURAL AREA FLEXIBILITY ANALYSIS

Pursuant to section 202-bb of the State Administrative Procedure Act, a rural area flexibility analysis is not required. This measure implements provisions set forth in the Family Health Care Decisions Act (FHCDA) that establishes a decision making process, applicable to decisions in general hospitals and nursing homes, whereby a surrogate is selected and empowered to make health care decisions for patients who lack capacity to make their own health care decisions or provided clear and convincing evidence of their wishes.

The proposed rule will not impose an adverse economic impact on hospitals and diagnostic treatment centers located in rural areas in New York State and will not impose any additional recordkeeping, reporting and other compliance requirements since the proposal simply updates already existing advance directive requirements.

JOB IMPACT STATEMENT

A Job Impact Statement is not included because it is apparent from the nature and purpose of these amendments that they will not have a substantial adverse impact on jobs and employment opportunities. This proposal merely updates the advance directive provisions in section 400.21 of 10 NYCRR to reflect current practice and statutory changes.

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

January 30, 2014

Acute Care Services - Construction

Exhibit # 2

	<u>Number</u>	<u>Applicant/Facility</u>
1.	132187 C	Winthrop-University Hospital (New York County)
2.	132207 C	New York Presbyterian Hospital – Columbia Presbyterian Center (New York County)



Public Health and Health Planning Council

Project # 132187 C
Winthrop University Hospital

County: New York County
Purpose: Construction

Program: Hospital
Acknowledged: October 4, 2013

Executive Summary

Description

Winthrop University Hospital, a 591-bed, not-for-profit hospital, requests approval to certify an extension clinic in New York County, to provide linear accelerator services and stereotactic cyberknife services. The program will be located at an extension clinic located at 2150 Amsterdam Avenue, New York, New York, 10023.

DOH Recommendation Contingent Approval

Need Summary

Winthrop University Hospital seeks CON approval to certify an extension clinic with a linear accelerator service to provide stereotactic radiosurgery or stereotactic body radiotherapy through the use of a cyberknife to treat certain types of tumors and inoperable lesions in the body. This application seeks

to address the incidence of cancer patients in New York City that can be treated with cyberknife therapy.

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 \$10,951,532 will be met with equity of \$1,095,154 and an equipment loan in the amount of \$9,856,378 at a rate of 4% for a term of 7 years.

Budget:

Revenues: \$8,046,439
Expenses: \$5,439,779
Gain/ (Loss) \$2,606,660

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 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. Submission of an executed agreement lease agreement, acceptable to the Department. [BFA]
3. Submission of an executed loan agreement, acceptable to the Department. [BFA]

Approval conditional upon:

1. The project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. All devices producing ionizing radiation must be licensed by the New York State Department of Health -- Bureau of Environmental Radiation Protection. [HSP]

Council Action Date

February 13, 2014

Need Analysis

Background

Winthrop University Hospital (WUH) is a 591-bed acute care hospital located at 259 First Street Mineola, 11501, in Nassau County. WUH seeks approval to certify an extension clinic at 150 Amsterdam Avenue, New York, 10023, in New York County for linear accelerator service for the purpose of providing cyberknife treatment.

Analysis

Winthrop University Hospital has the following certified beds and services:

*Table 1: Winthrop University Hospital: Certified Beds by Service.
Source HFIS, December 2013*

<u>Bed Type</u>	<u>Certified Beds</u>
Coronary Care	20
Intensive Care	36
Maternity	63
Medical / Surgical	415
Neonatal Continuing Care	7
Neonatal Intensive Care	6
Neonatal Intermediate Care	14
Pediatric	22
Pediatric ICU	8
Total	591

*Table 2: Winthrop University Hospital: Certified Service.
Source HFIS, December 2013*

Ambulatory Surgery - Multi Specialty	CT Scanner
Cardiac Catheterization - Adult Diagnostic	Cardiac Catheterization - Electrophysiology (EP)
Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)	Cardiac Surgery - Adult
Clinical Laboratory Service	Coronary Care
Emergency Department	Family Planning O/P
Health Fairs 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	Pediatric Intensive Care
Pharmaceutical Service	Poison Control Center
Primary Medical Care O/P	Psychiatric
Radiology – Diagnostic	Radiology-Therapeutic
Renal Dialysis – Acute	Therapy - Occupational O/P
Therapy - Physical O/P	

Winthrop University Hospital is authorized to operate 11 extension clinics and one Certified Home Health Agency (CHHA) in Nassau County. These clinics provide outpatient services such as dental O/P, diagnostic radiology, linear accelerator, medical social services, multi-specialty ambulatory surgery, occupational therapy, personal care, physical therapy, primary medical care, renal dialysis, speech language pathology, therapeutic radiology, and well child care.

Winthrop University Hospital has the following state designations:

- Regional Perinatal Center;

- Regional Trauma Center; and
- Stroke Center.

Winthrop University Hospital is the Primary Teaching Affiliate of Stony Brook University School of Medicine, a member of the Long Island Health Network and a member of New York-Presbyterian Health System.

Services to be certified at Winthrop University Hospital Cyberknife Center located at 150 Amsterdam Avenue, New York 10023:

- Linear Accelerator (cyberknife);
- Radiology – Therapeutic; and
- CT Scanner.

Winthrop University Hospital states that they receive referrals for cyberknife treatment from hospitals and physicians, including Memorial Sloan Kettering, New York-Presbyterian Hospital (Columbia and Weill Cornell Center), NYU Hospitals Center, and New York Eye and Ear Infirmary. The hospital indicates that it has administered over 60,000 cyberknife radiation doses since 2005 without a single radiation overdose.

The proposed facility will use the cyberknife to provide stereotactic radiosurgery therapy services. It is anticipated that the number of patients during the first and fifth year of operation will be 125 and 200, respectively. Based on the number of assumed cases, the clinic could expect to generate 625 treatments during the first year of operation and 1,000 by the fifth year. The cyberknife machine is expected to treat about 500 patients per year. Based on the projected number of cases, the facility will have capacity to accommodate additional cases.

Based on SPARCS data, Winthrop University Hospital primary inpatient and outpatient service area is Nassau County. Approximately 81.0 percent of its inpatients and 75.0 percent of its outpatients live in the county. The facility's secondary service area is comprised of Kings, New York, Queens and Suffolk Counties. Residents from these counties account for approximately 17.0 percent of the hospital's inpatient discharges and 24.0 percent of its outpatients visits. In 2000, the census count for the aforementioned counties was 8,985,813. By 2010, the census for the service area counties grew by 1.9 percent to 9,154,177 and is projected to reach 9,366,881 by 2020.

In 2007, the WUH recorded 34,702 total inpatient discharges. By 2008, these discharges increased by 0.4 percent to 34,832. Winthrop University Hospital continued to experience an increase in total inpatient discharges in 2009, 2010 and 2011; said discharges were 36,723; 36,848; and 36,933, respectively and stood at 34,795 in 2012 (Table 3).

<i>Table 3: Winthrop University Hospital: Distribution of Total Inpatient Discharges. Source: SPARCS, 2007 – 2012.</i>					
<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
34,702	34,832	36,723	36,848	36,933	34,795

Winthrop University Hospital seeks to provide therapeutic radiology services to the residents of New York City. During 2006 through 2010, the total new annual average cancer cases diagnosed in the five (5) Boroughs of New City was 38,194 residents. It is estimated that about 27.0 percent of these cases could be appropriate for cyberknife treatment.

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 radio therapeutic 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:
 - 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.
 - Sixty percent of the annual incidence of cancer cases in a service area will be candidates for radiation therapy.
 - 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 — New York City

New York City Therapeutic Radiology Need:	
Number of cancer cases per year (Average 2006 – 2010)	38,194
60% will be candidates for radiation therapy	22,916
50% of (2) will be curative patients	11,458
50% of (2) will be palliative patients	11,458
The course of treatment for curative patients is 35 treatments	401,037
The course of treatment for palliative patients is 15 treatments	171,873
The total number of treatments sum of (5 and 6)	572,910
Each MEV machine has a capacity for 6,500 treatments	88
<hr/>	
Need for Linacs in New York City	88
Existing and Approved Resource	73
Remaining Need	14

Conclusion

Based on the 709.16 need methodology for linear accelerators, there is a remaining need for 14 linear accelerators in New York City. This proposal will help to meet the need for the aforementioned service and lower the remaining need to 13.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Project Proposal

Winthrop University Hospital (WUH), a not-for-profit teaching hospital in Nassau County, requests approval for certification of an extension clinic in New York County to bring its cyberknife robotic radiosurgery services program to the New York City region, thus enhancing access for individuals who require radiation therapy. Upon approval, the center will be known as the Winthrop University Hospital Cyberknife Center.

Site	Approved Services
Winthrop-University Hospital Cyberknife Center	Radiology - Therapeutic

150 Amsterdam Avenue New York, NY 10023	CT Scanner
--	------------

First year staffing will consist of 10.0 FTEs, including registered nurses and technicians, and is expected to remain at that level through 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

Lease Rental Agreement:

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

- Premises: 6,300 Square feet located at 259 First Street, Mineola, New York
- Lessor: 150 Amsterdam Avenue Holdings, LLC
- Lessee: Winthrop University Hospital
- Term: 15 Years
- Rental: \$585,000 per year (\$92.85 per sq. ft.) with a stated escalation clause as follows:
 - (Year 2 - \$598,162.50 or \$94.95 per square ft.)
 - (Year 3 - \$611,621.16 or \$97.01 per square ft.)
 - (Year 4 - \$625,382.63 or \$99.28 per square ft.)
 - (Year 5 - \$639,453.74 or \$101.50 per square ft.)
 - (Year 6 - \$712,341.45 or \$113.07 per square ft.)
 - (Year 7 - \$728,369.13 or \$115.61 per square ft.)
 - (Year 8 - \$744,757.44 or \$118.22 per square ft.)
 - (Year 9 - \$761,514.48 or \$120.88 per square ft.)
 - (Year 10 - \$778,648.56 or \$123.60 per square ft.)
 - (Year 11 - \$860,518.15 or \$136.59 per square ft.)
 - (Year 12 - \$879,879.81 or \$139.66 per square ft.)
 - (Year 13 - \$899,677.10 or \$142.81 per square ft.)
 - (Year 14 - \$919,919.84 or \$146.02 per square ft.)
 - (Year 15 - \$940,618.03 or \$149.30 per square ft.)

Provisions: The lessee shall be responsible for maintenance, taxes and utilities utilized and proportioned for the space it occupies.

The applicant has submitted an affidavit indicating that there is no relationship between lessor and the lessee making this an arm's length agreement. Also, the applicant submitted two letters of rent reasonableness indicating that the lease amount is reasonable for the stated property.

Total Project Cost and Financing

Total project cost for renovations and the renovation and moveable equipment, is estimated at \$10,951,532, as indicated below:

Renovation & Demolition	\$4,664,000
Design Contingency	450,000
Construction Contingency	300,000
Fixed Equipment	4,344,000
Planning Consultant Fees	25,000
Architect Fees	358,000
Other Fees	65,000
Moveable Equipment	376,000
Financing Costs	98,564
Interim Interest Expense	209,075
Application Fee	2,000
CON Fees	<u>59,893</u>
Total Project Cost	\$10,951,532

Project costs are based on a March 1, 2014 start date and a seven month completion period.

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	\$6,638,983	\$8,046,439
Expenses:		
Operating	\$ 2,719,000	\$2,997,000
Capital	<u>2,498,608</u>	<u>2,442,778</u>
Total Expenses	\$ 5,217,608	\$5,439,779
Excess of Revenues over Expenses	<u>\$1,421,375</u>	<u>\$2,606,660</u>
Outpatient: (Visits)	500	605
Cost Per Visit	\$10,435.21	\$8,991.37

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

	<u>Year One</u>	<u>Year Three</u>
Outpatient		
Medicaid Fee-for-Service	.4%	.3%
Medicaid HMO	7.2%	7.4%
Medicare Fee-for-Service	42.6%	42.6%
Medicare HMO	14.6%	14.5%
Commercial Fee-for-Service	.2%	.2%
Commercial Managed Care	32.8%	32.6%
Private Pay	.2%	.3%
Charity care	2.0%	2.1%

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

Capability and Feasibility

Project costs of \$10,951,532 will be met via equity of \$1,095,154 and a loan in the amount of \$9,856,378 at a rate of 4% for a term of 7 years. A letter of interest has been submitted via TD Bank. BFA Attachment A is the financial summary of Winthrop University Hospital, which indicates sufficient resources for equity contribution.

The submitted budget projects an excess of revenues over expenses of \$1,421,375 and \$2,606,660 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 current 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 average excess of operating revenue over operating expenses of \$19,051,987 for the period shown.

BFA Attachment B is the internal financial statement for the hospital for period ending September 31, 2013. The hospital has maintained an average positive working capital and average net asset position. Also, the hospital achieved an excess of operating revenue over expenses of \$7,736,624.

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 – Winthrop University Hospital
BFA Attachment B	Internal Financial Summary – Winthrop University Hospital



Public Health and Health Planning Council

Project # 132207 C New York Presbyterian Hospital – Columbia Presbyterian Center

County: New York County
Purpose: Construction

Program: Hospital
Acknowledged: October 11, 2013

Executive Summary

Description

New York Presbyterian Hospital, a 2,298 bed, not-for-profit hospital system located in New York County, requests approval to create a new 16 single-bedded maternity unit located on the 10th floor of the Central Building at the Morgan Stanley Children’s Hospital at the New York Presbyterian Columbia University Medical Center campus. In order to create the new 16-bedded maternity unit, the applicant proposes to add 12 new maternity beds and relocate four existing high risk maternity beds located in the 10 Tower Labor and Delivery suite. The two existing double bedded high risk maternity inpatient rooms (four existing maternity beds) on 10 Tower will then be converted into two new Labor and Delivery rooms.

increase in maternity capacity is needed at the facility to accommodate its growth in maternity discharges and to operate its maternity beds within the desired planning occupancy optimum of 75 percent.

Program Summary

This facility has no outstanding Article 28 enforcement actions and is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations.

Financial Summary

Project costs of \$11,408,502 will be met via equity from operations.

DOH Recommendation
Contingent Approval

Incremental Budget:

Revenues	\$11,519,520
Expenses	<u>6,041,483</u>
Excess of Revenues over Expenses	\$5,478,037

Need Summary

New York Presbyterian Hospital - Columbia Presbyterian Center seeks approval renovate space in order to create a new maternity unit and add 12 net new maternity beds to its operating certificate. The

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]

Approval conditional upon:

1. The project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The applicant must adhere to the Construction Start (07/17/2014) and Completion Dates (08/26/2015) provided in the application. The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AES]

Council Action Date

February 13, 2014

Need Analysis

Background

New York Presbyterian Hospital - Columbia Presbyterian Center ("Columbia") is a 977-bed acute care hospital located at 622 West 168th Street, New York, 10032, in New York County. The applicant seeks CON approval to renovate space on its campus to create a new 16-bed maternity unit; by relocating 4 existing beds from another unit to the new unit and adding 12 net new maternity beds to its operating certificate. Upon project completion, the maternity beds at Columbia will increase from 58 to 70.

Analysis

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, December 2015.

<u>Bed Category</u>	<u>Existing Capacity</u>	<u>Requested Action</u>	<u>Capacity Upon Completion</u>
AIDS	14		14
Bone Marrow Transplant	4		4
Chemical Dependence - Detoxification	3		3
Coronary Care	18		18
Intensive Care	99		99
Maternity	58	12	70
Medical / Surgical	541		541
Neonatal Continuing Care	11		11
Neonatal Intensive Care	14		14
Neonatal Intermediate Care	33		33
Pediatric	100		100
Pediatric ICU	41		41
Physical Medicine and Rehabilitation	16		16
Psychiatric	25		25
Total	977	12	989

Table 2: New York Presbyterian Hospital - Columbia Presbyterian Center: Certified Beds by Service. Source: HFIS, December 2015.

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

Table 2: New York Presbyterian Hospital - Columbia Presbyterian Center: Certified Beds by Service. Source: HFIS, December 2015.

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

New York Presbyterian Hospital - Columbia Presbyterian Center is a member of The New York & Presbyterian Hospitals Inc. The organization is authorized to operate five (5) hospitals and seventeen (17) extension clinics in the New York Metropolitan Area.

New York State Designations:

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

New York Presbyterian Hospital - Columbia Presbyterian Center proposes to create a new 16-bed maternity unit and add 12 net new maternity beds to its operating certificate.

In 2007, New York Presbyterian Hospital - Columbia Presbyterian recorded 49,778 total inpatient discharges; by 2012, said discharges increased by 0.8 percent to 50,187. During the same period, Columbia’s obstetric/maternity discharges increased by 2.2 percent from 5,010 in 2007 to 5,119 in 2012 (Table 3).

During the period under review, New York Presbyterian Hospital - Columbia Presbyterian (excluding healthy newborns) experienced an overall average daily census (ADC) of 812 patients on any given day for an average occupancy rate of 83.1 percent. The hospital’s obstetric unit ADC averaged 51 patients on any given day for an average occupancy of 87.6 percent. Columbia’s obstetric occupancy rate was more than 10 percentage points higher than the NYSDOH desired planning optimum of 75.0 percent for urban counties.

Table 3: New York Presbyterian Hospital - Columbia Presbyterian: Inpatient Utilization by Major Service Category. Source: SPARCS 2007 - 2012.

Service	2007	2008	2009	2010	2011	2012	Current Beds
Discharges							
Medical/Surgical	32,679	31,967	33,519	34,088	33,813	33,836	
Pediatric	5,404	5,042	5,473	5,378	5,299	5,361	
Obstetric	5,010	4,857	5,017	4,993	5,034	5,119	
General Psychiatric	1,677	1,664	1,634	1,681	1,095	777	
Chemical Dependency	346	327	323	392	339	282	
High Risk Neonates	932	988	1,033	969	1,133	1,108	
Subtotal	46,048	44,845	46,999	47,501	46,713	46,483	
Healthy Newborns	3,730	3,470	3,663	3,610	3,525	3,704	

Table 3: New York Presbyterian Hospital - Columbia Presbyterian: Inpatient Utilization by Major Service Category. Source: SPARCS 2007 - 2012.

Service	2007	2008	2009	2010	2011	2012	Current Beds
Grand Total	49,778	48,315	50,662	51,111	50,238	50,187	
Average Daily Census							
Medical/Surgical	567	567	574	585	589	581	
Pediatric	92	94	93	87	92	87	
Obstetric	50	48	52	51	51	53	
General Psychiatric	29	30	29	30	28	25	
Chemical Dependency	6	5	5	7	6	3	
High Risk Neonates	53	60	62	56	64	62	
Subtotal	796	804	816	816	829	811	
Healthy Newborns	28	26	28	28	26	27	
Grand Total	824	830	844	844	855	838	
Occupancy Based on Current Beds							
Medical/Surgical	81.9	81.9	83.0	84.6	85.1	84.0	692
Pediatric	65.5	67.0	66.0	61.7	65.0	61.6	141
Obstetric	85.9	82.6	89.8	88.4	87.1	91.2	58
General Psychiatric	116.0	118.0	117.2	119.6	113.6	101.2	25
Chemical Dependency	186.7	163.3	170.0	223.3	190.0	113.3	3
High Risk Neonates	91.6	103.4	107.2	96.4	110.2	106.0	58
Total	81.5	82.3	83.5	83.5	84.8	83.0	977

New York Presbyterian Hospital - Columbia Presbyterian seeks to increase its obstetric beds in order to accommodate increased utilization due to physician recruitment, programmatic growth and to maintain occupancy rates within the desired obstetric planning optimum of 75.0 percent. The additional space will allow the hospital to meet the obstetric needs of its patients as well as, improve efficiencies and access to care.

Based on SPARCS discharge data, New York Presbyterian Hospital - Columbia Presbyterian obstetric unit occupancy has exceeded the desired planning optimum by more than 10 percentage points. In addition, the hospital's other inpatient units, except pediatric, have also exceeded the NYSDOH desired planning optimums. The renovations and addition of twelve (12) beds will provide the hospital with resources to appropriately treat its patients and to help with the growth in obstetric cases that the hospital is experiencing.

Conclusion

New York Presbyterian Hospital - Columbia Presbyterian seeks approval to expand its maternity unit and increase its maternity beds. The facility's maternity unit occupancy rate has consistently exceeded the desired planning optimum rate of 75.0 percent. In addition to the high occupancy rates, during the years under review, the hospital has experienced growth in its obstetric discharges. The expansion and additional beds will provide New York Presbyterian Hospital - Columbia Presbyterian with the space needed to meet the needs of its patients.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Project Proposal

New York-Presbyterian Hospital (NYP Hospital) proposes to create a new 16 single-bedded maternity unit located on the 10th floor of the Central Building at the Morgan Stanley Children's Hospital of New York-Presbyterian at the New York-Presbyterian/Columbia University Medical Center campus.

In order to create the new maternity unit, New York Presbyterian proposes to add 12 new maternity beds and relocate four existing high risk maternity beds located in the 10 Tower Labor and Delivery Suite. Two existing double-bedded high risk maternity inpatient rooms (four existing maternity beds) will be converted into two new Labor and Delivery Rooms. Specifically, the renovation will include 16 new inpatient single rooms, including six high risk single rooms, one isolation room and one bariatric room.

Staffing will increase by 30.8 FTEs in the first year after completion and is not anticipated to increase further 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 renovations and the acquisition of moveable equipment, is estimated at \$11,408,502, further itemized as follows:

Renovation and Demolition	\$6,625,713
Asbestos Abatement or Removal	54,500
Design Contingency	662,571
Construction Contingency	662,571
Planning Consultant Fees	35,000
Architect/Engineering Fees	689,100
Other Fees (Consultant)	1,058,209
Moveable Equipment	1,556,445
CON Fee	2,000
Additional Processing Fee	<u>62,393</u>
Total Project Cost	\$11,408,502

Project costs are based on a July 17, 2014 construction start date and a thirteen month construction period. The hospital will provide equity to meet the total project cost.

Operating Budget

The applicant has submitted an incremental operating budget, in 2014 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$9,909,024	\$11,519,520
Expenses:		
Operating	\$5,006,525	\$5,402,630
Capital	<u>732,932</u>	<u>638,853</u>
Total Expenses	\$5,739,457	\$6,041,483
Excess of Revenues over Expenses	\$4,169,567	\$5,478,037
Utilization: (Discharges)	886	1,030
Cost Per Discharge	\$6,477.94	\$5,865.52

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	47.29%	47.28%
Medicare Fee For Service	.56%	.58%
Medicare Managed Care	.22%	.20%
Commercial Fee For Service	51.93%	51.94%

Expense assumptions are based on the historical experience of the hospital. Utilization assumptions are based on the following: an increase in deliveries and obstetric admissions are aligned with the expected growth in physician capacity by the Department of Obstetrics and Gynecology; volume will rise as physician practices in their specialty programs for high risk pregnancies gradually mature; and volume increases due to additional volume through outreach efforts in the community as the presence of the hospital's specialty fetal and high risk maternity programs are established over time.

Capability and Feasibility

Project costs of \$11,408,502 will be met via equity from hospital operations. BFA Attachment A is the 2011 and 2012 certified financial statement of New York Presbyterian Hospital, which indicates the availability of sufficient funds to meet the total project cost.

The submitted budget indicates an excess of revenues over expenses of \$4,169,567 and \$5,478,037 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for maternity services. The budget appears reasonable.

As shown on Attachment A, the hospital had an average positive working capital position and an average positive net asset position from 2011 through 2012. Also, the facility achieved an average operating excess of revenues over expenses of \$187,337,000 from 2011 through 2012.

BFA Attachment B is the September 30, 2013 internal financial statements of New York Presbyterian Hospital. As shown on Attachment B, the hospital had a positive working capital position and a positive net asset position through September 30, 2013. Also, the facility achieved an operating excess of revenues over expenses of \$125,820,000 through September 30, 2013.

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- New York Presbyterian Hospital
Internal financial statements - New York Presbyterian Hospital

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

January 30, 2014

Ambulatory Surgery Centers - Construction

Exhibit # 3

	<u>Number</u>	<u>Applicant/Facility</u>
1.	132199 C	NYU Hospitals Center (New York County)
2.	132205 C	Strong Memorial Hospital (Monroe County)
3.	132210 C	Cayuga Medical Center at Ithaca (Tompkins County)



Public Health and Health Planning Council

Project # 132199 C
NYU Hospitals Center

County: New York County
Purpose: Construction

Program: Hospital
Acknowledged: October 15, 2013

Executive Summary

Description

New York University Hospitals Center (NYU), a 844-bed not-for-profit hospital located in New York County, requests approval to create the NYU Langone Center for ENT and Ophthalmologic Surgery, which will be located at its existing Ambulatory Care Center at 240 East 38th St. The ambulatory surgery unit will include 4 Class C Operating Rooms, 12 adult prep/recovery positions, 4 pediatric prep/recovery positions and an exam room. The location for this proposed newly created ENT and Ophthalmologic Surgery Unit will be an existing ambulatory facility with close proximity to other related programs.

There will be no changes in the operating certificate of New York University Hospitals Center as a result of this application.

DOH Recommendation Contingent Approval

Need Summary

The proposed project will relocate the ophthalmologic and otolaryngology services that are currently being provided at Tisch Hospital-NYU Hospitals Center. The number of projected cases is 2,700 cases in year 1 and 3,500 cases in year 3.

Program Summary

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.

Financial Summary

Total projects cost for renovation and moveable equipment is \$20,075,273, which will be paid in equity.

Incremental Budget:	Revenues	\$31,728,832
	Expenses	<u>15,014,792</u>
	Excess Revenues	\$16,714,040

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]

Approval conditional upon:

1. The project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. A time-limited waiver was granted specific to the requirements of NFPA 101-2000 20.4, 38.4.2, 11.8.2.1: "High-rise buildings shall be protected throughout by an approved, supervised automatic sprinkler system in accordance with Section 9.7." The waiver was based on the Waiver Determination signed by Stephen J. Rosenthal, A.I.A. dated December 31, 2013 and Request for Waiver dated December 30, 2013 with supporting documentation. This waiver expires July 30, 2019. [DAS]
7. The applicant is required to submit final construction documents, complying with requirements of 10NCYRR Part 710.7, to NYS DOH Bureau of Architecture and Engineering Facility Planning (BAEFP) prior to start of construction. [DAS]

Council Action Date

February 13, 2014

Need Analysis

Background

NYU Hospitals Center is seeking approval to renovate the 3rd floor of the Ambulatory Care Center at 240 East 38th Street, Manhattan, 10016, in New York County and to certify ambulatory surgery services for ENT and ophthalmologic procedures. These procedures are currently performed on the 6th and 10th floors of the Tisch Hospital-NYU Hospitals Center. Upon approval, the Center will be known as the NYU Langone Center for ENT and Ophthalmologic Surgery.

Analysis

The service area is New York County, which has a total of seven freestanding multi-specialty ASCs and eight freestanding single-specialty ASCs.

Existing Ambulatory Surgery Centers: New York County (Source: SPARCS 2012)

ASC Type	Name	Total Patients 2012
Gastroenterology	Carnegie Hill Endo, LLC	7,357
Multi-Specialty	Center for Specialty Care	4,585
Gastroenterology	East Side Endoscopy	8,811
Multi-Specialty	Fifth Avenue Surgery Center	2,051
Multi-Specialty	Gramercy Park Digestive Disease	8,577
Multi-Specialty	Gramercy Surgery Center, Inc	2,136
Endoscopy	Kips Bay Endoscopy Center LLC	9,401
Gastroenterology	Manhattan Endoscopy Ctr, LLC	9,857
Ophthalmology	Mid Manhattan Surgi-Center	3,888
Multi-Specialty	Midtown Surgery Center, LLC	2,860
Ophthalmology	Retinal Ambulatory Surgery Ctr	1,718
Multi-Specialty	Surgicare of Manhattan, LLC	3,993
Gastroenterology	West Side GI	3,652
Multi-Specialty	Roosevelt SC (Opened April 1, 2013)	N/A
Gastroenterology	Yorkville Endoscopy Center (Opened February 22, 2013)	N/A
Total		68,886

In addition there are two freestanding ASCs, one single-specialty ASC and one multi-specialty ASC, which have been approved, but are not yet operational.

The number of projected cases is 2,700 cases in Year 1 and 3,500 cases in Year 3.

Conclusion

The proposed project will relocate ophthalmologic and otolaryngology surgery from a hospital site to an ambulatory care facility with close proximity to other related programs.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

NYU Hospitals Center, requests approval to renovate space on the 3rd floor of its Ambulatory Care Center located at 240 East 38th Street, Manhattan and to certify multi-specialty ambulatory surgery for ENT and ophthalmologic procedures (which are currently performed on the 6th and 10th floors of the NYU Hospitals Center).

Upon approval, the Center will be known as the NYU Langone Center for ENT and Ophthalmologic Surgery. It will include four (4) Class C operating rooms, an exam room and 12 adult prep/recovery positions and four (4) pediatric prep/recovery positions.

It is anticipated the project will result in an additional 37.4 FTEs in the first year and 46.4 FTEs by year three.

Site

NYU Langone Ambulatory Care Center
240 East 38th Street, New York, NY 10016

Services to be Approved

Ambulatory Surgery – Multi Specialty
(Otolaryngology and Ophthalmology)

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 the renovation and moveable equipment is estimated at \$20,075,273, itemized as follows:

Renovation and Demolition	\$9,500,000
Asbestos Abatement	225,000
Design Contingency	1,000,000
Construction Contingency	1,000,000
Construction Manager Fees	500,000
Other Fees	700,000
Architect Fees	750,000
Moveable Equipment	5,688,474
Telecommunications	600,000
Application Fee	2,000
Additional Processing Fee	<u>109,799</u>
Total Costs	\$20,075,273

Project cost is based on a March, 2014 start date and a seven month construction period.

Operating Budget

The applicant has provided a first and third year incremental budget, in 2013 dollars, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$24,476,527	\$31,728,832
Expenses:		
Operating	\$10,831,032	\$13,595,153
Capital	<u>709,820</u>	<u>1,419,639</u>
Total Expenses	\$11,540,852	\$15,014,792
Excess Revenues	<u>\$12,935,675</u>	<u>\$16,714,040</u>
Utilization/(Procedures)	2,700	3,500
Cost Per Procedure	\$4,274.38	\$4,289.94

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

<u>Payor Source</u>	<u>Year One/Three</u>
Medicaid Managed Care	10%
Medicare Fee-For-Service	19%
Medicare Managed Care	3%
Commercial Fee-For-Service	65%
Commercial Managed Care	2%
Other	1%

Utilization and expense assumptions are based on historical experience of the existing operation at NYU.

Capability and Feasibility

The hospital will finance \$20,075,273 via cash equity. BFA Attachment A is a financial summary of NYU Hospital Center, which indicates the availability of sufficient funds to meet the equity contribution.

The submitted incremental budget projects excess revenues over expenses of \$12,935,675 and \$16,714,040 during the first and third years, respectively. The applicant's revenues reflect current reimbursement methodologies and rates of payment for ENT and ophthalmologic surgical services. The budget appears reasonable.

BFA Attachment A is a financial summary of New York University Hospitals Center. As shown in BFA Attachment A, NYU maintained an average positive working capital position and an average positive net asset position during the period shown. Also, the facility generated an average annual excess operating revenues over expenses of \$180,922,500 during the period shown. BFA Attachment B is the internal un-audited financial summary of New York University Hospitals Center. As shown in BFA Attachment B, NYU maintained a positive working capital position and a positive net asset position during the period shown. Also, the facility generated an excess of operating revenues over expenses of \$28,784,000 representing fiscal year January 1, 2013 thru October 31, 2013.

Based on the preceding, 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, NYU Hospital's Center
BFA Attachment B Internal Financial Summary, NYU Hospital Center



Public Health and Health Planning Council

Project # 132205 C
Strong Memorial Hospital

County: Monroe County
Purpose: Construction

Program: Hospital
Acknowledged: October 9, 2013

Executive Summary

Description

Strong Memorial Hospital, an 800-bed not-for-profit tertiary care teaching hospital located at 601 Elmwood Avenue, Rochester, NY (Monroe County), is requesting approval to establish an off-site ambulatory surgery center (ASC) within their article 28 extension clinic located at 156 West Avenue, Brockport, New York. Strong Memorial Hospital is a division of The University of Rochester.

As background, under CON 131231, Lakeside Memorial Hospital decertified all of their beds and services, and on April 27, 2013, they began operating as a diagnostic and treatment center with two extension clinics. Under CON 131333, Strong Memorial Hospital received approval to add the three sites as their own extension clinics. The extension clinics are located at: 156 West Avenue, Brockport, New York (formerly Lakeside Memorial Internal Medicine); 42 Nichols Street, Spencerport, New York (formerly Lakeside Urgent Care); and 8745 Lake Road, Leroy, New York (formerly Genesee Family Practice). Strong Memorial Hospital assumed the operations of these three locations on July 15, 2013.

The ambulatory surgery center will encompass 15,200 square feet on the first floor of the former Lakeside Memorial Hospital located at 156 West Avenue, Brockport, NY. The ambulatory surgery center will include: three operating rooms, five semi-private, and six private pre-operating and recovery bays/rooms, along with the requisite support areas.

The ambulatory surgery center expects to receive 1,200 surgical visits in its first year of operations and 3,000 visits by the third year. The applicant states that

the project will allow local residents, including SUNY Brockport students, to receive their care in a more convenient setting.

Under a companion application, CON 132125, Strong Memorial Hospital is seeking approval to establish a provider-based off-campus emergency department (ED) at this location.

DOH Recommendation Contingent Approval

Need Summary

Strong Memorial projects, that there will be 1,200 surgical procedures in year one and 3,000 in year three.

Program Summary

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.

Financial Summary

The total project costs of \$1,990,960 will be provided from Strong Memorial Hospital's accumulated funds.

Incremental Budget:	Revenues:	\$8,247,800
	Expenses:	<u>\$5,012,338</u>
	Gain/ (Loss)	\$3,235,462

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

Recommendations

Health Systems Agency
The HSA recommends approval 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 project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. All devices producing ionizing radiation must be licensed by the New York State Department of Health -- Bureau of Environmental Radiation Protection. [HSP]
3. The approval of SHC drawings will require further reconfiguration and designation of surgical suite spaces as necessary to maintain circulation from OR's to post op recovery areas within semi-restricted spaces as defined by the 2010 FGI Guidelines, 3.7-1.3.4.1(2) requiring personnel to wear surgical attire and cover head and facial hair and limiting traffic in this area to authorized personnel and patients. [AER]
4. 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]
5. The applicant shall complete construction by May 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 may be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
February 13, 2014

Need Analysis

Background

Strong Memorial Hospital is seeking approval to certify multi-specialty ambulatory surgery services at an existing extension clinic at 156 West Avenue, Brockport 14420, in Monroe County.

In July 2013, Strong Memorial Hospital was approved to add three Article 28 Extension Clinics as follows:

- 156 West Avenue, Brockport, 14420, Monroe County (formerly Lakeside Hospital),
- 42 Nichols Street, Spencerport, 14559, Monroe County (formerly lakeside Urgent Care Center), and
- 8745 Lake Road, Leroy, 14482, Genesee County (formerly Genesee Family Practice)

Strong Memorial Hospital now plans to operate an off-site hospital-based ambulatory surgery center at the West Avenue site.

Analysis

The service area is Monroe County. The proposed project will also serve communities in neighboring counties.

Monroe County has five freestanding multi-specialty ambulatory surgery centers.

2012 Ambulatory Surgery Total Patients		
<u>Type</u>	<u>Facility</u>	<u>Patients</u>
Multi-Specialty	Brighton Surgery Center LLC	4,745
Multi-Specialty	Lattimore Comm Surgicenter	3,616
Multi-Specialty	Linden Oaks Surg Ctr (AKA Unity Linden Oaks SC)	4,924
Multi-Specialty	Lindsay House Surgery Ctr Inc (AKA Rochester ASC)	599
Multi-Specialty	Westfall Surgery Center LLP	14,224

SPARCS 2012

Lakeside Memorial Hospital closed on April 26, 2013. In 2012, LMH provided 3,458 outpatient surgical procedures. The proposed project will preserve the services that were once provided by LMH.

The number of projected procedures is 1,200 in year one and 3,000 in year three.

Conclusion

The proposed project will allow for the continuation of ambulatory surgical services in Brockport and the surrounding areas.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Project Proposal

Strong Memorial Hospital (SMH) requests approval to certify an off-site ambulatory surgery center within the Article 28 extension clinic, Strong West (formerly Lakeside Hospital).

Site Name	Strong West Ambulatory Surgery Center
Site Address	156 West Avenue, Brockport, NY
Surgical Specialties	Multi-Specialty (including Ophthalmology, Orthopedic, Podiatry, and General Surgery)
Operating Rooms	3 (1 Class B & 2 Class C)

Procedure Rooms	1
Hours of Operation	Monday through Thursday, 7 AM to 6 PM
Staffing (1st Year/3rd Year)	24.7 FTEs / 37.0 FTEs
Medical Director(s)	Ryan Shelton, MD
Emergency , In-Patient and Backup Support Services Agreement and Distance	Strong Memorial Hospital 21.4 miles / 27 min.
On-Call Service	The surgeon's after-hours contact information/number will be provided to 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.

On August 5, 2004, Strong Memorial Hospital was fined \$20,000 for improperly computing patients' level of need which resulted in patients receiving liver transplants before other patients who would have scored higher.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Financial Analysis

Total project costs for the renovation and acquisition of moveable equipment is estimated at \$1,990,960, which is broken down as follows:

Renovation & Demolition	\$1,314,488
Design Contingency	62,708
Construction Contingency	62,708
Architect/Engineering Fees	54,467
Movable Equipment	483,710
CON Application Fee	2,000
CON Processing Fee	<u>10,879</u>
Total Project Cost	\$1,990,960

Total Project costs are based on an April 1, 2014 start date with a one month construction period. The applicant will fund the \$1,990,960 project from accumulated funds

Operating Budget

The applicant has submitted first and third years operating budgets, in 2013 dollars:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,887,200	\$8,247,800
Expenses:		
Operating	\$2,732,512	\$4,861,375
Capital	<u>150,963</u>	<u>150,963</u>
Total Expenses	\$2,883,475	\$5,012,338
Net Income or (Loss)	<u>\$3,725</u>	<u>\$3,235,462</u>

Utilization: (visits)	1,200	3,000
Cost Per Visit	\$2,402,90	\$1,670.78

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

Medicaid Managed Care	5.8%
Medicare Fee-For-Service	16.6%
Commercial Fee-For-Service	33.8%
Commercial Manage Care	18.7%
Private Pay	1.5%
All Other	21.6%
Charity	2.0%

Utilization assumptions were developed using Lakeside Memorial Hospital's historical experience in providing ambulatory surgery services at the 156 West Avenue campus. Expense assumptions were developed using the applicant's experiences in operating a multi-specialty off-site hospital ambulatory surgery center. The first year is expected to be close to breakeven, and by the third year the costs are expected to be covered at approximately 60.7% of projected volume or 1,821 visits.

The reasons for the operating surplus growing from \$3,725 in year 1 to \$3,235,462 by year 3 are as follows: In year 1 there is an assumption of approximately 1,200 visits based on a ramp up of operations, but an assumed baseline staffing component. By year 3, the facility is expecting to achieve 2.5 times the year 1 visits or approximately 3,000 visits with the expenses only growing by 1.7 times the year 1 expenses.

Capability and Feasibility

Strong Memorial Hospital will satisfy the \$1,990,960 in total project cost from accumulated funds. BFA Attachment A is Strong Memorial Hospital's 2011-2012 certified financial summary, which indicates the availability of sufficient resources.

Working capital requirements are estimated at \$835,390 and will be provided from operations. Review of BFA Attachment A indicates working capital requirements can be met through operations.

The incremental budget projects positive results for the first and third years of \$3,725 and \$3,235,462, respectively. Revenues are based on prevailing reimbursement methodologies while commercial payers are based on experience. The budget appears reasonable.

As shown on BFA Attachment A, Strong Memorial Hospital has maintained an average working capital position of \$287,723,337, average net asset position of \$402,661,151, and for 2011 through 2012 generated an average excess of revenues over expenses of \$77,986,532.

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
BHFP Attachment

Financial Summary for 2011 and 2012, Strong Memorial Hospital
Map



Public Health and Health Planning Council

Project # 132210 C Cayuga Medical Center at Ithaca

County: Tompkins County
Purpose: Construction

Program: Ambulatory Surgery Center
Acknowledged: October 11, 2013

Executive Summary

Description

Cayuga Medical Center at Ithaca is proposing to construct and renovate new space for its outpatient gastroenterology services. Currently, endoscopy services are offered from its main campus location at 101 Dates Drive, Ithaca, NY and the Ambulatory Surgery Center located at 10 Arrowwood Drive, Ithaca, NY. This proposal would relocate the clinic to a new location at 2435 N. Triphammer Road, Ithaca, NY. Once approved, Cayuga Medical Center will cease to provide any outpatient gastroenterological endoscopic services from its current site at 10 Arrowwood Drive and would further shift approximately 75% of the outpatient gastroenterological volume from its current Ambulatory Surgery site.

The new clinic site will consist of four new endoscopy rooms and will accommodate all required ancillary spaces while consolidating the service to a central location.

There will be no changes in the operating certificate of Cayuga Medical Centers Center as a result of this application.

DOH Recommendation
Contingent Approval

Need Summary

The proposed extension clinic is a relocation of outpatient endoscopy services as follows:

- a) Main Campus at 101 Dates Drive, Ithaca: approximately 75 percent of the outpatient services from this site will be shifted to the proposed new location on North Triphammer Road.

- b) Ambulatory Surgery Site at 10 Arrowwood Drive, Ithaca: operations at this site will discontinue.

The number of projected endoscopic procedure is 3,763 in year 1 and 3,801 in year 3.

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 projects cost for construction and renovation is \$3,473,095, which will be paid in equity.

Budget:	Revenues	\$ 3,402,066
	Expenses	<u>1,868,530</u>
	Excess Revenues	\$ 1,533,536

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

Recommendations

Health Systems Agency
Approval

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 project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. 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]
7. The applicant shall complete construction by September 1, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before the date, this may constitute abandonment of the approval and this approval may be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
February 13, 2014

Need Analysis

Project Description

Cayuga Medical Center at Ithaca is seeking approval to certify an extension clinic to provide single specialty ambulatory surgery services at 2435 North Triphammer Road, Ithaca, 14850, in Tompkins County.

Analysis

The service area includes a total of 11 zip codes in Tompkins County and surrounding communities in Cayuga, Cortland, Tioga, Schuler, Seneca, and Chemung Counties.

Tompkins County does not have a freestanding single or multi-specialty ambulatory surgery center.

The proposed location is in Health Professional Shortage Areas (HPSAs) as follows:

- HPSA for Primary Care Services: Medicaid Eligible-Tompkins County
- HPSA for Mental Health Services: Medicaid Eligible-Tompkins County
- HPSA for Dental Health Services: Medicaid Eligible-Tompkins County

The number of projected endoscopic procedure is 3,763 in year 1 and 3,801 in year 3.

Conclusion

This project will consolidate services that are currently being provided at the hospital and in another location in Ithaca that will be closed.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Project Proposal

Cayuga Medical Center at Ithaca (CMC) requests approval to construct a single specialty gastroenterology ambulatory surgery extension clinic. With the construction of the new clinic, gastroenterological endoscopic services will longer be provided at CMC's ambulatory surgery location and approximately 75% of outpatient volume from the medical center's main campus will shift to the new clinic's location.

Site Name	Cayuga Medical Center Endoscopy Clinic
Site Address	2435 N. Triphammer Road, Ithaca
Surgical Specialties	Gastroenterology
Procedure Rooms	4
Hours of Operation	Monday through Friday, 7:30 am – 5:00 pm
Staffing (1 st Year/3 rd Year)	Current Staff of 12 FTEs will increase by 3.3 FTEs the 1 st year and are anticipated to increase by an additional 1.0 FTE in the 3 rd year of operation.
Medical Director(s)	Peter Brennan, MD
Emergency , In-Patient and Backup Support Services Agreement and Distance	Cayuga Medical Center 8.1 Miles / 15 Minutes
On-Call Service	The center will provide patient with the number of their 24/7 physician on-call service.

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.

Cayuga Medical Center was fined \$8,000 pursuant to a Stipulation and Order dated October 27, 2010 for an incident which occurred on April 8, 2009 in which a patient received a right-sided laminotomy and disc excision when the patient required and signed a consent for a left-sided procedure.

Cayuga Medical Center was fined \$26,000 pursuant to a recent Stipulation and Order dated December 15, 2013 for surveillance findings of July 21, 2010 related to a complaint investigation into the medical and nursing care rendered to a 21-year-old student admitted with pneumonia and dehydration. Failure to recognize the severity of the condition and a lack of monitoring led to the patient's death.

Recommendation

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.

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site to be occupied, the terms of which are summarized below:

Premises:	8,960 square feet located at 2435 North Triphammer Road, Ithaca, NY. Currently the facility consists of 6,460 square feet and tenant will construct an additional 2,500 square feet in accordance with the lease terms at this location.
Lessor:	Triphammer Medical Realty, LLC
Lessee:	Cayuga Medical Center at Ithaca
Rental:	\$89,600 annually (\$10.00 per sq. ft.) Also, the annual increase in rent will be 3.5% per year over the ten year term.
Term:	15 years with yearly renewal options thereafter
Provisions:	Triple net lease whereby the Lessee shall pay landlord utilities, real estate taxes and miscellaneous expenses totaling approximately 58% of stated costs. Also, the landlord will pay \$58,000 toward the construction. Lessee will pay the Lessor an added \$4,833.33 for the first twelve months to reimburse the cost of construction.

The applicant has provided two letters indicating the rent reasonableness. The applicant has indicated that the lease agreement will be a non-arm's length lease agreement.

Total Project Cost and Financing

Total project cost, which is for the renovation and construction, is estimated at \$3,473,095 is broken down as follows:

New Construction	625,000
Renovation and Demolition	1,555,000
Site Development	395,000
Design Contingency	218,000
Construction Contingency	186,750
Planning Consultant Fees	151,100
Architect/Engineering Fees	156,900

Moveable Equipment	164,358
Application Fee	2,000
Additional Processing Fee	<u>18,987</u>
Total Costs	\$3,473,095

Operating Budget

The applicant has provided a first and third year budget in 2013 dollars, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,402,066	\$3,402,066
Expenses:		
Operating	\$1,673,153	\$1,536,481
Capital	<u>332,049</u>	<u>332,049</u>
Total Expenses	\$2,005,202	\$1,868,530
Excess Revenues	<u>\$1,396,864</u>	<u>\$1,533,536</u>
Utilization/(Procedures)	3,763	3,801
Cost Per Procedure	\$532.87	\$491.58

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

<u>PAYOR SOURCE</u>	<u>YEAR ONE/THREE</u>
Medicaid Fee-For-Service	1%
Medicaid Managed Care	3%
Medicare Fee-For-Service	24%
Medicare Managed Care	4%
Commercial Fee-For-Service	67%
Private Pay	1%

Utilization and expense assumptions are based on historical experience of the existing operation at Cayuga Medical Center.

Capability and Feasibility

The hospital will finance \$3,473,095 via cash equity. BFA Attachment A is the financial summary of Cayuga Medical Center, which indicates the availability of sufficient funds for the equity contribution.

The submitted incremental budget projects excess revenues over expenses of \$1,396,864 and \$1,533,536 during the first and third years, respectively. The applicant's revenues reflect current reimbursement methodologies and rates of payment for gastroenterology services. The budget appears reasonable.

As shown on BFA Attachment A, Cayuga Medical Center maintained an average positive working capital position and an average positive net asset position during the period shown. Also, the facility generated an average annual excess operating revenues over expenses of \$7,239,141 during the period shown.

BFA Attachment B is the interim un-audited financial summary for Cayuga Medical Center. As shown on Attachment B, Cayuga Medical Center has maintained a positive working capital position and positive net asset position for the period shown. Also, the facility generated excess operating revenue over expenses of \$1,275,274 for the period January 1, 2013 through July 31, 2013.

Based on the preceding, 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, Cayuga Medical Center
(Internal) Financial Summary, Cayuga Medical Center

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

January 30, 2014

Residential Health Care Facilities – Construction

Exhibit # 4

	<u>Number</u>	<u>Applicant/Facility</u>
1.	131309 C	Jamaica Hospital Nursing Home Co. Inc. (Queens County)
2.	132267 C	Linden Center for Nursing and Rehabilitation (Kings County)



Public Health and Health Planning Council

Project # 131309 C
Jamaica Hospital Nursing Home Co., Inc.

County: Queens County
Purpose: Construction

Program: Residential Health Care Facility
Acknowledged: June 11, 2013

Executive Summary

Description

Jamaica Hospital Nursing Home Co., Inc., a 224-bed hospital-based, not-for-profit residential health care facility (RHCF) with two respite beds, located on the Jamaica Hospital Medical Center Campus, requests approval to renovate space and certify four additional RHCF beds, bringing the total beds to 228.

Jamaica Hospital Nursing Home Co., Inc. is sponsored by the Jamaica Hospital Medical Center and is a member of the Medisys Health Network, which also includes Flushing Hospital Medical Center, Medisys Family Health Centers, Advanced Center for Psychotherapy and James and Sarah Brady Institute for Traumatic Brain Injury. BFA Attachment A is the Medisys Health Network Organizational Chart.

DOH Recommendation Contingent Approval

Need Summary

Jamaica Hospital Nursing Home has been above the 97 percent bed occupancy threshold for 2011 and is considered a safety-net facility for the local area. Jamaica Hospital Nursing Home has continued to see growth in their facility, partially due to their association

with Jamaica Hospital Medical Center and the Medisys network. The close association also allows them to provide palliative, hospice, and end of life care. The four additional beds and needed renovation will allow them to continue to operate as a safety-net facility and service their current residents.

Program Summary

The addition of four nursing home beds at Jamaica Hospital Nursing Home Company will not have an adverse impact on the existing residents, since the remaining lounge and activity space is adequate to meet their needs.

Financial Summary

Project costs will be met with \$64,341 in cash.

Incremental Budget:	Revenues:	\$446,023
	Expenses:	52,880
	Gain(Loss):	\$393,143

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a 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 the CON fees. [PMU]
2. 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]
3. 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:
 - a) Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b) Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c) 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
 - d) 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:
 - 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]
4. Submission of and programmatic review and approval of the final floor plans. [LTC]
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. The project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The effective date for the certification of the additional beds will be determined by the Metropolitan Area Regional Office. [LTC]
3. 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]
4. The applicant shall complete construction by May 16, 2014 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

February 13, 2014

Need Analysis

Project Description

Jamaica Hospital Nursing Home is an existing 224-bed not-for-profit facility located at 89-40 135th Street Jamaica, New York 11418 Queens County. They are seeking approval to add four net new beds and perform necessary renovations.

There is currently a need for 8,663 beds in the New York City Region as indicated in Table 1.

Table 1: RHCF Need – NYC Region

2016 Projected Need	51,071
Current Beds	41,895
Beds Under Construction	314
Total Resources	42,209
Unmet Need	8,862

Although a need for beds in New York City is indicated, section 709.3 states that in such circumstances, there shall be a presumption of no need if the overall occupancy of RHCFs in the planning area is less than 97 percent. The average RHCF occupancy rate for New York City is 94.8%, and the average occupancy for Queens County is slightly lower, at 94.4%, as indicated in Table 2. Occupancy at Jamaica Hospital Nursing Home was higher than that of Queens county for 2009, 2010 and 2011. It was also higher than that of New York City in 2009 and 2011, and slightly lower in 2010.

Table 2: RHCF Jamaica Hospital Nursing Home/Queens County

Facility/County/Region	2009	2010	2011
Jamaica Hospital Nursing Home	95.8%	95.1%	97.9%
Queens County	94.7%	94.7%	94.4%
NYC	94.9%	95.4%	94.8%

Because New York City's overall RHCF utilization rate is below that of the 97% percent planning optimum, there is a presumption of no need for additional beds in the area, as set forth in 709.3(f). However, subdivision (f) also provides for a rebuttal of this presumption based on local factors in the facility's service area.

In describing local factors pertaining to bed need, the applicant states the following:

- Jamaica Hospital occupancy rose to over 103% during Hurricane Sandy. Since all flood zone facilities remain at risk through 2020, a similar circumstance could recur and additional capacity again be needed.
- Jamaica Hospital continues to have a 98% utilization rate through 2013.
- Jamaica Hospital is the only facility able to provide a full service nursing facility to the areas of Jamaica, Ozone Park, Woodhaven, Richmond Hill, and Howard Beach.
- The hospital nursing home is likely to experience an increase in demand due to the collaboration with Jamaica Hospital Medical Center and as a member of the Medisys Health Network.
- The alliance with Jamaica Hospital Medical Center allows the facility to provide palliative, hospice, and end of life care, which will help contribute to high occupancy.
- The facility is the only Queens facility to participate in the CMS bundled payment initiative.

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 or 75 percent of the Health Systems Agency area Medicaid admissions percentage, 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 or of the Health Systems Agency percentage, whichever is applicable.

Jamaica Hospital Nursing Home was below the 75 percent of the planning average for both 2010 and 2011. The facility reported Medicaid admissions of 13.46 percent in 2010 and 11.78% in 2011. The 75 percent planning averages for Queens County for 2010 and 2011 were 28.46 percent (2010) and 30.41 percent (2011).

Conclusion

From a need perspective, approval is recommended. Jamaica Hospital Nursing Home is showing steady and maintained growth through the type and quality of its care, along with its extensive referral programs and singular location.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

	EXISTING	PROPOSED
FACILITY NAME	Jamaica Hospital Nursing Home Company, Inc.	Same
ADDRESS	89-40 135 th Street Jamaica, NY. 11418	Same
RHCF CAPACITY	224	228
ADHC PROGRAM CAPACITY	N/A	Same
TYPE OF OPERATOR	Voluntary	Same
CLASS OF OPERATOR	Corporation	Same
OPERATOR	Jamaica Hospital Nursing Home Company, Inc.	Same

Program Review

Jamaica Hospital Nursing Home Company, Inc. (Jamaica) is a 224 bed residential health care facility located in Queens County. The applicant states that the nursing home has experienced a sustained increase in demand due to its new physical plant, close affiliation with Jamaica Hospital and its location within Queens County. To meet the current and future demand, Jamaica Hospital Nursing Home Company proposes to certify an additional four beds for a net total of 228 permanent RHCF beds.

Physical Environment

Jamaica Hospital Nursing Home Company proposes to accommodate the additional beds by converting two respite beds located on the second floor into a double bedroom, and renovating an underutilized lounge on the fourth floor into another double. The respite room is currently configured as a standard two bedded room and will require no modification. Renovations to the lounge include adding overbed lights, a nurse call device, electrical outlets, additional partition work, and ceiling light reconstruction. The floor area of the existing lounge is 256 square feet, which matches the area of a typical double bedroom.

There are two other lounges located on the fourth floor, which are of sufficient size to meet the needs of the residents. Additionally, there is 3,238 square feet of dedicated activity space on the first floor.

Compliance

Jamaica Hospital Nursing Home Company, Inc. is currently in substantial compliance with all applicable codes, rules and regulations.

Conclusion

The addition of four nursing home beds at Jamaica Hospital Nursing Home Company will not have an adverse impact on the existing residents, since the remaining lounge and activity space is adequate to meet their needs.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total cost to renovate space is projected to be \$64,341 broken down as follows:

Renovation & Demolition	\$32,000
Architect/Engineering Fees	5,000
Other Fees(Consultant)	16,000
Movable Equipment	9,000
CON Application Fee	2,000
CON Processing Fee	<u>341</u>
Total Project Cost	<u>\$64,341</u>

Construction is anticipated to require one month for completion with a start date of April, 2014. Project costs will be financed through accumulated funds.

Operating Budget

The applicant has submitted an incremental operating budget, in 2013 dollars, for the first year subsequent to the addition of the four RHCf beds. The budget is summarized as follows:

	<u>Total</u>
Revenue:	
Medicaid	\$ 342,978
Medicare	103,045
Private Pay	<u>0</u>
Total	\$ 446,023
Expenses:	
Operating	\$ 45,780
Capital	<u>7,100</u>
Total	\$ 52,880
Net Income	\$ 393,143
Utilization: (patient days)	1,315
Occupancy	90.1%

The following is noted with respect to the incremental operating budget:

- The Medicaid capital component assumes reimbursement of interest and depreciation associated with total project cost.
- Medicare and private pay assume current rates of payment.
- Incremental Utilization by payor source is projected as follows:

Medicaid	76.9%
Medicare	23.1%

Capability and Feasibility

The facility will provide equity of \$64,341 from accumulated funds for total project costs. BFA Attachment B is the financial summary of Jamaica Hospital Nursing Home Co., Inc., showing sufficient funds available.

Working capital requirements for the RHCF incremental expenses are estimated at \$8,813. Review of BFA Attachment A, the financial summary, reveals sufficient resources to meet project cost equity and absorb additional working capital requirements.

The submitted incremental budget indicates that excess revenues of \$393,143 would be generated in the first year following renovations and the addition of four RHCF beds.

As shown on BFA Attachment B, the facility has experienced positive working capital and maintained negative net asset balances and an average net loss of \$2,072,722 as of July 31, 2013. Jamaica Hospital Nursing Home Co., Inc. is continuously working towards a break-even budget without interruption of patient care by decreasing and monitoring supply costs by approximately \$200,000, improving revenue cycles and payor mix, and increasing revenues by approximately \$600,000. BFA Attachment B shows a decrease in net losses from operations of approximately \$800,000 between 2012 and 2013 July cycles. BFA Attachment D shows that Jamaica Hospital Medical Center and Affiliates for 2012 experienced overall net income from operations of \$27,218,000.

Therefore, based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart of Medisys Health Network, Inc.
BFA Attachment B	Financial Summary, Jamaica Hospital Nursing Home Co. Inc., July 31, 2013
BFA Attachment C	Financial Summary, Jamaica Hospital Nursing Home Co. Inc., 2011-2012
BFA Attachment D	Financial Summary, Jamaica Hospital Medical Center and Affiliate, 2011-2012



Public Health and Health Planning Council

Project # 132267 C Linden Center for Nursing and Rehabilitation

County: Kings County
Purpose: Construction

Program: Residential Health Care Facility
Acknowledged: November 14, 2013

Executive Summary

Description

Alliance Health Associates, Inc., d/b/a Linden Center for Nursing and Rehabilitation (Linden), an existing proprietary corporation, is seeking approval to make permanent the temporary increase in RHCf beds granted after the devastation of Superstorm Sandy.

Linden was granted a temporary 40-bed increase on November 6, 2012, in order to relieve the decrease in available beds when numerous facilities were closed due to flood damage that forced evacuations and relocations. Linden has maintained a high level of occupancy since the temporary increase was granted. The 40 temporarily approved beds were initially occupied by displaced residents who were moved from their previous facilities due to the storm. These beds have since been occupied by residents from another facility, at the request of the Department, as well as newly admitted residents.

The members of Alliance Health Associates, Inc., d/b/a Linden Center for Nursing and Rehabilitation are as follows: Joel Landau (40%); Jack Basch (30%); Marvin Rubin (15%) and Solomon Rubin (15%). Alliance Health Associates, Inc. commenced operating the facility on May 28, 2013 through approval of CON number 112031.

DOH Recommendation
Contingent Approval

Need Summary

Linden Center for Nursing and Rehabilitation's utilization was 78.5% in 2009, 87.8% in 2010, 94.1% in 2011, and 98.0% in 2012. The 40 temporary beds were initially granted to accommodate residents of other facilities who were displaced by Superstorm

Sandy. Since the storm, the facility has retained nearly full occupancy. The majority of surrounding facilities are at or above the 97 percent planning optimum capacity. Linden has also set up additional programs that will help ensure the continued utilization of the extra beds. If approved, the bed capacity would be at a permanent 280 beds.

Program Summary

The additional nursing unit contains all code required elements. The relatively modern design will result in an acceptable residential environment.

Financial Summary

There are no project costs.

Budget (280 beds):

Revenues	\$28,644,643
Expenses	<u>27,780,037</u>
Net Income	\$864,606

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 for this application.

Office of Health Systems Management

Approval contingent upon:

1. 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:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. 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
 - d. 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:
 - 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]

Approval conditional upon:

1. The project must be completed within one year from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The effective date for the certification of the additional beds will be determined by the MARO. [LTC]

Council Action Date

February 13, 2014

Need Analysis

Project Description

Alliance Health Associates, Inc. d/b/a Linden Center for Nursing and Rehabilitation seeks approval for permanent certification of 40 temporary beds authorized in the wake of Superstorm Sandy. Linden Center for Nursing and Rehabilitation is an existing 240-bed Article 28 residential health care facility, located at 2237 Linden Boulevard, Brooklyn, 11207, in Kings County. This bed capacity does not include the 40 temporary beds proposed in this application.

Analysis

There is currently a need for 8,663 beds in the NYC Region as indicated in Table 1 below.

Table 1: RHCF Need – NYC Region

2016 Projected Need	51,071
Current Beds	42,330
Beds Under Construction	78
Total Resources	42,408
Unmet Need	8,663

Although a need for beds is indicated, Section 709.3 states that in such circumstances, there shall be a presumption of no need if the overall occupancy of RHCFs in the planning area is less than 97 percent. The average RHCF occupancy rate for New York City is 94.8%, and the average occupancy for Kings County is slightly lower, at 94.3%, as indicated in Table 2.

Table 2: Linden Center for Nursing and Rehabilitation/Kings County/NYC Region

Facility/County/Region	% Occupancy 2009	% Occupancy 2010	% Occupancy 2011
Linden Center for Nursing and Rehabilitation	78.5%	87.8%	94.1%
Kings County	92.7%	95.0%	94.3%
NYC Region	94.9%	95.4%	94.8%

Because New York City's overall RHCF utilization rate is below that of the 97% percent planning optimum, there is a presumption is no need for additional beds in the area, as set forth in 709.3(f). However, subdivision (f) also provides for a rebuttal of this presumption based on local factors in the facility's service area. Among such factors that may be considered are occupancy rates at other RHCFs. Although as noted in Table 2, the occupancy rate for RHCFs overall in the New York City planning area is below the planning optimum of 97 percent, facilities in the area of Brooklyn served by Linden Center show a higher rate, as indicated:

Facility	Certified Beds	2012 Occupancy
Atrium Center for Rehabilitation and Nursing	380	95.3%
Brooklyn United Methodist Church Home	120	100.0%
Brooklyn-Queens Nursing Home	140	95.0%
Bushwick Center for Rehabilitation and Health Care	225	96.0%
Four Seasons Nursing and Rehabilitation Center	270	99.5%
Linden Center for Nursing and Rehabilitation	240	98.0%
Schulman and Schachne Institute for Nursing And Rehabilitation	448	98.5%
Spring Creek Rehabilitation & Nursing Care Center	188	96.0%

As the chart indicates, the majority of facilities within a two-mile radius of Linden Center have occupancy rates above the 97 percent optimum. In addition, these occupancy rates are for the year 2012 and may

have been lowered by the effects of Super Storm Sandy in the last quarter of that period. Nevertheless, even with some of these facilities falling below the 97 percent threshold, the overall RHCF utilization in the area of Linden Center is above 97 percent.

Linden Center has developed initiatives that respond to factors in the area's older population that affect RHCF utilization and which have contributed to the facility's rising rate of occupancy. These efforts include:

- A secure Alzheimer's unit, which has a wait list;
- A Diabetic Program, coordinated with the facility's dedicated Wound Care program;
- Total Parenteral Nutrition;
- Urology and bladder scans;
- Trachea tubes;
- Certified IV nurses and an in-house nurse practitioner;
- In-house, at-bedside FEES exams;
- Vestibular therapy

These programs for difficult-to-serve residents have contributed to an increase in Linden Center's case mix index (CMI), which has risen to 1.18. The facility has also been able to treat residents with a higher need without hospital assistance, as indicated by its low hospital readmission rate. The facility's census also typically includes few physical A and B residents, indicating that Linden Center's services are responsive to individuals in the local area who are fully appropriate for RHCF placement.

Linden Center has also developed working relationships with Brooklyn Hospital Center, Brookdale, and University Hospital Brooklyn (SUNY Downstate) that help ensure the prompt discharge of patients appropriate for RHCF care. The facility has also taken the initiative to enter into contracts with 22 Managed Long Term Care (MLTC) plans to ensure its full participation in the improvement of long-term care under Medicaid Redesign.

The applicant, Alliance Health Associates (Alliance), was the receiver of the facility, then known as Ruby Weston Manor, from late in 2011, through all of 2012 and until May, 2013. Significant financial losses, low utilization and operator instability at Ruby Weston caused the Department to approve Alliance Health Associates, Inc. as receiver in 2011 to stabilize operations and ensure quality oversight. The improvements wrought by Alliance during the receivership and maintained since its assumption of ownership of the facility in May, 2013, together with the active efforts of its operators to implement the aforementioned special programs and services, will likely sustain the higher occupancy rates that began in 2011, exceeded 97 percent by the end of 2012 and were sustained even with the 40 additional beds in 2013. These same measures and approach make it likely that the facility will maintain its high rate of occupancy after the permanent certification of the requested higher bed capacity.

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, or of the Health Systems Agency area Medicaid admissions percentage, 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's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Linden Center for Nursing and Rehabilitation's Medicaid admissions of 62.6% in 2010 and 96.95% in 2011 far exceeded the Kings County 75% rates of 28.12% in 2010 and 30.92% in 2011.

Conclusion

Permanent certification of the additional 40 temporary beds awarded to the applicant is warranted, based on the following factors:

- A high overall occupancy rate in other facilities in the local area of Brooklyn served by the applicant;
- A high occupancy rate for the facility's complement of permanent and temporary beds, one that is likely to be sustained by the facility's operation of programs for hard-to-serve residents, its low rate of hospital readmissions, its working relationship with major hospitals in the area, and its active participation in multiple MLTC plans;
- A sustained high case mix index (CMI);
- Rates of Medicaid admissions well in excess of that for Kings County as a whole.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

	Existing	Proposed
Facility Name	Linden Center for Nursing and Rehabilitation	Same
Address	2237 Linden Boulevard Brooklyn, NY. 11207	Same
RHCF Capacity	240	280
ADHC Program Capacity	0	Same
Type Of Operator	Voluntary	Same
Class Of Operator	Corporation	Same
Operator	Alliance Health Associates, Inc.	Same

Program Review

Linden Center for Nursing and Rehabilitation (Linden Center), formerly Ruby Weston Manor, is a 240 bed nursing home located in Brooklyn. Originally approved as a 280 bed facility, Ruby Weston Manor opened in 2001 as a 240 bed nursing facility. For reasons that are unclear, the building was constructed to house 80 beds on the fourth floor, but the south nursing unit was left vacant and unoccupied. The nursing home continued to operate the 240 bed complement for the ensuing 12 years. In May, 2013 Ruby Weston Manor was purchased by Alliance Health Associates, Inc. d/b/a Linden Center for Nursing and Rehabilitation.

In October 2013 Superstorm Sandy flooded nursing homes in Brooklyn and Queens, and Linden Center offered the use of its vacant nursing unit to receive displaced individuals evacuated from the affected nursing facilities. Linden Center subsequently received emergency approval from DOH to open the vacant 40 bed unit to house the displaced residents. Linden Center is now requesting approval to certify the additional 40 beds, increasing the permanent bed capacity to 280 beds.

Physical Environment

The nursing unit to be certified is located on the south side of the fourth floor, and is a virtual mirror image of the existing 40 bed nursing unit situated on the northern side of the floor. The floor was designed as an "H" shaped residential unit, with a large dining room located in the central common space serving both nursing units. The dining room looks out to a courtyard which separates the twin nursing units. The elevator lobby, on the opposite side of the corridor from the dining room, leads to a "C" shaped area which overlooks a four story atrium. Activity rooms and staff offices and lounges serving both units are arrayed around the atrium.

The nursing unit is a traditional linear design with double loaded corridor. Small activity rooms are located in either end of the corridor, adjacent to the stairwell. The unit consists of 18 double-bedded rooms and four single-bedded rooms. The majority of the doubles are configured in a toe-to-toe bed alignment with each bed adjacent to a window, offering ample light to both residents. The toilet rooms in all resident rooms are fully handicapped accessible. Entrance into the unit from the elevator bank passes the nurse's station, which is adjacent to the clean and soiled utility rooms. A shower is located adjacent to the soiled room. An additional tub and shower room is located on the other side of the nursing station, adjacent to the service corridor and exam room.

Compliance

Linden Center for Nursing and Rehabilitation is currently in substantial compliance with all applicable codes, rules and regulations.

Conclusion

The additional nursing unit contains all code required elements. The relatively modern design will result in an acceptable residential environment.

Recommendation

From a programmatic perspective, approval is recommended.

<h2>Financial Analysis</h2>

Operating Budget

The applicant has submitted an operating budget for the 280 beds, in 2014 dollars, for the first and third years; summarized below:

	<u>Per Diem</u>	<u>Year One and Three</u>
Revenues:		
Medicaid Managed Care	\$221.69	\$15,542,385
Medicare Fee For Service	\$629.98	9,149,251
Commercial Fee For Service	\$253.13	3,802,773
Private Pay	\$299.87	<u>150,234</u>
Total Revenues		\$28,644,643
Expenses:		
Operating	\$222.46	\$22,280,209
Capital	<u>54.91</u>	<u>5,499,828</u>
Total Expenses	\$277.37	\$27,780,037
Net Income		\$864,606
Utilization: (patient days)		100,156
Occupancy		98.00%

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

	<u>Year One and Year Three</u>
Medicaid Managed Care	70.00%
Medicare Fee For Service	14.50%
Commercial Fee For Service	15.00%
Private Pay	0.50%

Expense and utilization assumptions are based on the historical experience of the facility. Incremental expenses for the 40-bed unit during the first and third years are projected to be \$648,638. Incremental revenues for the 40-bed unit during the first and third years, which is the result of Medicare and Commercial utilization increasing, while Medicaid utilization is decreasing is projected at \$1,006,123. The applicant has indicated that they have been experiencing this shift in utilization.

Capability and Feasibility

There are no total project cost or working capital requirements associated with this application.

The submitted budget indicates a net income of \$864,606 for the 280 beds during the first and third year after the permanent certification of the 40 beds. Revenues are based on current reimbursement rates. 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.

Since the current operator commenced operations on May 28, 2013, internal financial statements are only available. BFA Attachment A is the July 31, 2013 internal financial statement of Linden Center for Nursing and Rehabilitation. As shown, the entity had a positive working capital position and a positive net asset position through July 31, 2013. Also, the entity achieved a net income of \$720,160 through July 31, 2013.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A July 31, 2013 internal financial statements of Linden Center for Nursing and Rehabilitation.

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

January 30, 2014

**Upstate Request For Applications - Certified Home Health Agencies - Exhibit # 5
Construction**

<u>Number</u>	<u>Applicant/Facility</u>
1. 132354 C	Alpine Home Health Care, LLC (Bronx County)



Public Health and Health Planning Council

Project # 132354 C
Alpine Home Health Care, LLC

County: Bronx County
Purpose: Construction

Program: Certified Home Health Agency
Acknowledged: December 30, 2013

Executive Summary

Description

Alpine Home Health Care, LLC, an existing certified home health agency (CHHA) licensed to provide services in Bronx, Kings, New York, Queens, Richmond, Nassau and Suffolk counties, requests approval to expand its service area to include Rockland County. In another separate application, (CON 132353) Alpine is simultaneously seeking to establish a new CHHA to serve Erie and Niagara counties. Alpine is affiliated with Centers Plan for Health Living, LLC, which is an operational Managed Long Term Care Plan (MLTCP) that serves Bronx, New York, Kings, Queens, Richmond, Rockland, Niagara and Erie counties. Additionally, Centers Plan for Healthy Living, LLC plans to expand its proposed MLTCP to include Nassau and Suffolk counties. The applicant's sole member is Kenneth Rozenberg.

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 area and/or approved population of existing CHHA's. Americare Certified Special Services 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

Program Summary

This proposal seeks approval for Alpine Home Health Care, LLC, a for-profit limited liability company which currently operates an Article 36 Certified Home Health Agency (CHHA) located in Bronx, New York, that serves Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk Counties, to expand its approved geographic service area to include Rockland County, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:

Revenues	\$1,986,555
Expenses	<u>1,671,818</u>
Net Income	\$314,737

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

February 13, 2014

Need Analysis

Background

Alpine Home Health Care, LLC is an existing Article 36 Certified Home Health Agency with approval to serve Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk counties. The applicant has requested approval to expand into Rockland County.

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 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. Analysis provided for 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 for Alpine Home Health Care, LLC, a for-profit limited liability company which currently operates an Article 36 Certified Home Health Agency (CHHA) located in Bronx, New York, that serves Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk Counties, to expand its approved geographic service area to include Rockland County, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Also pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties, the existing Alpine Home Health Care, LLC, Article 36 Certified Home Health Agency (CHHA) located in Bronx, New York, that currently serves Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk Counties, has submitted additional CON project # 132353-E requesting approval to establish a second additional (separate and distinct) Certified Home Health Agency (CHHA) located in Buffalo, New York, to serve the counties of Erie and Niagara. That CON construction project is also on the current agenda.

The existing CHHA in Bronx will continue to conduct business under the name of Alpine Home Health Care, LLC, and will continue to be located at 4260 Bronx Boulevard, Bronx, New York 10466, from which it will serve all its approved counties, including Rockland. There are no plans to operate an additional branch office in Rockland County at this time. The CHHA will continue to provide the same authorized services currently offered, which include: home health aide, medical social services, medical supplies/equipment/appliances, nursing, occupational therapy, physical therapy, and speech therapy.

The CHHA is currently in compliance with all applicable codes, rules, and regulations.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an incremental budget, in 2014 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Managed Care	\$360,251	\$762,289
Medicare Fee For Service	319,468	875,992
Commercial Managed Care	<u>132,551</u>	<u>348,274</u>
Total Revenues	\$812,271	\$1,986,555
Total Expenses	\$764,078	\$1,671,818
Net Income	\$48,193	\$314,737
Utilization:		
Visits	2,638	7,033
Hours	18,091	40,655

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	34.79%	34.90%
Medicare Fee For Service	29.81%	29.91%
Commercial Managed Care	33.40%	33.19%
Charity Care	2.00%	2.00%

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

Capability and Feasibility

There are no total project costs associated with this application.

Working capital requirements are estimated at \$278,636, which is equivalent to two months of incremental third year expenses. The applicant has indicated the working capital requirement will be met via equity from the members of Alpine Home Health Care, LLC. BFA Attachment A is the personal net worth statement of the member of Alpine Home Health Care, LLC, which indicates the availability of sufficient funds for the working capital requirement.

The submitted budget indicates an incremental net income of \$48,193 and \$314,737 during the first and third years, respectively. Revenues are reflective of current payment rates as well as the implementation of the Medicaid Episodic Payment System. The submitted budget appears reasonable.

BFA Attachment B is the 2012 certified financial statements of Alpine Home Health Care, LLC. As shown, the facility had a positive working capital position and a positive net asset position during 2012. Also, the facility incurred a net loss of \$2,071,973 through 2012. The applicant has indicated that the reason for the loss was start-up costs for the subsidiary entity Centers Plan for Healthy Living's managed care program.

BFA Attachment C is the October 31, 2013 internal financial statements of Alpine Home Health Care, LLC. As shown, the facility had a negative working capital position and a positive net asset position through October 31, 2013. The applicant has indicated that the minor working capital deficit reflects a current year member draw, but as in the past, the member expects to end the year in a positive working capital position. Also, the facility achieved a net income of \$164,155 through October 31, 2013.

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	Personal Net Worth Statement
BFA Attachment B	2012 certified financial statements of Alpine Home Health Care, LLC
BFA Attachment C	October 31, 2013 internal financial statements of Alpine Home Health Care, LLC

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

January 30, 2014

**Downstate Request For Applications - Certified Home Health
Agencies - Construction**

Exhibit # 6

	<u>Number</u>	<u>Applicant/Facility</u>
1.	121223 C	Excellent Home Care Services, LLC (Kings County)
2.	121259 C	Americare Certified Special Services, Inc. (Kings County)



Public Health and Health Planning Council

Project # 121223 C Excellent Home Care Services, LLC

County: Kings County
Purpose: Construction

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

Executive Summary

Description

Excellent Home Care Services, LLC, an existing proprietary special needs Certified Home Health Agency (CHHA) is requesting approval to convert its special needs CHHA to a general purpose CHHA and expand its service area to include Richmond County. The CHHA currently serves Bronx, Kings, Nassau, New York 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. Excellent Home Care Services, 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.

Excellent Home Care Services, LLC went before the Establishment and Project Review committee on May 23, 2013. During the meeting, it was noted that there were pending lawsuits against Excellent. The pending suits currently totaled \$6,500,000, with all other claims satisfied. Presentation of the application was also postponed until a survey of all of their vendors was conducted to verify the above information and demonstrate that they have complied with their obligations to reimburse their vendors as required by law. In addition, full audited financials by an independent CPA through 2012 have been submitted, as well as internal financials as of August 31, 2013, which show that the outstanding \$6,500,000, if settled as such, can be covered through current working capital.

DOH Recommendation Approval

Need Summary

Excellent Home Care Services, LLC currently operates a special needs certified home health agency with approval to serve the mentally and developmentally disabled population in Bronx, Kings, New York, Queens and Nassau counties. The applicant is requesting approval to convert to a general purpose certified home health agency in the counties currently served and to expand into Richmond County.

Program Summary

This proposal seeks approval to convert the applicant's Special Needs Population Certified Home Health Agency (CHHA) into a general population CHHA, and to add Richmond County to its approved geographic service areas, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Financial Summary

There are no project costs associated with this application.

Incremental Budget	Revenues:	\$9,369,490
	Expenses:	<u>6,285,666</u>
	Net Income:	\$3,083,824

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 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. [LTC]

Council Action Date

February 13, 2014

Need Analysis

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.

Excellent Home Care Services, LLC provided details on how it would operate in support of several MRT initiatives, including reducing and controlling utilization of CHHAs, mandatory enrollment into MLTC, decrease in the incidence and improve the treatment of pressure ulcers and Health Homes. The applicant participates in the GOLD STAMP Program to reduce pressure ulcers. They currently have relationships in place with six managed long term care plans.

The applicant indicated in the proposal that the CHHA will reduce the costs associated with admissions and readmissions to high cost inpatient care facilities through specialized programs that will employ strategies to manage high risk cases such as individuals with congestive heart failure, wounds, and diabetes. The applicant also has experience in managing care for the mentally and developmentally disabled population whom they indicate they will continue to serve through the general purpose CHHA. They also indicated that they are currently using an EMR IT system which helps control utilization, and they plan to integrate their EMR system with the Regional Health Information Organization to improve communication regarding referrals and to improve patient outcomes. Excellent Home Care Services, LLC also employs a Quality Management Program to assist with efficiencies by mainstreaming operations and reducing operational costs.

The applicant provided data from a variety of sources and provided a detailed analysis of the data that demonstrated public need as specified in 10 NYCRR 709.1(a) and community need in each of the counties proposed. The applicant analyzed the data detailing demographic, projected growth in the elderly populations, persons receiving income support, disabled elderly population, mortality rates and PQI rates by race/ethnicity.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Program Description

Excellent Home Care Services, LLC, a limited liability company, operates an Article 36 special needs certified home health agency (CHHA) serving the mentally and developmentally disabled population in Bronx, Kings, New York, Queens and Nassau Counties. Excellent Home Care Services, LLC, is requesting approval to convert the special needs population CHHA into a general purpose population CHHA serving Bronx, Kings, New York, Queens and Nassau Counties, and to expand its geographic service area into Richmond County, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Excellent Home Care Services, LLC, will continue to provide the following home health services: home health aide, medical social services, medical supplies, equipment and appliances, nursing, nutritional, occupational therapy, personal care, physical therapy, respiratory therapy, and speech language pathology, and will continue to serve all counties from its current practice location at 91-93 South Third Street, Brooklyn, New York 11211.

Although this agency received conditional approval to operate their CHHA as a special needs CHHA limited to serving the mentally and developmentally disabled population they have not been fully compliant with this requirement. Excellent Home Care Services, LLC has made significant progress toward becoming compliant with the condition. They have increased the percentage of their patients served that fall within the special needs population from less than 5% in the January to June 2009 semi-annual reporting period to 58% in the January to June 2012 semi-annual reporting period.

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

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	\$65,329	\$172,832
Medicaid	2,744,806	7,261,577
Medicare	<u>731,443</u>	<u>1,935,081</u>
Total Revenues:	\$3,541,578	9,369,490
Expenses:	\$2,481,859	\$6,285,666
Net Income:	\$1,059,719	\$3,083,824

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

	<u>Year One and Three</u>
Commercial Managed Care	2%
Medicare Fee-for-Service	20%
Medicaid Managed Care	76%
Charity Care	2%

Expenses and utilization assumptions are based on the historical experience of Excellent Home Care Services. 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 \$1,047,611 based on two months of third year expenses and will be provided through the existing operation. BFA Attachment A is the financial summary of Excellent Home Care, which indicates the availability of sufficient funds.

The submitted budget indicates a net income of \$1,059,719 and \$3,083,824 for the first and third years of operations, respectively. Revenue is based on current payment rates for certified home health agencies including the Medicaid episodic payment rates. The budget appears reasonable.

BFA Attachment A, a financial summary of Excellent Home Care Services, LLC, indicates that the facility has maintained positive working capital and member's equity and generated a net income of \$5,499,457 and \$101,579 for 2010 and 2011 respectively.

BFA Attachment B, a financial summary of Excellent Home Care Services, LLC, indicates that the facility has maintained positive working capital, positive member's equity and generated a net income of \$3,592,314 as of December 31, 2012. BFA Attachment C, an internal financial summary of Excellent Home Care Services, LLC, indicates that the facility has maintained positive working capital and member's equity and generated a net income of \$934,064 as of August 31, 2013. The applicant has indicated they will be receiving \$8,844,502 as a result of the final reconciliation of paid claims per a February 26, 2012 letter from the Office of Health Insurance Programs, which will improve working capital.

Excellent Home Care Services, LLC went before the Establishment and Project Review committee on May 23, 2013. During the meeting, it was noted there are pending lawsuits against Excellent. The pending suits currently total \$6,500,000, with all other claims satisfied as shown on BFA Attachment D. Presentation of the application was also postponed until a survey of all of their vendors was conducted to verify the above information and demonstrate that they have complied with their obligations to reimburse

their vendors as required by law. In addition, full audited financials by an independent CPA through 2012 have been submitted, as well as internal financials as of August 31, 2013, which show that the outstanding \$6,500,000, if settled as such, can be covered through current working capital.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Audited Financial Summary 2010-2011, Excellent Home Care Services, LLC
BFA Attachment B	Audited Financial Summary as of December 31, 2012, Excellent Home Care Services, LLC
BFA Attachment C	Internal Financial Summary as of August 31, 2013, Excellent Home Care Services, LLC
BFA Attachment D	Chart of Active and Settled Claims



Public Health and Health Planning Council

Project # 121259 C
Americare Certified Special Services, Inc.

County: Kings County
Purpose: Construction

Program: Certified Home Health Agency
Acknowledged: April 24, 2012

Executive Summary

Description

Americare Certified Special Services, Inc., an existing proprietary corporation, requests approval to change the population served for its existing Certified Home Health Agency (CHHA) from special needs to general population. The applicant currently provides services in 14 counties of New York State and by servicing the general population, they would be able to expand and provide care to the general population in the underserved areas.

On December 8, 2011, the Public Health 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. Americare Certified Special Services 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

Program Summary

This proposal seeks approval to convert the applicant's Special Needs Population Certified Home Health Agency (CHHA) into a general population CHHA, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Financial Summary

There is no project cost associated with this application.

Incremental Budget:

Revenues	\$19,300,353
Expenses	<u>18,882,084</u>
Excess of Revenues over Expenses	\$418,269

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

February 13, 2014

Need Analysis

Background

Americare operates an Article 36 Special Needs Population Certified Home Health Agency (CHHA) approved to serve patients with mental health and behavioral health issues, served by the New York State Office of Mental Health, and patients with mental retardation and developmental disability issues, served by the New York State Office of Persons with Developmental Disabilities in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Westchester, Rockland, Orange, Sullivan, Putnam, Dutchess and Ulster counties. The applicant is requesting approval to convert to a general purpose certified home health agency in the counties they currently serve.

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.

Americare Certified Special Services, Inc. detailed their 20 years' experience in providing home care services to patients with complex multiple diseases, both behavioral and medical. They described their expertise and skills in identifying behavioral health concerns that will prevent both exacerbations of mental illness and at the same time foster compliance with medical regimens to increase disease stabilization and medication compliance.

Their ability and experience to identify behavioral health concerns and in prevention of exacerbation of mental illness with preventive goals of compliance of medical regimen for disease stabilization along with medication compliance will reduce recidivism of inpatient hospitalizations.

They currently have developed relationships with six managed long term care plans and plan to expand their network as new MLTCPs are approved.

They provided details on how it would operate in support of several MRT initiatives including reducing and controlling utilization of CHHAs, mandatory enrollment into MLTC,

The applicant has developed disease management programs which are responsive to the needs of their patients with comorbidities such as diabetes for which Americare has developed detailed protocols with specific and measurable goals.

They have fully implemented their Electronic Health Record system which they describe enables them to enhance efficiency of operations and detail how it ultimately reduces cost while improving quality.

They emphasize their progress in wound care and their partnering with Beth Israel Hospital in Manhattan to enhance wound care outcomes with jointly developed wound treatment programs to improve quality across the continuum.

They have also partnered with Beth Israel's Director of Rehabilitation and orthopedic surgeons in the care of orthopedic surgery cases with the goal of enhancing quality of care and preventing adverse effects. These partnerships focus on the continuum of care for specific diseases; ensure high quality outcomes; in addition to efficiency and coordination of services.

The applicant provided data from a variety of sources and provided a detailed analysis of the data that demonstrated public need as specified in 10 NYCRR 709.1(a) and community need in each of the counties proposed. The applicant analyzed the data detailing demographic, projected growth in the elderly populations, PQI rates.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Americare Certified Special Services, Inc. is an existing for-profit corporation that operates a Certified Home Health Agency (CHHA) approved to serve the special needs population of patients with mental health and behavioral health issues that are served by the New York State Office of Mental Health, and patients with mental retardation and developmental disability issues that are served by the New York State Office of Persons with Developmental Disabilities, in the counties of Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Westchester, Rockland, Orange, Sullivan, Putnam, Dutchess, and Ulster 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 seeks approval to

convert its Special Needs Population CHHA into a general population CHHA. Americare Certified Special Services, Inc. will continue to serve all fourteen (14) counties from the CHHA's existing main parent office practice location at 5923 Strickland Avenue, Brooklyn, New York 11234, its federally-designated CHHA sub-unit additional practice location at 100 Route 59, Suite 102, Suffern, New York 10901, and its approved sub-unit branch office additional practice location at 900 Merchant's Concourse, Suite LL-15, Westbury, New York 11590.

Americare Certified Special Services, Inc. will continue to 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; respiratory therapy; and speech language pathology.

Although this agency received conditional approval to operate their CHHA as a special needs population CHHA limited to patients with mental health and behavioral health issues that are served by the New York State Office of Mental Health, and patients with mental retardation and developmental disability issues that are served by the New York State Office of Persons with Developmental Disabilities, they have not been fully compliant with this requirement. Americare Certified Special Services, Inc. has made progress toward becoming compliant with the condition. They have increased the percentage of their patients served that fall within the special needs population from 78.02% in the January to June 2009 semi-annual reporting period to 87.68% in the January to June 2013 semi-annual reporting period.

Americare Certified Special Services, Inc. is currently in compliance with all applicable codes, rules and regulations.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an incremental operating budget in 2014 dollars during the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid	\$3,419,100	\$17,977,680
Medicare	58,950	309,960
Commercial	<u>205,092</u>	<u>1,012,713</u>
Total Revenues	\$3,683,142	\$19,300,353
Expenses:	3,184,905	18,882,084
Excess of Revenues over Expenses	\$498,237	\$418,269
Visits	11,022	70,798
Hours	106,758	685,688

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

	<u>Year One</u>	<u>Year Three</u>
Medicare	2.82%	2.72%
Medicaid	93.14%	89.72%
Commercial	2.04%	5.56%
Charity Care	2.00%	2.00%

Expense and utilization assumptions are based on the historical experience of Americare Certified Special Services, Inc. Revenues are reflective of the current payment rates and the Medicaid Episodic Payment System. The applicant has indicated that the reason for the ramp up in utilization from the first year to the third year is based on the increase in census. The applicant assumed a zero census at the start of year one, and an ending census at the end of year three of 650. This increase in census was based on the assumption from year one through year three that we would have a steady ramp up of admissions resulting in monthly admissions of 300 and discharges of 279 at the end of year three. They assumed that each patient received an average 3.57 HHA hours/week, eight SN visits/month, two PT visits/month and one OT visit/month.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$3,147,014 based on two months of third year incremental expenses and will be provided through the existing operation. BFA Attachment A is the personal net worth statement of the sole owner of Americare Certified Special Services, Inc., which indicates the availability of sufficient funds for the equity contribution to meet the working capital requirement.

The submitted budget indicates an incremental excess of revenues over expenses of \$498,237 and \$418,269 during the first and third years, respectively. Revenues are based on current payment rates and the Medicaid Episodic Payment System.

BFA Attachment B is the 2011 and 2012 certified financial statements of Americare Certified Special Services, Inc. As shown, the facility had an average positive working capital position and an average negative stockholders equity position from 2011 through 2012. The applicant has indicated that the reason for the average negative stockholders equity position is from prior year losses. Also, the facility incurred an average net loss of \$7,187,710 through 2011 and 2012. The applicant has indicated that the reason for the 2011 losses were the result of the implementation of the per patient spending limits put in place by the Department of Health for the period April 2011 through March 2012, and many of its patients were also transitioned to MLTC plans, which reduced census. Due to these losses, the applicant restructured the organization by cutting staff and reducing overhead costs.

BFA Attachment C is the November 30, 2013 internal financial statements of Americare Certified Special Services, Inc. As shown, the facility had a negative working capital position and a negative stockholders equity position through November 30, 2013. The reason for the negative working capital position is due to a related party liability. This liability is due to the other related companies that make up the Americare group of companies. They are all owned by Martin Kleinman, and this liability will not have to be paid off. The reason for the negative stockholders equity position is from prior year losses. Also, the applicant achieved a net income of \$1,636,563 through November 30, 2013.

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	Personal Net Worth Statement
BFA Attachment B	2011 and 2012 certified financial statements of Americare Certified Special Services, Inc.
BFA Attachment C	November 30, 2013 internal financial statements of Americare Certified Special Services, Inc.

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

January 30, 2014

Ambulatory Surgery Centers - Establish/Construct

Exhibit # 7

	<u>Number</u>	<u>Applicant/Facility</u>
1.	112086 B	1504 Richmond, LLC d/b/a Richmond Surgery Center (Richmond County)
2.	132134 B	Moshenyat, LLC d/b/a Moshenyat Gastroenterology Center (Kings County)



Public Health and Health Planning Council

Project #112086-B
1504 Richmond, LLC d/b/a Richmond Surgery Center

County: Richmond

Program: Ambulatory Surgery Center

Purpose: Establishment and Construction

Acknowledged: August 15, 2011

Executive Summary

Description

1504 Richmond, LLC d/b/a Richmond Surgery Center, a to-be-formed proprietary limited liability company, requests approval for the establishment of a multi- specialty ambulatory surgery center to serve the residents of Richmond County. The Center will provide the following surgical services in two operating rooms; plastic surgery, gastroenterology, gynecology, ophthalmology, orthopedics, otolaryngology and urology. The space will be leased space located at 1504 Richmond Road, Staten Island, New York.

The proposed members of Richmond Surgery Center, and their ownership percentages, are as follows:

Scott Vitolo	35%
Todd Vitolo	35%
Noreen Vitolo	25%
Michael Costes, M.D.	5%

This project was originally presented to the Establishment and Project Review Committee on March 22, 2012, and proceeded to the Public Health and Health Planning Council on April 5, 2012. The Committee recommended, and the Council approved, a deferral of the project due to questions from the Committee about the lack of health care facility experience of the proposed members. After the deferral, the applicant revised the proposed members to include a physician and a member with health facility experience, as well as explained more fully the qualifying experiences of the original members.

The project was brought back to the Committee and Council on November 21, 2013 and December 12, 2013, respectively. The proposal was again deferred, this time to allow area hospitals time to FOIL and review the CON file.

At this time, after reviewing the revised material and considering information submitted by area hospitals, the Department is again forwarding the project for consideration.

DOH Recommendation

Contingent Approval with an expiration of the operating certificate five (5) years from the date of issuance.

Need Summary

The number of projected procedures is 1,980 in year 1 and 2,183 in year 3. These projections are based on the actual experience of the proposed surgeons who will be utilizing the proposed center. The procedures are currently done in out-of-hospital settings or at area hospitals.

Program Summary

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

A transfer and affiliation agreement is expected be provided by North Shore/Staten Island University Hospital.

Financial Summary

Budget: Revenues:	\$ 2,376,790
Expenses:	\$ 1,858,376
Gain/(Loss):	\$ 518,414

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

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval with an expiration of the operating certificate five (5) years from the date of issuance contingent upon:

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
2. Submission 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]
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 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 an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of a working capital loan commitment, acceptable to the Department. [BFA]
6. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
7. Submission of a signed and dated first page of Schedule 1A, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's Articles of Organization, acceptable to the Department. [CSL]
9. Submission of a photocopy of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, acceptable to the Department. [CSL]
10. Submission of a photocopy of a fully executed and dated amendment to the applicant's Operating Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's revised Certificate of Doing Business under an Assumed Name, acceptable to the Department. [CSL]
12. Submission of a photocopy of a fully executed, dated and revised Lease Agreement, acceptable to the Department. [BFA, CSL]
13. Submission of documentation verifying the list of the applicant's managers, acceptable to the Department. [CSL]
14. Submission of documentation regarding the relocation or dissolution of Landmark Surgical, PLLC (Landmark PLLC) as applicable, acceptable to the Department. [CSL]
15. Submission of a signed 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 the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate. [CSL]
16. Submission of a photocopy of any and all fully executed and dated documents pursuant to which the applicant will acquire the operating assets of Landmark PLLC, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. (PMU)
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. 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]
7. The applicant shall complete construction by March 30, 2015 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

February 13, 2014

Need Analysis

Background

1504 Richmond, LLC d/b/a Richmond Surgery Center is seeking approval to establish and construct a diagnostic and treatment center to provide multi-specialty ambulatory surgery services. The proposed freestanding ambulatory surgery center will be located at 1504 Richmond Road, Staten Island, 10304, in Richmond County and will provide plastic surgery, gastroenterology, gynecology, ophthalmology, orthopedics, otolaryngology, and urology surgical procedures.

Analysis

The primary service area of the proposed project is Richmond County. Richmond County does not have any single specialty or multi-specialty freestanding ASCs. There are four hospitals in Richmond County that provide multi-specialty ambulatory surgical services.

The table below provides data on the number of total ambulatory patients in Richmond County hospitals.

<u>Ambulatory Surgery Patients</u>	<u>Total Patients 2012</u>
Richmond University Medical Center	3,764
Staten Island Hospital-North	12,754
Staten Island Hospital-South	4,030
Staten Island Hospital-Concord Div.	0

SPARCS 2012

The number of projected procedures is 1,980 in year 1 and 2,183 in year 3.

The applicant is committed to serving all persons in need of surgical care without regard to their ability to pay or the source of payment.

Conclusion

The proposed ASC will provide residents of the borough with access to ambulatory surgery in a freestanding, non-hospital Article 28 setting; and will bring some procedures performed in non-Article 28 settings into an Article 28 environment.

Recommendation

From a need perspective, contingent approval with an expiration of the operating certificate five (5) years from the date of its issuance, is recommended.

Programmatic Analysis

Background

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

Proposed Operator	1504 Richmond, LLC
Doing Business As	Richmond Surgery Center
Site Address	1504 Richmond Road, Staten Island
Surgical Specialties	Multi-Specialty, including: Plastic Surgery Gastroenterology Gynecology Ophthalmology Orthopedics Otolaryngology Urology
Operating Rooms	2
Procedure Rooms	0
Hours of Operation	Monday through Friday from 8:00 am to 6:00 pm (Extended as necessary to accommodate additional procedures).
Staffing (1 st Year / 3 rd Year)	15.75 FTEs / 16.50 FTEs
Medical Director(s)	Michel Costes
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by North Shore/Staten Island University Hospital 8.15 miles/14 minutes
On-call service	Patients will be provided with surgeon contact information as well as the facility's on-call service during hours when the facility is closed.

Character and Competence

The members of the LLC are:

Todd Vitolo	35%
Scott Vitolo	35%
Noreen Vitolo	25%
Michel Costes, MD	5%

Todd Vitolo is an attorney currently employed as a licensed associate broker for a real estate company. He worked four years as a medical malpractice and health care litigation attorney and, besides general liability and product liability cases, he was involved in every aspect of medical malpractice defense litigation for both physicians and hospitals. He feels that this experience has allowed him to learn the inner workings of the health care system, including hospital and physician practices. Additionally, he feels it has allowed him to define the line between good and inadequate care and the processes which hospitals and physicians should have in place to insure the delivery of the necessary standard of care to the public. Mr. Vitolo feels he has developed a solid understanding and respect for the ethics, rules, regulations and laws that define the standard of care and conduct for patient care. In 2004, he started another career in residential real estate sales where he founded the Columbia Group which manages the sale and purchase of multi-million dollar properties. Mr. Vitolo feels this business experience will be useful as the operator of an ambulatory surgery center.

Scott Vitolo is currently the practice manager and administrator for an office based surgical (OBS) practice. Previously, he was a certified Emergency Medical Technician (EMT) who worked as a New York City Emergency Medical Service 911 EMT. He has also worked in the construction field. Mr. Vitolo is now, and has been, a medical practice manager for over 19 years, overseeing the planning, construction, and opening of an office based surgery center accredited by a national accrediting organization.

Mr. Vitolo acted as the general contractor and project manager for not only the OBS practice, but has also been involved in the development of several restaurant projects. He feels his intimate involvement in the construction and initiation of the OBS practice gave him extensive experience and knowledge of the Life Safety aspect of health care facilities. He also feels his experience as a practice manager and OBS administrator has given him an understanding of the ethical, moral, health and procedural standards required to operate an ambulatory surgery center. Mr. Scott Vitolo will be the center's administrator.

Noreen Vitolo, a licensed esthetician, is the owner/operator of a skin care business. She previously worked in a multi-location medical practice in the areas of operations, sales and customer service. She had also worked at an advertising agency prior to founding her own company which specialized in medical marketing. Her firm focused primarily on consumer medical education for physicians and hospitals in the tri-state area and her firm won a Telly award. Ms. Vitolo has traveled to Armenia to produce awareness videos for a children's open heart surgery center staffed by American volunteer surgeons, nurses and physicians in an effort to raise money for this charitable cause. Additionally, Ms. Vitolo actively fundraises for the American Cancer Society, and she is a member of the Staten Island Mental Health Society, the Women's Guild Committee and the Staten Island Chamber of Commerce. She opened her current business in 2003 and feels that her extensive experience running small businesses will be beneficial to the operation of the center. While Ms. Vitolo's role in the center will be all encompassing, she will act as Chief Business Officer and Director of Community Outreach and Education. She intends on ensuring that the center provides charitable care to the uninsured and reduced fees to those in need, especially those in traditionally underserved populations.

Dr. Michel Costes is a practicing physician who will serve as the facility's medical director.

It should be noted that Dr. Robert Vitolo, the father of Todd, Scott, and Noreen, is the current owner of an office based surgery practice at the proposed location. The proposal does not include any reference to Dr. Vitolo being a member of the applicant nor being in any management position at the center. He has signed an affidavit indicating he will have no ownership, managerial, or operational role in the center. Dr. Vitolo's only role will be as a participating/practicing surgeon.

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

Should any patients present themselves at the center in need of primary care services, the center hopes to work with Staten Island University Hospital (SIUH) to provide such services. The proposed operators indicate that they have reached out to SIUH in an effort to establish a mutual network relationship. Additionally, the operators intend to participate in community health events and local religious institution events to make sure the community is aware of their services.

The center intends on utilizing electronic medical records and hopes to integrate in the regional health information organization (RHIO) or health information exchange (HIE). A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site to be occupied. The terms of which are summarized below:

Premises: 5,760 square feet located at 1504 Richmond Road, Staten Island, New York, Richmond County
Lessor: Landmark 1504, LLC
Lessee: 1504 Richmond, LLC d/b/a Richmond Surgery Center
Rental: \$96,000 annually/\$8,000 monthly (\$16.67 per sq. ft.)
Term: (5) year term
Provisions: The lessee is responsible for paying 100% of the property taxes.

The applicant has provided two letters indicating the rent reasonableness. The applicant has indicated that the lease agreement will be an arms length lease agreement and provided an affidavit indicating the disclosure.

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,163,352	\$2,376,790
Expenses:		
Operating	\$1,562,995	\$1,750,376
Capital	<u>108,000</u>	<u>108,000</u>
Total Expenses	\$1,670,995	\$1,858,376
Net Income	\$492,357	\$518,414
Utilization: (Procedures)	1,980	2,183
Cost Per Visit	\$843.94	\$851.29

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

Commercial Fee-for-Service	20.11%	20.18%
Commercial Managed Care	19.15%	19.22%
Medicare Fee-for-Service	38.31%	38.44%
Medicaid Fee-for-Service	5.27%	5.29%
Medicaid Managed Care	10.06%	10.09%
Charity Care	3.94%	3.60%
Private Pay	3.16%	3.18%

Expense and utilization assumptions are based on projected need study by the applicant and current reimbursement methodologies.

Capability and Feasibility

There is no project cost associated with this application.

Working capital requirements, estimated at \$309,730, which appear reasonable based on two months' of third year expenses. The proposed members will provide equity in the amount of \$154,865 to meet the working capital requirement. BFA Attachment A is a summary net worth statement of the proposed members of Richmond Surgery Center, LLC, which indicates the availability of sufficient funds for the stated equity levels. The residual \$154,865 will be provided by a bank to 1504 Richmond, LLC at a rate of 7% for a term of (5) years. A letter of interest from Capital One Bank has been submitted.

BFA Attachment B is the pro-forma balance sheet of Richmond Surgery Center, which indicates a positive shareholders' equity position of \$154,865 as of the first day of operation.

The submitted budget projects a net income of \$492,357 and \$518,414 during the first year and third year of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement- 1504 Richmond, LLC
BFA Attachment B	Pro-forma Balance Sheet- Richmond Surgery Center
BFA Attachment C	Detailed Budget of Richmond Surgery Center
BHFP Attachment	Map

Supplemental Information

Outreach

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

Facility: Richmond University Medical Center
355 Bard Avenue
Staten Island, NY 10310

Operating room utilization at Richmond University Medical Center (RUMC):

Current OR Use	Surgery Case Proportion ¹		Ambulatory Surgery Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	Inpatient		
70%	75%	25%	130	Not specified

RUMC opposes the application, stating that the proposed ASC presents "a grave financial risk" to the ongoing operation of RUMC's ambulatory program. The hospital does not attach a dollar amount to any expected loss of ambulatory surgical volume to the ASC. The hospital states that its current surgical revenues help support vital services, such as its 911 ambulance system and its Level 1 Trauma services in its ED. The hospital does not quantify the impact that a loss of surgical revenues to the proposed ASC would have on these or any other of its services or operations.

¹ Number of cases not specified.

RUMC had a working capital ratio of 0.98 in 2011 and 1.24 in 2012. In 2011, RUMC had an operating loss of \$17.1 million on revenues of \$283.1 million. In 2012, the facility had an operating loss of \$7.1 million on revenues of \$285.5 million. In 2011, RUMC provided charity care of \$5.3 million and experienced bad debt of \$14.8 million. In 2012, the facility provided \$6.2 million in charity care and had \$18.1 million in bad debt.

Facility: Staten Island University Hospital
475 Seaview Avenue
Staten Island, NY 10305

Operating room utilization at Staten Island University Hospital:

Current OR Use	Surgery Case Proportion ²		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	Inpatient		
North Campus OR: 69% (inpatient only) South Campus OR: 55% Ctr. for Ambulatory Surgery: 72%	S. Campus: 87% Ctr. for Amb. Surgery: 99%	S. Campus: 13% Ctr. for Amb. Surgery: 1%	354	Yes

The hospital opposes the application, based on its assumption that all 354 cases performed by applicant physicians at SIUH in 2012 would be transferred to the proposed ASC. The hospital projects that this would result in a loss of \$1,259,760 in revenues, which would adversely affect the ability of SIUH to provide necessary community services, such as health education events, chronic disease screening, flu vaccinations, smoking cessation programs, and similar activities. The hospital does not specify the specific impact that the projected loss would have on any individual service.

SIUH is reported under the North Shore-LIJ Health System's combined financial statement filing. The NSLIJ system had a working capital ratio of 1.7 in both 2011 and 2012. In 2011, NSLIJ system had an operating gain of \$134.2 million on operating revenue of \$6.2 billion. In 2012, the NSLIJ system's operating gain was \$97.9 million on operating revenue of \$6.7 billion. SIUH provided uncompensated care at established charges of approximately \$82,986,000 and \$69,916,000 in 2013 and 2012, respectively. This amount consisted of charity care of \$75,286,000 and \$63,116,000 in 2013 and 2012, respectively, and uncollectible charges written off as bed debt of \$7,700,000 and \$6,800,000 for 2013 and 2012, respectively.

Supplemental Information from Applicant

Need and Source of Cases: The applicant states that the projected volume of cases is based on the actual experience of the physicians who have expressed an interest in performing procedures at the proposed facility. The vast majority of these cases (85 percent) are currently performed in office-based settings. The applicant also expects the demand for ambulatory surgical services to continue to grow. The applicant further expects that patients will be attracted to the proposed ASC because of its convenience in scheduling and the fact that it will be located in an out-of-hospital setting.

Staff Recruitment and Retention: The applicant expects to employ existing staff of the current office-based practice. To the extent that additional staff is needed, the proposed operators are committed to not actively seeking staff from local hospitals.

Office-Based Cases: As noted, 85 percent of the cases projected for the proposed ASC are currently performed in an office-based setting.

² The hospital did not furnish the number of surgical cases. The percentages show the distribution of cases between inpatient and ambulatory surgery at each site.

OHSM Comment

The two hospitals that oppose this application assume that all the current cases performed by applicant physicians who practice at their facilities would be transferred to the proposed ASC. However, the applicant states that 85 percent of the cases projected for the proposed ASC are currently performed in an office-based setting, not in hospitals or hospital-based ambulatory surgery centers. In addition, neither hospital furnished information on its current annual number of ambulatory surgery cases, and one did not specify the actual dollar value of the revenues it expected to lose to the proposed ASC. The Department does not find the comments of the two hospitals sufficient to warrant reversal or modification of the recommendation for five-year limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.



Public Health and Health Planning Council

Project # 132134 B Moshenyat, LLC d/b/a Moshenyat Gastroenterology Center

County: Kings County

Program: Ambulatory Surgery Center

Purpose: Establishment and Construction

Acknowledged: September 11, 2013

Executive Summary

Description

Moshenyat, LLC d/b/a/ Moshenyat Gastroenterology Center, a to-be-formed limited liability company (LLC), requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located in leased space located at 1958 Ocean Avenue, Brooklyn. Moshenyat Gastroenterology Center will be certified as a single-specialty freestanding ambulatory surgery center (FASC) in the discipline of gastroenterology.

The applicant will lease approximately 3,452 square feet on the ground and cellar levels of the recently constructed six story building. The site will include one procedure room, two pre-operating holding positions and one post-operating recovery position, along with the requisite support areas.

Yitzchak Moshenyat, M.D. is the proposed sole member of Moshenyat, LLC d/b/a/ Moshenyat Gastroenterology Center. The FASC expects to have 2,740 visits during its first year, based on Dr.Yitzchak Moshenyat's current office based surgery practice.

DOH Recommendation

Contingent Approval with an expiration of the operating certificate five (5) years from the date of issuance.

Need Summary

Moshenyat Gastroenterology Center is located in the Midwood neighborhood and will serve Kings County. The center projects that there will be 2,740 visits in year one and 3,437 visits in year three.

Program Summary

The transfer and affiliation agreement is expected to be provided by Lutheran Medical Center.

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

Financial Summary

Total project costs of \$1,093,503 will be provided by \$299,051 in personal investments (cash) from Yitzchak Moshenyat, M.D. with the remaining \$794,452 balance being financed through Capital One Bank for ten years at a 7% interest rate.

Budget:	Revenues:	\$1,790,536
	Expenses:	<u>\$1,226,777</u>
	Gain/ (Loss)	\$ 563,759

Subject to noted contingencies, it appears 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 with an expiration of the operating certificate five (5) years from the date of issuance. contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission 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]
4. 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]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of a loan commitment, acceptable to the Department. [BFA]
7. Submission of a working capital loan commitment, acceptable to the Department. [BFA]
8. Submission of a lease that contains the language set forth in 10 NYCRR 600.2(d), acceptable to the Department. [BFA, CSL]
9. Submission of executed copies of Articles of Organization and Operating Agreement. [CSL]
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 project must be completed within three years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]

6. The review and approval of SHC drawings should include further evaluation of the remoteness of the first floor required exits and reconfiguration of smoke partitions to minimize the potential of both exits being blocked simultaneously as required by 2000 NFPA 101 LSC 7.5.1.3. [AER]
7. The applicant shall provide written approval from the New York City Fire Department, (FDNY) that the exiting arrangement and evacuation plans are acceptable at project completion. [AER]
8. 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]
9. The applicant shall complete construction by January 31, 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 may be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

February 13, 2014

Need Analysis

Background

Moshenyat Gastroenterology Center is seeking approval to establish and construct an Article 28 diagnostic and treatment center to provide single specialty ambulatory surgery services at 1958 Ocean Avenue, Brooklyn, 11230, in Kings County. The proposed services are gastroenterology surgical services.

Analysis

The service area is Kings County. The number of projected visits is 2,740 in year one and 3,437 in year three. These projections are based on the current practices of the participating surgeon. Kings County has a total of four freestanding multi-specialty ASCs and eight freestanding single-specialty ASCs.

Ambulatory Surgery Patients in 2012		SPARCS
Type	Facility	2012 Patients
Multi Specialty	All-City Family Hlthcare Ctr	3,345
Multi Specialty	ASC Brklyn (NY Center for Spec. Surgery)	2,025
Multi Specialty	Brklyn Endo & Amb Surg Ctr LLC (Closed 5/1/13)	5,628
Multi Specialty	Brook Plaza Amb Surgical Ctr	8,531
Ophthalmology	Brooklyn Eye Surgery Center	3,822
Gastroenterology	Digestive Diseases D & T C (South Brooklyn Endo-Center)	3,139
Endoscopy	Endoscopic Amb Specialty Ctr-Bay Ridge	1,078
Endoscopy	Endoscopic Diagnostic and Treatment Ctr LLC	2,815
Gastroenterology	Gastroenterology Care, Inc.	2,248
Endoscopy	Greater NY Endoscopy Surgical	7,085
Ophthalmology	Sheepshead Bay Surgery Center	2,398
Single-Specialty	Metro Center Digestive-Liver Diseases (Opened 2/6/2013)	n/a
Multi Specialty	Millennium ASC (Opened 6/8/2011)	n/a
Total		42,114

In addition there are eight freestanding ASCs, one single-specialty ASC and seven multi-specialty ASCs that have been approved, but which are not yet operational.

The applicant is committed to serving all persons without regard to their ability to pay or the source of payment.

Conclusion

Approval of the proposed ASC would bring under Article 28 regulation an additional provider of ambulatory surgery to serve the communities of Brooklyn.

Recommendation

From a need perspective, contingent approval is recommended, with an expiration of the operating certificate five (5) years from the date of issuance.

Programmatic Analysis

Project Proposal

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

Proposed Operator	Moshenyat, LLC
Doing Business as	Moshenyat Gastroenterology Center
Site Address	1958 Ocean Avenue, Brooklyn
Surgical Specialties	Single Specialty: Gastroenterology
Operating Rooms	0
Procedure Rooms	1
Hours of Operation	Monday through Friday from 8:00 am to 6:00 pm (Will be expanded to meet additional need, if necessary)
Staffing (1st Year / 3rd Year)	6.5 FTEs / 6.5 FTEs
Medical Director(s)	Moshenyat Yitzchak, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Lutheran Medical Center 7.3 miles/19 minute drive time
On-call service	Contact information for the surgeon, center, back-up hospital and the center's after-hours number will be provided to each patient with discharge instructions.

Character and Competence

The sole member of Moshenyat, LLC is:

Name	
Moshenyat Yitzchak, MD	100%

Dr. Yitzchak is a practicing surgeons/board-certified gastroenterologist.

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 Center will ensure that patients have access to primary care services through expansion of the Transfer and Affiliation Agreement with Lutheran Medical Center (LMC) to include primary and other specialty services, as needed. Outreach to the community will include participation in community health events and local religious institutions to increase awareness of services and relationship with the local hospital. Provisions will be made for those who cannot afford services, and charity care will be provided.

The applicant has made inquiries to LMC to establish a mutual network relationship and has expressed its interest in becoming a part of an Accountable Care Organization (ACO) and integrating into the regional health information organization (RHIO) and/or Health Information Exchange (HIE). Additionally, the applicant intends on utilizing an electronic medical record (EMR) and is reviewing programs but has not yet identified a specific EMR system.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted a draft lease for the proposed site:

Date:	May 1, 2013
Premises:	3,452 gross square feet on the ground and cellar levels of 1958 Ocean Avenue, Brooklyn, New York 11230
Landlord:	A & A 1958, LLC
Lessee:	Moshenyat, LLC d/b/a/ Moshenyat Gastroenterology Center
Term:	10 year (1 st year sq. ft. rental rate is \$17.38) 1 st year at \$60,000 2 nd year at \$62,400 3 rd year at \$64,866 4 th year at \$67,461 5 th year at \$70,158 6 th year at \$72,966 7 th year at \$75,876 8 th year at \$ 78,918 9 th year at \$82,074 10 th year at \$86,016 Renewal for (1) one 10-year term with a 4% rate increase
Provisions:	Utilities, Taxes, Maintenance and Insurance are all the responsibility of the tenant.

The applicant has provided an affidavit stating that the lease is a non-arm's length arrangement, as the applicant's sole member, Yitzchak Moshenyat, M.D., is also a member of the landlord A & A 1958, LLC. Realtor letters have been provided attesting to the rental rate being of fair market value.

Total Project Cost and Financing

Total project costs for new construction and the acquisition of moveable equipment is estimated at \$1,093,503, which is broken down as follows:

Renovation & Demolition	\$543,002
Design Contingency	54,300
Construction Contingency	27,150
Architect/Engineering Fees	45,000
Other Fees	125,000
Movable Equipment	236,130
Financing Fee	31,780
Interim Interest Expense	23,171
CON Application Fee	2,000
CON Processing Fee	<u>5,970</u>
Total Project Cost	\$1,093,503

Project costs are based on a June 1, 2014 start date with an eight month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$299,051
Bank Loan (7% for a 10-year term)	<u>794,452</u>
Total	\$1,093,503

A letter of interest has been provided from Capital One Bank

Operating Budget

The applicant has submitted the first and third years operating budgets, in 2014 dollars:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,427,404	\$1,790,536
Expenses:		
Operating	\$862,316	\$956,578
Capital	<u>263,864</u>	<u>270,199</u>
Total Expenses	\$1,126,180	\$1,226,777
 Net Income or (Loss)	 \$301,224	 \$563,759
 Utilization: (visits)	 2,740	 3,437
Cost Per Visits	\$411.01	\$356.93

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

Medicaid Managed Care	12.0%
Medicare Fee-For-Service	40.0%
Commercial Fee-For-Service	23.0%
Commercial Manage Care	20.0%
Private Pay	3.0%
Charity	2.0%

Utilization and expense assumptions are based on similar single-specialty FASC, as well as the proposed operator's historical experience in operating an office based surgery center. The breakeven point is approximately 78.86% for the first year, or 2,161 visits, and 68.50% for the third year, or approximately 2,354 visits.

Capability and Feasibility

The total project cost is \$1,093,503. The sole member, Yitzchak Moshenyat, M.D., will contribute \$299,051 from his personal liquid resources and the remaining balance of \$794,452 being finance through Capital One Bank at the above state terms.

Working capital requirements are estimated at \$204,463, which appears reasonable based on two months of third year expenses. The applicant has submitted a letter of interest from Capital One Bank to finance \$102,232 of the working capital with a three year payback period at an estimated 6% interest rate. The remaining \$102,231 in working capital will be provided from the sole member's own financial resources. BFA Attachment A is the applicant's personal net worth statements, which indicates there are sufficient liquid resources to meet both the equity and working capital requirements. BFA Attachment B is Moshenyat, LLC d/b/a/ Moshenyat Gastroenterology Center pro-forma balance sheet that shows operations will start off with \$401,282 in equity

Moshenyat, LLC d/b/a/ Moshenyat Gastroenterology Center projects an operating excess of \$301,224 and \$563,759 in the first and third years, respectively. Revenues for Medicare and Medicaid are based on current rates and commercial payers have been contacted for their current rate schedules. The applicant's budgets appear to be reasonable.

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 of Proposed Member of Moshenyat, LLC d/b/a/ Moshenyat Gastroenterology Center
BFA Attachment B	Pro-forma Balance Sheet of Moshenyat, LLC d/b/a/ Moshenyat Gastroenterology Center
BHFP Attachment	Map

Supplemental Information

Outreach

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

Facility: Beth Israel Medical Center -- **No Response**
Kings Highway Division
3201 Kings Highway
Brooklyn, NY 11212

Facility: New York Community Hospital of Brooklyn -- **No Response**
2525 Kings Highway
Brooklyn, NY 11215

Facility: Maimonides Medical Center -- **No Response**
4802 Tenth Avenue
Brooklyn, NY 11219

Facility: Lutheran Medical Center -- **No Response**
150 55th Street
Brooklyn, NY 11219

Facility: Coney Island Hospital -- **No Response**
2601 Ocean Parkway
Brooklyn, NY 11235

Supplemental Information from Applicant

Need and Source of Cases: The applicant states that the projected volume of the proposed ASC is based on the actual experience of the proposed physician/sole member. The applicant also expects that ongoing and projected growth in ambulatory surgery in general will be a source of cases for the proposed facility, as will convenience in scheduling and the location of the ASC in an out-of-hospital setting.

Staff Recruitment and Retention: The applicant plans to recruit necessary staff through a hiring program. To the extent that additional staff may be needed, the proposed operators are committed not to seek to attract staff from local hospitals. The applicant will retain staff through competitive salary benefits and continuing education opportunities, elective work schedules within regular work hours and occasional long weekends or additional days off as rewards for hard work and efficiency.

Office-Based Cases: The applicant states that approximately 85 percent of the procedures projected for the proposed ASC are currently performed in the office-based setting. The remaining procedures, because of medical reasons, have been performed as inpatient procedures.

OHSM Comment

In the absence of comments from area hospitals, the Department finds no reason to consider reversal or modification of the recommendations for five-year limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

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

January 30, 2014

Diagnostic and Treatment Centers - Establish/Construct

Exhibit # 8

	<u>Number</u>	<u>Applicant/Facility</u>
1.	131284 B	Lasante Health Center, Inc. (Kings County)
2.	132080 B	Broadway Community Health Center, Inc. (New York County)



Public Health and Health Planning Council

Project #131284-B
Lasante Health Center, Inc.

County: Kings County
Purpose: Establishment and Construction

Program: Diagnostic and Treatment Center
Submitted: May 22, 2013

Executive Summary

Description

Lasante Health Center, Inc., a proposed not-for-profit corporation requests approval for the establishment of a diagnostic and treatment center (D&TC) to provide primary medical care, pediatrics, well child care, dental, prenatal, psychology, ophthalmology, radiology, medical social services, nutritional services, health fairs and health education. While the center will focus on serving the Haitian community within the service area, it will be open to all patients who are in need of services. The existing building located at 672 Parkside Avenue in Brooklyn is a one-story structure that will be enlarged to four-stories. The center will be located in approximately 12,600 square feet of space on the 2nd floor of the building. The center will consist of thirty exam rooms, of which five will be dedicated to a separate dental suite with its own reception and waiting area. The facility will also have a main reception and waiting area, administrative and doctor's offices, conference room, a blood drawing room and laboratory, soiled utility room, staff locker room and lounge and appropriate support spaces. Upon CON approval the center will be applying for Federally Qualified Health Center designation.

Lasante Health Center will be managed and governed solely by a board of directors and will be under the medical direction of Rajat Mukherji, M.D.

DOH Recommendation
Contingent Approval

Need Summary

Lasante will be located in the Flatbush section of Brooklyn and will serve the Flatbush, Midwood and part of Borough Park neighborhoods.

Lasante will target the underserved Haitian population and is in a Health Professional Shortage Area for Primary Care and Dental Health Services. It is also in a Medically Underserved area/population. The number of projected visits is 24,819 in Year 1 and 36,639 in Year 3.

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

Total project costs of \$4,188,254, will be met with a \$3,769,428 bank loan and \$418,826 in equity.

Budget:	Revenues	\$3,130,817
	Expenses	<u>2,987,042</u>
	Net Income	\$ 143,775

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 for this application

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement with a local acute care hospital, acceptable to the Department. [HSP]
3. Submission of an executed building sublease acceptable to the Department. [BFA, CSL]
4. Submission of an executed construction loan, acceptable to the Department. [BFA]
5. Submission of an executed working capital loan, acceptable to the Department. [BFA]
6. Submission of documentation of contributions to be used as a source of financing, acceptable to the Department. [BFA]
7. 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 project must be completed within three years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. 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]
7. The applicant shall complete construction by April 1, 2015. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

February 13, 2014

Need Analysis

Project Description

Lasante Health Center, Inc. (LHC), a proposed New York State not-for-profit corporation, is seeking approval to establish and construct a diagnostic and treatment (D&TC) center to provide primary care, dental, ophthalmology, pediatrics, psychology, and well-child services. The proposed D&TC will be located at 672 Parkside Avenue, Brooklyn, 11226, in Kings County.

Upon approval of this CON, the applicant will apply for Federally Qualified Health Center status.

Analysis

The primary service area includes zip codes 11226, 11225, 11203, 11210, 11230, and 11218 in the Flatbush area. The target population is the underserved Haitian population as well as all of the communities living in the service area, including those from other Caribbean Countries such as Jamaica, Trinidad, and Guyana.

The proposed site is in a Health Professional Shortage Area for Primary Care and Dental Health Services. It is also in a Medically Underserved Area/Population.

The number of projected visits is 24,819 in Year 1 and 36,639 in Year 3.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease.

The table below provides information on the PQI rates for major condition categories. It shows that these rates are higher for 'All Circulatory,' 'All Diabetes,' and 'All PQIs' for three of the six service area zip codes combined than for the State.

PQI Rates-Hospital Admissions per 100,000 Adult, Source: NYSDOH-PQI

PQI Rates	Zip Codes 11226, 11225, 11203, Combined	NYS
All Circulatory	530	456
All Diabetes	374	224
All Above	1,618	1,563

The applicant is committed to serving all people in need regardless of their ability to pay or the source of payment.

Conclusion

The proposed D&TC will improve access to needed services for the underserved Haitian population and other underserved groups in Brooklyn.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Project Proposal

Lasante Community Services, Inc., a not-for-profit corporation, seeks to establish and construct a diagnostic and treatment center at 672 Parkside Avenue, Brooklyn. Upon approval, Lasante Community Services, Inc. intends to change its name to Lasante Health Center, Inc. The proposed health center's focus will be on the unmet needs of Brooklyn residents, particularly the local Haitian population.

Proposed Operator	Lasante Health Center, Inc.
Site Address	672 Parkside Avenue, Brooklyn
Specialties	Primary Medical Pediatrics Dental Well Child Care Prenatal Psychology Ophthalmology Radiology (Diagnostic) Nutritional Medical Social Services Health Fairs Health Education
Hours of Operation	Initially, the Center will be open 6 days/week (> 50 hours/week) and will provide expanded hours as determined by demand.
Staffing (1st Year / 3rd Year)	19.60 FTEs / 31.85 FTEs
Medical Director(s)	Rajat Mukherji, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by University Hospital of Brooklyn (SUNY Downstate) 0.4 miles/3 minutes away
On-call service	24/7 call in center for referral to physicians, health care services, support groups and to register for health education and screening programs.

Character And Competence

The Board of Directors is as follows:

<u>Name</u>	<u>Office Held</u>
(Rabbi) Yitzchok Halberstam	Chairperson
(Bishop) Guy Sansaricq	Vice-Chairperson
Kesler Dalmacy, MD	Secretary
Mendel Rottenberg	Treasurer
Marie Desruisseau, RN	Board Member

The proposed board is comprised of religious leaders and individuals with extensive experience in public health and social services who have been involved in efforts to develop health programs and services for the Haitian community. The Board Chairperson, Rabbi Halberstam, owns a firm that offers comprehensive consulting services to health care facilities. In addition, he is the founder of a community-based, "One Stop" resource and referral center and a non-profit primary health care center in New Jersey. Mr. Rottenberg has worked for several years as an Assistant Administrator for a long-term care facility. Three native-born Haitians round out the Board. Bishop Sansaricq served the Diocese of Brooklyn for 22 years, during which time he was appointed as the coordinator of the Haitian Apostolate and he co-founded a service agency, Haitian-Americans for Progress. Dr. Dalmacy, a practicing physician in Brooklyn for over 28 years, with degrees in medicine and public health, has been active in Brooklyn's Haitian and Caribbean communities. Ms. Desruisseau is a registered professional nurse with over 20 years of experience as a nursing supervisor in various health care facilities.

Disclosure information was similarly submitted and reviewed for the Medical Director. Dr. Mukherji, a practicing physician with over 35 years of experience, currently serves in a major metropolitan teaching hospital as Chief of Pulmonary Medicine and the Intensive Care Unit.

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.

The proposed Medical Director, Dr. Mukherji, disclosed one pending malpractice case.

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

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Financial Analysis

The applicant will lease approximately 12,600 square feet on the second floor of a newly expanded four story building located at 672 Parkside Avenue, Brooklyn under the terms of the proposed sublease agreement summarized below:

Landlord:	672 Parkside, LLC
Lessee:	Harriman Properties, LLC
Sub Lessee:	Lasante Health Center, Inc.
Term:	15 years
Rental:	\$403,200/year (\$32/sq. ft.)
Provisions:	The lessee will be responsible for utilities, maintenance, insurance, and taxes.

The Landlord has agreed to defer the rent and accrue the rental cost to be paid only if the D&TC receives FQHC approval and only if there is a surplus readily available to meet this payment.

The applicant has indicated that the lease will be an arm's length agreement and three letters of opinion from Licensed Commercial Real Estate Brokers have been submitted indicating rent reasonableness. Other non-related parties occupy the remainder of the building.

Total Cost and Financing

Total project costs for new construction and movable equipment are estimated at \$4,188,254, broken down as follows:

New Construction	\$2,161,271
Design Contingency	216,127
Construction Contingency	216,127
Architect/Engineering Fees	189,126
Construction Manager Fees	126,084
Consultant Fees	63,200
Movable Equipment	583,007
Telecommunications	210,667
Financing Costs	94,801
Interim Interest Expense	307,837
Application Fee	1,250
Additional Processing Fee	<u>18,757</u>
Total Project Cost	\$4,188,254

Project cost is based on a March 1, 2014 construction start date and a twelve month construction period. The applicant's financing plan appears as follows:

Bank Loan (7yrs, 6%)	\$3,769,428
Equity from Soloman Landau	\$418,826

A letter of interest from CapQuest Group, LLC has been submitted by the applicant. The applicant has submitted a letter indicating Solomon Landau will provide equity for project cost requirements with no repayment required. Mr. Landau is the owner of the landlord entity, 672 Parkside, LLC, and a local philanthropist. Lasante Health Center indicates that, with its focus on primary healthcare for the uninsured and underserved, it is a vehicle for Mr. Landau's vision of primary healthcare for all. Presented as BFA Attachment A, is the net worth statement of Soloman Landau, which shows sufficient funds available.

Operating Budget

The applicant has submitted an operating budget in 2014 dollars, for the first, second and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Two</u>	<u>Year Three</u>
Revenues:	\$2,120,772	\$2,667,313	\$3,130,817
Expenses:			
Operating	\$1,718,351	\$2,211,409	\$2,541,680
Capital	<u>507,139</u>	<u>447,165</u>	<u>445,362</u>
Total Expenses:	\$2,225,490	\$2,688,574	\$2,987,042
Net Income (Loss):	\$(104,718)	\$(21,261)	\$143,775
Utilization: (visits)	24,819	31,215	36,639
Cost per visit:	\$89.67	\$86.13	\$81.52

Harriman Properties, LLC is providing the applicant with a deferment of the \$402,300 annual lease costs, which are thus not included in year one through year three budgets. The accrued rental cost will be paid only if the D&TC receives FQHC approval and only if there is a surplus readily available to meet this payment. DOH staff has reviewed the D&TC budgets under FQHC status and applicant can fully meet the annual lease costs, while maintaining feasible operating results.

The applicant has submitted statements from Kolel Beis Yacov, a congregation located in Brooklyn, from Mr. Sandor Oberlander, a local philanthropist and from Quality Diamond LLC, which is owned by Mr. Oberlander, stating they are willing to fund year one and year two budgeted losses with donations should FQHC designation not be granted. DOH staff has noted the availability of sufficient funds.

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

	<u>Year One and Three</u>
Commercial Fee for Service	2%
Commercial Managed Care	9%
Medicare Fee for Service	7%
Medicare Managed Care	3%
Medicaid Managed Care	72%
Private Pay/Other	5%
Charity Care	2%

Expenses and utilization assumptions are based on similar diagnostic and treatment centers in the geographic area.

Capability and Feasibility

Total project costs of \$4,188,254 will be met through a loan from CapQuest Group, LLC for \$3,769,428 at stated terms, with the remaining \$418,826 from equity from Soloman Landau. BFA Attachment A is the net worth statement of Soloman Landau, which shows sufficient funds available.

Working capital needs are estimated at \$496,340 based on two months of third year expenses. The applicant will finance \$248,170 of working capital at an interest rate of 7% over 5 years, for which a letter of interest has been provided by CapQuest Group, LLC. The remaining \$248,170 will be provided as equity from Soloman Landau and Kolel Beis Yacov. Commitment letters have been provided stating they will provide equity for working capital requirements, which will not need to be repaid. BFA Attachment B is the pro-forma balance sheet of Lasante Health Center, Inc. as of the first day of operation, which indicates positive net assets of \$724,153.

The submitted budget indicates a net loss of \$104,718, and \$21,261 for the first and second years of operations, respectively, and a net income of \$143,775 for the third year of operation. DOH staff has reviewed the budget and it appears reasonable. Kolel Beis Yacov, Mr Sandor Oberlander and Quality Diamond, LLC have committed to funding the budgeted losses in year one and year two. Revenues are based on current reimbursement methodologies for diagnostic and treatment 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, approval is recommended.

Attachments

BFA Attachment A
BFA Attachment B

Net Worth Statement
Pro-forma Balance Sheet



Public Health and Health Planning Council

Project # 132080 B
Broadway Community Health Center, Inc.

County: New York County
Purpose: Establishment and Construction

Program: Diagnostic and Treatment Center
Acknowledged: August 9, 2013

Executive Summary

Description

Broadway Community Health Center, Inc., a to-be-formed, not-for-profit corporation, requests approval to establish and construct an Article 28 diagnostic and treatment center (DTC) to be located on floors three through six, consisting of approximately 10,302 square feet at 577 West 161st Street. The proposed services to be provided are as follows: Health Fairs, Medical Social Services/OP, Nutritional O/P, Ophthalmology O/P, Pediatrics O/P, Podiatry O/P, Prenatal O/P, Primary Medical Care O/P, Psychology O/P, Clinical Laboratory O/P, Dental O/P, Well Child and Radiology Diagnostic O/P. Upon approval and commencement of operations, the proposed center will seek approval to become a Federal Qualified Health Center (FQHC).

DOH Recommendation
Contingent Approval

Need Summary

Broadway Community Health Center, Inc. projects that there will be 25,525 visits in year one and 49,950 in year 3.

The proposed DTC will improve access to needed services for several communities in Manhattan and the Bronx.

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.

A transfer and affiliation agreement is expected to be provided by St. Luke's Roosevelt Hospital.

Financial Summary

There are no project costs associated with this application.

Budget:	Revenues:	\$ 6,747,496
	Expenses:	<u>5,909,955</u>
	Gain:	\$873,541

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 of this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of documentation of fundraising for working capital, acceptable to the Department. [BFA]
3. Submission of a loan commitment for working capital, acceptable to the Department. [BFA]
4. Submission of a photocopy of an executed amended Certificate of Incorporation, acceptable to the Department. [CSL]
5. Submission of an amended Organizational Chart, acceptable to the Department. [CSL]
6. 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 project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. 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]
7. The applicant shall complete construction by January 31, 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 may be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

February 13, 2014

Need Analysis

Background

Broadway Community Health Center, Inc. is seeking approval to establish and construct a diagnostic and treatment center to provide primary medical care and specialty services at 577 West 161st Street, New York, 10032, in New York County. Upon approval, Broadway Community Health Center will seek designation as a Federally Qualified Health Center Look-Alike status.

Analysis

The number of projected visits is 25,525 in year one and 49,950 in year 3. In year one, the percent of primary care visits is projected to 62 percent and 72 percent by year 3.

The proposed primary service area includes the following neighborhoods:

- Washington Heights-Inwood neighborhood (zip codes 10031-34, 10040).
- Central Harlem-Morningside Heights neighborhood (zip codes 10026-27, 10030, 10037, 10039).
- Parts of the Upper West Side (zip code 10025).
- Kingsbridge-Riverdale (zip codes 10463 and 10471)
- East Harlem (zip codes 10029 and 10035).
- South Bronx (zip codes 10451-57, 10459-60, and 10474).

The proposed services are as follows:

- Clinical Laboratory Services O/P
- Dental O/P
- Health Fairs O/P
- Medical Social Services O/P
- Nutritional O/P
- Ophthalmology O/P
- Pediatrics O/P
- Podiatry O/P
- Prenatal O/P
- Primary Medical Care O/P
- Psychology O/P
- Radiology-Diagnostic O/P
- Well-Child

New York County has 49 freestanding DTCs that provide primary medical care services O/P; none is in zip code 10032, where the proposed DTC will be located. (HFIS)

The proposed site is in a Health Professional Shortage Area (HPSA) and in a Medically Underserved Area/Population according to HRSA:

- HPSA for Primary Care Services for Medicaid Eligible – Washington Heights/Inwood.
- HPSA for Mental Health Services for Medicaid Eligible – Washington Heights/Inwood.
- Medically Underserved Area/Population - Washington Heights/Inwood.

Prevention Quality Indicators (PQIs)

PQIs are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease.

The table below provides information on the PQI rates for major condition categories. It shows that these rates are higher for all PQI categories for the 11 zip codes combined in the primary service area than those for the State.

PQI Rates-Hospital Admissions per 100,000 Adult, Source: NYSDOH-PQI

PQI Rates	Primary Service Area:	
	Zip Codes Combined:	NYS
All Acute	568	526
All Circulatory	655	456
All Diabetes	369	224
All Respiratory	478	357
All Above	2,071	1,563

Conclusion

The proposed DTC will improve access to needed services for several communities in Manhattan and the Bronx.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Project Proposal

Establish and construct a diagnostic and treatment center providing primary and specialty care services

Proposed Operator	Broadway Community Health Services, Inc.
Operator Type	Not-for-Profit
Site Address	577 West 161 st Street, New York, NY
Services	Health Fairs Dental Nutritional Pediatrics Prenatal Psychology Well Child Clinical Laboratory Medical Social Services Ophthalmology Podiatry Primary Medical Care Radiology - Diagnostic
Hours of Operation	Monday through Friday from 8:00 am to 6:00 pm (Will add additional hours as need/demand requires)
Staffing (1st Year / 3rd Year)	23.5 FTEs / 41.2 FTEs
Medical Director(s)	Franz E. Goyzueta, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by St. Luke's Roosevelt Hospital 2.5 miles/9 minutes

Character and Competence

The proposed Board of Directors is comprised of the following individuals:

Name	Title/Position and Experience
Franz E. Goyzueta, MD	President/Chairman; Physician in private practice with over 35 years of experience.
F. Sebastian Goyzueta	Vice President/Vice Chairman; Works for a private construction company in NYC.
Rosemary Goyzueta	Vice President/Vice Chairman/Treasurer; Office Manager of Goyzueta PC.

Lyudmilla Bloch	Secretary; Director of VP Programming at the Plaza Hotel and Marketing Director for various restaurants geared to tourists in NYC.
Jeanne Bunn	Director; Teacher/Assistant Principal at De La Salle Academy.
Daniel Cassidy	Director; Attorney.
Ivan Torres	Director; Full-time Law Student at Fordham Law School and community member.
Christopher Goff	Director; Chief Marketing Officer of a wholesale employee benefits firm.

Upon approval, the applicant has indicated a desire to seek authorization from the United States Department of Health Resources and Services Administration (HRSA) to become a Federally Qualified Health Center (FQHC); therefore, the composition of the governing board has been comprised of a majority of members who will be served by the center, and who, as a group, represent the individuals to be served in terms of demographic factors (i.e., race, ethnicity, sex).

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.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant will lease approximately 15,500 sq. ft. of space on the third through sixth floors and common area of 577 West 161st Street, New York, NY under the terms of the executed lease agreement summarized below:

Date:	June 7, 2013
Landlord:	SEB I Realty Corp
Tenant:	Broadway Community Health Center Inc.
Term:	10 Years with two five year renewal options.
Rental:	\$1,016,050(\$65.55 per sq. ft) per annum and increase 3.5% each year after.
Provisions:	Tenant responsible for maintenance, utilities, insurance and proportionate share of taxes.

The applicant has indicated that the lease will be a non- arm's length lease arrangement. Letters of opinion from license commercial real estate brokers have been submitted indicating rent reasonableness.

Total Project Cost and Financing

There are no project costs associated with this application. The Landlord will be doing all renovations and incorporating the expense into the lease payments.

The Landlord's construction start date is anticipated for April 1, 2014 with a ten month completion date.

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:	\$3,448,045	\$6,747,496
Expenses:		
Operating	\$2,561,544	\$4,776,537
Depreciation and Rent	<u>1,056,050</u>	<u>1,133,418</u>
Total Expenses	\$3,617,594	\$5,909,955
Net Income	<u>\$(169,549)</u>	<u>\$873,541</u>
Utilization: (visits)	25,525	49,950
Cost Per Visit	\$141.73	\$118.32

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

	<u>First and Third Years</u>
Commercial Fee-For-Service	3.5%
Medicare Managed Care	12.0%
Medicaid Managed Care	80.0%
Self-Pay	2.5%
Charity Care	2.0%

Expense and utilization assumptions are based on the historical data of similar proposed D&TCs in the planning area.

Capability and Feasibility

Working capital requirements, estimated at \$984,993, appear reasonable based on two months of third year expenses, which will be satisfied through a bank loan for \$492,496 with a 7% interest rate over three years, and the remaining \$492,497 through fundraising contributions. A letter of interest from Capital One Bank has been submitted by the applicant for the working capital loan. BFA Attachment A is the pro-forma balance sheet of Broadway Community Health Center, Inc. as of the first day of operation, which indicates positive fund balance of \$492,497.

The submitted budget indicates a net income of \$(169,549) and \$873,541 during the first and third years of operation, respectively. Revenues are based on prevailing reimbursement methodologies. FQHC status has not been taken into consideration under budgeted revenues. The budget appears reasonable.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A

Pro-forma Balance Sheet

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

January 30, 2014

Dialysis Services- Establish/Construct

Exhibit # 9

<u>Number</u>	<u>Applicant/Facility</u>
1. 132178 E	Big Apple Dialysis Management, LLC (Kings County)



Public Health and Health Planning Council

Project # 132178 E Big Apple Dialysis Management, LLC

County: Kings County
Purpose: Establishment

Program: Diagnostic and Treatment Center
Acknowledged: October 4, 2013

Executive Summary

Description

Big Apple Dialysis Management, LLC (Big Apple) requests approval to become the established operator of four chronic renal dialysis programs, which are currently operated by New York City Health & Hospitals Corporation at the following locations:

- Kings County Hospital Center located at 451 Clarkson Avenue, Dialysis Unit Room C6210, Brooklyn, to be renamed Big Apple Dialysis at Kings County Hospital
- Lincoln Hospital Center located at 234 East 149th Street, Hemodialysis Unit, Bronx, to be renamed Big Apple Dialysis at Lincoln Hospital
- Metropolitan Hospital Center, located at 1901 First Avenue, Dialysis Unit, New York to be renamed Big Apple Dialysis at Metropolitan Hospital Center
- Harlem Hospital located at 506 Lenox Avenue-Room 18-107 Dialysis Unit, New York, to be renamed Big Apple Dialysis at Harlem Hospital

Currently the Kings County Hospital location, which will become Big Apple's main site, is approved for 26 stations, located within the confines of the hospital. The Lincoln Hospital Center location is approved for eight dialysis stations, located within the confines of the hospital. The Metropolitan Hospital location is approved for 12 dialysis stations, located within the confines of the hospital. The Harlem Hospital Center location is approved for 11 dialysis stations, located within the confines of the hospital.

Upon the proposed change in ownership, there will not be a change in the number of approved stations or a modification to the existing physical environment

where the stations are located. Big Apple will enter into a license agreement with the New York City Health and Hospital Corporation for the right to continue to provide the ESRD services upon the change in ownership. There will be no disruption of services to the existing patients who receive dialysis services.

The members of Big Apple Dialysis Management, LLC and their ownership percentages are as follows:

<u>Owner</u>	<u>Percentage</u>
Jodumutt G. Bhat, M.D.	50%
Nirmal Mattoo, M.D.	50%

DOH Recommendation
Contingent Approval

Need Summary

All three counties serve a total population of 5,593,198 with a total of 1674 stations, including approval of not-yet-operational stations. There continues to be need in all three counties. These stations are necessary to provide continued service to patients in the service areas.

Program Summary

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

Financial Summary

The purchase price is \$1,137,380.88, based on the estimated current fair market value of the equipment within the centers. The purchase price will be met by \$113,738.88 in equity from the proposed members and a \$1,023,642 loan with a five year term at a 3.16% interest rate from JPMorgan Chase Bank, N.A. The rate is based on the 30 day Libor plus 3.00%. The current 30 day Libor per the Wall Street Journal published January 15, 2014 is 0.16%. There are no project costs associated with this CON.

Total Budget Year-One-All Sites

Revenues	\$15,090,828
Expenses	<u>\$12,021,686</u>
Gain	\$3,069,142

Year One Budget by Individual Site:

Big Apple Dialysis @ Kings County Hospital

	<u>Year One</u>
Revenues	\$5,102,345
Expenses	<u>\$4,235,617</u>
Gain	\$866,728

Big Apple Dialysis @ Lincoln Hospital Center

	<u>Year One</u>
Revenues	\$3,214,988
Expenses	<u>\$2,520,020</u>
Gain	\$694,968

Big Apple Dialysis @ Metropolitan Hospital Center

	<u>Year One</u>
Revenues	\$2,694,082
Expenses	<u>\$2,377,667</u>
Gain	\$316,415

Big Apple Dialysis @ Harlem Hospital

	<u>Year One</u>
Revenues	\$4,079,413
Expenses	<u>\$2,888,382</u>
Gain	\$1,191,031

Subject to the 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. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital for each of the four sites. [HSP]
2. Submission of a Medical Director Agreement, acceptable to the Department. [HSP]
3. Submission of a loan commitment, acceptable to the Department. [BFA]
4. Submission of a working capital loan commitment, acceptable to the Department. [BFA]
5. The submission of existing conditions schematic floor plans and architects letter of certification for existing buildings, for review and approval. [AER]
6. Submission of a completed Schedule 3. [CSL]
7. Submission of an executed Certificate of Assumed Name, acceptable to the Department and clarification regarding whether each location requires a Certificate of Assumed Name – if they are all operating under different names. [CSL]
8. Submission of an executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
9. Submission of an executed Operating Agreement (and Joinder), acceptable to the Department. [CSL]
10. Submission of an executed Administrative Services Agreement for all four (Harlem, Kings, Lincoln and Metropolitan) locations, acceptable to the Department. [BFA, CSL]
11. Submission of an executed building license agreement for all four (Harlem, Kings, Lincoln and Metropolitan) sites, acceptable to the Department. [BFA, CSL]
12. Submission of an executed Purchase and Sale Agreement. [CSL]

Approval conditional upon:

1. The project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. To provide Transfusion Services, licensure by the New York State Department of Health- Wadsworth Center is required. [HSP]

Council Action Date

February 13, 2014

Need Analysis

Background

Big Apple is seeking approval to be established as the new operator of four existing dialysis centers. These centers are as follows:

- Kings County Hospital Center, a 26-station chronic dialysis facility located at 451 Clarkson Avenue in Brooklyn, 11203;
- Lincoln Medical and Mental Health, an 8-station chronic dialysis facility located at 234 East 149th Street in the Bronx, 10451;
- Metropolitan Hospital Center, a 12-station chronic dialysis facility located at 1901 First Avenue in Manhattan, 10029 ;
- Harlem Hospital, an 11-station chronic dialysis unit located at 506 Lenox Ave Room 18-107 in Manhattan,10037.

There is need in Kings, Bronx, and New York Counties for additional chronic dialysis stations. Retaining these existing facilities is necessary for community residents and patients. There will not be any changes in the number of stations or the services offered at the facilities.

Analysis

The service area for Big Apple and the facilities they are purchasing is Kings, Bronx, and New York Counties.

Kings Population - 2,565,635

Ages 65 and Over:	11.7%	State Average:	14.1%
Nonwhite:	64.2%	State Average:	42.4%

Bronx Population - 1,408,473

Ages 65 and Over:	10.9%	State Average:	14.1%
Nonwhite:	89.2%	State Average:	42.4%

New York County Population - 1,619,090

Ages 65 and Over:	13.9%	State Average:	14.1%
Nonwhite:	52.4%	State Average:	42.4%

Source: U.S. Census 2012

The non-white and elderly groups are target groups for needing dialysis services, thus the reason we focus on the above percentage comparisons.

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. The estimated average number of dialysis procedures each patient receives per year is 156.
- 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 calculating the need for additional stations, the Department bases the projected need on establishing additional free standing stations.

Existing Stations

Kings – 585 current stations and 132 in pipeline
 Bronx- 389 current stations and 93 in pipeline
 New York- 380 current stations and 95 in pipeline

Based upon DOH methodology, Kings County could treat 3227 patients with the operational stations and pipeline stations combined. Bronx County could treat 2169 patients with the operational stations and pipeline stations combined. New York County could treat 2138 patients with the operational stations and pipeline stations combined.

Projected Need

	2011		2016	
	Total Patients Treated	Total Residents Treated	***Projected Total Patients Treated	***Projected Residents Treated
Kings County	3954	4507	4584	5073
Free Standing Stations Needed	879	1002	1019	1128
Existing Stations	585	585	585	585
Total Stations (Including Pipeline)	717	717	717	717
Net new stations from this project	0	0	0	0
Unmet Need With Approval	162	285	302	411

	2011		2016	
	Total Patients Treated	Total Residents Treated	***Projected Total Patients Treated	***Projected Residents Treated
Bronx County	2616	2739	3033	3083
Free Standing Stations Needed	582	609	674	686
Existing Stations	389	389	389	389
Total Stations (Including Pipeline)	482	482	482	482
Net new stations from this project	0	0	0	0
Unmet Need With Approval	100	127	192	204

	2011		2016	
	Total Patients Treated	Total Residents Treated	***Projected Total Patients Treated	***Projected Residents Treated
New York County	1917	2756	2223	3102
Free Standing Stations Needed	426	613	494	690
Existing Stations	380	380	380	380
Total Stations (Including Pipeline)	475	475	475	475
Net new stations from this project	0	0	0	0
Unmet Need With Approval	-49	138	19	215

**FS – Free Standing

***Based upon a 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, and each hospital station being able to treat 3 patients annually. 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.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Establish Big Apple Dialysis Management, LLC as the new operator of four dialysis programs/centers that are currently being operated by the New York City Health & Hospital Corporation. The center in Kings Hospital will be designated as the main site and three remaining centers, located in Lincoln Hospital, Metropolitan Hospital and Harlem Hospital, will be designated as extension sites. The applicant does not anticipate any physical changes or changes to the number of stations.

Proposed Operator	Big Apple Dialysis Management, LLC
Doing Business As	Big Apple Dialysis at Kings County Hospital
Site #1 Address	451 Clarkson Avenue, Brooklyn
Approved Services	Chronic Renal Dialysis (26 Stations)
Shifts/Hours/Schedule	Open 6 days per week, nearly 3 shifts per day.
Staffing (1st Year/3rd Year)	28.0 FTEs and will remain at that level by the third year of operation.
Medical Director(s)	Gary Briefel, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided onsite by Kings County Hospital.

Proposed Operator	Big Apple Dialysis Management, LLC
Doing Business As	Big Apple Dialysis at Lincoln Hospital
Site #2 Address	234 East 149 th Street, Bronx
Approved Services	Chronic Renal Dialysis (8 Stations)
Shifts/Hours/Schedule	Open 6 days per week, nearly 3 shifts per day.
Staffing (1st Year/3rd Year)	14.1 FTEs and will remain at that level by the third year of operation.
Medical Director(s)	Isaiarasi Gnanasekaran, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided onsite by Lincoln Hospital.

Proposed Operator	Big Apple Dialysis Management, LLC
Doing Business As	Big Apple Dialysis at Metropolitan Hospital
Site #3 Address	1901 First Avenue, Manhattan
Approved Services	Chronic Renal Dialysis (12 Stations)
Shifts/Hours/Schedule	Open 6 days per week, nearly 3 shifts per day.
Staffing (1st Year/3rd Year)	13.0 FTEs and will remain at that level by the third year of operation.
Medical Director(s)	Ashok P. Chaudhuri, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided onsite by Metropolitan Hospital

Proposed Operator	Big Apple Dialysis Management, LLC
Doing Business As	Big Apple Dialysis at Harlem Hospital
Site #4 Address	506 Lenox Avenue, Manhattan
Approved Services	Chronic Renal Dialysis (11 Stations)
Shifts/Hours/Schedule	Open 6 days per week, nearly 3 shifts per day.
Staffing (1st Year/3rd Year)	15.7 FTEs and will remain at that level by the third year of operation.
Medical Director(s)	LeRoy Herbert, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided onsite by Harlem Hospital

The document entitled "Medical Director Agreement" submitted with the application delegates more authority to the contractor, Physicians Affiliate Group of New York, then is provided for in regulation. Specifically, it is an employment contract for the provision of multiple, unnamed, Medical Directors at four separate sites. As drafted, it constitutes an unacceptable management contract because the established operator is not retaining direct independent authority to appoint and discharge the Medical Directors as required by regulation. Therefore, a contingency has been placed on the recommendation regarding the submission of an acceptable Medical Director Agreement.

Character and Competence

The members of the LLC are:

<u>Name</u>	<u>Percent</u>
Jodumutt G. Bhat, MD	50.0%
Nirmal Mattoo, MD	50.0%

Drs. Bhat and Mattoo are both local physicians, board-certified in Internal Medicine. Dr. Mattoo holds a subspecialty in Nephrology.

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.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted a draft asset purchase agreement, which is summarized as follows:

Date:	September 4, 2013
Seller:	New York City Health and Hospitals Corporation
Purchaser:	Big Apple Dialysis Management, LLC
Acquired Assets:	The physical assets relating to the facilities including All equipment without limitation, reverse osmosis system, dialysis machines and recliners, telephone, fax and computer P.C.s, all furniture, all inventory and supplies located at such facility (collectively, the Inventory), All rights and interest in and to claims made or to be made by seller against the party from whom seller purchased the assets relating thereto, and its principals and any recoveries or proceeds therefrom.
Excluded Assets:	Cash deposits and cash equivalents of each facility as of the date immediately preceding such facility's closing date, all accounts receivable, regardless of when billed, including promissory notes, liens, mortgages, negotiable instruments and other claims, rights and causes of action against third parties, relating to services rendered by each facility prior to such facility's closing date, all retroactive rate increases and/or lump sum or other payments, resulting from rate appeals, audits or otherwise with respect to third party payments from any source which may be paid on or after the closing date from services rendered by each facility prior to such facility's closing date, all payments or cash equivalent credits relating to each facility resulting from claims, insurance premium rate reductions or insurance or other dividends paid or accruing for periods prior to such facility's closing date, subject to buyers rights hereunder, the rights of seller under this agreement and the proceeds payable to seller hereunder or in connection with the transactions contemplated hereby, Seller's Medicare and Medicaid provider numbers and provider agreements, all refunds and deposits with respect to income tax liabilities for all periods ending prior to each closing date, all original governance documents and records of seller, all goodwill and other intangible assets used by seller in connection with the operations of the facilities, all original tax and accounting records, subject to applicable law and any real property or the improvements to any real property being used in the operation of the facilities, it being acknowledged that seller will retain the ownership of such real property and improvements and will license to buyer their use under the license agreement.
Assumed Liabilities:	None
Excluded Liabilities:	None
Purchase Price:	\$1,137,380.88 which is allocated as follows: (1) Kings County Medical Center \$655,104.84, (2) Lincoln Hospital Center \$35,800, (3) Metropolitan Center \$353,676.04 and (4) Harlem Hospital Center \$92,000.
Payment:	\$113,738.88 in members equity \$1,023,642 at closing, through a loan from JPMorgan Chase Bank, N.A, with a five year term at a rate based on the 30 day Libor plus 3.00%. The current 30 day Libor per the Wall Street Journal published on January 15, 2014 is 0.16%. As of January 15, 2014 the rate would be 3.16%.

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

Administrative Services Agreements

The applicant has submitted four draft administrative services agreements for each site, which are summarized as follows:

Big Apple Dialysis @ Kings County Hospital

Provider: Atlantic Dialysis Management Services, LLC (ADMS)
Facility: Big Apple Dialysis Management, LLC d/b/a Big Apple Dialysis @ Kings County Hospital

Services Provided: Billing and collection services which includes reviewing all bills for items and services provided by the dialysis center, advising Big Apple in connection with administering controls and systems for the recording and collection of the revenues of the dialysis center as follows: perform billing and collection services on behalf of and in the name of the Dialysis Center. They however, will not bill for physician professional services on behalf of and in the name of the Physicians. They shall review Big Apple's collection policies for the Dialysis center to assure that they are reasonable, appropriate and consistent with all applicable laws, regulations, and agreements with third party payors, as applicable, it being understood that ADMS has no control over the adoption of such policies on behalf of Big Apple. Accounting and financial services. ADMS shall assist Big Apple in developing and annual budget for the dialysis Center for the upcoming fiscal year. At least 30 days prior to the end of each fiscal year of ADMS, commencing with the first full fiscal year after the commencement date, ADMS shall submit to Big Apple a proposed Budget for the Dialysis Center. Big Apple will have the sole right to reject, revise or adopt the Budget proposed by ADMS. Quality and Utilization Controls. ADMS shall advise and assist Big Apple in performing such medical record audits and in conducting utilization review and quality assurance/control review for the Dialysis center and other related activities as are necessary and appropriate for the operation of the Dialysis center as permitted under applicable law. ADMS shall provide a coordinator to work full time on site at the Dialysis center to fulfill its obligations under the agreement. ADMS shall provide and install a dialysis clinical information system software program (Dialysis System) to support the clinical and billing operations of the dialysis center which is licensed to ADMS. The system is proprietary and confidential and shall be return to ADMS upon termination of this agreement. ADMS shall advise Big Apple as to all necessary equipment and hardware required to ensure the operability of the Dialysis System. At the option and request of Big Apple, ADMS shall order for in and the name of the Dialysis center, all supplies, inventory and drugs necessary for the Dialysis center's operations under national and regional supply agreements or purchase contracts on terms identical to what ADMS and its affiliates receive provided Big Apple promptly pays the vendor for the supplies. The dialysis center shall be responsible for and pay directly to the laboratory any lab services ordered for the patients treated at the Dialysis Center.

Term: 3 Years with unlimited renewal terms of 1 year each.
Compensation: \$300,000 year one paid in bi weekly installments of \$11,538.46, \$350,000 year two paid in bi weekly installments of \$13,461.54 and \$400,000 year three paid in bi weekly installments of \$15,384.62.

Big Apple Dialysis @ Lincoln Hospital Center

Provider: Atlantic Dialysis Management Services, LLC (ADMS)
Facility: Big Apple Dialysis Management, LLC d/b/a Big Apple Dialysis @ Lincoln Hospital Center
Services Provided: Billing and collection services which includes reviewing all bills for items and services provided by the dialysis center, advising Big Apple in connection with administering controls and systems for the recording and collection of the revenues of the dialysis center as follows: perform billing and collection services on behalf of and in the name of the Dialysis Center. They however, will not bill for physician professional services on behalf of and in the name of the Physicians. They shall review Big Apple's collection policies for the Dialysis center to assure that they are reasonable, appropriate and consistent with all applicable laws, regulations, and agreements with third party payors, as applicable, it being understood that ADMS has no control over the adoption of such policies on behalf of Big Apple. Accounting and financial services. ADMS shall assist Big Apple in developing and annual budget for the dialysis Center for the upcoming fiscal year. At least 30 days prior to the end of each fiscal year of ADMS, commencing with the first full fiscal year after the commencement date, ADMS shall submit to Big Apple a proposed Budget for the Dialysis Center. Big Apple will have the sole right to reject, revise or adopt the Budget proposed by ADMS. Quality and Utilization Controls. ADMS shall advise and assist Big Apple in performing such medical record audits and in conducting utilization review and quality assurance/control review for the Dialysis center and other related activities as are necessary and appropriate for the operation of the Dialysis center as permitted under applicable law. ADMS shall provide a coordinator to work full time on site at the Dialysis center to fulfill its obligations under the agreement. ADMS shall provide and install a dialysis clinical information system software program (Dialysis System) to support the clinical and billing operations of the dialysis center which is licensed to ADMS. The system is proprietary and confidential and shall be return to ADMS upon termination of this agreement. ADMS shall advise Big Apple as to all necessary equipment and hardware required to ensure the operability of the Dialysis System. At the option and request of Big Apple, ADMS shall order for in and the name of the Dialysis center, all supplies, inventory and drugs necessary for the Dialysis center's operations under national and regional supply agreements or purchase contracts on terms identical to what ADMS and its affiliates receive provided Big Apple promptly pays the vendor for the supplies. The dialysis center shall be responsible for and pay directly to the laboratory any lab services ordered for the patients treated at the Dialysis Center.

Term: 3 Years with unlimited renewal terms of 1 year each.
Compensation: \$200,000 year one paid in bi weekly installments of \$7,692.31, \$250,000 year two paid in bi weekly installments of \$9,615.38 and \$300,000 year three paid in bi weekly installments of \$11,538.46.

Big Apple Dialysis @ Metropolitan Hospital Center

Provider: Atlantic Dialysis Management Services, LLC (ADMS)
Facility: Big Apple Dialysis Management, LLC d/b/a Big Apple Dialysis@Metropolitan Hospital Center

Services Provided: Billing and collection services which includes reviewing all bills for items and services provided by the dialysis center, advising Big Apple in connection with administering controls and systems for the recording and collection of the revenues of the dialysis center as follows: perform billing and collection services on behalf of and in the name of the Dialysis Center. They however, will not bill for physician professional services on behalf of and in the name of the Physicians. They shall review Big Apple's collection policies for the Dialysis center to assure that they are reasonable, appropriate and consistent with all applicable laws, regulations, and agreements with third party payors, as applicable, it being understood that ADMS has no control over the adoption of such policies on behalf of Big Apple. Accounting and financial services. ADMS shall assist Big Apple in developing and annual budget for the dialysis Center for the upcoming fiscal year. At least 30 days prior to the end of each fiscal year of ADMS, commencing with the first full fiscal year after the commencement date, ADMS shall submit to Big Apple a proposed Budget for the Dialysis Center. Big Apple will have the sole right to reject, revise or adopt the Budget proposed by ADMS. Quality and Utilization Controls. ADMS shall advise and assist Big Apple in performing such medical record audits and in conducting utilization review and quality assurance/control review for the Dialysis center and other related activities as are necessary and appropriate for the operation of the Dialysis center as permitted under applicable law. ADMS shall provide a coordinator to work full time on site at the Dialysis center to fulfill its obligations under the agreement. ADMS shall provide and install a dialysis clinical information system software program (Dialysis System) to support the clinical and billing operations of the dialysis center which is licensed to ADMS. The system is proprietary and confidential and shall be return to ADMS upon termination of this agreement. ADMS shall advise Big Apple as to all necessary equipment and hardware required to ensure the operability of the Dialysis System. At the option and request of Big Apple, ADMS shall order for in and the name of the Dialysis center, all supplies, inventory and drugs necessary for the Dialysis center's operations under national and regional supply agreements or purchase contracts on terms identical to what ADMS and its affiliates receive provided Big Apple promptly pays the vendor for the supplies. The dialysis center shall be responsible for and pay directly to the laboratory any lab services ordered for the patients treated at the Dialysis Center.

Term: 3 Years with unlimited renewal terms of 1 year each.
Compensation: \$200,000 year one paid in bi weekly installments of \$7,692.31, \$250,000 year two paid in bi weekly installments of \$9,615.38 and \$300,000 year three paid in bi weekly installments of \$11,538.46.

Big Apple Dialysis @ Harlem Hospital

Provider: Atlantic Dialysis Management Services, LLC (ADMS)
Facility: Big Apple Dialysis Management, LLC d/b/a Big Apple Dialysis @ Harlem Hospital

Services Provided: Billing and collection services which includes reviewing all bills for items and services provided by the dialysis center, advising Big Apple in connection with administering controls and systems for the recording and collection of the revenues of the dialysis center as follows: perform billing and collection services on behalf of and in the name of the Dialysis Center. They however, will not bill for physician professional services on behalf of and in the name of the Physicians. They shall review Big Apple's collection policies for the Dialysis center to assure that they are reasonable,

appropriate and consistent with all applicable laws, regulations, and agreements with third party payors, as applicable, it being understood that ADMS has no control over the adoption of such policies on behalf of Big Apple. Accounting and financial services. ADMS shall assist Big Apple in developing and annual budget for the dialysis Center for the upcoming fiscal year. At least 30 days prior to the end of each fiscal year of ADMS, commencing with the first full fiscal year after the commencement date, ADMS shall submit to Big Apple a proposed Budget for the Dialysis Center. Big Apple will have the sole right to reject, revise or adopt the Budget proposed by ADMS. Quality and Utilization Controls. ADMS shall advise and assist Big Apple in performing such medical record audits and in conducting utilization review and quality assurance/control review for the Dialysis center and other related activities as are necessary and appropriate for the operation of the Dialysis center as permitted under applicable law. ADMS shall provide a coordinator to work full time on site at the Dialysis center to fulfill its obligations under the agreement. ADMS shall provide and install a dialysis clinical information system software program (Dialysis System) to support the clinical and billing operations of the dialysis center which is licensed to ADMS. The system is proprietary and confidential and shall be return to ADMS upon termination of this agreement. ADMS shall advise Big Apple as to all necessary equipment and hardware required to ensure the operability of the Dialysis System. At the option and request of Big Apple, ADMS shall order for in and the name of the Dialysis center, all supplies, inventory and drugs necessary for the Dialysis center's operations under national and regional supply agreements or purchase contracts on terms identical to what ADMS and its affiliates receive provided Big Apple promptly pays the vendor for the supplies. The dialysis center shall be responsible for and pay directly to the laboratory any lab services ordered for the patients treated at the Dialysis Center.

Term: 3 Years with unlimited renewal terms of 1 year each.
Compensation: \$300,000 year one paid in bi weekly installments of \$11,538.46, \$350,000 year two paid in bi weekly installments of \$13,461.54 and \$400,000 year three paid in bi weekly installments of \$15,384.62.

There is common ownership between the administrative services agreement provider and the applicant; both entities are owned by the same two individuals with the same ownership percentage.

License Agreement

The applicant has submitted a draft license agreement for the proposed sites, as summarized below:

Premises: Kings County Hospital Site 6th floor "C" building, Metropolitan Hospital Center Site 14th floor Main hospital building, Harlem Hospital Center site 4th floor New Patient Pavilion, Lincoln Hospital Center site interim location 9th floor and permanent location 7th floor
Licensor: New York City Health and Hospitals Corporation
Licensee: Big Apple Dialysis Management, LLC
Fees: Kings County site \$484,380 annually (\$54.00 per sq. ft.), Metropolitan Hospital Center site \$250,750 annually (\$50.00 per sq. ft.), Harlem Hospital Center site \$463,000 annually (\$50.00 per sq. ft.), Lincoln interim site \$239,920 annually (\$40.00 per sq. ft.) and Lincoln permanent site \$296,800 annually (\$40.00 per sq. ft.) On the fifth anniversary of the commencement date the fees will increase 10% based on the original fees.
Term: Five-year term with one additional four-year extension
Provisions: Licensor will provide utilities and maintenance services

The applicant has stated that the proposed lease is an arm's length arrangement.

Operating Budget

The applicant has submitted separate first year operating budgets, in 2013 dollars:

Big Apple Dialysis @ Kings County Hospital

	<u>Year One</u>
Total Revenues	\$5,102,345
Expenses	
Operating	\$3,464,585
Capital	<u>771,032</u>
Total Expenses	\$4,235,617
Excess of Revenues over Expenses	<u>\$866,728</u>
Utilization (treatments)	18,307
Cost Per Treatment	\$231.37
*Includes pharmaceuticals	

Utilization by payor source for the first year subsequent to the change in operator is summarized below:

	<u>Year One</u>
Medicaid Fee-For-Service	10.51%
Medicare Fee-For-Service	78.98%
Commercial Fee-For-Service	10.51%

Utilization estimates were based on existing volumes at the Kings County Hospital program site. Expense projections were based on the historical experiences of Big Apple Dialysis Management, LLC in operating dialysis clinics. The number of procedures required to breakeven in the first year is approximately 15,211 treatments, or 83.09% of the budgeted treatments.

Big Apple Dialysis @ Lincoln Hospital Center

	<u>Year One</u>
Total Revenues	\$3,214,988
Expenses	
Operating	\$2,178,154
Capital	<u>341,866</u>
Total Expenses	\$2,520,020
Excess of Revenues over Expenses	<u>\$694,968</u>
Utilization: (treatments)	11,544
Cost Per Treatment	\$218.30
*Includes pharmaceuticals	

Utilization by payor source for the first year subsequent to the change in operator is summarized below:

	<u>Year One</u>
Medicaid Fee-For-Service	10.81%
Medicare Fee-For-Service	78.38%
Commercial Fee-For-Service	10.81%

Utilization estimates were based on existing volumes at the Lincoln Hospital Center program site. Expense projections were based on the historical experiences of Big Apple Dialysis Management, LLC in operating dialysis clinics. The number of procedures required to breakeven in the first year is approximately 9,051 treatments, or 78.40% of the budgeted treatments.

Big Apple Dialysis @ Metropolitan Hospital Center

	<u>Year One</u>
Total Revenues	\$2,694,082
Expenses	
Operating	\$1,972,286
Capital	<u>405,381</u>
Total Expenses	\$2,377,667
 Excess of Revenues over Expenses	 <u>\$316,415</u>
 Utilization (treatments)	 9,984
Cost Per Treatment	\$238.15
*Includes pharmaceuticals	

Utilization by payor source for the first year subsequent to the change in operator is summarized below:

	<u>Year One</u>
Medicaid Fee-For-Service	10.94%
Medicare Fee-For-Service	78.12%
Commercial Fee-For-Service	10.94%

Utilization estimates were based on existing volumes at the Metropolitan Hospital Center program site. Expense projections were based on the historical experiences of Big Apple Dialysis Management, LLC in operating dialysis clinics. The number of procedures required to breakeven in the first year is approximately 8,811 treatments, or 88.25% of the budgeted treatments.

Big Apple Dialysis @ Harlem Hospital

	<u>Year One</u>
Total Revenues	\$4,079,413
Expenses	
Operating	\$2,523,281
Capital	<u>365,101</u>
Total Expenses	\$2,888,382
 Excess of Revenues over Expenses	 <u>\$1,191,031</u>
 Utilization (treatments)	 14,352
Cost Per Treatment	\$201.26
*Includes pharmaceuticals	

Utilization by payor source for the current year, and the first year subsequent to the change in operator, is summarized below:

	<u>Year One</u>
Medicaid Fee-For-Service	10.65%
Medicare Fee-For-Service	78.70%
Commercial Fee-For-Service	10.65%

Utilization estimates were based on existing volumes at the Harlem Hospital program site. Expense projections were based on the historical experiences of Big Apple Dialysis Management, LLC in operating dialysis clinics. The number of procedures required to breakeven in the first year is approximately 10,161 treatments, or 70.80% of the budgeted treatments.

Note, as these are currently HHC facilities, the applicant was not able to provide the current year information due to HHC having consolidated reporting for all of their facilities.

Capability and Feasibility

Total purchase price is \$1,137,380.88, which is allocated as follows: (1) Kings County Medical Center \$655,104.84, (2) Lincoln Hospital Center \$35,800, (3) Metropolitan Center \$353,676.04 and (4) Harlem Hospital Center \$92,000. Big Apple Dialysis Management, LLC will meet the \$1,137,380.88 purchase price by \$113,738.88 in equity from the proposed members and a loan allocated to the project in the amount of \$1,023,642 at the above stated terms. There are no project costs associated with this CON.

Working capital requirements are estimated at \$2,222,500, which appears reasonable based upon two months of third year expenses. The proposed members will provide \$1,111,250 of the working capital from their personal resource and entered into a \$1,111,250 1-year working capital line of credit with JPMorgan Chase Bank, N.A., at a 3.25 % interest rate based on the current prime rate, which as of January 15, 2014 is 3.25%, as published in the Wall Street Journal. BFA Attachment A is the applicant personal net worth statements. Review of Attachment A indicates there are sufficient liquid resources to meet the equity and working capital requirements.

BFA Attachment B is the pro-forma balance sheet for Big Apple Dialysis Management, LLC, which shows operations will start off with \$1,224,988 in equity. BFA Attachment C is the pro-forma balance sheet for Big Apple Dialysis Management, LLC @ Kings Hospital site specific, which shows operations will start off with \$396,103 in equity. BFA Attachment D is the pro-forma balance sheet for Big Apple Dialysis Management, LLC @ Lincoln Hospital site specific, which shows operations will start off with \$232,228 in equity. BFA Attachment E is the pro-forma balance sheet for Big Apple Dialysis Management, LLC @ Metropolitan Hospital site specific, which shows operations will start off with \$219,766 in equity. BFA Attachment F is the pro-forma balance sheet for Big Apple Dialysis Management, LLC @ Harlem Hospital site specific, which shows operations will start off with \$263,153 in equity.

Year One shows net income of \$866,728 for Big Apple Dialysis @ Kings County Hospital, net income of \$694,968 for Big Apple Dialysis @ Lincoln Hospital Center, net income of \$316,415 for Big Apple Dialysis @ Metropolitan Hospital Center and net income of \$1,191,031 for Big Apple Dialysis @ Harlem Hospital. The combined Year One net income is \$3,069,142. Revenues reflect current reimbursement methodologies for Medicaid and Medicare and commercial revenues based on Big Apple Dialysis Management, LLC experience in operating centers throughout New York State. The budget appears reasonable.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statements For the members of Big Apple Dialysis Management, LLC
BFA Attachment B	Pro-forma Balance sheet for Big Apple Management, LLC
BFA Attachment C	Pro-forma Balance Sheet for Big Apple Dialysis @ Kings County Hospital
BFA Attachment D	Pro-forma Balance Sheet for Big Apple Dialysis @ Lincoln Hospital Center
BFA Attachment E	Pro-forma Balance Sheet for Big Apple Dialysis @ Metropolitan Hospital Center
BFA Attachment F	Pro-forma Balance Sheet for Big Apple Dialysis @ Harlem Hospital

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

January 30, 2014

Residential Health Care Facilities - Establish/Construct

Exhibit # 10

	<u>Number</u>	<u>Applicant/Facility</u>
1.	131036 E	Little Neck Nursing Home (Queens County)
2.	131159 E	Morningside Acquisition I, LLC d/b/a Morningside House Nursing Home (Bronx County)
3.	131348 E	Shore View Nursing & Rehabilitation Center, LLC (Kings County)
4.	132071 E	Steuben Operations Associates, LLC d/b/a Steuben Center for Rehabilitation and Healthcare (Steuben County)
5.	132166 E	Williamsburg Services, LLC d/b/a Bedford Center for Nursing and Rehabilitation (Kings County)



Public Health and Health Planning Council

Project # 131036 E Little Neck Care Center

County: Queens County
Purpose: Establishment

Program: Residential Health Care Facility
Acknowledged: January 25, 2013

Executive Summary

Description

Little Neck Care Center, an existing proprietary LLC and a 120-bed Residential Health Care Facility (RHCF) located at 260-19 Nassau Blvd in Little Neck is seeking approval for an 82.5% transfer in ownership. Ownership of the facility before and after the requested change is as follows:

Current

<u>Name</u>	<u>Percentages</u>
Bent Philipson	50%
Esther Farkovits	50%

Proposed

<u>Name</u>	<u>Percentages</u>
Bent Philipson	17.5%
Judy Landa	42.5%
David Rubenstein	15.0%
Leah Freidman	12.5%
Rochel David	12.5%

The transfer price is approximately \$12,060.25 per percentage; therefore, the total purchase price is \$994,930.31, which is broken down as follows:

<u>Transferee</u>	<u>Purchase Price</u>
Judy Landa	\$512,560.33
David Rubenstein	\$180,903.72
Leah Friedman	\$150,733.13
Rochel David	\$150,733.13

The transfer agreements have been executed between current members and proposed members at above stated prices, and the transfer of the interests will be

made when all necessary regulatory and lender approvals have been made.

Judy Landa currently has 25.75% membership interest in West Lawrence Care Center, a 215-bed RHCF in Far Rockaway.

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.

DOH Recommendation
Contingent Approval

Need Summary
Transfer of stock does not require a Need Review.

Program Summary
No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Financial Summary

There are no project costs associated with this application.

Budget:	Revenues:	\$11,757,119
	Expenses:	<u>11,418,610</u>
	Gain:	\$ 338,509

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 contingent upon:

1. Submission of an operating agreement acceptable to the department. [CSL]

Approval conditional upon:

1. The project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

February 13, 2014

Need Analysis

Recommendation

Transfer of stock does not require a Need Review.

Programmatic Analysis

Facility Information

	Existing	Proposed
Facility Name	Little Neck Care Center	Same
Address	260-19 Nassau Blvd. Little Neck, NY 11362	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Little Neck Care Center, LLC <u>Members:</u> Esther Farkovits 50.00% Bent Philipson 50.00%	Little Neck Care Center, LLC <u>Existing Member:</u> Bent Philipson 17.50% <u>New Members:</u> Judy Landa 42.50% David Rubenstein 15.00% Leah Friedman 12.50% Rochel David <u>12.50%</u> 100.00%

Character and Competence Background

Facilities Reviewed

Brookhaven Rehabilitation & Health Care Center LLC	04/2001 to 02/2009
Fort Tryon Center for Rehabilitation and Nursing	11/2002 to 01/2009
Franklin Center for Rehabilitation and Nursing	11/2002 to 01/2009
Highfield Gardens Care Center of Great Neck (formerly Wedgewood Care Center)	11/2003 to 11/2005
West Lawrence Care Center	09/2003 to present

Individual Background Review

Judy Landa reports no employment during the past ten years. Ms. Landa has disclosed the following health care facility interests with dates of ownership, as follows:

Brookhaven Rehabilitation and Health Care Center	04/2001 to 02/2009
Fort Tryon Center for Rehabilitation and Nursing	11/2002 to 01/2009
Franklin Center for Rehabilitation and Nursing	11/2002 to 01/2009
Highfield Gardens Care Center of Great Neck (formerly Wedgewood Care Center)	01/1997 to 11/2005
West Lawrence Care Center	09/2003 to present

David Rubenstein is dually employed as administrator at Garden State Health Care Administrators and United Health Administrators, both in the insurance industry. Mr. Rubenstein discloses no ownership interests in health care facilities.

Leah (Zahler) Friedman lists her current employment in human resources/payroll with Confidence Management Systems LLC, which provides housekeeping and laundry facilities to the healthcare industry. Ms. David discloses no ownership interests in health care facilities.

Rochel (Zahler) David lists her current employment in human resources/payroll with Confidence Management Systems LLC, which provides housekeeping and laundry facilities to the healthcare industry. Ms. David discloses no ownership interests in health care facilities.

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 Brookhaven Rehabilitation & Health Care Center, LLC for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued April 3, 2009 for surveillance findings on April 25, 2008. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care: Accidents.

A review of Highfield Gardens Care Center of Great Neck for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order issued August 16, 2005 for surveillance findings on August 27, 2004. Deficiencies were found under 10 NYCRR 415.12(c)(2) - Quality of Care: Pressure Sores.

A review of operations for Brookhaven Rehabilitation & Health Care Center, LLC and Highfield Gardens Care Center of Great Neck, for the periods 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 Tryon Center for Rehabilitation and Nursing, Franklin Center for Rehabilitation and Nursing and West Lawrence Care Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

No changes in the program or physical environment are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

Following is a summary of the submitted operating budget, presented in 2013 dollars, for the first year subsequent to change in ownership:

Revenues:	
Medicaid	\$6,667,119
Medicare	3,200,000
Private Pay/Other	<u>1,890,000</u>
Total	\$11,757,119
Expenses:	
Operating	\$10,730,397
Capital	<u>688,213</u>
Total	\$11,418,610
Net Income	<u>\$ 338,509</u>

- Medicaid capital component is based on the return of and return on equity methodology.
- Medicare and private pay revenues are based on current payment rates.
- Overall utilization is projected at 95.9%.
- Payor mix is based on an average utilization between 2011 and 2012.
- Utilization by payor source is anticipated as follows:

Medicaid	73.1%
Medicare	11.9%
Private/Other	15.0%
- Breakeven utilization is projected at 93.1%.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the transfer of the 82.5% ownership is \$994,930.31. BFA Attachment A is the Net Worth Statements for proposed member, which shows sufficient equity.

Working capital requirements are estimated at \$1,903,102 based on two months' of first year expenses, and will be satisfied from proposed members' equity. Review of BFA Attachment A, net worth of proposed members, reveals sufficient resources to satisfy the working capital requirements.

The submitted budget indicates that a net income of \$338,509 would be maintained during the first year following change in ownership. DOH staff has noted a fluctuation in payor mix between 2012 and current 2013, and has therefore sensitized the budgets, which still show a net profit. BFA Attachment E is the sensitized budget based on August 31, 2013 historical census. BFA Attachment B presents the pro-forma balance sheet of Little Neck Care Center. As shown, the facility will initiate operation with \$568,000 members' equity. 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 BFA Attachment C, financial summary of Little Neck Care Center, shows a slight negative working capital in 2011, positive net equity, and a net loss from operations of \$1,267,902 due to a

Medicaid retroactive adjustment not accounted for. The 2012 certified financials show a \$249,709 net loss from operations due from a Medicaid recoupment adjustment and losses ceased as of 2013, showing a net income of \$1,301,044 as of August 31, 2013.

BFA Attachment D is the financial summary of West Lawrence Care Center. As shown, the facility had an average negative working capital position and an average positive net asset position from 2010 through 2012. The reason for the negative working capital position is that the facility experienced historical losses. Also, the facility incurred average historical losses of \$81,385 from 2010 through 2012. The applicant has indicated that the reasons for the losses are retroactive rate reductions of \$833,857 in 2011, and the losses in 2012 resulted from approximately \$40 per patient day reduction in the facility's Medicaid rate. The applicant implemented the following steps to improve operations: reevaluating staff patterns; decreasing excess staff without adversely effecting patient care; and aggressively restructuring contracts and insurance policies.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA-Attachment A	Net Worth of Proposed Members
BFA-Attachment B	Pro-forma Balance Sheet, Little Neck Care Center
BFA-Attachment C	Financial Summary, Little Neck Care Center
BFA-Attachment D	Financial summary , West Lawrence Care Center
BFA Attachment E	Sensitized Budget based on August 31, 2013 Historical Census



Public Health and Health Planning Council

Project # 131159 E Morningside Acquisition I, LLC d/b/a Morningside House Nursing Home

County: Bronx County
Purpose: Establishment

Program: Residential Health Care Facility
Acknowledged: April 8, 2013

Executive Summary

Description

Morningside Acquisition I, LLC, d/b/a Morningside House Nursing Home (Morningside House) requests approval to be established as the operator of Morningside House Nursing Home Company, Inc., a 362-bed not-for-profit residential health care facility (RHCF) located at 1000 Pelham Parkway South. Morningside House also has two offsite adult day health care programs (ADHCP) with a total of 70 slots, a long term home health care program (LTHHCP) serving Bronx County, and licensed home care services agency (LHCSA). A separate application will be filed for the change in ownership of the LHCSA. CON 131126 has been approved for the decertification of 48 beds and is pending finalization from the Regional Office; therefore the acquisition will be for 314 beds. Ownership of the operation and real estate before and after the requested change is as follows:

CURRENT MEMBERSHIP		PROPOSED MEMBERSHIP	
<u>Operation</u>		<u>Operation</u>	
Morningside House Nursing Home Company, Inc.	100%	Morningside Acquisition I, LLC d/b/a Morningside House Nursing Home:	
		Alex Solovey	35%
		Pasquale DeBenedictis	35%
		Soloman Rutenberg	20%
		Joseph F. Carrillo II	10%
<u>Real Property</u>		<u>Real Property</u>	
Morningside House Nursing Home Company, Inc.	100%	Morningside Acquisition II, LLC.	
		Alex Solovey	35%
		Pasquale DeBenedictis	35%
		Soloman Rutenberg	20%
		Joseph F. Carrillo II	10%

Joseph Carrillo, II, Pasquale DeBenedictis and Alex Solovey currently have membership interests in Petite Fleur Nursing Home, a 180-bed RHCF located in Sayville; Mills Pond Nursing and Rehabilitation Center, a 250-bed RHCF located in St. James; East Neck Nursing and Rehabilitation Center, a 300-bed RHCF

located in West Babylon; and Barnwell Nursing and Rehabilitation Center, a 236-bed RHCF located in Valatie.

Joseph Carrillo, II also currently has membership interest in Carillon Nursing and Rehabilitation Center, a 315-bed RHCF located in Huntington.

DOH Recommendation
Contingent Approval

Need Summary
The change in ownership will not result in any change in beds or services.

The facility has operated below the county average and the department's 97% planning optimum for 2009, 2010, and 2011. Utilization decreased due to patient displacement while the facility was being renovated.

Program Summary
No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Financial Summary
The purchase price for the operating assets is \$6,349,040 and the real property is \$33,650,960, totaling \$40,000,000. The purchase price will be paid with a bank loan of \$32,000,000 for the real property and operations, and \$8,000,000 of member's equity.

There are no project costs associated with this application.

Budget:	Revenues:	\$47,618,580
	Expenses:	<u>46,484,585</u>
	Net Income:	\$ 1,133,995

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 is no HSA recommendation for 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:
 - a) Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b) Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c) 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
 - d) 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:
 - 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 building lease, acceptable to the Department. [BFA, CSL]
4. Submission of a loan commitment for working capital, acceptable to the Department. [BFA]
5. Submission of a commitment, acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and old refinanced debt. [BFA]
6. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of Morningside Acquisition I, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed amended Operating Agreement of Morningside Acquisition I, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Certificate of Assumed Name of Morningside Acquisition I, LLC, acceptable to the department. [CSL]
9. Submission of a fully executed proposed Certificate of Amendment of the Certificate of Incorporation or Certificate of Dissolution of Morningside Nursing Home Company, Inc. [CSL]

Approval conditional upon:

1. The project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

February 13, 2014

Need Analysis

Background

Morningside Acquisition I, LLC is seeking approval to become the new operator/owner of Morningside House Nursing Home Company, Inc., a 314 bed nursing home located at 1000 Pelham Parkway South, Bronx, 10461, in Bronx County.

Analysis

There is currently an unmet need of 8,862 beds in the New York City region as shown in Table 1. However, overall occupancy is 94.8% as indicated in Table 2.

Table 1: RHCF Need – NYC Region

2016 Projected Need	51,071
Current Beds	41,895
Beds Under Construction	314
Total Resources	42,209
Unmet Need	8,862

Morningside Acquisition I, LLC utilization was lower than that of Bronx County for 2009, 2010, and 2011 as shown in Table 2.

Table 2: RHCF – Morningside House Nursing Home /Bronx County Occupancy

Facility/County/Region	2009	2010	2011
Morningside House Nursing Home	95.6%	93.0%	86.5%
Bronx County	96.0%	95.8%	94.3%
NYC	94.9%	95.4%	94.8%

From 2011 to August 2013, Morningside converted 48 RHCF beds to assisted living beds with the assistance of a HEAL grant. The decrease in RHCF bed utilization at Morningside during this period is the result of the construction associated with this conversion of RHCF bed space to ALP functions.

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.

Morningside House Nursing Home was above the 75 percent planning average for 2010 and 2011. The facility reported Medicaid admissions of 43.13 percent in 2010 and 48.25 percent in 2011. The 75 percent planning averages for Bronx County for 2010 and 2011 were 34.1 percent and 37.5 percent respectfully.

Conclusion

The new owners will continue to make this RHCF an asset to local residents through an updated facility that will restore its occupancy to more optimum levels.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Establishment Application Review Character and Competence Background

Facility Information

	Existing	Proposed
Facility Name	Morningside House Nursing Home Company Inc	Morningside House Nursing Home
Address	1000 Pelham Parkway South Bronx, New York 10461	Same
RHCF Capacity	314	Same
ADHC Program Capacity	70	Same
Type of Operator	Not for Profit Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Morningside House Nursing Home Company Inc	Morningside Acquisition I, LLC d/b/a Morningside House Nursing Home Members: Pasquale DeBenedictis 35% Alex Solovey 35% Soloman Rutenberg 20% Joseph F. Carillo, II 10%

Facilities Reviewed

Carillon Nursing and Rehabilitation Center	05/2003 to present
Barnwell Nursing and Rehabilitation Center	10/2003 to present
East Neck Nursing and Rehabilitation Center	02/2006 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Petite Fleur Nursing Home	12/2012 to present
Workmen's Circle Multicare Center	05/2013 to present
Carillon Dialysis Center	10/2003 to present
Norwalk Acquisition I Nursing Home d/b/a Cassena Care at Norwalk (Connecticut)	08/2013 to present

Individual Background Review

Pasquale DeBenedictis is the director of finance at Carillon Nursing and Rehabilitation since 1997. Mr. DeBenedictis has disclosed ownership interest in the following health care facilities:

Barnwell Nursing and Rehabilitation Center	11/2003 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Petite Fleur Nursing Home	12/2012 to present
Workmen's Circle Multicare Center	05/2013 to present
Norwalk Acquisition I Nursing Home d/b/a Cassena Care at Norwalk (Connecticut)	08/2013 to present

Alexander Solovey is a New York State licensed physical therapist in good standing. He is the director of rehabilitation at Theradynamics Physical Therapy Rehabilitation P.C. since 1999. Mr. Solovey disclosed ownership interest in the following health care facilities:

Barnwell Nursing and Rehabilitation Center	11/2003 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Petite Fleur Nursing Home	12/2012 to present
Workmen's Circle Multicare Center	05/2013 to present
Norwalk Acquisition I Nursing Home d/b/a Cassena Care at Norwalk (Connecticut)	08/2013 to present

Joseph F. Carillo II holds an active New York Nursing Home Administrator's License in good standing. He is the Administrator at Carillon Nursing and Rehabilitation since 1986. He has disclosed ownership interest in the following health care facilities:

Carillon Nursing and Rehabilitation Center	01/1999 to present
Barnwell Nursing and Rehabilitation Center	10/2003 to present
East Neck Nursing and Rehabilitation Center	02/2006 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Petite Fleur Nursing Home	12/2012 to present
Workmen's Circle Multicare Center	05/2013 to present
Carillon Dialysis Center	10/2003 to present

Soloman Rutenberg is employed as CEO at Workmen's Circle Multicare Center (SNF) since 2006. He disclosed ownership interest in the following health care facility:

Workmen's Circle Multicare Center	07/2013 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 Barnwell Nursing & Rehabilitation Center, Carillon Nursing and Rehabilitation Center, East Neck Nursing and Rehabilitation Center, Mills Pond Nursing and Rehabilitation Center, Petite Fleur Nursing Home, and Workmen's Circle Multicare Center, for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with an executed asset purchase agreement, the terms of which are summarized below:

Date:	February 4, 2013
Seller:	Morningside House Nursing Home Company, Inc.
Purchaser:	Morningside Acquisition I, LLC
Purchased Assets:	All rights, title and interest in all assets exclusively used in the operation of the business to include fixed equipment; non-fixed equipment; assigned contracts; all resident and patient records; all policy and procedural manuals related solely to the operation of the businesses; the Medicare and Medicaid provider numbers and provider agreements to the extent assignable; any and all permits; tax and accounting records and goodwill.
Excluded Assets:	All cash; cash equivalents; short term investments; accounts receivable or any amounts due from third parties prior to the closing date; resident prepayments; any credits prepaid expenses; deferred charges, advance payments, security deposits; benefits and rights to reimbursement available under insurance policies; any personnel records required by law to be retained; all tax losses, refunds, credits, or other similar benefits; any and all claims against third parties including, but not limited to all retroactive rate increases and lump sum or other payments prior to the closing date and certain items in the Chapel.
Assumed Liabilities:	All claims, liabilities and obligations of any kind or nature incurred in the conduct of the business from and after the closing date.

Excluded Liabilities: All claims, liabilities and obligation of any kind or nature incurred in the conduct of the business prior to the closing date.
Purchase Price: \$6,349,040
Purchase Terms: Paid in full at closing.

Real Property Sale Agreement

The change in real property will be effectuated in accordance with the executed real property sale agreement, the terms of which are summarized below:

Date: February 4, 2013
Seller: Morningside House Nursing Home Company, Inc.
Purchaser: Morningside Acquisition II, LLC
Purchase Price: \$33,650,960
Purchase Terms: \$2,000,000 down payment with the remaining \$31,650,960 paid in full at closing.
Closing Date: Transactions to take place concurrently with the closing of the Asset Purchase Agreement.

The applicant has provided a letter of interest from Greystone stating available financing of \$32,000,000 at 6% for a term of thirty years, with the remaining balance of \$8,000,000 to be paid with equity from the proposed members. BFA Attachment B is the net worth statements of the proposed members, which indicates available resources. Each proposed member 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:

Premises: A 362-bed RHCF located at 1000 Pelham Parkway South, Bronx
Lessor: Morningside Acquisition II, LLC
Lessee: Morningside Acquisition I, LLC
Terms: 30 years with the option to renew for an additional 10 years.
Rental: \$3,548,840/year
Provisions: Lessee responsible for taxes, utilities, insurance 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

The applicant has submitted an operating budget, in 2013 dollars, for the first and third year subsequent to change in ownership:

<u>RHCF</u>	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid	\$28,813,125	28,426,817
Medicare	5,391,708	7,019,863
Private/Other	993,611	1,347,812
Total Revenues	\$35,198,444	\$36,794,492
Expenses:		
Operating	\$29,963,856	\$30,191,450
Capital	5,712,115	5,712,115
Total Expenses	\$35,675,971	\$35,903,565

Net Loss/Income:	\$(477,527)	\$890,927
Utilization (patient days):	111,172	112,318
Occupancy:	97.0%	98.0%

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

- The reduction of 48 beds increases the budgeted occupancy levels from historical and is based on historical 2012 occupancy.
- Medicare and private pay assume current rate of payment.
- Medicaid rates are based on 2013 Medicaid pricing rates with no trend.
- 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 and three is expected as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid	89.60%	87.50%
Medicare	8.44%	10.00%
Private/Other	1.96%	2.50%

- The slight shift in 2012 and budgeted Medicaid and Private Pay is based on past experience of the proposed operators as a result of meetings with local community leaders, local hospitals and local physicians to determine specific community needs and offer programs that are responsive to the need in the area.
- Breakeven occupancy is projected at 93.3%

ADHCP

Revenues:	<u>Year One</u>	<u>Year Three</u>
Medicaid	\$1,278,147	\$1,365,293
Private	<u>386,270</u>	<u>412,607</u>
Total Revenues	\$1,664,417	1,777,900
Expenses:	\$1,613,517	\$1,613,517
Net Income:	\$50,900	\$164,383
Visits:	13,728	14,664
Cost per Visit:	\$117.53	\$110.03

Utilization by payor source is as follows:

Medicaid	85%
Private	15%

LTHHCP

Revenues:	<u>Year One</u>	<u>Year Three</u>
	\$7,866,307	\$9,046,188
Expenses:	<u>8,349,395</u>	<u>8,967,503</u>
Net Loss/Income:	\$(483,088)	\$78,685

Utilization by payor source is as follows:

Medicare Fee for Service	8.5%
Medicaid Managed Care	89.5%
Charity Care	2.0%

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

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

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$44,729,168	\$47,618,580
Expenses:	<u>45,638,883</u>	<u>46,484,585</u>
Net Loss/Income:	\$(909,715)	\$1,133,995

Capability and Feasibility

The purchase price of \$6,349,040 for the operations and \$33,650,960 for the property will be financed with a total bank loan of \$32,000,000 at stated terms, with the remaining \$8,000,000 from proposed member's equity. BFA Attachment B, the net worth statements of the proposed members, indicates available resources.

Working capital requirements are estimated at \$7,606,481, based on two months of first year expenses. The applicant will finance \$3,803,240 of working capital at an interest rate of 6% over 5 years for which a letter of interest has been provided by Greystone. The remaining \$3,803,241 will be provided as equity from the proposed members. BFA Attachment C is the pro-forma balance sheet of Morningside House Nursing Home. As shown, the facility will initiate operation with \$3,803,241 member's equity.

The budget indicates a net loss of \$909,715 during the first year and a net income of \$1,133,995 during the third year subsequent to change in ownership. The budget appears reasonable. Following is a comparison of historical and projected third year revenues and expenses:

Projected Income	\$47,618,580
Projected Expense	<u>46,484,585</u>
Projected Net Profit	\$1,133,995
2012 Operating Revenues	\$46,192,545
2012 Operating Expense	<u>50,532,904</u>
2012 Net Loss	\$(4,340,359)
Incremental Net Income	\$5,474,354

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 BFA Attachment D, financial summary of Morningside Nursing Home Company, Inc., indicates the facility experienced negative working capital, generated positive equity and experienced an average net loss of \$5,012,872 for the period shown between 2010 and 2012. The applicant has stated that the losses were due to years of the facilities cost of operations exceeding the allowable reimbursable rates and occupancy affected due to construction on the A-5 unit and the delay in issuance of the approval to decertify 48 RHCf beds and certify 40 assisted living beds. Between 2011 and 2012, the existing operator has reduced expenses by approximately \$3,400,000. To improve operations and further reduce expenses without interruption of patient services the proposed new owners will do the following:

- The proposed operators have a central business office that coordinates and handles all of the financial office and administrative support services, which will result in a decrease in expenses of approximately \$704,659.
- Reductions in administrative and direct nursing services will result in a decrease in expenses of approximately \$3,474,804.
- Services such as grounds/security, housekeeping, medical records and dietary services will be reduced further by approximately \$1,162,469.

Review of BFA Attachments E, F, G, and H, financial summaries of Barnwell Nursing and Rehabilitation Center, Carillon Nursing and Rehabilitation Center, East Neck Nursing and Rehabilitation Center, and Mills Pond Nursing and Rehabilitation Center, indicates these facilities have maintained average positive working capital and equity and generated average positive net income for 2011-2012. As of July 31, 2013, the facilities maintained positive working capital and equity and generated positive net income, with the exception of Mills Pond Nursing & Rehabilitation Center, which experienced negative working capital due to a misclassification on the balance sheet for a long term liability classified as current relating to Jopal Realty.

Review of BFA Attachment I, financial summary of Petite Fleur Nursing Home, which was acquired December 21, 2012, indicates the facility has maintained positive working capital and equity and generated a net income of \$2,043,741 as of July 31, 2013.

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.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organization Chart
BFA Attachment B	Personal Net Worth Statement
BFA Attachment C	Pro-forma Balance Sheet
BFA Attachment D	Financial Summary, Morningside House Nursing Home Company, Inc.
BFA Attachment E	Financial Summary, Barnwell Nursing and Rehabilitation Center
BFA Attachment F	Financial Summary, Carillon Nursing and Rehabilitation Center
BFA Attachment G	Financial Summary, East Neck Nursing and Rehabilitation Center
BFA Attachment H	Financial Summary, Mills Pond Nursing Home and Rehabilitation Center
BFA Attachment I	Financial Summary, Petite Fleur Nursing and Rehabilitation Center



Public Health and Health Planning Council

Project # 131348 E
Shore View Nursing & Rehabilitation, LLC

County: Kings County
Purpose: Establishment

Program: Residential Health Care Facility
Acknowledged: July 19, 2013

Executive Summary

Description

Shore View Acquisition I, LLC, to-be-renamed Shore View Nursing & Rehabilitation Center, LLC, requests approval to be established as the operator of Shoreview Nursing Home, a 320-bed proprietary skilled nursing facility located at 2865 Brighton 3rd Street, Brooklyn. The applicant will not be purchasing the real estate as part of this application. There will be no change in services provided. The applicant entered into a transfer agreement dated April 4, 2013 with Shoreview Nursing Home.

The current and proposed operator is as follows:

<u>Current</u>		<u>Proposed</u>	
Shoreview Nursing Home		Shore View Nursing & Rehabilitation Center, LLC	
<u>Partners:</u>		<u>Members:</u>	
Karen Boxer	0.75%	Pasquale DeBenedictis	32.50%
Robin Chaney	0.75%	Alex Solovey	32.50%
Ann Castellucci	3.30%	Soloman Rutenberg	5.00%
Ernest Dicker	17.26%	Michael Schrieber	30.00%
Mark Dicker	33.20%		
Sheryl Dicker	33.20%		
Helene Fried	0.32%		
Steven Katzenstein	1.20%		
Norma Krupenie	0.24%		
Beth Mcgrath	1.27%		
Howard Present	2.55%		
Raymond Small	0.30%		
Reuben Taub	2.55%		
Richard Weisbrod	0.64%		
Frederick Turk	1.20%		
Jane O'Brien	1.27%		

BFA Attachments E and F are the financial summaries of the other skilled nursing facilities owned by the proposed members.

DOH Recommendation
 Contingent Approval

Need Summary

Shoreview's utilization was 90.6% in 2009, 92.6% in 2010, 90.7% in 2011, and 91.5% in 2012. Shoreview was damaged by Superstorm Sandy, necessitating closure until repairs and improvements could be made. The facility re-opened in March of 2013, and has seen approximately 80 – 100 admission requests each month since. To date the facility has a total of 302 patients which is a 94 percent utilization rate. The applicant expects the facility to be at near-optimum capacity shortly, because of new programs and services that meet the needs of a unique niche, a large Russian population. The change in ownership will not result in any change in beds or services.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicant members.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Financial Summary

The purchase price of \$10 will be met via equity from the proposed members personal resources.

Budget:	
Revenues	\$34,580,200
Expenses	<u>34,089,600</u>
Net Income	\$490,600

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 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.
 - 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:
 - 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 working capital loan commitment, acceptable to the Department. [BFA]
4. Submission of an executed Certificate of Assumed name, acceptable to the Department. [CSL]
5. Submission of an executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of an Amendment of the Articles of Organization, acceptable to the Department. [CSL]
7. Submission of an Asset Purchase Agreement, acceptable to the Department. [CSL]
8. Submission of an executed Lease Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

February 13, 2014

Need Analysis

Background

Shore View Acquisition 1, LLC, to-be-renamed Shore View Nursing & Rehabilitation Center, LLC, a newly formed entity, seeks approval to enter into an asset purchase agreement with Shoreview Nursing Home to be established as the new owner/operator. Shoreview Nursing Home is a 320-bed Article 28 residential health care facility located at 2865 Brighton 3rd Street, Brooklyn, 11235, in Kings County.

Analysis

The RHCF bed need methodology set forth in 10 NYCRR 709.3 may be used in the evaluation of changes of RHCF ownership, even if no additional beds are requested. The applicant does not request additional beds in the proposed change of ownership, but in light of the facility's low occupancy rates of recent years, the Department evaluated the need for maintenance of Shoreview's current complement of 320 beds.

Table 1: RHCF Need – New York City Region

2016 Projected Need	51,071
Current Beds	42,330
Beds Under Construction	78
Total Resources	42,408
Unmet Need	8,663

There is currently a need for 8,663 beds in the New York City Region as indicated in Table 1. Although a need for beds is indicated, Section 709.3 states there shall be a presumption of no need if the overall occupancy of RHCFs in the planning area is less than 97 percent. The average RHCF occupancy rate for New York City is 94.8%, and the average occupancy for Kings County is slightly lower, at 94.3%, as indicated in Table 2.

Table 2: Shoreview Nursing Home/Kings County/New York City Region Occupancy

<u>Facility/County/Region</u>	<u>% Occupancy 2009</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>
Shoreview Nursing Home	90.6%	92.6%	90.7%
Kings County	92.7%	95.0%	94.3%
New York City Region	94.9%	95.4%	94.8%

Local Factors

Section 709.3 also provides that the presumption of no need based on aggregate occupancy of less than 97 percent may be rebutted by consideration of factors that may affect access to and utilization of RHCF beds in the applicant's local area. It is the responsibility of the applicant to describe and document these factors.

In describing relevant local factors, the applicant first cited Superstorm Sandy, which damaged Shoreview in late 2012, causing the facility to close to make necessary repairs and renovations. The facility undertook these repairs and improvements and re-opened in March, 2013.

The applicants further describe a distinctive feature of the service area in the form of a large number of residents of Russian descent in the area surrounding the facility. In recognition of this niche population, the operators have recently recruited Russian-speaking staff and initiated service of Russian cuisine for residents. Since completing the aforementioned repairs and renovations and initiating these culturally targeted efforts, the facility has been receiving 80 – 100 admissions requests per month. Currently, 70 percent of Shoreview's residents are of Russian descent.

Recently, the facility has also set up a working relationship with area hospitals. Shoreview currently has 290 residents, with 12 in hospitals looking to be transferred to the facility, for a total of 302 individuals. With new relationships between Shoreview, Maimonides and Coney Island Hospitals, the applicant intends to expand the facility's services to include a new cardiac and wound care program, which is likely to attract additional residents.

Features of the renovated facility include:

- Expanded open spaces for residents to make the environment more comfortable and home-like;
- A cardiac rehabilitation unit to address the high prevalence of congestive heart failure in the service area's Russian population;
- A state-of-the-art rehabilitation center.

Occupancy

The 290 current residents and 12 intended admissions from area hospitals as of mid-January, 2014 would total to a 94 percent operating utilization. The applicant stated that the facility's census is typically made up of approximately 100 shorter-term residents and approximately 200 longer-term residents. This relatively high proportion of shorter-term residents may cause the occupancy rate to fluctuate from time-to-time and hold it somewhat below the 97 percent optimum.

Shoreview Nursing Home's utilization was 90.6% in 2009, 92.6% in 2010, and 90.7% in 2011. The applicant stated the reason for the low utilization in previous years was because of the physical appearance of the building, along with the outdated services then being provided. In view of the increase in occupancy that has occurred since the renovated facility re-opened, this seems an accurate assessment.

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, or of the Health Systems Agency area Medicaid Admissions percentage, 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 or of the Health Systems Agency percentage, whichever is applicable.

Shoreview Nursing Home Medicaid admissions of 64.42% in 2010 and 60.81% in 2011 far exceeded the Kings County 75% rates of 28.12% in 2010 and 30.92% in 2011.

Conclusion

Continued certification of Shoreview's currently certified capacity of 320 beds is warranted in view of the following factors:

- Renovations in physical plant that have made the facility more attractive to current and potential residents;
- Staffing and program initiatives that recognize the distinctive characteristics of the service area's population;
- Collaborative relationships with area hospitals;
- A state-of-the-art rehabilitation center to serve both longer-term and shorter-term residents;
- A cardiac rehabilitation program reflective of the health needs of the area's population;
- A steadily increasing occupancy rate, one which includes a high proportion of Medicaid clients.

Approval of this application will maintain a community resource that provides services to both the Medicaid patient population and the community demographic.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

	Existing	Proposed
Facility Name	Shoreview Nursing Home	Shore View Nursing & Rehabilitation Center, LLC
Address	2865 Brighton 3 rd Street Brooklyn, New York 11235	Same
RHCF Capacity	320	Same
ADHC Program Capacity	n/a	Same
Type of Operator	Partnership	LLC
Class of Operator	Proprietary	Proprietary
Operator	Shoreview Nursing Home	Shore View Nursing & Rehabilitation Center, LLC Members: Pasquale DeBenedictis 32.5% Alex Solovey 32.5% Soloman Rutenberg 5.0% Michael Schreiber <u>30.0%</u> . 100.0%

Character and Competence Background

Facilities Reviewed

Barnwell Nursing and Rehabilitation Center	01/2004 to present
East Neck Nursing and Rehabilitation Center	02/2006 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Petite Fleur Nursing Home	12/2012 to present
Workmen's Circle Multicare Center	07/2013 to present
Norwalk Acquisition I Nursing Home	08/2013 to present
d/b/a Cassena Care at Norwalk (Connecticut)	

Individual Background Review

Pasquale DeBenedictis is a certified public accountant (CPA) in good standing. He is the director of finance at Carillon Nursing and Rehabilitation Center since 1997. Mr. DeBenedictis discloses ownership interests in the following residential health care facilities:

Barnwell Nursing and Rehabilitation Center	11/2003 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Petite Fleur Nursing Home	12/2012 to present
Workmen's Circle Multicare Center	07/2013 to present
Norwalk Acquisition I Nursing Home	08/2013 to present
d/b/a Cassena Care at Norwalk (Connecticut)	

Alexander Solovey is a New York State licensed physical therapist in good standing. He is the director of rehabilitation at Theradynamics Physical Therapy Rehabilitation P.C. since 1999. Mr. Solovey discloses ownership interests in the following residential health care facilities:

Barnwell Nursing and Rehabilitation Center	11/2003 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Petite Fleur Nursing Home	12/2012 to present
Workmen's Circle Multicare Center	07/2013 to present

Norwalk Acquisition I Nursing Home
d/b/a Cassena Care at Norwalk (Connecticut)

08/2013 to present

Michael Schreiber holds an active New York Nursing Home Administrator's License in good standing. Mr. Schreiber is employed as a director at both Shoreview Nursing Home, since 2006, and Sea-Crest Health Care Center, since 2005. Mr. Schreiber discloses he served as an executive director for these facilities for the following time periods:

Sea Crest Health Care Center	01/2008 to 12/2012
Shoreview Nursing Home	01/2008 to 12/2012

Soloman Rutenberg has been employed as CEO at Workmen's Circle Multicare Center, a skilled nursing facility, since 2006. Prior employment has Mr. Rutenberg as the assistant administrator at Kingsbridge Heights, from 1998 to 2006. He discloses an ownership interest in the following health care facility:

Workmen's Circle Multicare Center	07/2013 to present
-----------------------------------	--------------------

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of operations for Barnwell Nursing & Rehabilitation Center, Carillon Nursing and Rehabilitation Center, East Neck Nursing and Rehabilitation Center, Mills Pond Nursing and Rehabilitation Center, Petite Fleur Nursing Home, and Workmen's Circle Multicare Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the purchase of the nursing home, summarized below:

Date	April 4, 2013
Seller	Shoreview Nursing Home
Purchaser	Shore View Nursing & Rehabilitation Center, LLC
Assets Acquired	Business and operation of the Facility; all inventory, supplies and other articles of personal property; all contracts, agreements, leases, undertakings, commitments and other arrangements which Buyer agrees to assume at the Closing; the name "Shoreview Nursing Home" and any and all other trade names, logos, trademarks and service marks associated with the Facility; all security deposits and prepayments; all menus, policies and procedures manuals and computer software; all telephone numbers and telefax numbers used by the Facility; all resident/patient records relating to the Facility; goodwill in connection with the operation of the Facility; all accounts receivable relating to services rendered by the Facility on and after the Effective Date of March 15, 2013; all rate increases and/or lump payments resulting from rate appeals with respect to third party payments, which become effective or paid on or after the Effective Date; all cash, marketable securities, deposits and cash equivalents, and all accrued interest and dividends and all reimbursement made prior to, on or after the Closing Date by

Excluded Assets	Medicare, Medicaid or any third party payor, excluding insurance proceeds, for storm damage suffered by Seller and/or the Facility relating to or caused by Hurricane Sandy. All insurance policies and claims, and the proceeds thereof, relating to events occurring prior to the Effective Date; all retroactive rate increases, resulting from rate appeals, with respect to third party payments for services rendered at the Facility prior to the Effective Date of March 15, 2013 and all accounts receivable relating thereto and proceeds thereof, all claims, rights, causes of action, rights of recovery, rights of set off and recoup against and third parties; all amounts due from third parties related to Seller; all leasehold improvements, furniture, fixtures and equipment owned by Seller; all financial books and records of Seller; all accounts receivable related to services rendered by the Facility prior to the Effective Date; any assets of Seller not used in connection with the operation of the Seller and the real property and improvements thereon.
Assumed Liabilities	All liabilities and obligations relating to the Facility and/or Basic Assets arising on or after the Effective Date of March 15, 2013 or otherwise relating to services rendered by, or the operation of, the Facility on and after the Effective Date; all of Seller's Accounts Payable and other Liabilities and all healthcare, Medicaid and Medicare overpayments and assessments liabilities and all of Seller's Liabilities relating to the Transferred Employees for vacation, holiday time and personal days, all of which were earned but not yet taken or paid prior to the Effective Date.
Retained Liabilities	Seller is retaining and shall remain liable for the following liabilities: any liability relating to the Excluded Assets; any liability relating to or arising out of use, ownership or operation of the Facility prior to the Effective Date of March 15, 2013 other than the Assumed Liabilities; all of Seller's sick pay Liabilities existing on the day before the Effective Date and all of Seller's Accounts Payable existing on the day prior to the Effective Date, other than the Assumed Liabilities.
Purchase Price	\$10 and the assumption of the Assumed Liabilities.
Payment of Purchase Price	Cash at Closing

The applicant submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of the liability and responsibility. Currently, there are no outstanding liabilities.

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site that they will occupy, which is summarized below:

Date:	April 12, 2013
Premises:	The property located at 2865 Brighton 3 rd Street, Brooklyn, New York, which consists of a 320-bed residential nursing facility.
Lessor:	Shore View Real Estate Holding, LLC
Lessee:	Shore View Nursing & Rehabilitation Center, LLC
Term:	The lease will terminate on March 30, 2061.
Rental:	From Commencement Date through March 14, 2014; \$1,123,141 annually. From March 15, 2014 through March 14, 2019; \$1,500,000 annually. From March 15, 2019 through March 14, 2024; \$2,000,000 annually.

From March 15, 2024 through March 14, 2029; \$2,100,000 annually.
 For every five year period subsequent to March 15, 2029, minimum
 annual rent shall be equal to the fair market value for the lease premises.
 Provisions: The lessee shall be responsible for maintenance, utilities and real estate
 taxes.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the first year after the change in operator, summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid Managed Care	\$266.28	\$23,027,100
Medicare Fee For Service	\$571.63	7,112,800
Commercial Fee For Service	\$498.90	1,902,800
Private Pay	\$500.78	2,362,200
Non Operating Revenues		<u>175,300</u>
Total Revenues		\$34,580,200
Expenses:		
Operating	\$301.46	\$32,392,500
Capital	<u>15.79</u>	<u>1,697,100</u>
Total Expenses	\$317.25	\$34,089,600
Net Income		\$490,600
Utilization: (patient days)		107,453
Occupancy		91.99%

The breakeven occupancy for the facility is 90.63%. The applicant has provided the occupancy from December 18, 2013, through January 5, 2014, and the facility had an average occupancy of 91.54%. The projected occupancy during the first year is consistent with what the facility has been achieving since December 18, 2013.

Utilization for the RHCf beds, broken down by payor source during the first year after the change in operator is summarized as follows:

Medicaid Managed Care	80.48%
Medicare Fee For Service	11.58%
Commercial Fee For Service	3.55%
Private Pay	4.39%

The following expense categories are projected to decrease after the change in operator when compared with 2011 data:

- The new operator will not have the continued bad debt expense of \$539,593.
- The administrative fees and executive director costs have been removed as the expense already is included in the full administrative staff and totals \$597,321.

Capability and Feasibility

The purchase price of \$10 will be met via equity from the proposed members. The applicant will also assume some of the current operator's liabilities.

Working capital requirements are estimated at \$5,681,600, which is equivalent to two months of first year expenses. The applicant will finance \$2,000,000 at an interest rate of 1 month LIBOR + 275 basis points (approximately 2.92% as of 12/20/2013). The remainder, \$3,681,600, will be met via equity from the proposed members' personal resources. BFA Attachment A is the personal net worth statements of the proposed members of Shore View Nursing & Rehabilitation Center, LLC, which indicates the availability of sufficient funds for the equity contribution.

The applicant provided an affidavit indicating that the proposed members will provide equity disproportionate to their ownership percentages. BFA Attachment C is the pro-forma balance sheet of Shore View Nursing & Rehabilitation Center, LLC as of the first day of operation, which indicates a positive net asset position of \$2,993,208.

The submitted budget indicates a net income of \$490,600 during the first year after the change in operator. Revenues are increasing because the applicant is projecting utilization levels achieved prior to Superstorm Sandy in 2012. The submitted budget appears reasonable. Revenues are increasing from 2011 historical experience due to trending and additional occupancy projected from 2011 data. The applicant has indicated that due to Superstorm Sandy, the facility did repairs totaling \$3,354,286.

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.

BFA Attachment B is the financial summary of Shoreview Nursing Home from 2010 through 2012. As shown, the facility had an average negative working capital position and average negative net asset position from 2010 through 2012. The applicant has indicated that the reason for the average negative working capital position and the average negative net asset position is from prior year losses. The applicant has indicated that the reason for the 2010 loss was due to the facility not controlling expenses, of which the operator then controlled expenses. The applicant has indicated that the 2012 loss was due to Superstorm Sandy.

BFA Attachment D is the October 31, 2013 internal financial statements of Shoreview Nursing Home. As shown, the facility had a positive working capital position and a positive net asset position through October 31, 2013. Also, the facility achieved an income from operations of \$3,530,186 through October 31, 2013.

BFA Attachment E is the financial summary of Barnwell Nursing and Rehabilitation from 2010 through 2012. As shown, the facility had an average positive working capital position and an average positive net asset position. The applicant has indicated that the negative working capital position in 2010 and 2011 was due to a large liability due to a third party, which has been removed as of the 2012 financial statement leaving a positive working capital position in 2012. Also, the facility achieved an average net income of \$372,063 from 2010 through 2012.

BFA Attachment F is the financial summary of East Neck Nursing Home from 2010 through 2012. As shown, the facility had an average positive working capital position and an average positive net asset position from 2010 through 2012. Also, the facility achieved an average net income of \$720,923 from 2010 through 2012.

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	Personal Net Worth Statement- Proposed Members
BFA Attachment B	Financial Summary- Shoreview Nursing Home
BFA Attachment C	Pro-forma Balance Sheet
BFA Attachment D	October 31, 2013 internal financial statements of Shoreview Nursing Home
BFA Attachment E	Financial Summary- Barnwell Nursing and Rehabilitation
BFA Attachment F	Financial Summary- East Neck Nursing Home



Public Health and Health Planning Council

Project # 132071 E
Steuben Operations Associates, LLC d/b/a Steuben Center for Rehabilitation and Healthcare

County: Steuben
Purpose: Establishment

Program: Residential Health Care Facility
Acknowledged: August 6, 2013

Executive Summary

Description

Steuben Operations Associates, LLC d/b/a Steuben Center for Rehabilitation and Healthcare, is seeking approval to become established as the new operator of Steuben County Infirmary, an existing 105-bed county-owned residential health care facility (RHCF) located at 7009 Rumsey Street Extension in Bath.

Steuben Operations Associates, LLC ownership as follows:

	<u>% Membership Interest</u>
Kenneth Rozenberg	63%
Jeffrey Strauss	29%
Jeffrey Sicklick	3%
David Greenberg	5%

The initial capital paid for proposed membership interest is \$20 per one percent for a total of \$2,000.

Kenneth Rozenberg, Jeffrey Strauss, and Jeffrey Sicklick have membership interests in multiple healthcare facilities. BFA Attachment B shows the proposed members interest in the affiliated facilities.

DOH Recommendation
Contingent Approval

Need Summary

Utilization at Steuben County Infirmary has been steady from 2009 to 2011 but did see a slight decrease in 2012 to 90 percent. This decrease is assumed to be from patients being aware of the nursing home sale that would take place. The utilization for 2013 has increased back to 94.3% with only 6 vacancies in the

building. The new owners plan to bring their successful managed long term care environment and apply it to this facility which they feel with help them exceed the 97% planning optimum..

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with the CMS 2013 sprinkler mandate.

Financial Summary

The purchase price for the operating assets is \$6,987,500. The purchase price will be paid by \$698,750 in cash and a \$6,288,750 mortgage at 5.26% over a 10 year term with a 20 year amortization.

There are no project costs associated with this proposal.

Budget:	Revenues:	\$11,677,467
	Expenses:	<u>\$ 11,343,211</u>
	Gain:	334,256

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

The HSA recommends contingent approval of this application.

Office of Health Systems Management

Approval contingent upon:

1. 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 be 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 implement 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 for working capital, acceptable to the Department. [BFA]
4. Submission of a loan commitment for the purchase price, acceptable to the Department. [BFA]
5. Submission of a photocopy of an executed Assignment and Assumption Agreement, acceptable to the Department. (CSL)
6. The sponsor's signing a Medicaid access agreement. [FLA]
7. The sponsor's willingness to enter into an agreement with Steuben County which articulates how the sponsor will continue to provide a safety net function for the County. [FLA]
8. The sponsor's agreement to either develop an aide training program or enter into an arrangement with Corning Community College or others to insure a sufficient supply of aides. [FLA]

Approval conditional upon:

1. The project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. With the condition that the sponsor, who will become the largest single provider of skilled nursing facility services in Steuben County and given the increasing prevalence of dementia with the aging of the population, actively engages with Steuben County authorities and other health care providers and facilities in the county to assess the unmet needs of people with dementia and their caregivers for both out-patient and inpatient best practice services. Further, the sponsor submits a report to FLHSA within a year of assuming operation of the facility indicating what role the sponsor is willing to assume to address identified needs of caregivers and people with dementia. [FLA]

Council Action Date

February 13, 2013.

Need Analysis

Background

Steuben Operations Associates, LLC d/b/a Steuben Center for Rehabilitation and Healthcare seeks approval to be established as the new operator of Steuben County Infirmary, a 105-bed residential health care facility located at 7009 Rumsey Street Extension, Bath, in Steuben County.

Analysis

Steuben County has met its 2016 bed need. There is no remaining RHCf bed need in Steuben County, as shown in Table 1.

Table 1: RHCf Need – Steuben County

2016 Projected Need	691
Current Beds	691
Beds Under Construction	0
Total Resources	691
Unmet Need	0

Steuben Operations Associates did not exceed the Department's planning optimum of 97% RHCf occupancy for 2009, 2010, or 2011. Steuben Operations Associates did exceed the Steuben County average RHCf utilization for the same years. Occupancy was 94.1 % in 2009, 93.5% in 2010 and 93.9% in 2011, while Steuben County averaged 91.2% in 2009, 91.4% in 2010, and 91.9% in 2011.

Table 2: Steuben Operations Associates/Steuben County

<u>Facility/County/Region</u>	<u>% Occupancy 2009</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>
Steuben Operations Associates	94.1%	93.5%	93.9%
Steuben County	91.2%	91.4%	91.9%

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 or 75% of the Health Systems Agency area, 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 or Health Systems Agency percentage, whichever is applicable.

Steuben County Infirmary did not exceed the Steuben County 75% Medicaid admission percentages of 17.97% in 2010 and 17.14% in 2011 with admissions of 16.89% and 5.08%, respectively.

Conclusion

This transfer of ownership will not result in any capacity changes and will preserve a facility that is serving the community, with higher occupancy rates than other RHCf's in the county.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

	Existing	Proposed
Facility Name	Steuben County Infirmiry	Steuben Center for Rehabilitation and Healthcare
Address	7009 Rumsey Street Extension Bath, NY 14810	Same
RHCF Capacity	105	Same
ADHC Program Capacity	N/A	Same
Type of Operator	County	Limited Liability Company
Class of Operator	Public	Proprietary
Operator	Steuben County Department of Social Services	Steuben Operations Associates, LLC d/b/a Steuben Center for Rehabilitation and Healthcare Managing Member Kenneth Rozenberg 63.0% Members: Jeremy Strauss 29.0% David Greenberg 5.0% Jeremy Sicklick 3.0%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	10/2003 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Bushwick Center for Rehabilitation and Health Care	06/2008 to present
Chittenango Center for Rehabilitation and Health Care	07/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	07/2008 to present
Suffolk Center for Rehabilitation and Nursing	05/2007 to 07/2011
University Nursing Home	10/2003 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	10/2003 to present

Certified Home Health Agency

Alpine Home Health Care (CHHA)	07/2008 to present
--------------------------------	--------------------

Licensed Home Care Services Agency

Amazing Home Care (LHCSA)	05/2006 to present
---------------------------	--------------------

Emergency Medical Services

Senior Care Emergency Ambulance Services, Inc. (EMS) 06/2005 to present

Individual Background Review

Kenneth Rozenberg is a licensed nursing home administrator in good standing, and a licensed paramedic in good standing. He lists current employment as CEO at Bronx Center for Rehabilitation & Health Care since 1998. Mr. Rozenberg discloses extensive health care facility interests as follows:

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Bushwick Center for Rehabilitation and Health Care	05/2010 to present
Wartburg Lutheran Home Receivership	06/2008 to 05/2010
Wartburg Lutheran Home for the Aging Receivership	06/2008 to 05/2010
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Stonehedge–Chittenango Receivership	07/2008 to 05/2011
Corning Center for Rehabilitation (formerly Founders Pavilion)	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	05/2013 to present
Holliswood Center Receivership	11/2010 to 05/2013
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Stonehedge- Rome Receivership	07/2008 to 05/2011
University Nursing Home	08/2000 to present
Waterfront Center for Rehabilitation and Health Center	01/2013 to present
Waterfront Center Receivership	08/2011 to 01/2013
Williamsbridge Manor Nursing Home	11/1996 to present
Alpine Home Health Care (CHHA)	07/2008 to present
Amazing Home Care (LHCSA)	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS)	05/2005 to present

Jeremy B. Strauss has been employed as Executive Director of Dutchess Center for Rehabilitation since 2003. Mr. Strauss discloses the following health facility interests:

Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Senior Care Emergency Ambulance Services, Inc. (EMS)	04/2011 to present
Suffolk Center for Rehabilitation and Nursing	05/2007 to 07/2011
Waterfront Center for Rehabilitation	01/2013 to present

Jeffrey N. Sicklick is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator at Bronx Center for Rehabilitation & Health Care since October, 1997. Mr. Sicklick discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Corning Center for Rehabilitation	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2007 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Waterfront Center for Rehabilitation	01/2013 to present

David Greenberg is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Greenberg has been employed as an Administrator at Boro Park Center Nursing Home since July 2010. Prior employment includes Administrator positions at both Wartburg Lutheran Nursing Home from November 2007 to July 2010, and Liberty House Nursing Home in Jersey City, NJ May 2002 to November 2007. Mr. Greenberg reports no health facility interests.

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 of Bronx Center for Rehabilitation and Health Care for the period identified above reveals that the facility was fined \$2,000 pursuant to a Stipulation and Order issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.

The facility was also fined \$4,000 pursuant to a Stipulation and Order issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.

A review of the operations of Chittenango Center for Rehabilitation and Health Care (formerly known as Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals that the facility was fined \$20,000 pursuant to a Stipulation and Order issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) Quality of Care: Catheters.

The facility was also fined \$4,000 pursuant to a Stipulation and Order issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision, and 415.26(b)(3)(4) Governing Body.

A review of the operations of Waterfront Health Care Center for the period identified above reveals that the facility was fined \$2,000 pursuant to a Stipulation and Order issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.

A review of Williamsbridge Manor Nursing Home for the period identified above reveals that the facility was fined \$1,000 pursuant to a Stipulation and Order issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

The review of operations for Williamsbridge Manor Nursing Home, Bronx Center for Rehabilitation and Health Care, Waterfront Health Care Center, and Chittenango Center for Rehabilitation and Health Care for the time periods indicated above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

The review of operations of University Nursing Home, Dutchess Center for Rehabilitation and Healthcare, Queens Center for Rehabilitation and Residential Health Care, Brooklyn Center for Rehabilitation and Residential Health Care, Bushwick Center for Rehabilitation and Health Care, Boro Park Center for Rehabilitation and Healthcare, Rome Center for Rehabilitation and Health Care, Holliswood Center for Rehabilitation and Healthcare, Fulton Center for Rehabilitation and Healthcare, Richmond Center for Rehabilitation and Specialty Healthcare, Suffolk Center for Rehabilitation and Nursing, and Corning Center for Rehabilitation for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no enforcements.

A review of Alpine Home Health Care, LLC and Amazing Home Care reveals that a substantially consistent high level of care has been provided since there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc. reveals that a substantially consistent high level of care has been provided since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with an executed asset purchase agreement, the terms of which are summarized below:

Date:	June 3, 2013
Seller:	County of Steuben
Purchaser :	Steuben Operations 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.
Purchase Price:	\$6,987,500 for the operating interest.
Payment of Purchase Price:	\$698,750 cash held in escrow as a deposit upon execution with the remaining \$6,288,750 at closing.

Concurrent with entering into the Asset Purchase Agreement, the County of Steuben entered into a Land Purchase Agreement with Steuben Land Associates, LLC for the sale and acquisition, respectively, of the real property interest of Steuben County Infirmary at a purchase price of \$3,762,500. The members of Steuben Land Associates, LLC are Daryl Hagler (99%) and Jonathan Hagler (1%).

The applicant 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 an executed lease agreement, the terms of which are summarized as follows:

Date: June 15, 2013
 Premises: A 105 bed RHCF located at 7009 Rumsey Street Extension, Bath
 Landlord: Steuben Land Associates, LLC
 Tenant: Steuben Operations Associates, LLC
 Terms: 30 years commencing on the execution of the lease
 Rental: Base rent equal to the debt service payments of the mortgage covering the premises. \$316,406 per year plus \$250,000 per year.
 Provisions: Tenant is responsible for taxes, insurance, utilities and maintenance

The lease arrangement is an arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between landlord and tenant in that members of each company have previous business relationships involving real estate transactions of other nursing homes.

Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2013 dollars, for the first and third year subsequent to change in ownership:

Revenues:	
Medicaid	\$6,941,932
Medicare	1,896,139
Private Pay	<u>2,839,396</u>
Total Revenues	\$11,677,467
Expenses:	
Operating	\$10,164,542
Capital	<u>1,178,669</u>
Total Expenses	<u>\$11,343,211</u>
Net Income	<u>\$334,256</u>
Utilization: (patient days)	38,284
Occupancy	99.9%

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

- Expenses include lease rental.
- Medicaid revenues include assessment revenues.
- Medicaid rates are based on 2013 Medicaid pricing rates with no trend to 2014.
- Medicare and Private rates are based on the experience of the County and the applicant's experience in assuming operations of similar facilities.
- Overall utilization is projected at 99.9%, while utilization by payor source is expected as follows:

Medicaid	76.3%
Medicare	9.3%
Private Pay	14.4%
- Breakeven occupancy is projected at 97.0%.

Capability and Feasibility

The purchase price of the operations will be financed by a loan from Greystone of \$6,288,750 at an interest rate of 5.26% for 10 years, with a 20 year amortization, with the remaining \$698,750 from the members of Steuben Operations Associates, LLC. BFA Attachment A is the net worth statement of proposed members, which shows sufficient equity. A Letter of Interest has been submitted by Greystone.

The members of Steuben Operations 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. BFA Attachment E is the interest and amortization schedule for the ten year term.

Working capital requirements are estimated at \$1,890,535, based on two months of the first year expenses, of which \$945,268 will be satisfied from the proposed member's equity, and the remaining \$945,267 will be satisfied through a loan from Greystone at 5.26% over 5 years. A letter of interest has been supplied by the bank. BFA Attachment A is the net worth of proposed members, which shows sufficient equity.

The submitted budget indicates that a net income of \$334,256 would be maintained during the first year following change in ownership. DOH staff has reviewed the difference between the current 2012 net operating loss of \$2,881,322, as shown on BFA Attachment E, and the first year budgeted net income of \$334,256 and has concluded that the difference is mainly due to the reduction in employee fringe benefits of \$2,872,740. The facility will no longer participate in the County benefit plan. BFA Attachment G is the budget sensitivity analysis based on September 25, 2013 current utilization of the facility, which shows the budgeted revenues would decrease by \$183,076, resulting in a net income in year one of \$151,180. BFA Attachment C is the pro-forma balance sheet of Steuben Operations Associates, LLC d/b/a Steuben Center for Rehabilitation and Healthcare, which indicates positive members' equity of \$2,020,268 as of the first day of operations. It is noted that assets include \$6,987,500 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, members' equity would be negative \$4,967,232. 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 maintained positive working capital in 2009-2010, experienced negative working capital in 2011, and maintained positive net assets and an average net loss from operations of \$2,137,607 for the period shown.

As shown on BFA Attachment E, the facility experienced negative working capital, net assets and a net operating loss of \$2,881,322 in 2012. The county cannot maintain its current operation due to reoccurring losses from year to year and has therefore decided to sell the facility.

BFA Attachment H is the financial summary of the proposed members' affiliated health care facilities and shows the facilities have maintained positive income from operations for the periods shown with one exception, Chittenango Center for Rehabilitation had loss due to a one-time audit recoupment.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members
BFA Attachment B	Proposed Members Ownership Interest in Affiliated Homes
BFA Attachment C	Pro-forma Balance Sheet,
BFA Attachment D	Financial Summary, Steuben County Infirmary, 2009-2011
BFA Attachment E	Financial Summary, Steuben County Infirmary, 2012
BFA Attachment F	Interest and Amortization Schedule
BFA Attachment G	Budget Sensitivity Analysis
BFA Attachment H	Financial Summaries of Affiliated RHCs for proposed members



Public Health and Health Planning Council

Project # 132166 E
Williamsburg Services, LLC d/b/a Bedford Center for Nursing & Rehabilitation

County: Kings County
Purpose: Establishment

Program: Residential Health Care Facility
Acknowledged: September 24, 2013

Executive Summary

Description

Williamsburg Services, LLC d/b/a Bedford Center for Nursing and Rehabilitation, is seeking approval to become established as the new operator of Keser Nursing and Rehabilitation Center, Inc., an existing 200-bed voluntary residential health care facility (RHCF) located at 40 Heyward Street, Brooklyn. Keser Nursing and Rehabilitation Center, Inc. entered into an asset purchase agreement with Williamsburg Services, LLC, on April 1, 2013, for the sale and acquisition of the facility's operating interest. A separate real estate company, Aishel Avarham, Inc., currently owns the property and leases it to Keser; this lease will continue with the new operator.

BFA Attachment A presents a summary net worth statement of the proposed members. Several of the proposed members have ownership interest in additional RHCF facilities; the financial summaries are presented as BFA Attachments D through F for: Hamilton Park Nursing and Rehabilitation Center, Bezalel Rehabilitation and Elmhurst Care Center, respectively.

The applicants also have ownership in three other nursing homes: Linden Center for Rehabilitation and Nursing; Crown Heights Center for Rehabilitation and Nursing; and Hopkins Center for Rehabilitation and Nursing. These facilities were acquired by the members between March 2012 and May 2013, and therefore have not yet submitted full certified financial statements in which the members would have been associated with the facilities for an entire year.

<u>Before</u>		Operation	<u>After</u>	
Keser Nursing and Rehabilitation Center, Inc.			Williamsburg Services, LLC d/b/a Bedford Center for Nursing and Rehabilitation	
<u>Name</u>	<u>Percent Owned</u>		<u>Name</u>	<u>Percent Owned</u>
Keser Nursing and Rehabilitation Center, Inc.	100%		Solomon Rubin	30%
			Marvin Rubin	30%
			Joel Landau	20%
			Jack Basch	10%
			Zvi Klein	5%
			Sidney Greenberger	5%

DOH Recommendation Contingent Approval

Need Summary

The change in ownership will not result in any change in beds or services. Keser Nursing and Rehabilitation Center's utilization was 90.2% in 2009, 88.3% in 2010, and 92.6% in 2011. While utilization is below the Department's 97% planning optimum, the facility plans to increase utilization by creating new outreach programs in conjunction with other healthcare facilities and provider plans in its service area.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Financial Summary

The facility's assets have been sold in accordance with the Asset Purchase Agreement effective April 1, 2013. There are no project costs associated with this proposal.

		<u>Year One</u>	<u>Year Three</u>
Budget	Revenues	\$19,418,860	\$19,527,060
	Expenses	<u>19,826,389</u>	<u>19,475,517</u>
	Gain/(Loss)	(\$407,529)	\$51,543

Subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, based on year three's projected budget.

Recommendations

Health Systems Agency
There will be no HSA review 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 be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. 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
 - d. 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:
 - Information on activities relating to a-c above;
 - 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 photocopy of an executed Certificate of Assumed Name of Williamsburg Services, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed lease agreement and lease assignment agreement, acceptable to the Department. [BFA, CSL]
5. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of Williamsburg Services, LLC, acceptable to the Department. [BFA, CSL]
6. Submission of a photocopy of an executed Amended and Restated Operating Agreement of Williamsburg Services, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed Certificate of Dissolution of Keser Nursing and Rehabilitation Center, Inc, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date
February 13, 2014

Need Analysis

Project Description

Williamsburg Services, LLC, seeks approval to become the established operator of Keser Nursing and Rehabilitation Center, an 80-bed Article 28 residential health care facility, located at 40 Heyward Street, Brooklyn, 11249, in Kings County. Upon approval, the facility will be renamed Bedford Center for Nursing and Rehabilitation.

Analysis

There is currently a need for 8,663 beds in the New York City Region as indicated in Table 1 below. However, the overall occupancy for the New York City Region is 94.8% for 2011 as indicated in Table 2.

Table 1: RHCF Need – New York City Region

2016 Projected Need	51,071
Current Beds	42,330
Beds Under Construction	78
Total Resources	42,408
Unmet Need	8,663

Keser Nursing and Rehabilitation Center's utilization was 90.2% in 2009, 88.3% in 2010, and 92.6% in 2011. The low utilization can be attributed to the facility's lack of outreach to surrounding healthcare facilities that would have better aligned the services that the facility offers with the needs of the area being serviced.

Table 2: Keser Nursing and Rehabilitation Center/Kings County/NYC Region Occupancy

Facility/County/Region	2009	2010	2011
Keser Nursing and Rehabilitation Center	90.2%	88.3%	92.6%
Kings County	92.7%	95.0%	94.3%
New York City Region	94.9%	95.4%	94.8%

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 or 75% of the Health Systems Agency area percentage, 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's admissions is at least 75% of the planning area percentage or Health Systems Agency percentage, whichever is applicable.

Keser Nursing and Rehabilitation Center's Medicaid admissions for 2010 and 2011 was 55.47% and 67.08%, respectively, which exceeds the Kings County 75% rate of 28.12% in 2010 and 30.92% in 2011.

Conclusion

Approval of this application will help maintain a needed RHCF facility for the community and for its Medicaid population..

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

	Existing	Proposed
Facility Name	Keser Nursing and Rehabilitation Center, Inc.	Bedford Center for Nursing and Rehabilitation
Address	40 Heyward Street Brooklyn, NY. 11249	Same
RHCF Capacity	200	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Not-for-profit	Proprietary
Class of Operator	Corporation	Limited Liability Company
Operator	Keser Nursing and Rehabilitation Center, Inc.	Williamsburg Services, LLC Members: Solomon Rubin 30.00% Marvin Rubin 30.00% Joel Landau 20.00% Jack Basch 10.00% Zvi Klein 5.00% Sidney Greenberger 5.00%

Character and Competence – Background

Facilities Reviewed

Nursing Homes

Linden Center for Rehabilitation and Nursing (previously known as Ruby Weston Manor)	05/2013 to present
Crown Heights Center for Nursing and Rehabilitation (previously known as Marcus Garvey Residential Rehabilitation Pavilion)	12/2012 to present
Hamilton Park Nursing and Rehabilitation Center	08/2009 to present
Hopkins Center for Rehabilitation and Healthcare	03/2012 to present
Elmhurst Care Center, Inc.	12/2003 to present
Bezalel Rehabilitation and Nursing Center	12/2003 to present

New Jersey Nursing Homes

AristaCare at Norwood Terrace	12/2003 to present
AristaCare at Alameda Center	08/2004 to present
AristaCare at Cedar Oaks	03/2007 to present
AristaCare at Whiting	06/2008 to present
AristaCare at Cherry Hill	01/2012 to present

Pennsylvania Nursing Homes

AristaCare at Meadow Springs	07/2006 to present
------------------------------	--------------------

Licensed Home Care Services Agency (LHCSA)

True Care, Inc.	03/2011 to present
-----------------	--------------------

Diagnostic Laboratory

Shiel Medical Laboratory, Inc.	12/2003 to present
--------------------------------	--------------------

Individual Background Review

Solomon Rubin is the controller for the Grandell Rehabilitation and Nursing Center and the Beach Terrace Care Center. He is also a manager at Hamilton Park Nursing and Rehabilitation Center.

Solomon Rubin discloses the following ownership interests in health facilities:

Hamilton Park Nursing and Rehabilitation Center	08/2009 to present
Linden Center for Rehabilitation and Nursing	05/2013 to present
Crown Heights Center for Nursing and Rehabilitation	04/2013 to present
AristaCare at Norwood Terrace	2000 to present

Marvin Rubin is a manager at the Hamilton Park Nursing and Rehabilitation Center. Marvin Rubin discloses the following ownership interests in health facilities:

Linden Center for Rehabilitation and Nursing	05/2013 to present
Crown Heights Center for Nursing and Rehabilitation	04/2013 to present
Hopkins Center for Rehabilitation and Healthcare	03/2012 to present
Hamilton Park Nursing and Rehabilitation Center	12/2012 to present
True Care, Inc.	03/2011 to present

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. Joel Landau is a notary public, licensed by the Department of State in New York State. Mr. Landau discloses the following ownership interests in health facilities:

Linden Center for Rehabilitation and Nursing	05/2013 to present
--	--------------------

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
Linden Center for Rehabilitation and Nursing	05/2013 to present
Crown Heights Center for Nursing and Rehabilitation	12/2012 to present
Shiel Medical Laboratory	1994 to present

Zvi Klein is the president of AristCare, a nursing home management company located in South Plainfield, New Jersey. Mr. Klein discloses the following ownership interests in health facilities:

AristaCare at Meadow Springs	07/2006 to present
AristaCare at Cedar Oaks	03/2007 to present
AristaCare at Whiting	06/2008 to present
AristaCare at Cherry Hill	01/2012 to present

Sidney Greenberger is a licensed nursing home administrator in the states of New York and New Jersey, for which he is considered to be in good standing in both states. Mr. Greenberger is employed as the chief executive officer for AristaCare, a nursing home management company located in South Plainfield, New Jersey. Mr. Greenberger discloses the following ownership interests in health facilities:

AristaCare at Alameda Center	08/2004 to present
AristaCare at Meadow Springs	07/2006 to present
AristaCare at Cedar Oaks	03/2007 to present
AristaCare at Whiting	06/2008 to present
AristaCare at Cherry Hill	01/2012 to present

Character and Competence Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of operations for the Bezalel Rehabilitation and Nursing Center, Elmhurst Care Center, Inc., Linden Center for Rehabilitation and Nursing, Hopkins Center for Rehabilitation and Healthcare, Hamilton Park Nursing and Rehabilitation Center, and Crown Heights Center for Nursing and Rehabilitation, 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 of AristaCare at Norwood Terrace, AristaCare at Alameda Center, AristaCare at Cedar Oaks, AristaCare at Whiting, and AristaCare at Cherry Hill in the state of New Jersey 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 of AristaCare at Meadow Springs in the state of Pennsylvania 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 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.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with an executed asset purchase agreement, the terms of which are summarized below:

Date:	April 1, 2013
Seller:	Keser Nursing and Rehabilitation Center, Inc.
Purchaser:	Williamsburg Services, LLC
Purchased Assets:	All of the seller's right, title and interest in and to all assets of Seller to the extent that such assets are (x) subject to assignment, (Y) owned by the Seller and (Z) related solely to the facility business, included without limitation the following , (1) the books and records, including, but not limited to patient records pursuant to the terms of a patient medical records transfer agreement, (2) computer software, (3) any permits and accreditations, (4) the tangible assets, (5) intellectual property, including, but not limited to, the name "Keser Nursing and Rehabilitation Center", (6) goodwill and (7) all current assets of the seller reflected on the balance sheet of the seller, including all cash and accounts receivable.
Liabilities Assumed :	All liabilities of the seller related to the facility, the facility business and the seller business assets, which are "current liabilities" as defined in accordance with generally accepted accounting principles, of seller (the " assumed liabilities"), including but not limited to the obligation to pay American Geri Care ("Geri Care") all amounts due relating to employee leasing services, which have been guaranteed

by the landlord and the \$150,000 working capital loan made by the landlord to the seller. Purchaser shall pay in full, all Assumed Liabilities or to the extent such obligations are not paid in full, Purchaser shall obtain Vendor Releases and deliver such Vendor releases to the seller. Notwithstanding the foregoing, purchaser shall not assume any ongoing contractual obligation of seller.

Purchase Price: Assumption of approximately \$12,000,000 in liabilities.
Payment of Purchase Price: Liability assumption effective as of the closing date.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

Lease Agreement

Facility occupancy will continue to be subject to a lease agreement that will be assigned from Keser to Williamsburg Services, LLC d/b/a Bedford Center for Nursing and Rehabilitation, the terms of the lease are summarized as follows:

Premises:	200-bed Skilled nursing facility located at 40 Heyward Street, Brooklyn, New York, 11211 (County)	
Lessor:	Aishel Avraham, Inc.	
Lessee/Assignor:	Keser Nursing and Rehabilitation Center, Inc.	
Assignee/new Lessor:	Williamsburg Services, LLC d/b/a Bedford Center for Nursing and Rehabilitation	
Term:	25 years starting September 2012 with 1 five year extension	
Rental:	Year 1 \$650,000	Year 14 \$780,000
	Year 2 \$660,000	Year 15 \$790,000
	Year 3 \$670,000	Year 16 \$800,000
	Year 4 \$680,000	Year 17 \$810,000
	Year 5 \$690,000	Year 18 \$820,000
	Year 6 \$700,000	Year 19 \$830,000
	Year 7 \$710,000	Year 20 \$840,000
	Year 8 \$720,000	Year 21 \$850,000
	Year 9 \$730,000	Year 22 \$860,000
	Year 10 \$740,000	Year 23 \$870,000
	Year 11 \$750,000	Year 24 \$880,000
	Year 12 \$760,000	Year 25 \$890,000
	Year 13 \$770,000	
Provisions:	Tenant pays for all utilities, taxes, repairs and maintenance	

The lease arrangement is an arm's length agreement.

Currently, Medicaid capital cost is reimbursed based on the interest and depreciation reimbursement methodology. After the change in the ownership, capital reimbursement will be based on the return of and return on equity methodology. Based on depreciable asset value, it appears that there is no real property reimbursable life remaining.

Operating Budget

Following is a summary of the submitted operating budget, presented in 2013 dollars, for the first and third year subsequent to change in ownership:

<u>Year One</u>	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid	\$213.00	\$12,113,310
Medicare	\$735.00	5,608,050
Private Pay	\$350.00	<u>1,697,500</u>
Total		\$19,418,860
Expenses:		
Operating		\$17,442,983
Capital		<u>2,383,406</u>
Total		\$19,826,389
Net Income/(Loss)		(\$407,529)
Utilization: (patient days)		69,350
Occupancy		<u>94.74%</u>

<u>Year Three</u>	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid	\$213.00	\$12,390,210
Medicare	\$735.00	5,666,850
Private Pay	\$350.00	1,470,000
Total		\$19,527,060
Expenses:		
Operating		\$17,094,125
Capital		<u>2,381,392</u>
Total		\$19,475,517
Net Income/(Loss)		\$51,543
Utilization: (patient days)		70,080
Occupancy		<u>96.00%</u>

Overall utilization is projected at 94.74% for year one and at 96.00% for year three, while utilization by payor source is expected as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid	82.00%	83.01%
Medicare	11.00%	11.00%
Private Pay	7.00%	5.99%

- Breakeven utilization is projected at 96.73% for Year One
- Breakeven utilization is projected at 95.484% for Year Three.

Capability and Feasibility

The purchase price and initiation of operations as a financially viable entity will be funded through the members' equity. Working capital requirements are estimated at \$3,304,398, based on two months of first year expenses, to be satisfied from the proposed members' equity. BFA Attachment A, the members' net worth statements, shows that some of the applicant's do not have sufficient liquid assets to cover all aspects of the application. Mr. Jack Basch, one of the applicant's, has provided a disproportionate share affidavit in order to cover the potential shortfalls of the other applicants

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.

The submitted budget indicates a net loss of \$407,529 would occur during the first year following the change in ownership and a net gain of \$51,543 would be achieved by year three. The budget appears reasonable. BFA Attachment B is the pro-forma balance sheet of Willamsburg Services, LLC, which indicates positive working capital as well as negative members' equity of \$7,764,769 as of the first day of operations. It is noted that the negative member equity is a result of the assumption of approximately \$12,000,000 of sellers' liabilities.

BFA Attachment C is a financial summary of Keser Nursing and Rehabilitation Center, Inc. from 2010 through 2012. As shown, the facility had an average negative working capital position and an average negative net asset position. Also, the facility achieved an average net loss of \$2,166,703 from the period 2010 through 2012. The reason Keser incurred a loss in 2010 from operations is that its low occupancy did not permit the facility to cover their operating costs. The 2011 loss was due to low occupancy and because the facility received Medicaid and Medicare negative retroactive adjustments for the rate years 2009, 2010 and 2011. The facility again incurred a loss in 2012 due to low occupancy and a significant reduction in the Medicaid 2012 reimbursement rates.

In order to address the financial losses, the applicant will improve the outreach initiatives to surrounding health care facilities and managed long term care plans to better align the facility's services and programs with the needs of the residents in its service area. This initiative also includes the promotion of better working relationships with community and discharge planners at area health care facilities, modernization of the facility's Rehabilitation Department, including development of a specialized cardiac therapy program, and enhancement of the facility's ventilator unit and pulmonary department. These combined efforts to increase utilization coupled with better management control of operating costs, will permit the facility to realize an operating profit in Year Three.

BFA Attachment D is a financial summary of Hamilton Park Nursing and Rehabilitation Center from 2010 through 2012. As shown, the facility had an average negative working capital position and an average positive net asset position. The applicant indicates that the negative working capital is a temporary condition due to construction of 50 new beds approved through CON 102316. Once the new beds are fully operational, they expect to return to positive working capital. The facility achieved an average net income of \$1,030,503 from the period 2010 through 2012.

BFA Attachment E is the financial summary of Bezalel Nursing Home Company from 2010 through 2012. As shown on Attachment E, the facility had an average positive working capital position and an average positive net asset position. Also, the facility incurred an average net loss of \$442,280 during the period 2010 through 2012. The loss in both 2011 and 2012 was due to one-time only prior period adjustments; the adjustment in 2012 totaled \$575,000. Without this adjustment, the facility would have shown a net income of approximately \$330,000.

BFA Attachment F is the financial summary of Elmhurst Care Center, Inc. from 2010 through 2012. As shown, the facility had an average positive working capital position and an average positive net asset position. The facility incurred an average net income of \$106,652 during the period 2010 through 2012. The 2012 loss was caused by prior period one time only adjustments that totaled \$2,740,000. Without these adjustments, the facility would have had a profit from operations of approximately \$1,380,000.

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.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members of Williamsburg Services, LLC d/b/a Bedford Center for Nursing and Rehabilitation
BFA Attachment B	Pro-forma Balance Sheet Williamsburg Services, LLC d/b/a Bedford Center for Nursing and Rehabilitation
BFA Attachment C	Financial Summary Keser Nursing and Rehabilitation Center, Inc. from 2010 through 2012
BFA Attachment D	Financial Summary, Hamilton Park Nursing and Rehabilitation Center from 2010 through 2012
BFA Attachment E	Financial Summary Bezalel Nursing Home Company from 2010 through 2012
BFA Attachment F	Financial Summary Elmhurst Care Center, Inc. from 2010 through 2012

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

January 30, 2014

Certified Home Health Agencies – Establish/Construct

Exhibit # 11

	<u>Number</u>	<u>Applicant/Facility</u>
1.	132115 E	Visiting Nurse Service of New York Home Care (Kings County)
2.	132264 E	Visiting Nurse Service of New York Home Care (Kings County)



Public Health and Health Planning Council

Project # 132115 E Visiting Nurse Service of New York Home Care

County: Kings County
Purpose: Establishment

Program: Certified Home Health Agency
Acknowledged: August 27, 2013

Executive Summary

Description

Visiting Nurse Service of New York Home Care II, d/b/a Visiting Nurse Service of New York Home Care (VNSNY), a not-for-profit certified home health agency (CHHA) requests approval to acquire The Brooklyn Hospital Center's certified home health agency a/k/a Brooklyn Hospital Center Home Health Services Division (Brooklyn Hospital's CHHA), which serves Kings County. VNSNY will integrate Brooklyn Hospital's CHHA into its current home care operations that services the following counties: Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, and Westchester. In addition, under CON 121313, VNSNY was approved on April 11, 2013, by the Public Health and Planning Council to service Suffolk County.

Concurrently, the VNSNY has three CON projects under review: CON 131224, which is requesting approval to service five additional counties in the Hudson Valley Region (Dutchess, Orange, Putnam, Sullivan, and Ulster); CON 131225, which is requesting approval to service eight additional counties in the Central Region (Delaware, Fulton, Hamilton, Herkimer, Montgomery, Oneida, Onondaga, and Otsego); CON 132264, requesting approval to acquire Brookdale Hospital's CHHA serving Bronx, Kings, New York, Queens, Richmond, Nassau and Suffolk Counties.

DOH Recommendation
Contingent Approval

Need Summary
There will be no Need recommendation for this application

Program Summary

Visiting Nurse Service of New York Home Care II, d/b/a Visiting Nurse Service of New York Home Care, a voluntary not-for-profit Article 36 CHHA and LTHHCP, proposes to purchase, acquire, and merge the Article 36 CHHA operated by Brooklyn Hospital Center Home Health Services Division, a voluntary not-for-profit Article 36 CHHA approved to serve Kings County. Upon transfer of ownership, VNSNY will merge all the operations of Brooklyn Hospital Center Home Health Services Division CHHA into its existing CHHA operations, resulting in the ultimate closure of the former Brooklyn Hospital Center Home Health Services Division CHHA.

Financial Summary

The purchase price is \$4,250,000, and will be funded from equity. There are no project costs associated with this application.

Incremental Budget:	Revenues:	\$10,002,594
	Expenses:	\$ 8,645,814
	Gain (Loss):	\$ 1,356,780

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed building sub-lease acceptable to the Department. [BFA]
2. Submission of a photocopy of the applicant's fully executed Bylaws, acceptable to the Department. [CSL]
3. Submission of a photocopy of the resolution of the applicant's Board of Directors, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's fully executed Certificate of Incorporation, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

February 13, 2014

Programmatic Analysis

Program Description

Visiting Nurse Service of New York Home Care II, d/b/a Visiting Nurse Service of New York Home Care (VNSNY), a voluntary not-for-profit Article 36 CHHA and LTHHCP, proposes to purchase, acquire, and merge the Article 36 CHHA operated by Brooklyn Hospital Center Home Health Services Division, a voluntary not-for-profit Article 36 CHHA approved to serve Kings County. Upon transfer of ownership, VNSNY will merge the operations of Brooklyn Hospital Center Home Health Services Division CHHA into its existing CHHA operations, resulting in the ultimate closure of the former Brooklyn Hospital Center Home Health Services Division CHHA.

VNSNY has its main parent office practice location address in New York County, and six additional branch office practice location addresses in Bronx, Kings, Queens, Richmond, Nassau, and Westchester Counties. The CHHA currently serves Bronx, Kings, New York, Queens, Richmond, Nassau, Westchester, and Rockland Counties, and was approved by PHHPC on April 11, 2013, to expand into Suffolk County. The LTHHCP serves Bronx, Kings, New York, Queens, and Nassau Counties. The applicant also operates VNS Children and Adolescent Mental Health Clinic at FRIENDS, a mental health clinic licensed by NYS Office of Mental Health.

VNSNY CHHA will continue to provide the following home health care services:

Nursing	Home Health Aide	Medical Social Services
Physical Therapy	Occupational Therapy	Speech Language Pathology
Medical Supplies, Equipment, and Appliances		

VNSNY has as its member (parent) corporation Visiting Nurse Service of New York, a not-for-profit corporation. Visiting Nurse Service of New York is also the member (parent) corporation of the following not-for-profit corporations: Visiting Nurse Service of New York Hospice Care, an Article 40 hospice; New Partners, Inc., d/b/a Partners in Care Services, an Article 36 licensed home care services agency (LHCSA); Family Care Services, an Article 36 LHCSA and home attendant program; and VNS Continuing Care Development Corporation. The latter corporation is the member (parent) corporation of VNS Choice, d/b/a VNSNY Choice, a Managed Care Organization which includes a Managed Long Term Care Plan, a Medicaid Advantage Plan, and a Medicaid Advantage Plus Plan; and VNS Choice Community Care, an Article 36 LHCSA.

The governing body of the applicant, Visiting Nurse Service of New York Home Care II, d/b/a Visiting Nurse Service of New York Home Care, is as follows:

Jon Mattson, Chairperson
Partner, Trilantic Capital Partners (Private Equity Partnership)
Affiliations: VNSNY

Anne Bick Ehrenkranz, Vice Chairperson
Retired
Affiliations: VNSNY; New Partners, Inc., d/b/a Partners in Care

Margaret A. Bancroft, Esq.
Of Counsel, Dechert, LLP (Law Firm)
Affiliations: VNSNY

Alice Cooney Frelinghuysen
Curator, Metropolitan Museum of Art
Affiliations: VNSNY

Elisabeth Gotbaum
Partner, Bedford Grove (Political Fundraising Firm)
Affiliations: VNSNY

Clare Gregorian
Retired
Affiliations: VNSNY

Valerie S. Peltier, Esq.
Managing Director, Tishman Speyer Properties, Inc. (Real Estate Development)
Affiliations: VNSNY

Carl H. Pforzheimer, III
Manager, Carl H. Pforzheimer & Co., LLC (Investment Firm)
Affiliations: VNSNY

John P. Rafferty, CPA
Retired Partner, Ernst and Young, LLP (Accounting Firm)
Affiliations: VNSNY

Ira S. Rimerman
Retired Senior Executive, Citigroup (Banking)
Affiliations: VNSNY; Continuum Health Partners, Inc. (Beth Israel Medical Center, Inc. – Petrie Campus, Manhattan, and Kings Highway Division, Brooklyn; St. Lukes Roosevelt Hospital Center, Inc. – Roosevelt Hospital Division and St. Lukes Hospital Division; Long Island College Hospital; New York Eye and Ear Infirmary, Inc. (all Hospitals); Beth Israel Ambulatory Care Services Corp. (D&TC); Robert Mapplethorpe Residential Treatment Facility (RHCF); Jacob Perlow Hospice Corp. (Hospice)

The governing body of the member (parent) corporation, Visiting Nurse Service of New York, is as follows:

Douglas D. Broadwater, Esq., Chairperson
Retired Partner, Cravath, Swaine & Moore, LLP (Law Firm)

Frank S. Vigilante
Retired Senior V.P., AT&T
Affiliations: VNA of Central Jersey, Inc. (Hospice), VNA of Central Jersey Health Group, Inc. (CHHA); VNSNY Hospice Care

Margaret A. Bancroft, Esq.
Disclosed above

Bobbie Berkowitz, RN (WA)
Senior VP, Columbia University Medical Center
Dean, Columbia University School of Nursing
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care; Group Health Cooperative, Seattle, WA (NFP Health Care Plan); Qualis Health, Seattle, WA (NFP Healthcare Quality Consulting Organization)

Carmen Beauchamp Ciparick, Esq.
Of Counsel, Greenberg Traurig, LLP (Law Firm)
Retired Associate Judge, NYS Court of Appeals
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

Robert C. Daum
Retired CEO, DFMC, Inc., d/b/a Growth Capital Partners (Investments)
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

E. Mary C. Davidson
VP, Maxwell Davidson Gallery (Art Dealer)
Affiliations: VNSNY Hospice Care

Jose M. de Lasa, Esq.
Of Counsel, Baker and MacKenzie (Law Firm)

Edith M. Dupuy, RN
Retired
Claire M. Fagin, R.N., Ph.D.
Retired Self-Employed Consultant
Elisabeth Gotbaum
Disclosed above

Anne Bick Ehrenkranz
Disclosed above
Alice Cooney Frelinghuysen
Disclosed above
Clare Gregorian
Disclosed above

Mary R. (Nina) Henderson
Managing Partner, Henderson Advisory (Consulting Firm)
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

Peter L. Hutchings
Retired Exec. V.P. & CFO, Guardian Life Insurance Co.
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care; Public Health Solutions, d/b/a MIC Women's Health Services, formerly Medical and Health Research Association of NYC (D&TC), NY Organ Donor Network, Empire Health Choice (HMO)

Robert M. Kaufman, Esq.
Partner, Proskauer Rose, LLP (Law Firm)
Board Director, Old Westbury Funds (Mutual Funds)
Affiliations: VNSNY Hospice Care; Public Health Solutions, d/b/a MIC Women's Health Services, formerly Medical and Health Research Association of NYC (D&TC)

Arthur Lindenauer, CPA
Retired CFO, Schlumberger Limited (Oil Field Services)
Affiliations: New Partners, Inc., d/b/a Partners in Care

Joseph D. Mark
Retired President, Aveta, Inc. (Health Insurance Company)
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

Mathy Mezey, R.N., Ed.D.
Professor, NYU College of Nursing
Affiliations: VNSNY Hospice Care

Valerie S. Peltier, Esq.
Disclosed above

John P. Rafferty, CPA
Disclosed above

Ira S. Rimerman
Disclosed above

Albert L. Siu, MD
Chairman / Professor, Mount Sinai School of Medicine's Brookdale Department of Geriatrics and Palliative Medicine
Director, Bronx VA Medical Center's Geriatric Research, Education, and Clinical Center
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care; Senior Health Partners (MLTCP); Mount Sinai Care, LLC (ACO)

Michael Laskoff
CEO, Managing Partner, Abilto, LLC (Behavioral Health Consulting)
Affiliations: New Partners, Inc., d/b/a Partners in Care

Kwan-Lan (Tom) Mao
Retired V.P., Citigroup (Banking)
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

Jon Mattson
Disclosed above

Phyllis J. Mills, R.N.
Trustee, Mary Flagler Charitable Trust
Affiliations: VNS Continuing Care Development Corporation; VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

Carl H. Pforzheimer, III
Disclosed above

Corinne H. Rieder, Ed.D.
Executive Director, Treasurer, The John A. Hartford Foundation (Charitable Foundation)
Affiliations: VNSNY Hospice Care
Andrew N. Schiff, M.D.
Partner, Aisling Capital (Investments/Finance)
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

Kenneth G. Standard, Esq.
Partner, Epstein Becker & Green, PC (Law Firm)
Affiliations: Family Care Services

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

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

The Office of the Professions of the State Education Department, the New York State Physician Profile, the Office of Professional Medical Conduct, the NYS Unified Court System, and the Washington State Department of Health Professional Licensing, where appropriate, indicate no issues with the licensure of the health professionals and other licensed professionals associated with this application. In addition, the attorneys have all submitted current Certificates of Good Standing.

The Division of Hospitals and Diagnostic and Treatment Centers reviewed the compliance history of all affiliated hospitals and diagnostic and treatment centers for the time period 2006 to 2013, or for the time periods specified as the affiliations, whichever applied. The review revealed that the following facility was the subject of enforcement actions:

St. Lukes Roosevelt Hospital Center, Inc. was the subject of an enforcement action in 2006 based on violations citing improperly delayed treatment due to financial considerations. The hospital paid a \$4,000 civil penalty to resolve this matter. The hospital has been in compliance since that time.

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

The Division of Residential Services reviewed the compliance history of the affiliated residential health care facility for the time period specified as the affiliation. It has been determined that the residential health care facility has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The Division of Home and Community Based Services reviewed the compliance history of all affiliated long term home health care programs, certified home health agencies, licensed home care service agencies, and hospices for the time period 2006 to 2013, or for the time periods specified as the affiliations, whichever applied. The review revealed that the following provider was the subject of an enforcement action:

Jacob Perlow Hospice Corporation, now d/b/a MJHS Hospice and Palliative Care (formerly d/b/a Continuum Hospice Care / Jacob Perlow Hospice / Harlem Community Hospice) was cited with condition-level deficiencies in the areas of Governing Authority; Contracts; Administration; Staff and Services; Personnel; Patient / Family Rights; Plan of Care; and Medical Records Systems / Charts, as a result of a November 29, 2006 survey. An enforcement action was resolved with an October 1, 2007 stipulation and order, which included payment of a \$24,000 civil penalty. The agency has been in compliance since that time.

It has been determined that the long term home health care programs, certified home health agencies, licensed home care service agencies, and hospices have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

The Office of Health Insurance Programs Division of Managed Care reviewed the compliance history of the affiliated managed long term care plans and health maintenance organizations for the time period 2006 to 2013, or for the time periods specified as the affiliations, whichever applied.

The Office of Health Insurance Programs Division of Managed Care reports that the Medicaid Advantage Plan operated by VNS Choice, d/b/a VNSNY Choice, has no enforcement history and is currently in substantial compliance. The Managed Long Term Care Plan, and Medicaid Advantage Plus Plan, operated by VNS Choice, d/b/a VNSNY Choice, had a suspension on all new enrollments imposed in April 2013, which was lifted by the Department and new enrollments were allowed to resume, effective November 1, 2013. The Managed Long Term Care Plan, and Medicaid Advantage Plus Plan, operated by VNS Choice, d/b/a VNSNY Choice, are therefore now in substantial compliance. The New York State Office of the Attorney General reports that, although it has a continuing investigation involving this same provider at this time, the Office of the Attorney General no longer requests that the Department hold off the review and approval of the current applications, since the provider has executed an interim agreement to resolve in principle certain aspects of their investigation.

It has therefore been determined that the affiliated managed long term care plans and health maintenance organizations are currently in substantial compliance with all applicable codes, rules, and regulations.

The New York State Office of Mental Health has reviewed the compliance history of the affiliated mental health clinic, for the time period 2008 (initial licensure) to 2013, and has determined the mental health clinic has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The State of New Jersey has reviewed the compliance histories of the health care facilities operated under VNA of Central Jersey, Inc., and VNA of Central Jersey Health Group, Inc., for the time period specified as the affiliation, and has determined the health care facilities have been in substantial compliance with all applicable codes, rules, and regulations.

The State of Washington has reviewed the compliance history of the health care plan administered by Group Health Cooperative, for the time period specified as the affiliation, and has determined the health care plan has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

A review of all personal qualifying information indicates there is nothing in the background of the board members of Visiting Nurse Service of New York Home Care II and Visiting Nurse Service of New York to adversely affect their positions on the boards. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Purchase and Sale Agreement

The applicant has submitted an executed agreement to purchase the CHHA operating interest, the terms of which are summarized below:

Date:	August 14, 2013
Seller:	The Brooklyn Hospital Center
Purchaser:	Visiting Nurse Service of New York Home Care II d/b/a Visiting Nurse Service of New York Home Care
Assets Transferred Operations:	Rights, title and interest in assets of the business including: copies of records used in the business, personnel records, patients files and medical records, technical and nontechnical data relating to operations. All permitted licenses, operating certifies, permits waivers and consents relating to the operations. Goodwill.
Excluded Assets:	Cash, cash equivalents, and accounts receivable prior to midnight of the closing date.
Assumed Liabilities:	Obligations and liabilities arising subsequent to the closing date.
Purchase Price:	\$4,250,000
Payment:	\$4,250,000 due at closing

The purchase price will be satisfied through equity

BFA Attachment A is the 2011 and 2012 certified financial summary for Visiting Nurse Service of New York Home Care II, d/b/a Visiting Nurse Service of New York Home Care, 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 36 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. There are no outstanding Medicaid and Assessment liabilities as of September 19, 2013.

Interim Management Agreement

The applicant has entered in interim management agreement with The Brooklyn Hospital Center to manage their CHHA's day-to-day operation until the transfer is consummated. The hospital will pay a monthly fee of \$13,750. On September 5, 2013, the Department of Health approved this arrangement.

Operating Budget

The applicant has submitted the first and third year's incremental operating budgets, in 2013 dollars:

	<u>First Year</u>	<u>Third Year</u>
Revenues		
Medicaid	\$ 884,449	\$857,732
Medicare	5,260,398	5,113,113
Commercial	3,705,795	3,880,591
Other	<u>144,651</u>	<u>151,158</u>
Total Revenues	\$9,995,293	\$10,002,594
Total Expenses	<u>\$8,480,737</u>	<u>\$8,645,814</u>
Net Income or (Loss)	<u>\$1,514,556</u>	<u>\$1,356,780</u>

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

	<u>First Year</u>	<u>Third Year</u>
Medicaid-Episodic	6.3%	6.3%
Medicare-Episodic	43.2%	42.9%
Commercial-Managed Care	44.5%	44.2%
Charity Care	6.0%	6.6%

Patient utilization and expense projections are based on the applicant's analysis of data from Brooklyn Hospitals CHHA, along with their historical experience.

As a conservative measure, the applicant is projecting a 2% reduction from the 2012 Medicaid episodic payment base rate, starting in the first year and compounding through the third year. Thus, the average Medicaid episodic payment in the first and third years is expected to be \$6,032 and \$5,793, respectively, after taking into consideration the average case mix of 1.100 and adjusting for New York City Wage Index Factor of 0.991433. The average case mix of 1.100 was based on Brooklyn Hospital's CHHA experience

As a conservative measure, the applicant is projecting a 2% reduction from the 2012 Medicare episodic payment base rate starting in the first year and compounding through the third year. Thus the average Medicare episodic payment in the first and third years is expected to be \$3,235 and \$3,107, respectively after taking into consideration the average case mix of 1.2500 and adjusting for New York City Wage Index Factor of 1.3052. The average case mix of 1.2500 is based upon the applicant's analysis of the population to be served, which is slightly higher than Brooklyn Hospital's CHHA case mix of 1.1706. Commercial rates were based on VNSNY existing contract rates.

Capability and Feasibility

The applicant will provide \$4,250,000 in equity to purchase The Brooklyn Hospital's CHHA. Review of BFA Attachment A, VNSNY's 2011 and 2012 certified financial summary, indicates the availability of sufficient resources for the equity contribution. Additionally, the financial statement stated that the VNSNY transfers substantially all of its excess cash to Visiting Nurse Service of New York, its sole member, for cash management and investment purposes. BFA Attachment B is Visiting Nurse Service of New York and Subsidiaries 2011 and 2012 certified financial summary, which shows average investments of \$1,002,658,000.

The working capital requirement is estimated at \$1,440,969, which appears reasonable based upon two months of third year expenses, and will be provided from the applicant. BFA Attachment A, VNSNY's 2011 and 2012 certified financial summary, shows sufficient resources to meet the working capital requirements as well.

The budget projects a first and third years' surplus of \$1,514,556 and \$1,356,780, respectively. Revenues are based on current payment methodologies. The submitted budget appears reasonable.

A review of BFA Attachment A shows VNSNY recorded an Asset Impairment charge of \$32,778,000. The applicant has determined that in 2012 programmatic and reimbursement changes to New York's Long Term Home Health Program (LTHHCP) limited the functionality on a prospective basis on several of their previously acquired licenses and rights. Thus, in 2012, they recognized an impairment loss on those affected non-amortized intangible assets.

As shown in BFA Attachment A, the applicant has maintained a positive working capital position, had a positive net equity, and experienced net losses in 2011 and 2012 of \$15,842,000 and \$6,814,000, respectively. Losses are related to declines in volume, as well as rate reductions in both Medicare and Medicaid. VNSNY is planning to implement significant operational improvements to reach break-even financial operating results by 2015. They include the following:

- 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, streamlining of contract administration, and office space consolidation.
- In addition, Visiting Nurse Service of New York Home Care II 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.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary for 2011 and 2012, Visiting Nurse Service of New York Home Care II d/b/a Visiting Nurse Service of New York Home Care
BFA Attachment B	Financial Summary for 2011 and 2012, Visiting Nurse Service of New York and Subsidiaries



Public Health and Health Planning Council

Project # 132264 E Visiting Nurse Service of New York Home Care

County: Kings County
Purpose: Establishment

Program: Certified Home Health Agency
Acknowledged: November 15, 2013

Executive Summary

Description

Visiting Nurse Service of New York Home Care II d/b/a Visiting Nurse Service of New York Home Care (VNSNY), a not-for-profit corporation, is requesting approval to acquire Brookdale Hospital Medical Center's CHHA, which serves Bronx, Kings, New York, Queens, Richmond, Nassau and Suffolk counties. VNSNY will integrate Brookdale Hospital Medical Center's CHHA into its current home care operations that service the following counties: Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, and Westchester. VNSNY was approved on April 11, 2013 by the Public Health and Planning Council, to service Suffolk County as well.

Concurrently, the VNSNY has three CON projects under review: CON 131224, requesting approval to service five additional counties in the Hudson Valley Region (Dutchess, Orange, Putnam, Sullivan and Ulster); CON 131225, requesting approval to service eight additional counties in the Central Region (Delaware, Fulton, Hamilton, Herkimer, Montgomery, Oneida, Onondaga and Otsego); CON 132115, requesting approval to acquire The Brooklyn Hospital Center's certified home health agency a/k/a Brooklyn Hospital Center Home Health Services Division (Brooklyn Hospital's CHHA), which serves Kings County.

DOH Recommendation
Contingent Approval

Need Summary

There will be no Need recommendation of this application.

Program Summary

VNSNY, a voluntary not-for-profit Article 36 CHHA and LTHHCP, proposes to purchase, acquire, and merge the Article 36 CHHA operated by Brookdale Hospital Medical Center Home Health Agency, a voluntary not-for-profit Article 36 CHHA and LTHHCP, whose CHHA is approved to serve Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk Counties, and whose LTHHCP is approved to serve Kings County only. Upon transfer of ownership, VNSNY will merge the operations of Brookdale Hospital Medical Center Home Health Agency CHHA into its existing CHHA operations, resulting in the ultimate closure of the former Brookdale Hospital Medical Center Home Health Agency CHHA.

The Brookdale Hospital Medical Center Home Health Agency LTHHCP will not be a part of this proposed transaction. Accordingly, the Brookdale Hospital Medical Center Home Health Agency CHHA-based LTHHCP will be required to either close, or convert to a Brookdale Hospital Medical Center hospital-based LTHHCP. Either transaction must occur at the same time as, or prior to, the sale and closure of the Brookdale Hospital Medical Center Home Health Agency CHHA.

Financial Summary

The purchase price is \$1,250,000 and will be funded from equity. There are no project costs associated with this application.

Incremental Budget:	Revenues:	\$16,913,299
	Expenses:	<u>16,035,578</u>
	Gain (Loss):	\$877,721

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

Approval contingent upon:

1. Submission of an executed building sub-lease, acceptable to the Department. [BFA]
2. Submission of a photocopy of the applicant's fully executed Bylaws, acceptable to the Department. [CSL]
3. Submission of a photocopy of the resolution of the applicant's Board of Directors, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's fully executed Certificate of Incorporation, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

February 13, 2014

Programmatic Analysis

Background

Visiting Nurse Service of New York Home Care II, d/b/a Visiting Nurse Service of New York Home Care (VNSNY), a voluntary not-for-profit Article 36 CHHA and LTHHCP, proposes to purchase, acquire, and merge the Article 36 CHHA operated by Brookdale Hospital Medical Center Home Health Agency, a voluntary not-for-profit Article 36 CHHA and LTHHCP, whose CHHA is approved to serve Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk Counties, and whose LTHHCP is approved to serve Kings County only. Upon transfer of ownership, VNSNY will merge the operations of Brookdale Hospital Medical Center Home Health Agency CHHA into its existing CHHA operations, resulting in the ultimate closure of the former Brookdale Hospital Medical Center Home Health Agency CHHA.

The Brookdale Hospital Medical Center Home Health Agency LTHHCP will not be a part of this proposed purchase, acquisition, and merger transaction. Accordingly, the Brookdale Hospital Medical Center Home Health Agency CHHA-based LTHHCP will be required to either close, or convert to a Brookdale Hospital Medical Center hospital-based LTHHCP. Either transaction must occur at the same time as, or prior to, the sale and closure of the Brookdale Hospital Medical Center Home Health Agency CHHA.

VNSNY, has its main parent office practice location address in New York County, and six additional branch office practice location addresses in Bronx, Kings, Queens, Richmond, Nassau, and Westchester Counties. VNSNY currently serves Bronx, Kings, New York, Queens, Richmond, Nassau, Westchester, and Rockland Counties, and was approved by PHHPC on April 11, 2013, to expand into Suffolk County. The Visiting Nurse Service of New York Home Care LTHHCP serves Bronx, Kings, New York, Queens, and Nassau Counties. The applicant also operates VNS Children and Adolescent Mental Health Clinic at FRIENDS, a mental health clinic licensed by NYS Office of Mental Health.

VNSNY will serve the patients transferred from Brookdale Hospital Medical Center Home Health Agency CHHA, predominantly from its existing branch office practice location addresses located in Kings and Nassau Counties. VNSNY will continue to provide the following approved home health care services:

Nursing	Home Health Aide	Medical Social Services
Physical Therapy	Occupational Therapy	Speech Language Pathology
Medical Supplies, Equipment, and Appliances		

VNSNY, has as its member (parent) corporation Visiting Nurse Service of New York, a not-for-profit corporation. Visiting Nurse Service of New York is also the member (parent) corporation of the following not-for-profit corporations: Visiting Nurse Service of New York Hospice Care, an Article 40 hospice; New Partners, Inc., d/b/a Partners in Care Services, an Article 36 licensed home care services agency (LHCSA); Family Care Services, an Article 36 LHCSA and home attendant program; and VNS Continuing Care Development Corporation. The latter corporation is the member (parent) corporation of VNS Choice, d/b/a VNSNY Choice, a Managed Care Organization which includes a Managed Long Term Care Plan, a Medicaid Advantage Plan, and a Medicaid Advantage Plus Plan; and VNS Choice Community Care, an Article 36 LHCSA.

The governing body of the applicant, Visiting Nurse Service of New York Home Care II, d/b/a Visiting Nurse Service of New York Home Care, is as follows:

Jon Mattson, Chairperson Partner, Trilantic Capital Partners (Private Equity Partnership) Affiliations: VNSNY	Anne Bick Ehrenkranz, Vice Chairperson Retired Affiliations: VNSNY; New Partners, Inc., d/b/a Partners in Care
--	---

Margaret A. Bancroft, Esq. Of Counsel, Dechert, LLP (Law Firm) Affiliations: VNSNY	Alice Cooney Frelinghuysen Curator, Metropolitan Museum of Art Affiliations: VNSNY
--	--

Elisabeth Gotbaum
Partner, Bedford Grove (Political Fundraising Firm)
Affiliations: VNSNY

Clare Gregorian
Retired
Affiliations: VNSNY

Valerie S. Peltier, Esq.
Managing Director, Tishman Speyer Properties, Inc. (Real Estate Development)
Affiliations: VNSNY

Carl H. Pforzheimer, III
Manager, Carl H. Pforzheimer & Co., LLC (Investment Firm)
Affiliations: VNSNY

John P. Rafferty, CPA
Retired Partner, Ernst and Young, LLP (Accounting Firm)
Affiliations: VNSNY

Ira S. Rimerman
Retired Senior Executive, Citigroup (Banking)
Affiliations: VNSNY; Continuum Health Partners, Inc. (Beth Israel Medical Center, Inc. – Petrie Campus, Manhattan, and Kings Highway Division, Brooklyn; St. Lukes Roosevelt Hospital Center, Inc. – Roosevelt Hospital Division and St. Lukes Hospital Division; Long Island College Hospital; New York Eye and Ear Infirmary, Inc. (all Hospitals); Beth Israel Ambulatory Care Services Corp. (D&TC); Robert Mapplethorpe Residential Treatment Facility (RHCF); Jacob Perlow Hospice Corp. (Hospice)

The governing body of the member (parent) corporation, Visiting Nurse Service of New York, is as follows:

Douglas D. Broadwater, Esq., Chairperson
Retired Partner, Cravath, Swaine & Moore, LLP (Law Firm)

Frank S. Vigilante
Retired Senior V.P., AT&T
Affiliations: VNA of Central Jersey, Inc. (Hospice), VNA of Central Jersey Health Group, Inc. (CHHA); VNSNY Hospice Care

Margaret A. Bancroft, Esq.
Disclosed above

Bobbie Berkowitz, RN (WA)
Senior VP, Columbia University Medical Center
Dean, Columbia University School of Nursing
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care; Group Health Cooperative, Seattle, WA (NFP Health Care Plan); Qualis Health, Seattle, WA (NFP Healthcare Quality Consulting Organization)

Carmen Beauchamp Ciparick, Esq.
Of Counsel, Greenberg Traurig, LLP (Law Firm)
Retired Associate Judge, NYS Court of Appeals
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

Robert C. Daum
Retired CEO, DFMC, Inc., d/b/a Growth Capital Partners (Investments)
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

E. Mary C. Davidson
VP, Maxwell Davidson Gallery (Art Dealer)
Affiliations: VNSNY Hospice Care

Jose M. de Lasa, Esq.
Of Counsel, Baker and MacKenzie (Law Firm)

Edith M. Dupuy, RN
Retired

Anne Bick Ehrenkranz
Disclosed above

Claire M. Fagin, R.N., Ph.D.
Retired Self-Employed Consultant

Alice Cooney Frelinghuysen
Disclosed above

Elisabeth Gotbaum
Disclosed above

Clare Gregorian
Disclosed above

Mary R. (Nina) Henderson
Managing Partner, Henderson Advisory
(Consulting Firm)
Affiliations: VNS Choice, d/b/a VNSNY
Choice; VNS Choice Community Care

Peter L. Hutchings
Retired Exec. V.P. & CFO, Guardian Life
Insurance Co.
Affiliations: VNS Choice, d/b/a VNSNY
Choice; VNS Choice Community Care; Public
Health Solutions, d/b/a MIC Women's Health
Services, formerly Medical and Health
Research Association of NYC (D&TC), NY
Organ Donor Network, Empire Health Choice
(HMO)

Robert M. Kaufman, Esq.
Partner, Proskauer Rose, LLP (Law Firm)
Board Director, Old Westbury Funds (Mutual
Funds)
Affiliations: VNSNY Hospice Care; Public
Health Solutions, d/b/a MIC Women's Health
Services, formerly Medical and Health
Research Association of NYC (D&TC)

Michael Laskoff
CEO, Managing Partner, Abilto, LLC
(Behavioral Health Consulting)
Affiliations: New Partners, Inc., d/b/a Partners
in Care

Arthur Lindenauer, CPA
Retired CFO, Schlumberger Limited (Oil Field
Services)
Affiliations: New Partners, Inc., d/b/a Partners
in Care

Kwan-Lan (Tom) Mao
Retired V.P., Citigroup (Banking)
Affiliations: VNS Choice, d/b/a VNSNY
Choice; VNS Choice Community Care

Joseph D. Mark
Retired President, Aveta, Inc. (Health
Insurance Company)
Affiliations: VNS Choice, d/b/a VNSNY
Choice; VNS Choice Community Care

Jon Mattson
Disclosed above

Mathy Mezey, R.N., Ed.D.
Professor, NYU College of Nursing
Affiliations: VNSNY Hospice Care

Phyllis J. Mills, R.N.
Trustee, Mary Flagler Charitable Trust
Affiliations: VNS Continuing Care
Development Corporation; VNS Choice, d/b/a
VNSNY Choice; VNS Choice Community Care

Valerie S. Peltier, Esq.
Disclosed above

Carl H. Pforzheimer, III
Disclosed above

John P. Rafferty, CPA
Disclosed above

Corinne H. Rieder, Ed.D.
Executive Director, Treasurer, The John A.
Hartford Foundation (Charitable Foundation)
Affiliations: VNSNY Hospice Care

Ira S. Rimerman
Disclosed above

Andrew N. Schiff, M.D.
Partner, Aisling Capital (Investments/Finance)
Affiliations: VNS Choice, d/b/a VNSNY
Choice; VNS Choice Community Care

Albert L. Siu, MD
Chairman / Professor, Mount Sinai School of
Medicine's Brookdale Department of
Geriatrics and Palliative Medicine
Director, Bronx VA Medical Center's Geriatric
Research, Education, and Clinical Center
Affiliations: VNS Choice, d/b/a VNSNY
Choice; VNS Choice Community Care; Senior
Health Partners (MLTCP); Mount Sinai Care,
LLC (ACO)

Kenneth G. Standard, Esq.
Partner, Epstein Becker & Green, PC (Law
Firm)
Affiliations: Family Care Services

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

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

The Office of the Professions of the State Education Department, the New York State Physician Profile, the Office of Professional Medical Conduct, the NYS Unified Court System, and the Washington State Department of Health Professional Licensing, where appropriate, indicate no issues with the licensure of the health professionals and other licensed professionals associated with this application. In addition, the attorneys have all submitted current Certificates of Good Standing.

The Division of Hospitals and Diagnostic and Treatment Centers reviewed the compliance history of all affiliated hospitals and diagnostic and treatment centers for the time period 2006 to 2013, or for the time periods specified as the affiliations, whichever applied. The review revealed that the following facility was the subject of enforcement actions:

St. Lukes Roosevelt Hospital Center, Inc. was the subject of an enforcement action in 2006 based on violations citing improperly delayed treatment due to financial considerations. The hospital paid a \$4,000 civil penalty to resolve this matter. The hospital has been in compliance since that time.

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

The Division of Residential Services reviewed the compliance history of the affiliated residential health care facility for the time period specified as the affiliation. It has been determined that the residential health care facility has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The Division of Home and Community Based Services reviewed the compliance history of all affiliated long term home health care programs, certified home health agencies, licensed home care service agencies, and hospices for the time period 2006 to 2013, or for the time periods specified as the affiliations, whichever applied. The review revealed that the following provider was the subject of an enforcement action:

Jacob Perlow Hospice Corporation, now d/b/a MJHS Hospice and Palliative Care (formerly d/b/a Continuum Hospice Care / Jacob Perlow Hospice / Harlem Community Hospice) was cited with condition-level deficiencies in the areas of Governing Authority; Contracts; Administration; Staff and Services; Personnel; Patient / Family Rights; Plan of Care; and Medical Records Systems / Charts, as a result of a November 29, 2006 survey. An enforcement action was resolved with an October 1, 2007 stipulation and order, which included payment of a \$24,000 civil penalty. The agency has been in compliance since that time.

It has been determined that the long term home health care programs, certified home health agencies, licensed home care service agencies, and hospices have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

The Office of Health Insurance Programs Division of Managed Care reviewed the compliance history of the affiliated managed long term care plans and health maintenance organizations for the time period 2006 to 2013, or for the time periods specified as the affiliations, whichever applied.

The Office of Health Insurance Programs Division of Managed Care reports that the Medicaid Advantage Plan operated by VNS Choice, d/b/a VNSNY Choice, has no enforcement history and is currently in substantial compliance. The Managed Long Term Care Plan, and Medicaid Advantage Plus Plan, operated by VNS Choice, d/b/a VNSNY Choice, had a suspension on all new enrollments imposed in April 2013, which was lifted by the Department and new enrollments were allowed to resume, effective November 1, 2013. The Managed Long Term Care Plan, and Medicaid Advantage Plus Plan, operated by VNS Choice, d/b/a VNSNY Choice, are therefore now in substantial compliance. The New York State Office of the Attorney General reports that, although it has a continuing investigation involving this same provider at this time, the Office of the Attorney General no longer requests that the Department hold off the review and approval of the current applications, since the provider has executed an interim agreement to resolve in principle certain aspects of their investigation.

It has therefore been determined that the affiliated managed long term care plans and health maintenance organizations are currently in substantial compliance with all applicable codes, rules, and regulations.

The New York State Office of Mental Health has reviewed the compliance history of the affiliated mental health clinic, for the time period 2008 (initial licensure) to 2013, and has determined the mental health clinic has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The State of New Jersey has reviewed the compliance histories of the health care facilities operated under VNA of Central Jersey, Inc., and VNA of Central Jersey Health Group, Inc., for the time period specified as the affiliation, and has determined the health care facilities have been in substantial compliance with all applicable codes, rules, and regulations.

The State of Washington has reviewed the compliance history of the health care plan administered by Group Health Cooperative, for the time period specified as the affiliation, and has determined the health care plan has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

A review of all personal qualifying information indicates there is nothing in the background of the board members of Visiting Nurse Service of New York Home Care II and Visiting Nurse Service of New York to adversely affect their positions on the boards. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

There are no project costs associated with this application.

Purchase and Sale Agreement

The applicant has submitted an executed agreement to purchase the CHHA operating interest of Brookdale Hospital Medical Center, the terms of which are summarized below:

Date:	November 4, 2013
Seller:	Brookdale Hospital Medical Center
Purchaser:	Visiting Nurse Service of New York Home Care II d/b/a Visiting Nurse Service of New York Home Care
Assets Transferred Operations:	Rights, title and interest in assets of the business including: copies of records used in the business, personnel records, patients files and medical records, technical and nontechnical data relating to operations. All permitted licenses, operating certificates, permits, waivers, and consents relating to the operations, and Goodwill.
Excluded Assets:	Cash, cash equivalents, and accounts receivable prior to midnight of the closing date.
Assumed Liabilities:	Obligations and liabilities arising subsequent to the closing date.
Purchase Price:	\$1,250,000
Payment:	\$1,250,000 due at closing

The purchase price will be satisfied through equity.

BFA Attachment A is the 2011 and 2012 certified financial summary for VNSNY, 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 36 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Interim Management Agreement

The applicant has entered into an interim management agreement with Brookdale to manage their CHHA's day-to-day operations until the transfer is consummated. Brookdale will pay a monthly fee of \$3,000. The Department of Health approved this arrangement on December 3, 2013.

Lease Rental Agreement

The applicant has submitted a draft sublease for the proposed site; the terms are summarized below:

Premises:	58,387 sq. ft. aggregate in the building known as 1630 and 1642 East 15 th Street, Brooklyn, NY
Landlord:	Kingswood Partners, LLC
Lessee/sublessor:	Visiting Nurse Service of New York
Sublessee	VNSNY Home Care II
Term:	5 years starting at \$1,867,590.60 per year commencing on the commencement date (\$31.99 per sq. ft.) and increasing to \$2,060,539.32 per annum (\$35.29 per sq. ft.) commencing on November 7, 2016.
Provisions:	Utilities, Insurance and Maintenance to be paid by sublessee for their portion of these costs.

The applicant states the lease is an arm's length arrangement between Kingswood Partners, LLC and Visiting Nurse Service of New York, which are not related parties. The proposed sublease is a non-arm's length agreement between related parties, Visiting Nurse Service of New York and VNSNY Home Care II.

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>
Revenues:		
Medicaid	\$6,673,082	\$7,935,471
Medicare	3,921,015	7,053,617
Commercial	<u>1,019,184</u>	<u>1,924,211</u>
Total Revenues	\$11,613,281	\$16,913,299
Expenses	<u>\$11,037,921</u>	<u>\$16,035,578</u>
Net Gain(Loss)	\$575,360	\$877,721

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	20.19%	25.79%
Medicare	66.46%	57.62%
Medicaid	10.88%	14.19%
Charity Care	2.47%	2.40%

Patient utilization and expense projections were based on the applicant's analysis of data from Brookdale Hospital CHHA, along with their historical experience and similarly located CHHA's.

As a conservative measure, the applicant is projecting a 2% reduction from the 2012 Medicaid episodic payment base rate starting in the first year and compounding through the third year. Thus, the average Medicaid episodic payment in the first and third years is expected to be \$6,032.32 and \$5,793.44, respectively, after taking into consideration the average case mix of 1.100 and adjusting for New York

City Wage Index Factor of 0.991433. The average case mix of 1.100 was based on the experience of similarly located CHHA's due to the very small census of the Brookdale Hospital CHHA.

As a conservative measure, the applicant is projecting a 2% reduction from the 2012 Medicare episodic payment base rate starting in the first year and compounding through the third year. Thus the average Medicare episodic payment in the first and third years is expected to be \$3,235.98 and \$3,107.83, respectively, after taking into consideration the average case mix of 1.2500 and adjusting for New York City Wage Index Factor of 1.3052. The average case mix of 1.2500 is based upon the applicant's analysis of the population to be served, which is slightly higher than Brookdale Hospital CHHA case mix of 1.0700.

Commercial rates were based on VNSNY existing contract rates.

Capability and Feasibility

There are no project costs associated with this application. The \$1,250,000 purchase price for the CHHA will be funded from the applicant's equity. Review of BFA Attachment A, VNSNY 2011 and 2012 certified financial summary, indicates the availability of sufficient resources for the equity contribution. Additionally, the financial statement states that VNSNY transfers substantially all of its excess cash to Visiting Nurse Service of New York, its sole member, for cash management and investment purposes. BFA Attachment B is Visiting Nurse Service of New York and Subsidiaries 2011 and 2012 certified financial summary, which shows average investments of \$1,002,658,000.

Working capital requirements are estimated at \$2,672,596, which appears reasonable based upon two months of third year expenses, and will be provided from the applicant. Review of BFA Attachment A, VNSNY 2011 and 2012 certified financial summary, shows sufficient resources to meet the working capital requirements as well.

The submitted budget indicates that the applicant will achieve incremental net revenue in the first and third years of operations of \$575,360 and \$877,721, respectively. Revenue is based on current payment rates for Certified Home Health Agencies. The budget appears reasonable.

A review of BFA Attachment A shows VNSNY recorded an Asset Impairment charge of \$32,778,000. The applicant determined in 2012, that programmatic and reimbursement changes to New York's Long Term Home Health Program (LTHHCP) limited functionality on a prospective basis of their previously acquired licenses and rights. Thus, in 2012, they recognized an impairment loss on those affected non-amortized intangible assets.

As shown in BFA Attachment A, the applicant has maintained a positive working capital position, had a positive net equity, and experienced net operating losses in 2011 and 2012 of \$15,842,000 and \$6,814,000, respectively. Losses in 2011 and 2012 are related to declines in volume, as well as rate reductions in both Medicare and Medicaid. VNSNY is planning to implement significant operational improvements to reach break-even financial operating results by 2015. They include the following:

- 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, streamlining of contract administration, and office space consolidation.
- In addition, Visiting Nurse Service of New York Home Care II 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 contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary for 2011 and 2012, Visiting Nurse Service of New York Home Care II d/b/a Visiting Nurse Service of New York Home Care
BFA Attachment B	Financial Summary for 2011 and 2012, Visiting Nurse Service of New York and Subsidiaries

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

January 30, 2014

**Upstate Request For Applications - Certified Home Health Agencies – Exhibit # 12
Establish/Construct**

	<u>Number</u>	<u>Applicant/Facility</u>
1.	131224 E	Visiting Nurse Service of New York Home Care (Dutchess County)
2.	131225 E	Visiting Nurse Service of New York Home Care (Oneida County)
3.	132353 E	Alpine Home Health Care, LLC (Erie County)



Public Health and Health Planning Council

Project # 131224 E Visiting Nurse Service of New York Home Care

County: Dutchess County
Purpose: Establishment

Program: Certified Home Health Agency
Acknowledged: April 26, 2013

Executive Summary

Description

Visiting Nurse Service of New York Home Care II d/b/a Visiting Nurse Service of New York Home Care (VNSNY), a not-for-profit corporation, is requesting to establish a new Certified Home Health Agency (CHHA) into Dutchess, Orange, Putnam, Sullivan and Ulster Counties. VNSNY's CON 131225 is concurrently being reviewed, requesting eight additional upstate counties. VNSNY currently serves Kings, Bronx, Queens, New York, Nassau, Westchester, Richmond and Rockland Counties. VNSNY was approved by the Public Health and Health Planning Council for Suffolk County as of April 11, 2013.

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. Visiting Nurse Service of New York Home 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

Contingent Approval

Program Summary

This proposal seeks to establish a new Certified Home Health Agency (CHHA) to serve the upstate counties of Dutchess, Orange, Putnam, Sullivan, and Ulster, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:

Revenues:	\$11,252,813
Expenses:	<u>11,139,966</u>
Gain (Loss):	\$112,847

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 Department of Health reserves the right to re-evaluate the incremental budgets for feasibility if all counties for establishment or expansion are not approved. [BFA]
2. Submission of an executed sublease building agreement, acceptable to the Department. [BFA]
3. Submission of a photocopy of the applicant's fully executed Bylaws, acceptable to the Department. [CSL]
4. Submission of a photocopy of the resolution of the applicant's Board of Directors, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's fully executed Certificate of Incorporation, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's full executed Certificate of Assumed Name, 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

February 13, 2014

Need Analysis

Background

Visiting Nurse Service of New York Home Care II, Inc. d/b/a Visiting Nurse Service of New York Home Care is requesting approval to establish a new Certified Home Health Agency to serve the upstate counties of Dutchess, Orange, Putnam, Sullivan and Ulster 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 provided a thorough analysis of the home health care needs and demonstrated knowledge of the issues surrounding home health care in the counties requested. The applicant also demonstrated how its organizational capacity including disease management and care management programs will produce quality and efficient home health care.

VNSNY demonstrated support of Medicaid Redesign initiatives and elaborated 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 also discussed how the CHHA will produce operating efficiencies within the health care system through clinical innovation and economies of scale.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Visiting Nurse Service of New York Home Care II, d/b/a Visiting Nurse Service of New York Home Care, is an existing not-for-profit corporation currently operating an Article 36 CHHA and LTHHCP, with its main parent office located in New York County, and six branch offices located in Bronx, Kings, Queens, Richmond, Nassau, and Westchester Counties. The CHHA serves Bronx, Kings, New York, Queens, Richmond, Nassau, Westchester, and Rockland Counties, and was approved by PHHPC on April 11, 2013, to expand into Suffolk County. The LTHHCP serves Bronx, Kings, New York, Queens, and Nassau Counties. The applicant also operates VNS Children and Adolescent Mental Health Clinic at FRIENDS, a mental health clinic licensed by NYS Office of Mental Health.

This CON application # 131224-E has been submitted by Visiting Nurse Service of New York Home Care II, d/b/a Visiting Nurse Service of New York Home Care, to request approval to establish a new additional CHHA in New York State, under Article 36 of the Public Health Law, with approval to serve the upstate counties of Dutchess, Orange, Putnam, Sullivan, and Ulster, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties. A companion CON application # 131225-E has also been submitted by Visiting Nurse Service of New York Home Care II, d/b/a Visiting Nurse Service of New York Home Care, to request approval to establish a second new additional CHHA in New York State, under Article 36 of the Public Health Law, with approval to serve the upstate counties of Hamilton, Fulton, Montgomery, Otsego, Delaware, Herkimer, Oneida, and Onondaga, also pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties. That companion CON application is also being presented to the PHHPC at this time under separate cover.

The applicant proposes to operate the new CHHA proposed in this CON application # 131224 from a main parent office practice location at 300 Westage Business Center Drive, Suite 225, Fishkill (Dutchess County), New York 12524, to serve Dutchess, Orange, Putnam, Sullivan, and Ulster Counties.

The applicant proposes to provide the following home health care services:

Nursing	Home Health Aide	Medical Social Services
Physical Therapy	Occupational Therapy	Speech Language Pathology
Medical Supplies, Equipment, and Appliances		

Visiting Nurse Service of New York Home Care II, d/b/a Visiting Nurse Service of New York Home Care, has as its member (parent) corporation Visiting Nurse Service of New York, a not-for-profit corporation. Visiting Nurse Service of New York is also the member (parent) corporation of the following not-for-profit corporations: Visiting Nurse Service of New York Hospice Care, an Article 40 hospice; New Partners, Inc., d/b/a Partners in Care Services, an Article 36 licensed home care services agency (LHCSA); Family Care Services, an Article 36 LHCSA and home attendant program; and VNS Continuing Care Development Corporation. The latter corporation is the member (parent) corporation of VNS Choice, d/b/a VNSNY Choice, a Managed Care Organization which includes a Managed Long Term Care Plan, a Medicaid Advantage Plan, and a Medicaid Advantage Plus Plan; and VNS Choice Community Care, an Article 36 LHCSA.

The governing body of the applicant, Visiting Nurse Service of New York Home Care II, d/b/a Visiting Nurse Service of New York Home Care, is as follows:

Jon Mattson, Chairperson
Partner, Trilantic Capital Partners (Private
Equity Partnership)
Affiliations: VNSNY

Anne Bick Ehrenkranz, Vice Chairperson
Retired
Affiliations: VNSNY; New Partners, Inc., d/b/a
Partners in Care

Margaret A. Bancroft, Esq.
Of Counsel, Dechert, LLP (Law Firm)
Affiliations: VNSNY

Alice Cooney Frelinghuysen
Curator, Metropolitan Museum of Art
Affiliations: VNSNY

Elisabeth Gotbaum
Partner, Bedford Grove (Political Fundraising
Firm)
Affiliations: VNSNY

Clare Gregorian
Retired
Affiliations: VNSNY

Valerie S. Peltier, Esq.
Managing Director, Tishman Speyer
Properties, Inc. (Real Estate Development)
Affiliations: VNSNY

Carl H. Pforzheimer, III
Manager, Carl H. Pforzheimer & Co., LLC
(Investment Firm)
Affiliations: VNSNY

John P. Rafferty, CPA
Retired Partner, Ernst and Young, LLP
(Accounting Firm)
Affiliations: VNSNY

Ira S. Rimerman
Retired Senior Executive, Citigroup (Banking)
Affiliations: VNSNY; Continuum Health
Partners, Inc. (Beth Israel Medical Center, Inc.
– Petrie Campus, Manhattan, and Kings
Highway Division, Brooklyn; St. Lukes
Roosevelt Hospital Center, Inc. – Roosevelt
Hospital Division and St. Lukes Hospital
Division; Long Island College Hospital; New
York Eye and Ear Infirmary, Inc. (all Hospitals);
Beth Israel Ambulatory Care Services Corp.
(D&TC); Robert Mapplethorpe Residential
Treatment Facility (RHCF); Jacob Perlow
Hospice Corp. (Hospice)

The governing body of the member (parent) corporation, Visiting Nurse Service of New York, is as follows:

Douglas D. Broadwater, Esq., Chairperson
Retired Partner, Cravath, Swaine & Moore,
LLP (Law Firm)

Frank S. Vigilante
Retired Senior V.P., AT&T
Affiliations: VNA of Central Jersey, Inc.
(Hospice), VNA of Central Jersey Health
Group, Inc. (CHHA); VNSNY Hospice Care

Margaret A. Bancroft, Esq.
Disclosed above

Bobbie Berkowitz, RN (WA)
Senior VP, Columbia University Medical Center
Dean, Columbia University School of Nursing
Affiliations: VNS Choice, d/b/a VNSNY
Choice; VNS Choice Community Care; Group
Health Cooperative, Seattle, WA (NFP Health
Care Plan); Qualis Health, Seattle, WA (NFP
Healthcare Quality Consulting Organization)

Carmen Beauchamp Ciparick, Esq.
Of Counsel, Greenberg Traurig, LLP (Law
Firm)
Retired Associate Judge, NYS Court of
Appeals
Affiliations: VNS Choice, d/b/a VNSNY
Choice; VNS Choice Community Care

Robert C. Daum
Retired CEO, DFMC, Inc., d/b/a Growth Capital
Partners (Investments)
Affiliations: VNS Choice, d/b/a VNSNY
Choice; VNS Choice Community Care

E. Mary C. Davidson
VP, Maxwell Davidson Gallery (Art Dealer)
Affiliations: VNSNY Hospice Care

Jose M. de Lasa, Esq.
Of Counsel, Baker and MacKenzie (Law Firm)

Edith M. Dupuy, RN
Retired

Anne Bick Ehrenkranz
Disclosed above

Claire M. Fagin, R.N., Ph.D.
Retired Self-Employed Consultant

Alice Cooney Frelinghuysen
Disclosed above

Elisabeth Gotbaum
Disclosed above

Clare Gregorian
Disclosed above

Mary R. (Nina) Henderson
Managing Partner, Henderson Advisory
(Consulting Firm)
Affiliations: VNS Choice, d/b/a VNSNY
Choice; VNS Choice Community Care

Peter L. Hutchings
Retired Exec. V.P. & CFO, Guardian Life
Insurance Co.
Affiliations: VNS Choice, d/b/a VNSNY
Choice; VNS Choice Community Care; Public
Health Solutions, d/b/a MIC Women's Health
Services, formerly Medical and Health
Research Association of NYC (D&TC), NY
Organ Donor Network, Empire Health Choice
(HMO)

Robert M. Kaufman, Esq.
Partner, Proskauer Rose, LLP (Law Firm)
Board Director, Old Westbury Funds (Mutual Funds)
Affiliations: VNSNY Hospice Care; Public Health Solutions, d/b/a MIC Women's Health Services, formerly Medical and Health Research Association of NYC (D&TC)

Michael Laskoff
CEO, Managing Partner, Abilto, LLC (Behavioral Health Consulting)
Affiliations: New Partners, Inc., d/b/a Partners in Care

Arthur Lindenauer, CPA
Retired CFO, Schlumberger Limited (Oil Field Services)
Affiliations: New Partners, Inc., d/b/a Partners in Care

Kwan-Lan (Tom) Mao
Retired V.P., Citigroup (Banking)
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

Joseph D. Mark
Retired President, Aveta, Inc. (Health Insurance Company)
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

Jon Mattson
Disclosed above

Mathy Mezey, R.N., Ed.D.
Professor, NYU College of Nursing
Affiliations: VNSNY Hospice Care

Phyllis J. Mills, R.N.
Trustee, Mary Flagler Charitable Trust
Affiliations: VNS Continuing Care Development Corporation; VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

Valerie S. Peltier, Esq.
Disclosed above

Carl H. Pforzheimer, III
Disclosed above

John P. Rafferty, CPA
Disclosed above

Corinne H. Rieder, Ed.D.
Executive Director, Treasurer, The John A. Hartford Foundation (Charitable Foundation)
Affiliations: VNSNY Hospice Care

Ira S. Rimerman
Disclosed above

Andrew N. Schiff, M.D.
Partner, Aisling Capital (Investments/Finance)
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

Albert L. Siu, MD
Chairman / Professor, Mount Sinai School of Medicine's Brookdale Department of Geriatrics and Palliative Medicine
Director, Bronx VA Medical Center's Geriatric Research, Education, and Clinical Center
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care; Senior Health Partners (MLTCP); Mount Sinai Care, LLC (ACO)

Kenneth G. Standard, Esq.
Partner, Epstein Becker & Green, PC (Law Firm)
Affiliations: Family Care Services

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

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

The Office of the Professions of the State Education Department, the New York State Physician Profile, the Office of Professional Medical Conduct, the NYS Unified Court System, and the Washington State Department of Health Professional Licensing, where appropriate, indicate no issues with the licensure of the health professionals and other licensed professionals associated with this application. In addition, the attorneys have all submitted current Certificates of Good Standing.

The Division of Hospitals and Diagnostic and Treatment Centers reviewed the compliance history of all affiliated hospitals and diagnostic and treatment centers for the time period 2006 to 2013, or for the time periods specified as the affiliations, whichever applied. The review revealed that the following facility was the subject of enforcement actions:

St. Lukes Roosevelt Hospital Center, Inc. was the subject of an enforcement action in 2006 based on violations citing improperly delayed treatment due to financial considerations. The hospital paid a \$4,000 civil penalty to resolve this matter. The hospital has been in compliance since that time.

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

The Division of Residential Services reviewed the compliance history of the affiliated residential health care facility for the time period specified as the affiliation. It has been determined that the residential health care facility has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The Division of Home and Community Based Services reviewed the compliance history of all affiliated long term home health care programs, certified home health agencies, licensed home care service agencies, and hospices for the time period 2006 to 2013, or for the time periods specified as the affiliations, whichever applied. The review revealed that the following provider was the subject of an enforcement action:

Jacob Perlow Hospice Corporation, now d/b/a MJHS Hospice and Palliative Care (formerly d/b/a Continuum Hospice Care / Jacob Perlow Hospice / Harlem Community Hospice) was cited with condition-level deficiencies in the areas of Governing Authority; Contracts; Administration; Staff and Services; Personnel; Patient / Family Rights; Plan of Care; and Medical Records Systems / Charts, as a result of a November 29, 2006 survey. An enforcement action was resolved with an October 1, 2007 stipulation and order, which included payment of a \$24,000 civil penalty. The agency has been in compliance since that time.

It has been determined that the long term home health care programs, certified home health agencies, licensed home care service agencies, and hospices have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

The Office of Health Insurance Programs Division of Managed Care reviewed the compliance history of the affiliated managed long term care plans and health maintenance organizations for the time period 2006 to 2013, or for the time periods specified as the affiliations, whichever applied.

The Office of Health Insurance Programs Division of Managed Care reports that the Medicaid Advantage Plan operated by VNS Choice, d/b/a VNSNY Choice, has no enforcement history and is currently in substantial compliance. The Managed Long Term Care Plan, and Medicaid Advantage Plus Plan, operated by VNS Choice, d/b/a VNSNY Choice, had a suspension on all new enrollments imposed in April 2013, which was lifted by the Department and new enrollments were allowed to resume, effective November 1, 2013. The Managed Long Term Care Plan, and Medicaid Advantage Plus Plan, operated by VNS Choice, d/b/a VNSNY Choice, are therefore now in substantial compliance. The New York State Office of the Attorney General reports that, although it has a continuing investigation involving this same provider at this time, the Office of the Attorney General no longer requests that the Department hold off the review and approval of the current applications, since the provider has executed an interim agreement to resolve in principle certain aspects of their investigation.

It has therefore been determined that the affiliated managed long term care plans and health maintenance organizations are currently in substantial compliance with all applicable codes, rules, and regulations.

The New York State Office of Mental Health has reviewed the compliance history of the affiliated mental health clinic, for the time period 2008 (initial licensure) to 2013, and has determined the mental health clinic has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The State of New Jersey has reviewed the compliance histories of the health care facilities operated under VNA of Central Jersey, Inc., and VNA of Central Jersey Health Group, Inc., for the time period specified as the affiliation, and has determined the health care facilities have been in substantial compliance with all applicable codes, rules, and regulations.

The State of Washington has reviewed the compliance history of the health care plan administered by Group Health Cooperative, for the time period specified as the affiliation, and has determined the health care plan has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

A review of all personal qualifying information indicates there is nothing in the background of the board members of Visiting Nurse Service of New York Home Care II and Visiting Nurse Service of New York to adversely effect their positions on the boards. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Sublease Agreement

The applicant has submitted a proposed sublease agreement for 3780 square feet on the second floor of 300 Westage Business Center Drive, Suite 225, located in Fishkill (Dutchess County), the terms of which are summarized below:

Premises:	300 Westage Business Center Drive, Suite 225, Fishkill, New York 12524
Lessor:	Samson Westage, LLC
Lessee, Sublessor:	VNS Choice
Sublessee:	VNSNY Home Care II
Rental:	\$7,560 /mo. (\$24.00/sq.ft.)
Term:	5 years with an additional 5 year renewal option.
Provisions:	The Lessee shall be responsible for insurance, taxes, maintenance and utilities.

The sublease 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:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Commercial Managed Care	\$339,221	\$600,274
Medicare Fee-for-Service	2,564,581	4,139,086
Medicare Managed Care	329,244	582,619
Medicaid Managed Care	<u>5,328,469</u>	<u>5,930,834</u>
Total Revenues	\$8,561,515	\$11,252,813
Expenses	<u>\$8,440,269</u>	<u>\$11,139,966</u>
Net Gain (Loss)	\$121,246	\$112,847

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

<u>Pavor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial Managed Care	4.8%	6.2%
Medicare Fee-for-Service	27.2%	34.5%
Medicare Managed Care	4.7%	6.1%
Medicaid Managed Care	61.3%	51.2%
Charity Care	2.0%	2.0%

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

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements, estimated at \$1,856,661, appear reasonable based on two months of third year expenses and will be provided through the existing operation. BFA Attachment A is the financial summary for Visiting Nurse Service of New York Home Care.

The submitted budget indicates that the applicant will achieve a \$121,246 and \$112,847 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.

BFA Attachment A is the 2012 audited and 2011 audited financial summary of VNSNY, which shows the applicant has maintained positive working capital, net equity and experienced net loss from operations of \$6,814,000 and \$15,842,000 for 2012 and 2011, respectively. Losses in 2011 and 2012 are related to declines in volume, as well as rate reductions in both Medicare and Medicaid. VNSNY plans to implement significant operational improvements to reach break-even financial operating results by 2015. Over the course of the next three years VNSNY intends:

- 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, 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 proceeding, 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

Financial Summary for 2011 audited and 2012 audited Visiting Nurse
Service of New York Home Care



Public Health and Health Planning Council

Project # 131225 E Visiting Nurse Service of New York Home Care

County: Oneida County
Purpose: Establishment

Program: Certified Home Health Agency
Acknowledged: April 26, 2013

Executive Summary

Description

Visiting Nurse Service of New York Home Care II d/b/a Visiting Nurse Service of New York Home Care (VNSNY), a not-for-profit corporation, is requesting to establish a new Certified Home Health Agency (CHHA) to serve Delaware, Fulton, Hamilton, Herkimer, Montgomery, Oneida, Onondaga and Otsego Counties. VNSNY currently serves Kings, Bronx, Queens, New York, Nassau, Westchester, Richmond and Rockland Counties. VNSNY's CON 131224 is concurrently being reviewed, and is requesting five additional upstate counties. VNSNY was approved by the Public Health and Health Planning Council for Suffolk County on April 11, 2013.

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. Visiting Nurse Service of New York Home 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
Contingent Approval

Program Summary

This proposal seeks to establish a new Certified Home Health Agency (CHHA) to serve the upstate counties of Hamilton, Fulton, Montgomery, Otsego, Delaware, Herkimer, Oneida, and Onondaga, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:

Revenues:	\$20,723,126
Expenses:	<u>20,487,317</u>
Gain (Loss):	\$ 235,809

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 is no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. The Department of Health reserves the right to re-evaluate the incremental budgets for feasibility if all counties for establishment or expansion are not approved. [BFA]
2. Submission of an executed building lease agreement, acceptable to the Department. [BFA]
3. Submission of a photocopy of the applicant's fully executed Bylaws, acceptable to the Department. [CSL]
4. Submission of a photocopy of the resolution of the applicant's Board of Directors, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's fully executed Certificate of Incorporation, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, 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

February 13, 2014

Need Analysis

Background

Visiting Nurse Service of New York Home Care II, Inc. d/b/a Visiting Nurse Service of New York Home Care is requesting approval to establish a new Certified Home Health Agency to serve the upstate counties of Delaware, Otsego, Montgomery, Fulton, Hamilton, Onondaga, Oneida and Herkimer counties.

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 the counties requested. The applicant also demonstrated how its organizational capacity including disease management and care management programs will produce quality and efficient home health care.

VNSNY demonstrated support of Medicaid Redesign initiatives and elaborated 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 also discussed how the CHHA will produce operating efficiencies within the health care system through clinical innovation and economies of scale.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Review Summary

Visiting Nurse Service of New York Home Care II, d/b/a Visiting Nurse Service of New York Home Care, is an existing not-for-profit corporation currently operating an Article 36 CHHA and LTHHCP, with its main parent office located in New York County, and six branch offices located in Bronx, Kings, Queens, Richmond, Nassau, and Westchester Counties. The CHHA serves Bronx, Kings, New York, Queens, Richmond, Nassau, Westchester, and Rockland Counties, and was approved by PHHPC on April 11, 2013, to expand into Suffolk County. The LTHHCP serves Bronx, Kings, New York, Queens, and Nassau Counties. The applicant also operates VNS Children and Adolescent Mental Health Clinic at FRIENDS, a mental health clinic licensed by NYS Office of Mental Health.

This CON application # 131225-E has been submitted by Visiting Nurse Service of New York Home Care II, d/b/a Visiting Nurse Service of New York Home Care, to request approval to establish a new additional CHHA in New York State, under Article 36 of the Public Health Law, with approval to serve the upstate counties of Hamilton, Fulton, Montgomery, Otsego, Delaware, Herkimer, Oneida, and Onondaga, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties. A companion CON application # 131224-E has also been submitted by Visiting Nurse Service of New York Home Care II, d/b/a Visiting Nurse Service of New York Home Care, to request approval to establish a second new additional CHHA in New York State, under Article 36 of the Public Health Law, with approval to serve the upstate counties of Dutchess, Orange, Putnam, Sullivan, and Ulster Counties, also pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties. That companion CON application is also being presented to the PHHPC at this time under separate cover.

The applicant proposes to operate the new CHHA proposed in this CON application # 131225 from a main parent office practice location at 2 Ellinwood Drive, Suite 6, Lower Level, New Hartford (Oneida County), New York 13413, to serve Hamilton, Fulton, Montgomery, Otsego, Delaware, Herkimer, Oneida, and Onondaga Counties. The applicant is also willing to establish one or two additional branch office practice locations, if warranted by New York State Department of Health.

The applicant proposes to provide the following home health care services:

Nursing	Home Health Aide	Medical Social Services
Physical Therapy	Occupational Therapy	Speech Language Pathology
Medical Supplies, Equipment, and Appliances		

Visiting Nurse Service of New York Home Care II, d/b/a Visiting Nurse Service of New York Home Care, has as its member (parent) corporation Visiting Nurse Service of New York, a not-for-profit corporation. Visiting Nurse Service of New York is also the member (parent) corporation of the following not-for-profit corporations: Visiting Nurse Service of New York Hospice Care, an Article 40 hospice; New Partners,

Inc., d/b/a Partners in Care Services, an Article 36 licensed home care services agency (LHCSA); Family Care Services, an Article 36 LHCSA and home attendant program; and VNS Continuing Care Development Corporation. The latter corporation is the member (parent) corporation of VNS Choice, d/b/a VNSNY Choice, a Managed Care Organization which includes a Managed Long Term Care Plan, a Medicaid Advantage Plan, and a Medicaid Advantage Plus Plan; and VNS Choice Community Care, an Article 36 LHCSA.

The governing body of the applicant, Visiting Nurse Service of New York Home Care II, d/b/a Visiting Nurse Service of New York Home Care, is as follows:

Jon Mattson, Chairperson
Partner, Trilantic Capital Partners (Private Equity Partnership)
Affiliations: VNSNY

Anne Bick Ehrenkranz, Vice Chairperson
Retired
Affiliations: VNSNY; New Partners, Inc., d/b/a Partners in Care

Margaret A. Bancroft, Esq.
Of Counsel, Dechert, LLP (Law Firm)
Affiliations: VNSNY

Alice Cooney Frelinghuysen
Curator, Metropolitan Museum of Art
Affiliations: VNSNY

Elisabeth Gotbaum
Partner, Bedford Grove (Political Fundraising Firm)
Affiliations: VNSNY

Clare Gregorian
Retired
Affiliations: VNSNY

Valerie S. Peltier, Esq.
Managing Director, Tishman Speyer Properties, Inc. (Real Estate Development)
Affiliations: VNSNY

Carl H. Pforzheimer, III
Manager, Carl H. Pforzheimer & Co., LLC (Investment Firm)
Affiliations: VNSNY

John P. Rafferty, CPA
Retired Partner, Ernst and Young, LLP (Accounting Firm)
Affiliations: VNSNY

Ira S. Rimerman
Retired Senior Executive, Citigroup (Banking)
Affiliations: VNSNY; Continuum Health Partners, Inc. (Beth Israel Medical Center, Inc. – Petrie Campus, Manhattan, and Kings Highway Division, Brooklyn; St. Lukes Roosevelt Hospital Center, Inc. – Roosevelt Hospital Division and St. Lukes Hospital Division; Long Island College Hospital; New York Eye and Ear Infirmary, Inc. (all Hospitals); Beth Israel Ambulatory Care Services Corp. (D&TC); Robert Mapplethorpe Residential Treatment Facility (RHCF); Jacob Perlow Hospice Corp. (Hospice)

The governing body of the member (parent) corporation, Visiting Nurse Service of New York, is as follows:

Douglas D. Broadwater, Esq., Chairperson
Retired Partner, Cravath, Swaine & Moore, LLP (Law Firm)

Frank S. Vigilante
Retired Senior V.P., AT&T
Affiliations: VNA of Central Jersey, Inc. (Hospice); VNA of Central Jersey Health Group, Inc. (CHHA); VNSNY Hospice Care

Margaret A. Bancroft, Esq.
Disclosed above

Bobbie Berkowitz, RN (WA)
Senior VP, Columbia University Medical Center
Dean, Columbia University School of Nursing
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care; Group Health Cooperative, Seattle, WA (NFP Health Care Plan); Qualis Health, Seattle, WA (NFP Healthcare Quality Consulting Organization)

Carmen Beauchamp Ciparick, Esq.
Of Counsel, Greenberg Traurig, LLP (Law Firm)
Retired Associate Judge, NYS Court of Appeals
Affiliations: VNS Choice, d/b/a VNSNY Choice;

Robert C. Daum
Retired CEO, DFMC, Inc., d/b/a Growth Capital Partners (Investments)
Affiliations: VNS Choice, d/b/a VNSNY Choice;

VNS Choice Community Care

E. Mary C. Davidson
VP, Maxwell Davidson Gallery (Art Dealer)
Affiliations: VNSNY Hospice Care

Edith M. Dupuy, RN
Retired
Claire M. Fagin, R.N., Ph.D.
Retired Self-Employed Consultant
Elisabeth Gotbaum
Disclosed above

Mary R. (Nina) Henderson
Managing Partner, Henderson Advisory (Consulting Firm)
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

Robert M. Kaufman, Esq.
Partner, Proskauer Rose, LLP (Law Firm)
Board Director, Old Westbury Funds (Mutual Funds)
Affiliations: VNSNY Hospice Care; Public Health Solutions, d/b/a MIC Women's Health Services, formerly Medical and Health Research Association of NYC (D&TC)

Arthur Lindenauer, CPA
Retired CFO, Schlumberger Limited (Oil Field Services)
Affiliations: New Partners, Inc., d/b/a Partners in Care

Joseph D. Mark
Retired President, Aveta, Inc. (Health Insurance Company)
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

Mathy Mezey, R.N., Ed.D.
Professor, NYU College of Nursing
Affiliations: VNSNY Hospice Care

Valerie S. Peltier, Esq.
Disclosed above

John P. Rafferty, CPA
Disclosed above

Ira S. Rimerman
Disclosed above

VNS Choice Community Care

Jose M. de Lasa, Esq.
Of Counsel, Baker and MacKenzie (Law Firm)

Anne Bick Ehrenkranz
Disclosed above
Alice Cooney Frelinghuysen
Disclosed above
Clare Gregorian
Disclosed above

Peter L. Hutchings
Retired Exec. V.P. & CFO, Guardian Life Insurance Co.
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care; Public Health Solutions, d/b/a MIC Women's Health Services, formerly Medical and Health Research Association of NYC (D&TC), NY Organ Donor Network, Empire Health Choice (HMO)

Michael Laskoff
CEO, Managing Partner, Abilto, LLC (Behavioral Health Consulting)
Affiliations: New Partners, Inc., d/b/a Partners in Care

Kwan-Lan (Tom) Mao
Retired V.P., Citigroup (Banking)
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

Jon Mattson
Disclosed above

Phyllis J. Mills, R.N.
Trustee, Mary Flagler Charitable Trust
Affiliations: VNS Continuing Care Development Corporation; VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

Carl H. Pforzheimer, III
Disclosed above

Corinne H. Rieder, Ed.D.
Executive Director, Treasurer, The John A. Hartford Foundation (Charitable Foundation)
Affiliations: VNSNY Hospice Care

Andrew N. Schiff, M.D.
Partner, Aisling Capital (Investments/Finance)
Affiliations: VNS Choice, d/b/a VNSNY Choice; VNS Choice Community Care

Albert L. Siu, MD
Chairman / Professor, Mount Sinai School of
Medicine's Brookdale Department of Geriatrics and
Palliative Medicine
Director, Bronx VA Medical Center's Geriatric
Research, Education, and Clinical Center
Affiliations: VNS Choice, d/b/a VNSNY Choice;
VNS Choice Community Care; Senior Health
Partners (MLTCP); Mount Sinai Care, LLC (ACO)

Kenneth G. Standard, Esq.
Partner, Epstein Becker & Green, PC (Law Firm)
Affiliations: Family Care Services

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

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

The Office of the Professions of the State Education Department, the New York State Physician Profile, the Office of Professional Medical Conduct, the NYS Unified Court System, and the Washington State Department of Health Professional Licensing, where appropriate, indicate no issues with the licensure of the health professionals and other licensed professionals associated with this application. In addition, the attorneys have all submitted current Certificates of Good Standing.

The Division of Hospitals and Diagnostic and Treatment Centers reviewed the compliance history of all affiliated hospitals and diagnostic and treatment centers for the time period 2006 to 2013, or for the time periods specified as the affiliations, whichever applied. The review revealed that the following facility was the subject of enforcement actions:

St. Lukes Roosevelt Hospital Center, Inc. was the subject of an enforcement action in 2006 based on violations citing improperly delayed treatment due to financial considerations. The hospital paid a \$4,000 civil penalty to resolve this matter. The hospital has been in compliance since that time.

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

The Division of Residential Services reviewed the compliance history of the affiliated residential health care facility for the time period specified as the affiliation. It has been determined that the residential health care facility has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The Division of Home and Community Based Services reviewed the compliance history of all affiliated long term home health care programs, certified home health agencies, licensed home care service agencies, and hospices for the time period 2006 to 2013, or for the time periods specified as the affiliations, whichever applied. The review revealed that the following provider was the subject of an enforcement action:

Jacob Perlow Hospice Corporation, now d/b/a MJHS Hospice and Palliative Care (formerly d/b/a Continuum Hospice Care / Jacob Perlow Hospice / Harlem Community Hospice) was cited with condition-level deficiencies in the areas of Governing Authority; Contracts; Administration; Staff and Services; Personnel; Patient / Family Rights; Plan of Care; and Medical Records Systems / Charts, as a result of a November 29, 2006 survey. An enforcement action was resolved with an October 1, 2007 stipulation and order, which included payment of a \$24,000 civil penalty. The agency has been in compliance since that time.

It has been determined that the long term home health care programs, certified home health agencies, licensed home care service agencies, and hospices have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

The Office of Health Insurance Programs Division of Managed Care reviewed the compliance history of the affiliated managed long term care plans and health maintenance organizations for the time period 2006 to 2013, or for the time periods specified as the affiliations, whichever applied.

The Office of Health Insurance Programs Division of Managed Care reports that the Medicaid Advantage Plan operated by VNS Choice, d/b/a VNSNY Choice, has no enforcement history and is currently in substantial compliance. The Managed Long Term Care Plan, and Medicaid Advantage Plus Plan, operated by VNS Choice, d/b/a VNSNY Choice, had a suspension on all new enrollments imposed in April 2013, which was lifted by the Department and new enrollments were allowed to resume, effective November 1, 2013. The Managed Long Term Care Plan, and Medicaid Advantage Plus Plan, operated by VNS Choice, d/b/a VNSNY Choice, are therefore now in substantial compliance. The New York State Office of the Attorney General reports that, although it has a continuing investigation involving this same provider at this time, the Office of the Attorney General no longer requests that the Department hold off the review and approval of the current applications, since the provider has executed an interim agreement to resolve in principle certain aspects of their investigation.

It has therefore been determined that the affiliated managed long term care plans and health maintenance organizations are currently in substantial compliance with all applicable codes, rules, and regulations.

The New York State Office of Mental Health has reviewed the compliance history of the affiliated mental health clinic, for the time period 2008 (initial licensure) to 2013, and has determined the mental health clinic has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The State of New Jersey has reviewed the compliance histories of the health care facilities operated under VNA of Central Jersey, Inc., and VNA of Central Jersey Health Group, Inc., for the time period specified as the affiliation, and has determined the health care facilities have been in substantial compliance with all applicable codes, rules, and regulations.

The State of Washington has reviewed the compliance history of the health care plan administered by Group Health Cooperative, for the time period specified as the affiliation, and has determined the health care plan has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

A review of all personal qualifying information indicates there is nothing in the background of the board members of Visiting Nurse Service of New York Home Care II and Visiting Nurse Service of New York to adversely effect their positions on the boards. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Agreement

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

Premises: 2,400 square feet at 1256 Albany Street, Utica, New York 13501
 Landlord: Parkway Drugs Holding, LLC
 Tenant: VNSNY Home Care II
 Rental: \$2,100 /mo. (\$10.50/sq.ft.)
 Term: 5 years with an additional 5 year renewal option.
 Provisions: The Lessee shall be responsible for insurance, taxes, maintenance and utilities.

The lease arrangement is an 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>YearOne</u>	<u>YearThree</u>
<u>Revenues:</u>		
Commercial Managed Care	\$ 719,878	\$ 1,157,411
Medicare Fee-for-Service	5,650,217	8,317,507
Medicare Managed Care	698,705	1,123,369
Medicaid Managed Care	<u>8,920,808</u>	<u>10,124,839</u>
Total Revenues	\$15,989,608	\$20,723,126
Expenses	<u>15,783,485</u>	<u>20,487,317</u>
Net Gain(Loss)	\$ 206,281	\$ 235,809

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial Managed Care	5.3%	6.3%
Medicare Fee-for-Service	32.0%	36.5%
Medicare Managed Care	5.2%	6.1%
Medicaid Managed Care	55.5%	49.1%
Charity Care	2.0%	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 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 \$3,414,553, appear reasonable based on two months of third year expenses and will be provided through the existing operation. BFA Attachment A is the financial summary for Visiting Nurse Service of New York Home Care.

The submitted budget indicates that the applicant will achieve a \$206,281 and \$235,809 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.

BFA Attachment A is the 2012 audited and 2011 audited financial summary of VNSNY, which shows the applicant has maintained positive working capital, net equity and experienced net loss from operations of \$6,814,000 and \$15,842,000 for 2012 and 2011, respectively. Losses in 2011 and 2012 are related to declines in volume, as well as rate reductions in both Medicare and Medicaid. VNSNY is planning to implement significant operational improvements to reach break-even financial operating results by 2015. Over the course of the next three years VNSNY intends:

- 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, 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.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A Financial Summary for 2011 Audited and 2012 Audited Visiting Nurse Service of New York Home Care



Public Health and Health Planning Council

Project # 132353 E
Alpine Home Health Care, LLC

County: Erie County
Purpose: Establishment

Program: Certified Home Health Agency
Acknowledged: December 30, 2013

Executive Summary

Description

Alpine Home Health Care, LLC, an existing certified home health agency (CHHA) licensed to provide services in Bronx, Kings, New York, Queens, Richmond, Nassau and Suffolk Counties, requests approval to establish a CHHA to serve Erie and Niagara counties. In another separate application, Alpine is simultaneously seeking to expand its service area to include Rockland County. Alpine is affiliated with Centers Plan for Health Living, LLC, which is an operational Managed Long Term Care Plan (MLTCP) that serves Bronx, New York, Kings, Queens, Richmond, Rockland, Niagara and Erie Counties. Additionally, Centers Plan for Healthy Living, LLC plans to expand its proposed MLTCP to include Nassau and Suffolk Counties. The applicant's sole member is Kenneth Rozenberg.

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 area and/or approved population of existing CHHA's. Americare Certified Special Services 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

Program Summary

This proposal seeks approval for Alpine Home Health Care, LLC, a for-profit limited liability company which currently operates an Article 36 Certified Home Health Agency (CHHA) located in Bronx, New York, that serves Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk Counties, to establish a second additional (separate and distinct) Certified Home Health Agency (CHHA) located in Buffalo, New York, to serve the counties of Erie and Niagara, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:

Revenues	\$2,891,262
Expenses	<u>2,743,649</u>
Net Income	\$ 147,613

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, acceptable to the Department. [BFA]

Approval conditional upon:

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

Council Action Date

February 13, 2014

Need Analysis

Background

Alpine Home Health Care, LLC is requesting approval to establish a new Certified Home Health Agency to serve Erie and Niagara 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 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 MLTCPs and is affiliated Centers Plan for Healthy Living. The CHHA will support the affiliated MLTCP by providing care management to high risk-enrollees of the MLTCP. They discussed 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 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. Analysis provided for 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

Alpine Home Health Care, LLC, a for-profit limited liability company, currently operates an Article 36 certified home health agency (CHHA) located in Bronx, New York, that serves Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk Counties. The current proposal seeks approval to establish a second additional (separate and distinct) Certified Home Health Agency (CHHA) located in Buffalo, New York, to serve the counties of Erie and Niagara, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Also pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties, the existing Alpine Home Health Care, LLC, Article 36 Certified Home Health Agency (CHHA) located in Bronx, New York, that currently serves Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk Counties, has submitted additional CON project # 132354-C requesting the addition of Rockland County to its geographic service area. That CON construction project is also on the current agenda.

This proposed new CHHA in Buffalo will conduct business under the name of Alpine Home Health Care, LLC, and will be located at 200 Seventh Avenue, Buffalo, New York 14201, in office space leased from Waterfront Health Care Center, Inc., an Article 28 nursing home. The Alpine Home Health Care, LLC, CHHA to be located in Buffalo, New York, will continue to provide the same authorized services currently offered by the Alpine Home Health Care, LLC, CHHA located in Bronx, New York, which include: home health aide, medical social services, medical supplies/equipment/appliances, nursing, occupational therapy, physical therapy, and speech therapy.

The sole member and manager of Alpine Home Health Care, LLC, is Kenneth Rozenberg, with 100% membership interest. Mr. Rozenberg is currently licensed as both a nursing home administrator and an emergency medical technician in New York State. Mr. Rozenberg has been employed as the Chief Executive Officer of Bronx Center for Rehabilitation and Health Care since 1998. His ownership interests in health care facilities encompass the following nineteen (19) providers:

- Williamsbridge Manor Nursing Home (Nursing Home) – 1997 to present
- Bronx Center for Rehabilitation and Health Care (Nursing Home) – 1998 to present
- University Nursing Home (Nursing Home) – 2000 to present
- Dutchess Center for Rehabilitation and Health Care (Nursing Home) – 2004 to present
- Queens Center for Rehabilitation and Health Care (Nursing Home) – 2004 to present
- SeniorCare EMS (Ambulance Company) – 2005 to present

- Amazing Home Care, Inc. (Licensed Home Care Services Agency) – 2006 to present
- Brooklyn Center for Rehabilitation and Residential Health Care (Nursing Home) – 2007 to present
- Alpine Home Health Care, LLC (CHHA) – 2008 to present
- Rome Center for Rehabilitation and Health Care, formerly Stonehedge Health and Rehabilitation Center – Rome (Nursing Home) – 2008 to present
- Chittenango Center for Rehabilitation and Health Care, formerly Stonehedge Health and Rehabilitation Center – Chittenango (Nursing Home) – 2008 to present
- Bushwick Center for Rehabilitation and Health Care, formerly Wartburg Lutheran Home for the Aging (Nursing Home) – 2008 to present
- Holliswood Center for Rehabilitation, formerly Holliswood Care Center (Nursing Home) – 2010 to present
- Boro Park Center for Rehabilitation and Health Care (Nursing Home) – 2011 to present
- Waterfront Health Care Center (Nursing Home) – 2011 to present
- Fulton Center for Rehabilitation and Health Care (Nursing Home) – 2012 to present
- Richmond Center for Rehabilitation and Specialty Healthcare (Nursing Home) – 2012 to present
- The Centers Plan for Healthy Living (Managed Long Term Care Plan) – 2013 to present
- Corning Center for Rehabilitation (Nursing Home) – 2013 to present

A search of the above named member, manager, employer, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List.

The New York State Department of Health's Bureau of Professional Credentialing and Bureau of Emergency Medical Services indicate that Mr. Rozenberg's professional licenses and certifications are both in good standing.

The Division of Quality and Surveillance for Nursing Homes and ICF/MRs reviewed the compliance history of the affiliated nursing homes for the time periods specified as the affiliations.

An enforcement action was taken against Bronx Center for Rehabilitation and Health Care in 2007 based on the findings of an April, 2007, survey. Deficiencies were cited in Quality of Care: Highest Practicable Potential; and Quality of Care: Nutrition. A \$2,000 civil penalty was assessed.

An additional enforcement action was taken against Bronx Center for Rehabilitation and Health Care in 2011 based on the findings of an April, 2010, survey. Deficiencies were cited in Quality of Care: Accidents and Supervision; and Administration. A \$4,000 civil penalty was assessed.

An enforcement action was taken against Williamsbridge Manor Nursing Home in 2008 based on the findings of a December, 2007, survey. Deficiencies were cited in Quality of Care. A \$1,000 civil penalty was assessed.

An enforcement action was taken against Stonehedge Health and Rehabilitation Center – Chittenango (now Chittenango Center for Rehabilitation and Health Care) in 2010 based on the findings of an October, 2009, survey. Deficiencies were cited in Quality of Care: Accidents and Supervision; and Governing Body. A \$4,000 civil penalty was assessed.

An additional enforcement action was taken against Chittenango Center for Rehabilitation and Health Care (formerly Stonehedge Health and Rehabilitation Center – Chittenango) in 2012 based on the findings of a January, 2011, survey. Deficiencies were cited in Quality of Care: Pressure Sores; and Quality of Care: Catheters. A \$20,000 civil penalty was assessed.

An enforcement action was taken against Waterfront Health Care Center in 2013 based on the findings of a September, 2011, survey. Deficiencies were cited in Quality of Care: Accidents and Supervision. A \$2,000 civil penalty was assessed.

It has been determined that the affiliated nursing homes are operating in substantial compliance with all applicable codes, rules and regulations.

The Division of Home and Community Based Care reviewed the compliance history of the affiliated certified home health agency and licensed home care services agency for the time period specified as the affiliation. It has been determined that the affiliated certified home health agency and licensed home care services agency have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

The Bureau of Emergency Medical Services reviewed the compliance history of the affiliated ambulance company for the time period specified as the affiliation. It has been determined that the affiliated ambulance company has operated in substantial compliance with all applicable codes, rules and regulations.

The Office of Health Insurance Programs Division of Managed Care reviewed the compliance history of the affiliated managed long term care plan for the time period specified as the affiliation. It has been determined that the affiliated managed long term care plan has operated in substantial compliance with all applicable codes, rules and regulations.

A review of all personal qualifying information indicates there is nothing in the background of the member and manager of Alpine Home Health Care, LLC, to adversely effect his position in the organization. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

<h2>Financial Analysis</h2>

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site that they will occupy:

Premises: 3,500 square feet located at 200 Seventh Street, Buffalo, New York
 Lessor: Waterfront Health Care Center, Inc.
 Lessee: Alpine Home Health Care, LLC
 Term: Five years with a renewable five year term.
 Rental: \$52,000 annually (\$14.85 per sq. ft.)
 Provisions: The leasee shall be responsible for real estate taxes, maintenance and utilities.

Operating Budget

The applicant has submitted an incremental budget, in 2014 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Managed Care	\$630,603	\$1,169,979
Medicare Fee For Service	559,214	1,037,528
Commercial Managed Care	<u>259,417</u>	<u>683,755</u>
Total Revenues	\$1,449,234	\$2,891,262
Total Expenses	\$1,401,154	\$2,743,649
Net Income	\$48,080	\$147,613
Utilization:		
Visits	5,191	13,980
Hours	32,246	72,503

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	34.88%	34.94%
Medicare Fee For Service	29.90%	29.95%
Commercial Managed Care	33.22%	33.11%
Charity Care	2.00%	2.00%

Expense and utilization assumptions are based on the historical experience of the applicant's existing CHHA. Revenues are reflective of current payment rates including the implementation of the Medicaid Episodic Payment System.

Capability and Feasibility

There are no total project costs associated with this application.

Working capital requirements are estimated at \$457,274, which is equivalent to two months of the incremental third year expenses. The applicant has indicated the working capital requirement will be met via equity from the members of Alpine Home Health Care, LLC. BFA Attachment A is the personal net worth statement of the sole member of Alpine Home Health Care, LLC, which indicates the availability of sufficient funds for the working capital requirement.

The submitted budget indicates an incremental net income of \$48,080 and \$147,613 during the first and third years, respectively. Revenues are reflective of current payment rates as well as the implementation of the Medicaid Episodic Payment System. The submitted budget appears reasonable.

BFA Attachment B is the 2012 certified financial statements of Alpine Home Health Care, LLC. As shown, the facility had a positive working capital position and a positive net asset position during 2012. Also, the facility incurred a net loss of \$2,071,973 through 2012. The applicant has indicated that the reason for the loss was start-up costs for the subsidiary entity, Centers Plan for Healthy Living's managed care program.

BFA Attachment C is the October 31, 2013 internal financial statements of Alpine Home Health Care, LLC. As shown, the facility had a negative working capital position and a positive net asset position through October 31, 2013. The applicant has indicated that the minor working capital deficit reflects a current year member draw, but, as in the past, the member expects to end the year in a positive working capital position. Also, the facility achieved a net income of \$164,155 through October 31, 2013.

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	Personal Net Worth Statement
BFA Attachment B	2012 certified financial statements of Alpine Home Health Care, LLC
BFA Attachment C	October 31, 2013 internal financial statements of Alpine Home Health Care, LLC

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

January 30, 2014

Certificates

Restated Articles of Organization

Exhibit # 13

Applicant

1. The Plastic Surgery Center of Westchester , LLC

Certificate of Incorporation

Exhibit # 14

Applicant

1. Montefiore Foundation, Inc.



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Colleen Frost, Executive Secretary
Public Health and Health Planning Council

FROM: James E. Dering, General Counsel *JED*
Division of Legal Affairs

DATE: October 30, 2013

SUBJECT: Restated Articles of Organization of The Plastic Surgery Center of Westchester, LLC. changing its name to "Surgical Specialty Center of Westchester, LLC."

Attached is the Restated Articles of Organization of The Plastic Surgery Center of Westchester, LLC. This Article 28 limited liability company seeks approval to change its name to "The Surgical Specialty Center of Westchester, LLC." Public Health and Health Planning Council approval for a change of corporate name is required by 10 NYCRR § 600.11 (a) (4). Please be advised that Public Health Council approved a prior Restated Articles of Organization that changed the name of the applicant from "White Plains Surgeons Project, LLC" to The Plastic Surgery Center of Westchester, LLC.

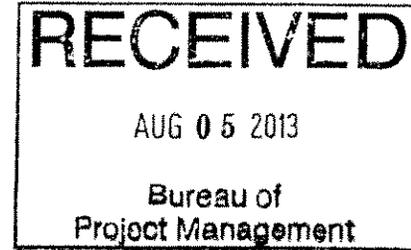
Also attached is a letter dated August 2, 2013 from Benjamin Malerba, the company's attorney. As explained in that letter, the company was converted from a single specialty to a multi-specialty ambulatory surgery center and it believes that the proposed name change more accurately reflects the services that it currently provides.

The Department has no objection to the name change, and the Restated Articles of Organization is in legally acceptable form.

Attachments

BENJAMIN MALERBA
PARTNER
(516) 357-3128
benjamin.malerba@rivkin.com

August 2, 2013



BY OVERNIGHT MAIL

Barbara DeICogliano
Director of Bureau of Project Management
New York State Department of Health
1842 Corning Tower
Empire State Plaza
Albany, NY 12237

Re: Request to Change the Name of The Plastic Surgery Center of Westchester, LLC to Surgical Specialty Center of Westchester, LLC
Operating Certificate No.: 594520011R 5945200R
Facility ID: 9231

Dear Ms. DeICogliano:

We represent The Plastic Surgery Center of Westchester, LLC (the "Center") and we write to you, on behalf of the Center, to request a change of name of the Center from "The Plastic Surgery Center of Westchester, LLC" to "Surgical Specialty Center of Westchester, LLC". The Center was converted from a single specialty to a multi-specialty ambulatory surgery center and it believes that the proposed name more accurately reflects the services that it currently provides. Provided that this request is approved, the Center will change its signage, letterhead and otherwise hold itself out to the public using the name "Surgical Specialty Center of Westchester, LLC".

Enclosed herewith is a copy of (i) a draft of the amended and restated Articles of Organization that we intend to file with the Department of State, which includes the name change (Exhibit A); and (ii) the filed Articles of Organization (Exhibit B). We also request that the Center's Operating Certificate be amended to reflect the new name (Exhibit C).

If you have any questions, please feel free to contact me.

Respectfully submitted,

RIVKIN RADLER LLP

Benjamin P. Malerba
Benjamin P. Malerba

BPM/ic

cc: Samuel J. Beran, M.D.
2819279 v1

RESTATED

ARTICLES OF ORGANIZATION

OF

THE PLASTIC SURGERY CENTER OF WESTCHESTER, LLC

Under Section 214 of the Limited Liability Company Law of the State of New York

The undersigned being an authorized person of the Limited Liability Company does hereby certify:

FIRST: The name of the limited liability company is THE PLASTIC SURGERY CENTER OF WESTCHESTER, LLC.

SECOND: The date when the articles of organization were filed by the Department of State is February 12, 2007. The name under which it formed was WHITE PLAINS SURGEONS PROJECT, LLC.

THIRD: The text of the articles of organization is hereby amended and restated to change the name, the purpose and address of the limited liability company and shall read as follows:

ARTICLES OF ORGANIZATION

OF

SURGICAL SPECIALTY CENTER OF WESTCHESTER, LLC

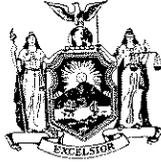
Under Section 203 of the Limited Liability Company Law of the State of New York

FIRST: The name of the limited liability company is SURGICAL SPECIALTY CENTER OF WESTCHESTER, LLC.

SECOND: The Company is organized and shall operate for the sole purpose of owning and operating a multi-specialty ambulatory surgery center under Article 28 of the New York Public Health Law which shall be located at (and the principal office of which shall be) 440 Mamaroneck Avenue, Harrison, New York 10528 in the county of Westchester, provided, however, that the Company shall not engage in such act or activity without first obtaining the consent or approval of the New York State Department of Health.

THIRD: The county within this State in which the office of the company is to be located is Westchester County.

FOURTH: The Company is not to have a specific date of dissolution in addition to the events of dissolution set forth in Section 701 of the LLCL.



STATE OF NEW YORK - DEPARTMENT OF HEALTH

M E M O R A N D U M

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel *JED*
Division of Legal Affairs

DATE: January 17, 2014

SUBJECT: Proposed Certificate of Incorporation of the Montefiore Foundation, Inc.
(Foundation)

The attached proposed Certificate of Incorporation of Montefiore Foundation, Inc. (“the Foundation”), dated November 22, 2013, is being submitted for Public Health and Health Planning Council approval. The Foundation’s Certificate includes in its purposes the solicitation and receipt of grants and contributions of every kind and description, wherever situated, within or without New York State without limitations to value for promoting and furthering the charitable, educational and scientific purposes of the tax-exempt entities within the Montefiore Health System, which includes entities that are licensed pursuant to Article 28 of the Public Health Law. Public Health and Health Planning Council approval is therefore required by Public Health Law § 2801-a(1) and (6).

The following documents and information are attached in support of the Foundation’s request for approval.

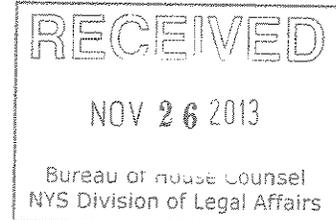
1. A letter dated November 22, 2013, from Jay E. Gerzog, requesting the creation of the Foundation and including a generalized description of the fundraising activities to be undertaken by the Foundation;
2. An Organizational Chart of Montefiore Health Systems, Inc.;
3. Information regarding the four members of the Foundation’s Initial Board of Directors;
4. The proposed Certificate of Incorporation of the Foundation;
5. The proposed bylaws for the Foundation;
6. A letter from the intended beneficiary acknowledging and approving of the Foundation’s proposed fund-raising activities on their behalf;

cc: Barbara DeICogliano

November 22, 2013

VIA FEDEX

Director, Bureau of House Counsel
Division of Legal Affairs
NYS Department of Health
Corning Tower, Room 2484
Empire State Plaza
Albany, New York 12237



**Re: Request for Consent to the Filing of the Certificate of Incorporation of
Montefiore Foundation, Inc.**

Dear Sir/Madam:

I am writing to request the Department of Health's review and consent to the filing of the attached proposed Certificate of Incorporation of Montefiore Foundation, Inc. (the "Foundation").

The Foundation is being formed under the New York State Not-for-Profit Corporation Law to solicit charitable contributions to support the Section 501(c)(3) tax-exempt charitable organizations within the system of affiliated health care providers and related corporations and legal entities directly or indirectly controlled by Montefiore Health System, Inc., a New York not-for-profit corporation (hereinafter referred to collectively as the "Montefiore Health System"), including the following health care facilities licensed under the New York State Public Health Law ("PHL") as indicated below (hereinafter referred to collectively as the "Licensed Supported Organizations"):

- Montefiore Medical Center – licensed under Article 28 of the PHL as a hospital
- Montefiore New Rochelle Hospital – licensed under Article 28 of the PHL as a hospital
- Montefiore Mount Vernon Hospital – licensed under Article 28 of the PHL as a hospital
- Schaffer Extended Care Center – licensed under Article 28 of the PHL as a nursing home

The Foundation will also fundraise for other Section 501(c)(3) tax-exempt charitable organizations within the Montefiore Health System that are not licensed health care providers. The parent organization and sole member of the Foundation will be Montefiore Health System, Inc., which also serves as the parent organization of the Montefiore Health System as a whole. It is not presently anticipated that the Foundation will control any other organizations. A diagram of the Licensed Supported Organizations and other legal entities included within the Montefiore Health System and their respective relationships is attached as **Exhibit 1**.

The Foundation is being formed to centralize and streamline the fundraising efforts of the Montefiore Health System. The Foundation will be instrumental in obtaining additional financial resources for the continued operation of the Montefiore Health System and in fulfilling the health care needs of the patient population it serves. In order to fulfill its purposes, the Foundation will solicit and manage charitable contributions, gifts, grants and other forms of support for the benefit of the tax-exempt charitable affiliates of the Montefiore Health System. The Foundation will solicit funds for both the general purposes of the Licensed Supported Organizations and their affiliates and for any specific purposes as determined by the Foundation's Board of Trustees from time to time (e.g. renovation of the emergency department, breast cancer research, charity care, etc.). Forms of solicitation employed by the Foundation may include, but are not limited to, directed fundraising campaigns, galas, cocktail parties, dinners, golf and tennis outings, and solicitations by mail and telephone.

The following is information required by the New York State Department of Health regarding each of the four members of the Foundation's initial Board of Directors:

- **Steven M. Safyer, M.D.**
 - *Residential Address: 26 East 93rd Street, Apt 3CD, New York, NY 10128*
 - *Occupation: President and Chief Executive Officer*
 - *Employer Name and Address: Montefiore Medical Center*
 - *Past and present affiliations with other charitable or non-profit organizations: See **Exhibit 2a**.*

- **Philip O. Ozuah, M.D., Ph.D.**
 - *Residential Address: 8 Ronwood Road, Chestnut Ridge, NY 10977*
 - *Occupation: Executive Vice President and Chief Operating Officer*
 - *Employer Name and Address: Montefiore Medical Center*
 - *Past and present affiliations with other charitable or non-profit organizations: See **Exhibit 2b**.*

- **Christopher S. Panczner, Esq.**
 - *Residential Address: 531 East 20th Street, Apt. 10G, New York, NY 10010*
 - *Occupation: Senior Vice President and General Counsel*
 - *Employer Name and Address: Montefiore Medical Center*
 - *Past and present affiliations with other charitable or non-profit organizations: See **Exhibit 2c**.*

- **Lynn Richmond**
 - *Residential Address: 32-76 46th Street, Astoria, NY 11103*
 - *Occupation: Senior Vice President and Chief of Staff*
 - *Employer Name and Address: Montefiore Medical Center*
 - *Past and present affiliations with other charitable or non-profit organizations: See **Exhibit 2d**.*

The following documents required by the New York State Department of Health relating to the proposed incorporation of the Foundation are enclosed:

- 1) A copy of the signed and dated proposed Certificate of Incorporation of the Foundation (attached as **Exhibit 3**);
- 2) A copy of the proposed draft of the Foundation's Bylaws to be adopted following the incorporation of the Foundation (attached as **Exhibit 4**);
- 3) An original signed and dated letter from a duly-authorized representative of each of the Licensed Supported Organizations acknowledging that such Organizations will accept funds raised for them by the Foundation (attached as **Exhibit 5**).

If you have any questions or require any additional information, please call me directly at (212) 351-4940 at your earliest convenience. Thank you.

Very truly yours,



Jay E. Gerzog

Enclosures

Exhibit 1

Exhibit 2a

**Steven M. Safyer, M.D.
President and Chief Executive Officer
Montefiore Medical Center**

Office of the President
111 East 210th Street
Bronx, NY 10467-2490

Current Responsibilities

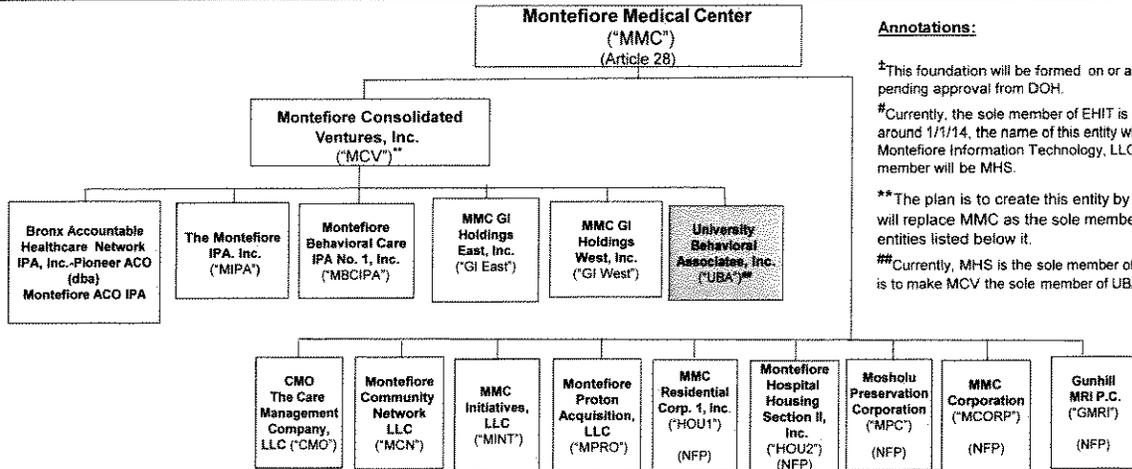
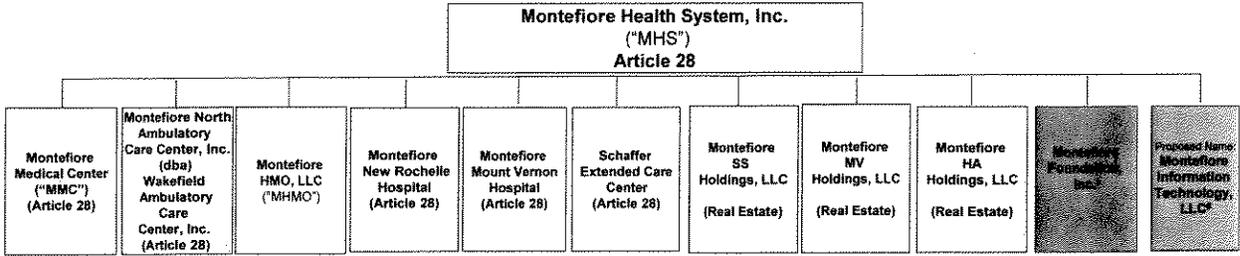
Steven M. Safyer, M.D., is president and chief executive officer of Montefiore in New York City. Montefiore is the University Hospital and Academic Medical Center for Albert Einstein College of Medicine and a full-service, integrated delivery system caring for patients from the New York metropolitan region. An accomplished physician leader and highly respected healthcare executive, Dr. Safyer has been at Montefiore since 1982, previously serving as senior vice president and chief medical officer.

Prior Experience

Throughout his medical career at Montefiore, Dr. Safyer has been a strong advocate for underserved populations, including those incarcerated and those affected by the public health crises of HIV and tuberculosis. He has built extensive primary care networks, developed innovative business and clinical strategies to manage care and assume risk, championed the adoption of cutting-edge clinical information systems and created nationally recognized quality and safety programs. He has nurtured a close relationship with Einstein which has resulted in superior, comprehensive specialty care being provided in Montefiore's Centers of Excellence in the areas of heart, transplant, cancer, The Children's Hospital at Montefiore and joint mobility.

Education, Awards and Professional Affiliations

Dr. Safyer received his Bachelor of Science degree from Cornell University and his medical degree from Albert Einstein College of Medicine. He completed his internship and residency in social medicine at Montefiore. He is board certified in internal medicine and a professor of medicine in the department of medicine and professor of epidemiology and population health in the department of epidemiology and population health at Einstein. Dr. Safyer currently serves as Chair of the League of Voluntary Hospitals and Homes and past chairman of the Board of Governors for the Greater New York Hospital Association (GNYHA). He is a board member of the Hospital Association of New York State (HANYS); Association of American Medical Colleges' Council of Teaching Hospitals (COH) Administrative Board; The Macy's Foundation; New York eHealth Collaborative (NYcE); Coalition to protect America's Health Care; and University HealthSystem Consortium (UHC). He is an active participant on committees for organizations such as the Association of American Medical Colleges; New York State Council on Graduate Medical Education; Medicaid Redesign Team; and Chase Regional Advisory Board. He was the previous Chair of the Bronx Regional Health Information Organization, an independent organization for health information sharing. A frequent lecturer on topics including population-based medicine, healthcare reform, and public health, Dr. Safyer has authored and co-authored numerous articles in peer-reviewed journals, covering subjects ranging from electronic medical records to managing the health of a population, to tuberculosis in prison populations.



Annotations:

‡ This foundation will be formed on or around 1/1/14, pending approval from DOH.

Currently, the sole member of EHIT is MMC. On or around 1/1/14, the name of this entity will be changed to Montefiore Information Technology, LLC, and the sole member will be MHS.

** The plan is to create this entity by 1/1/14. MCV will replace MMC as the sole member of the entities listed below it.

*** Currently, MHS is the sole member of UBA. The plan is to make MCV the sole member of UBA as of 1/1/14.

Exhibit 2b

Philip O. Ozuah, MD, PhD

**Executive Vice President
Chief Operating Officer**

Dr. Ozuah is Executive Vice President and Chief Operating Officer of Montefiore. A nationally recognized physician, leader, executive, researcher, teacher and author, Dr. Ozuah completed his residency in social pediatrics at Montefiore. In addition to his medical degree, he also holds a Doctorate in Educational Leadership and Administration. He previously served as Professor and University Chairman of Pediatrics at Albert Einstein College of Medicine and Physician-in-Chief of the Children's Hospital at Montefiore (CHAM).

As the leader of CHAM and the Department of Pediatrics, he expanded access for underserved communities, recruited and cultivated outstanding talent, advanced programs of excellence, fostered innovations in medical education, quadrupled specialty case volumes and National Institutes of Health (NIH) funding, enhanced CHAM's regional and national reputation, and improved financial and operational performance. Under his leadership, the Department of Pediatrics became a Top-20 ranked NIH-funded department, and CHAM became one of "America's Best Children's Hospitals." He is also Professor of Pediatrics and Professor of Epidemiology and Population Health at Einstein.

Exhibit 2c

Christopher S. Panczner, SR VP & General Counsel, Montefiore Medical Center

Trustee, RESOLVE NYC, New York, NY – 1998-2001

Trustee, The Acorn School, New York, NY 2001 – 2004

Volunteer, Educational Alliance, New York, NY – 2004 – 2009

Member, Development Committee, Grace Church School, New York, NY - 2012-2013

Director, Barnes Landing Association, Amagansett, NY - 2012-present

Adjunct Professor, Pace University School of Law

Exhibit 2d

Lynn Richmond

Montefiore Medical Center
Senior Vice President and Chief of Staff

- 2013 Bronx RHIO
- 2011 H-CAP
- 1994 Chair, Domestic Violence Task Force, Bellevue Hospital Center
- 1992 Staff Writer, NYC Task Force on Control of TB in Criminal Justice System, appointed by Commissioners of Health and Correction
- 1991 Chair, Addiction Committee, Montefiore Rikers Island Health Services

Exhibit 3

CERTIFICATE OF INCORPORATION

OF

MONTEFIORE FOUNDATION, INC.

Under Section 402 of the New York State Not-for-Profit Corporation Law

The undersigned, a natural person over the age of eighteen years, for the purpose of forming a corporation under Section 402 of the New York State Not-for-Profit Corporation Law (the “NPCL”), hereby certifies as follows:

FIRST: The name of the corporation is Montefiore Foundation, Inc. (hereinafter referred to as the “Corporation”).

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL and shall be a Type B corporation as defined in Section 201 of the NPCL.

THIRD: (a) The Corporation shall be a corporation with members. The Corporation shall have one member and the the sole member of the Corporation shall be Montefiore Health System, Inc. (sometimes hereinafter referred as the “Member”), a New York Type B not-for-profit corporation qualifying under Section 501(c)(3) of the Code (as defined in Article FIFTEENTH below). The rights, powers, duties and obligations of the Member shall be as set forth in the By-Laws of the Corporation.

(b) The Corporation shall be a constituent entity of the “Montefiore Health System”, an integrated group of affiliated health care providers and related legal entities of which Montefiore Health System, Inc. is the direct or indirect parent corporation, which affiliated group includes, in addition to the Corporation: (i) Montefiore Medical Center, Montefiore New Rochelle Hospital, Montefiore Mount Vernon Hospital, Schaffer Extended Care Center, and Montefiore North Ambulatory Care Center, Inc., each being a New York not-for-profit corporation licensed under Article 28 of the New York State Public Health Law (“PHL”) and exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code and other than a private foundation by reason of their being described in Sections 509(a)(1) and 170(b)(i)(A)(iii) of the Code; and (ii) such other not-for-profit and for profit corporations and other legal entities as from time to time become constituent entities of the Montefiore Health System.

FOURTH: (a) The Corporation is organized, and shall be operated, exclusively for the charitable, educational and scientific purposes of promoting, facilitating and enhancing the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well being of, the communities served by the Montefiore Health System, by:

(1) soliciting, collecting, receiving and managing funds and other contributed assets to be received by gift, grant, donation, deed, purchase, legacy, bequest, devise or otherwise, and to otherwise acquire money and property (real or personal) of every kind and description, wherever situated, within or without the State of New York, and upon any terms and conditions, without limitations as to amount or value except such limitations, if any, as may now or hereafter be imposed by law, for use in furtherance of providing financial support to, and otherwise promoting and furthering the charitable, educational and scientific purposes of the Section 501(c)(3) tax-exempt entities within the Montefiore Health System and promoting the best interests of the patient populations served thereby; and

(2) subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable, educational and scientific purposes.

(b) The Corporation is organized, and shall be operated and shall engage in activities in furtherance of the purposes set forth in Paragraph (a) of this Article FOURTH, exclusively for charitable, educational and scientific purposes in the United States and abroad within the meaning of Section 170(c)(2)(B) and Section 501(c)(3) of the Code.

(c) Notwithstanding anything to the contrary in this Certificate, nothing herein shall authorize the Corporation, directly or indirectly, to engage in or to include among its purposes any of the activities mentioned in Section 404(a) through (v) of the NPCL, without the Corporation first having obtained the consent or approval from the appropriate governmental authority with respect thereto.

(d) Nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York to: (1) provide hospital services or health related services, as such terms are defined in the PHL; (2) establish, operate or maintain a hospital, a diagnostic and treatment center, a nursing home, or any facility providing health related services required to be licensed under Article 28 of the PHL; (3) establish, operate or maintain a home care services agency, a hospice, a managed care organization or a health maintenance organization, as provided for by Articles 36, 40 and 44, respectively, of the PHL and implementing regulations; (4) establish and operate an independent practice association; (5) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law; or (6) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL. Additionally, nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York, to (a) hold itself out as providing, or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

(e) The Corporation shall not operate for the purpose of carrying on a trade or business for profit.

FIFTH: In furtherance of its corporate purposes as set forth in Article FOURTH hereof, the Corporation shall have all of the general rights, powers and authority enumerated in the NPCL, including, in particular (a) Section 202 of the NPCL; (b) the power to solicit and receive grants, bequests and contributions for the purposes of the Corporation and the power to maintain a fund or funds of real or personal property in furtherance of the Corporation's purposes; provided, however, that notwithstanding any provision to the contrary set forth in Article FOURTH hereof or any other Article of this Certificate of Incorporation, the Corporation shall not have, and shall not be authorized to exercise, any right, power or authority in respect of any entity affiliated with the Montefiore Health System that is or may be licensed under Article 28, Article 28-A, or Article 36 of the PHL that would require establishment or licensure of the Corporation as an operator or active member of any such entity, including, but not limited to, any power or authority with regard to any of the matters set forth in 10 NYCRR Section 405.1(c).

SIXTH: No part of the Corporation's assets, net earnings, income or profits shall inure to the benefit of, or be distributable to, any trustee, director, officer or employee of the Corporation or other private person; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to or for the Corporation in furtherance of one or more of its purposes. No trustee, director, officer or employee of the Corporation or any private person shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

SEVENTH: No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent permitted by Section 501(h) of the Code if the Corporation makes an election thereunder), and the Corporation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

EIGHTH: Notwithstanding anything to the contrary in this Certificate, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status (a) as a corporation which is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, or (b) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.

NINTH: The names and addresses of initial members of the Corporation's Board of Trustees, who shall serve as Trustees until the initial meeting of the Board of Trustees of the Corporation and until their successors are elected, are as follows:

Steven M. Safyer, M.D.
111 East 210th Street
Bronx, New York 10467-2490

Philip O. Ozuah, M.D., Ph.D.
111 East 210th Street
Bronx, New York 10467-2490

Christopher S. Panczner
111 East 210th Street
Bronx, New York 10467-2490

Lynn Richmond
111 East 210th Street
Bronx, New York 10467-2490

TENTH: In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to:

(a) Montefiore Health System, Inc. and/or one or more affiliates or successors thereof, as are then in good standing and qualifying under Section 501(c)(3) of the Code, for use by such entities in furtherance of charitable, scientific and educational purposes substantially similar to those of the Corporation; or

(b) in the event that Montefiore Health System, Inc. and its affiliates and successors have ceased to exist or are not then qualifying under Section 501(c)(3) of the Code, then to one or more charitable, educational and/or scientific organizations as are then in existence and qualifying under Section 501(c)(3) of the Code, or to the Federal, State and/or local governments for a related public purpose, in such proportions as the Board of Trustees of the Corporation shall determine, for use by such entities in furtherance of charitable, scientific and educational purposes substantially similar to those of the Corporation,

in either case, subject to compliance with (i) the rules and regulations of the New York State Department of Health and any other applicable laws of the State of New York and (ii) an order of a Justice or the Supreme Court of the State of New York.

ELEVENTH: The office of the Corporation shall be located in Bronx County, New York.

TWELTH: In accordance with Section 508(e) of the Code, if in any taxable year the Corporation is a private foundation as defined in Section 509(a) of the Code, then in such year:

(a) The Corporation shall distribute such amounts for each taxable year at such time and in such manner so as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(b) The Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;

(c) The Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code;

(d) The Corporation shall not make any investments in such manner so as to subject the Corporation to tax under Section 4944 of the Code; and

(e) The Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

THIRTEENTH: No trustee, director or officer of the Corporation shall have any personal liability to the Corporation or its members for damage resulting from any breach of such trustee's, director's or officer's duties as a trustee, director or officer of the Corporation; provided, however, that this Article THIRTEENTH shall not eliminate or limit the liability of any trustee, director or officer: (a) if a judgment or other final adjudication adverse to such trustee, director or officer establishes that his or her acts or omissions (i) were in bad faith or involved intentional misconduct or a knowing violation of law or that such trustee, director or officer personally gained in fact a financial profit or other advantage to which he or she was not legally entitled, or (ii) violated Section 719 of the NPCL, unless the NPCL is amended or supplemented to so limit or eliminate such liability; or (b) to the extent that such personal liability is otherwise required by, or can not otherwise be eliminated in accordance with, the NPCL.

FOURTEENTH: (a) The Corporation shall, to the fullest extent permitted by the NPCL, indemnify any present or former trustee, director, officer, employee or agent of the Corporation or the personal representatives thereof, made or threatened to be made a party in any civil or criminal action or proceeding by reason of the fact that such trustee, director, officer, employee or agent, or his or her testator or intestate, is or was a member, trustee, director, officer, employee or agent of the Corporation or, at the request of the Corporation, served any other organization, entity or other enterprise in any capacity, to the full extent and in all such circumstances as shall be permitted under the NPCL, and all such indemnified costs and expenses incurred shall be advanced by the Corporation pending the final disposition of such action or proceeding.

(b) Such required indemnification shall be subject only to the exception that no indemnification may be made to or on behalf of any trustee, director, officer, employee or agent in the event and to the extent that a judgment or other final adjudication adverse to the trustee, director, officer, employee or agent establishes that such trustee's, director's, officer's, employee's or agent's acts were committed in bad faith or involved intentional misconduct or a knowing violation of law or that such trustee, director, officer, employee or agent personally gained in fact a financial profit or other advantage to which he or she was not legally entitled (provided, however, that indemnification shall be made upon any successful appeal of any such adverse judgment or final adjudication).

(c) The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation, its members, trustees, directors, officers, employees and agents of the Corporation, and other persons otherwise entitled to indemnification, to the full extent and in such circumstances as is permitted under the NPCL. No indemnification shall be made under this Article FOURTEENTH if such indemnification would be inconsistent with the provisions of the Corporation's By-Laws, a resolution of Corporation's member(s) or Board of Trustees or other proper corporate action, or, the provisions of Sections 4941 through 4945 or Section 4958 of the Code, as any such of the foregoing may be in effect at the time of the accrual

of the alleged cause of action asserted in the threatened or pending action or proceeding, which prohibits or otherwise limits such indemnification.

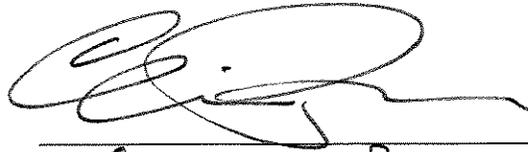
FIFTEENTH: All references herein to the Code are to the Internal Revenue Code of 1986, and shall be deemed to include both amendments thereto and corresponding statutory provisions of future United States Internal Revenue Laws which supercede the Code or particular provisions thereof.

SIXTEENTH: The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon the Secretary of State is: Montefiore Foundation, Inc., Attn: Office of the General Counsel, 111 East 210th Street, Bronx, New York 10467.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF this Certificate of Incorporation has been signed and the statements made herein affirmed as true under penalties of perjury this 21st day of November, 2013.



By: Christopher S. Panczner
Sole Incorporator

CERTIFICATE OF INCORPORATION
OF
MONTEFIORE FOUNDATION, INC.

Pursuant to Section 402 of the
Not-For-Profit Corporation Law

Jay E. Gerzog, Esq.
EPSTEIN, BECKER & GREEN, P.C.
250 Park Avenue
New York, New York 10177-1211

212.351.4500

Exhibit 4

DRAFT

BYLAWS
OF
MONTEFIORE FOUNDATION, INC.

ARTICLE I.

PURPOSE

Section 1.1 Principal Office. Montefiore Foundation, Inc. (the “Corporation”) shall have its principal office in the Bronx, New York or at such other place as may be determined by the Board of Trustees from time to time.

Section 1.2 Purposes. The Corporation shall at all times be operated exclusively for charitable, scientific, and educational purposes within the meaning of Section 170(c)(2)(B) and 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), as set forth in the Corporation’s Certificate of Incorporation.

Section 1.3 Powers. The Corporation shall have all of the powers of a not-for-profit corporation provided for under the New York State Not-for-Profit Corporation Law (“NPCL”), subject to any limitations contained in its Certificate of Incorporation and these Bylaws, as such may be amended from time to time; provided, however, the Corporation shall exercise its powers only in furtherance of its charitable, scientific, and educational purposes as such terms are defined under Section 501(c)(3) of the Code and as further specified in the Corporation’s Certificate of Incorporation.

ARTICLE II.

MEMBERS

Section 2.1 Sole Member. The sole member of the Corporation shall be Montefiore Health System, Inc. (the “Member”), a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law that is exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code.

Section 2.2 Powers and Duties; Reserved Powers. In addition to its other powers and responsibilities established by law, by the Certificate of Incorporation of the Corporation and by these Bylaws, the Member shall have the following reserved powers:

(a) The power to elect the Trustees of the Corporation and to remove the Trustees of the Corporation subject to Section 3.3 of these Bylaws; and

(b) The power to authorize (i) the amendment and restatement of the Certificate of Incorporation and Bylaws of the Corporation; (ii) the merger or consolidation of the Corporation with any other entity; (iii) the sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all the property and assets of the Corporation; and (iv) the voluntary dissolution of the Corporation, and the plan of distribution of assets upon dissolution and the revocation of voluntary dissolution proceedings.

Section 2.3 Meetings of the Member. The Member may hold regular or special meetings, either in or outside of the State of New York. Regular and special meetings of the Member may be held at such times and such places as determined by the Member and set forth in the notices of meeting. The Member, the Chair of the Board of Trustees, or the Board of Trustees may cause special meetings of the Member. The annual meeting of the Member shall be held at such time and place as shall be stated in the notice of meeting.

Section 2.4 Action by Member.

(a) The vote of a majority of the Members' Board of Trustees shall be deemed to constitute the vote and act of the Member, except as provided in Section 3.5 of these Bylaws for the removal of Trustees by the Member.

(b) The Annual Meeting of the Member's Board of Trustees shall be deemed to constitute the annual meeting of the Member of the Corporation required by Section 603(b) of the Not-For-Profit Corporation Law and as provided in Section 2.3 hereof.

(c) Each of the reserved powers set forth in Section 2.2 hereof, including without limitation: (i) the appointment of the Trustees of the Corporation, (ii) any amendment to the Corporation's Certification of Incorporation or these Bylaws, or (iii) the dissolution, merger, or sale of all or substantially all of the assets of the Corporation, shall require the affirmative action of the Member.

(d) Any action required or permitted to be taken at a meeting of the Member may be taken without a meeting if a duly authorized representative of the Member signs a written consent, setting forth the action.

ARTICLE III.

BOARD OF TRUSTEES

Section 3.1 Powers. The property, affairs, and business of the Corporation shall be managed by its Board of Trustees. The Board of Trustees shall have, and may exercise, all of the powers of the Corporation except as may be limited or conferred by law, by the Certificate of Incorporation of the Corporation, or by these Bylaws.

Section 3.2 Number and Qualification. The number of Trustees constituting the entire Board shall be fixed from time to time by the Member; provided, however, that such number of Trustees shall not be less than three (3), or such other minimum required by the NPCL. No decrease in the number of Trustees shall shorten the term of any incumbent Trustee. Trustees shall be selected on the basis of a demonstrated record of dedication to community service, an interest in the objectives of the Corporation, as well as the ability of the candidates to participate effectively in fulfilling those objectives. Each Trustee shall be at least eighteen (18) years of age.

Section 3.3 Election and Term of Office of Trustees. All Trustees of the Corporation shall be elected by the Member for a term of one (1) year at each Annual Meeting of the Member or as determined from time to time by the Member. The terms of office of all Trustees shall expire at the next Annual Meeting of the Corporation following their election and, in any event, each elected Trustee shall continue in office until his or her successor shall have been elected and qualified, or until his or her death, resignation or removal.

Section 3.4 Vacancies. Any vacancy or vacancies in the Board because of death, resignation, removal, disqualification, increase in the number of Trustees, or any other cause, may be filled by the Member. Each person selected to fill a vacancy shall serve as a Trustee until the next Annual Meeting of Trustees at which the vacated position is up for election in the regular order of business, and until his or her successor is duly elected, appointed and qualified.

Section 3.5 Resignation and Removal. Any Trustee may resign at any time by giving written notice of such resignation to the Board of Trustees or to the Chairman or Secretary thereof, and such resignation shall take effect at the time stated therein, or if no time is stated, upon its delivery to the Board, the Chairman or Secretary. Any Trustee may be removed at any time for cause by the Member.

Section 3.6 Attendance. Trustees shall be expected to attend all meetings of the Board unless excused therefrom by the Chairman. Failure by any Trustee, without good cause as determined by the Chairman, to attend at least fifty percent (50%) of all such meetings in any calendar year shall be grounds for cause for removal from the Board.

Section 3.7 Annual and Regular Meetings. As soon as practical after each annual election of Trustees by the Member, the annual meeting of the Board of Trustees shall be held on such date, and at such time and at such place as the Board of Trustees shall determine for the purpose of election of Officers of the Corporation and the transaction of such other business as may be properly brought before such meeting. The Board of Trustees shall hold such number of other regular meetings at such times and at such places as may from time to time be determined by the Board of Trustees. At the annual meeting of the Board, the Board may fix the dates for its regular meetings during the upcoming year.

Section 3.8 Special Meetings. Special meetings of the Board of Trustees may be called at any time by the President or Chairman of the Board, by the Member, or by the Secretary upon written demand of a majority of the Board of Trustees, and shall be held at such time and place as shall be designated in the notice thereof.

Section 3.9 Notice of Meetings. Notice of the time and location of the annual meeting shall be given either personally, sent by certified or overnight mail, electronic mail, or facsimile to each Trustee at least five (5) days before the date of such meeting. Regular meetings of the Board of Trustees may be held without notice at such time and place as shall from time to time be determined as regular meeting dates and places by the Board. Notice of the time, place and purpose of each special meeting of the Board shall be given either personally, sent by certified or overnight mail, electronic mail or facsimile to each Trustee at least forty-eight (48) hours before the scheduled time of the meeting, or such shorter notice as the person or persons calling such meeting may deem necessary or appropriate under the existing circumstances. No business other than that specified in the notice of a special meeting shall be transacted thereat. At any meeting at which every member of the Board of Trustees shall be present, though held without notice, any business may be transacted which might have been transacted as if the meeting had been duly called.

Section 3.10 Waiver of Notice. Notice of the time, place and purpose of any meeting of the Board shall not be required to be given to any Trustee who submits a waiver of notice either before or after the meeting, or who attends the meeting without protesting the lack of notice to him prior thereto or at its commencement.

Section 3.11 Quorum. Except as may be otherwise specifically provided by the NPCL, the Certificate of Incorporation of the Corporation or these Bylaws, at all meetings of the Board of Trustees, the presence of a majority of the number of Trustees then in office who are entitled to vote shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees. If a quorum shall not be present at any meeting of the Board of Trustees, the Trustees who are present may adjourn the meeting from time to time, until a quorum shall be present. A Trustee who is deemed to have a conflict of interest with respect to the approval of a contract, transaction or other arrangement pursuant to the Corporation's Conflict of Interest Policy, although not entitled to participate in the discussion nor vote on any matters with respect to which such Trustee has a conflict, may be counted in determining the presence of a quorum at a meeting of the Board of Trustees or committee that authorizes such contract, transaction or arrangement.

Section 3.12 Vote. Each Trustee shall be entitled to one (1) vote. The vote of a majority of the Trustees present at any meeting at which a quorum is present shall be the act of the Trustees, unless the act of a greater number or percentage of Trustees is required by the NPCL, the Certificate of Incorporation of the Corporation or these Bylaws.

Section 3.13 Action without a Meeting. Unless otherwise provided by the Certificate of Incorporation of the Corporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Trustees or of any committee thereof may be taken without a meeting, if all the members of the Board of Trustees or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Trustees or committee.

Section 3.14 Teleconference. Any or all Trustees may participate in a meeting of the Board of Trustees by means of a conference telephone or similar telecommunications equipment by which all persons participating in the meeting are able to hear each other at any special

meeting of the Board of Trustees. Participation by such means at any special meeting of the Board of Trustees shall constitute presence in person at such meeting.

Section 3.15 Minutes. The Secretary or his or her designee shall maintain complete and accurate minutes of all Board meetings and shall retain all unanimous written consents executed by the Trustees. Said minutes and written consents shall be maintained in the permanent records of the Corporation.

Section 3.16 Entire Board of Trustees. For purposes of these Bylaws, the phrase “entire Board of Trustees” shall mean the total number of Trustees pursuant to Section 3.2 of these Bylaws including vacancies.

Section 3.17 Compensation. Trustees shall receive no compensation for their services as Trustees, but may be reimbursed for the expenses reasonably incurred by them in the performance of their duties in accordance with policies established by the Board of Trustees or the Member.

ARTICLE IV.

COMMITTEES

Section 4.1 Committees Generally. The Board of Trustees may designate such committees of the Board with such duties and responsibilities as it deems appropriate. All standing committees shall have at least three (3) trustees as members of the committee. There shall be a standing Executive Committee and an advisory Finance and Investment Committee, and, in addition, the Board of Trustees may, by resolution approved by a majority of the entire Board, designate one (1) or more additional committees of the Board (standing, special, advisory or otherwise) as may from time to time be deemed suitable, necessary, or convenient to aid in accomplishing the purposes of the Corporation. The Chairman shall have the right to appoint non-Trustees to serve on special and advisory committees, provided, however, that: (1) only Trustees may serve as the Chair of any committee; (2) Trustees shall, at all times, constitute a majority of the total membership of any committee; and (3) non-Trustee members of any committee shall not be counted toward the quorum or the votes of the committee if such committee is acting with regard to powers of the Board of Trustees that have been delegated to the committee by the Board of Trustees. Committees shall be required to maintain and submit minutes of their meetings to the full Board of Trustees. In addition, each Committee (through its chair, if any) shall be required to respond to inquiries made by the Chairman or the Board with regard to the activities of such Committee. The Chairman shall serve as an *ex officio* member of each Committee of which the Chairman is not otherwise a regular member. The President, if he/she is otherwise a Trustee, shall be an *ex officio* voting member of each Committee. Notwithstanding the foregoing, no committee shall have authority as to any of the following matters:

- (a) the power to appoint or remove Officers of the Corporation;
- (b) the filling of vacancies in the Board of Trustees or any committee thereof;

- (c) the amendment or repeal of any resolution of the Board of Trustees which by the terms thereof shall not be so amendable or repealable;
- (d) the fixing of compensation of the Trustees for serving on the Board of Trustees or on any committee;
- (e) causing the Corporation to incur debt, or pledging tangible or intangible assets of Corporation;
- (f) the authorization of indemnification for expenses incurred by Trustees, Officers or other persons in defending a civil or criminal action or proceeding under the applicable provisions of the NPCL pursuant to ARTICLE VI of these Bylaws;
- (g) the amendment or repeal of the Certificate of Incorporation of the Corporation or these Bylaws, or the adoption of new bylaws of the Corporation;
- (h) transferring, by sale or lease, any real property of the Corporation; and
- (i) the approval of a petition for non-judicial dissolution of the Corporation, a plan of merger or consolidation or the sale or other disposition of all or substantially all of the corporate assets.

Section 4.2 Executive Committee. The Executive Committee shall consist of the Chairman, President, Secretary and Treasurer. In order to provide continuity of governing body control, the Executive Committee shall exercise the authority of the Board of Trustees in the supervision and control of the affairs of the Corporation in the interval between the meetings of the Board. The Executive Committee shall have special charge of all matters not expressly assigned to some other Committee. The Executive Committee shall be considered always in session and the affirmative vote of a majority of the members of the Committee shall constitute valid action of such Committee. Except as otherwise prohibited by the NPCL, the Executive Committee shall and may exercise the powers of the Board of Trustees, provided such action is not inconsistent with the provisions of the Certificate of Incorporation of the Corporation, these Bylaws, any law or statute governing the Corporation or any limitations imposed by the Board. Any action taken by the Executive Committee shall be reported fully to the Trustees at the next regular or special meeting.

Section 4.3 Finance and Investment Committee. The Finance and Investment Committee shall review the proposed annual budget for the Corporation and shall recommend the adoption of the budgets to the Board and periodically review the actual fiscal operations of the Corporation. In relation to its approved budget, the committee shall recommend for approval by the Board any rules and regulations that may be necessary for the proper drawing of drafts and checks, upon the Treasury and for the prompt collection of all interest, dividends and rentals, as well as other monies due the Corporation. In addition, the committee shall examine as often as it may consider necessary, but at least once each fiscal year, the investments of the Corporation and make recommendations thereon to the Board. The Finance and Investment Committee shall consist of the Treasurer of the Board of Trustees, and not less than three (3) additional members. Subject to the limitations set forth in Section 4.1 hereof, the Chairman shall

have the right to appoint persons who are not members of the Board of Trustees, to the Committee.

Section 4.4 Tenure of Members of Committees of the Board. Each committee of the Board of Trustees and every member thereof shall serve at the pleasure of the Board and for such terms as the Board shall determine. The Board of Trustees shall have the power at any time to change the membership of any committee, to fill vacancies, and to discharge any such committees. The Board of Trustees may designate one or more Trustees as alternate members of any Committee, who may replace any absent or disqualified member at any meeting of any such Committee.

Section 4.5 Meetings. Meetings of committees, of which no notice shall be necessary, shall be held at such time and place as shall be fixed by the Chairman or President of the Corporation or the Chair of the committee or by a vote of a majority of all of the members of the committee.

Section 4.6 Quorum and Manner of Acting. Unless otherwise provided by resolution of the Board of Trustees, and subject to the limitations set forth in Section 4.1 hereof, a majority of all of the members of a committee shall constitute a quorum for the transaction of business. Except as otherwise set forth in these Bylaws, a vote by a majority of the members present at a meeting at which a quorum is present shall constitute valid action taken by the Committee in question. The procedures and manner of acting of the committees of the Board of Trustees shall be subject at all times to the directions of the Board of Trustees.

Section 4.7 Alternate Committee Members. The Board of Trustees may designate one or more Trustees as alternate members of any standing or special committee of the Board of Trustees who may replace any absent member or members at any meeting of such committee.

ARTICLE V.

OFFICERS

Section 5.1 Number. The Officers of the Corporation shall include: (i) a Chairman, (ii) a President, (iii) a Secretary, and (iv) a Treasurer. In addition, the Board of Trustees from time to time, may elect such other Officers and confer upon the Officers those powers and duties which it shall deem necessary or advisable for the conduct of the affairs of the Corporation. Any Officer may hold two or more offices except that the same person shall not be both President and Secretary.

Section 5.2 Election and Term of Office. The Officers shall be elected by the Trustees at the Annual Meeting of the Board unless otherwise determined by the Trustees, and shall serve until the next Annual Meeting, and until their successors are duly elected and qualified. The Chair must be a Trustee; all other Officers may be, but need not be, Trustees. Any Officer elected by the Trustees may be removed with or without cause by an affirmative vote of a majority of the Trustees then in office. Such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer shall not in and of itself create any contract rights.

Section 5.3 Resignation. Any Officer may resign at any time by giving written notice of such resignation to the Board, the Chairman or the Secretary. Such resignation shall take effect at the time specified therein or, if not so specified, upon its delivery to the Board, the Chairman, or the Secretary, as the case may be.

Section 5.4 Vacancies. A vacancy in any office by reason of death, resignation, removal or otherwise may be filled by the Board of Trustees for the unexpired portion of the term of such office. Every Officer so elected shall, unless sooner displaced, serve until the next Annual Meeting, and until such Officer's successor is duly elected and qualified.

Section 5.5 Duties of the Chairman. The Chairman shall preside at all meetings of the Board of Trustees. In the absence or disability of the Chairman, the President shall perform the duties and exercise all the powers of the Chairman.

Section 5.6 Duties of the President. The Board shall appoint a chief executive officer bearing the title of President who shall be its representative in the management and operation of the Corporation and shall have general care, supervision and direction of its affairs. Except as otherwise provided and subject always to control by the Board of Trustees, the President shall be responsible for the overall management of the Corporation. The President shall be accountable to the Board of Trustees for the management of the Corporation and shall report periodically to the Board of Trustees on the affairs of the Corporation as the Board of Trustees shall require. The President shall be responsible for supervising the day to day operations of the Corporation, may employ and discharge other employees of the Corporation, may approve ordinary and reasonable expenditures and contracts and sign such contracts and other documents, including, without limitation, documents and forms required by federal, state and local governments to be executed by the Corporation's officers, and shall have such other duties as may be assigned by the Board of Trustees. Consistent with the policies and directives of the Board of Trustees, the President may delegate or assign such management duties as are necessary and prudent to accomplish the objectives of the Board of Trustees.

Section 5.7 Duties of the Treasurer. The Treasurer shall maintain the books of account and shall have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds in the name of and to the credit of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Trustees. The Treasurer shall ensure that a true and accurate accounting of the financial transactions of the Corporation is made and that reports of such transactions are presented to the Board of Trustees. The Treasurer shall also perform all other duties customarily incident to the office of Treasurer and such other duties as from time to time may be assigned by the Board of Trustees.

Section 5.8 Duties of the Secretary. The Secretary shall keep a record of all the meetings and proceedings of the Board of Trustees. Except as otherwise provided, the Secretary shall give or cause to be given notice, where required, of all meetings of the Trustees. The Secretary shall keep or cause to be kept a correct list of the Trustees of the Corporation, and shall perform the entire duties incident to the office of the Secretary. The Secretary shall be the custodian of the records and seal of the Corporation, and attest all acts of the Corporation when such attestation is required or deemed desirable. In the absence or disability of the Secretary, the

Secretary's duties shall be assumed by such other person or persons as the Chairman or the Board of Trustees may designate.

ARTICLE VI.

INDEMNIFICATION

Section 6.1 Indemnification of Employees, Officers, Trustees and Members of Committees. The Corporation shall indemnify to the fullest extent permitted by law every Trustee, employee, Officer and member of a committee or of the Corporation made a party to a proceeding by reason of such person being or having been a Trustee, employee, Officer, or member of a committee of the Corporation, against judgments, penalties, fines, settlements and reasonable expenses actually incurred, including those expenses actually incurred prior to the final disposition of such proceeding.

Section 6.2 Prohibited Indemnification. Notwithstanding Section 6.1 hereof, the Corporation shall not indemnify any person if a judgment or other final adjudication adverse to the indemnified person (or to the person whose actions are the basis for the action or proceeding) establishes, or the Board of Trustees in good faith determines, that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

Section 6.3 Insurance. The Corporation is not required to purchase liability insurance for Trustees and Officers, but the Corporation may purchase such insurance if authorized and approved by the Board of Trustees. To the extent permitted by law, such insurance may insure the Corporation for any obligation it incurs as a result of this ARTICLE VI or operation of law and it may insure directly the Trustees, Officers, employees, or volunteers of the Corporation for liabilities against which they are not entitled to indemnification under this Article VI as well as for liabilities against which they are entitled or permitted to be indemnified by the Corporation.

ARTICLE VII.

GENERAL PROVISIONS

Section 7.1 Fiscal year. The fiscal year of the Corporation shall commence on January 1st and end as of December 31st of each year.

Section 7.2 Books and Records. There shall be kept at the office of the Corporation (i) correct and complete books and records of account; (ii) minutes of the proceedings of the Member, the Board of Trustees and any committee of the Board of Trustees; (iii) a current list of the Trustees, Officers and Member of the Corporation and their residential and business addresses; (iv) a copy of the Certificate of Incorporation of the Corporation and these Bylaws, (v) a copy of the Corporation's application for recognition of exempt status under Section 501(c)(3) of the Code (IRS Form 1023); and (vi) copies of the Foundation's past three (3) years' information returns (IRS Form 990).

Section 7.3 Corporate Seal. The Board of Trustees shall have the authority to select the inscription and form of the Foundation's corporate seal.

Section 7.4 Deposits, Checks and Notes. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Trustees may select. All deposits shall be made in the name of the Corporation. Checks, notes, drafts, bills of exchange, acceptances, undertakings, or other instruments or orders for the payment of money shall be signed by such Officers or agents as the Trustees may from time to time designate or shall bear the facsimile signature of such Officers or agents as the Trustees may from time to time designate.

Section 7.5 Execution of Contracts. The President, Treasurer and Secretary shall have the authority, in the name of and on behalf of the Corporation, to enter into any contract or execute and deliver any instrument. The Board of Trustees, except as otherwise provided in these Bylaws, may authorize any Officer or Officers, agent or agents, in the name of and on behalf of the Corporation to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances; but, unless so authorized by the Board of Trustees, or expressly authorized by these Bylaws, no Officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily in any amount for any purpose.

Section 7.6 Conflict of Interest Policy. The Board of Trustees shall adopt, and shall cause the Corporation, the Board of Trustees and the Officers of the Corporation to adhere to, a Conflict of Interest Policy that is substantially consistent with prevailing principles and standards established for addressing conflicts of interest by applicable law, regulation and/or administrative guidance, including, but not limited to, the New York State Not-for-Profit Corporation Law and Internal Revenue Service guidance and policy.

Section 7.7 Loans. No loans shall be contracted on behalf of the Corporation unless specifically authorized by the Board of Trustees.

Section 7.8 Loans to Trustees and Officers. No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by the Corporation to its Trustees or Officers, or to any other corporation, firm, association or other entity in which one or more of its Trustees or Officers are trustees, directors or officers or hold a substantial financial interest, except a loan by one Type B not-for-profit corporation to Type B not-for-profit corporation. A loan made in violation of this section shall be a violation of the duty to the Corporation of the Trustees or Officers authorizing it or participating in it, but the obligation of the borrower with respect to the loan shall not be affected thereby.

ARTICLE VIII.

**DIRECTION AND CONTROL OF DISPOSITION OF DONOR RESTRICTED FUNDS:
RETAINED POWER**

Section 8.1 Notwithstanding any provision hereof to the contrary, the disposition of any donor-restricted funds or assets of the Corporation shall remain at all times under the exclusive direction and control of the Board of Trustees of the Corporation.

ARTICLE IX.

AMENDMENTS

Section 9.1 These Bylaws may be altered, amended or repealed solely by action of the Member.

* * *

Exhibit 5

Montefiore

THE UNIVERSITY HOSPITAL FOR
ALBERT EINSTEIN COLLEGE OF MEDICINE

November 22, 2013

Director, Bureau of House Counsel
Division of Legal Affairs
NYS Department of Health
Corning Tower, Rm 2484
Empire State Plaza
Albany, New York 12237

Re: Acceptance of Donations from Montefiore Foundation, Inc.

Dear Sir/Madam:

I am writing in connection with the request of Montefiore Foundation, Inc. (the “**Foundation**”) for the consent of the New York State Department of Health to the filing of the Foundation’s Certificate of Incorporation.

The Foundation is being formed to raise charitable contributions to support various affiliated Section 501(c)(3) tax-exempt charitable organizations, including, but not limited to, the following entities that are licensed health care facilities under Article 28 of the New York State Public Health Law (“**PHL**”), as indicated below (referred to collectively as the “**Licensed Supported Organizations**”):

- Montefiore Medical Center – licensed under Article 28 of the PHL as a hospital
- Montefiore New Rochelle Hospital – licensed under Article 28 of the PHL as a hospital
- Montefiore Mount Vernon Hospital – licensed under Article 28 of the PHL as a hospital
- Schaffer Extended Care Center – licensed under Article 28 of the PHL as a nursing home

In order to grant consent to the filing of a certificate of incorporation of a not-for-profit corporation that includes among its purposes the solicitation of funds to benefit a facility that is located in New York State and licensed under Article 28 of the PHL, the New York State Department of Health requires a letter from a duly-authorized representative of the intended supported organization, acknowledging that it will accept funds raised by the not-for-profit corporation. In compliance with such requirement, I hereby acknowledge, as the President of each of the Licensed Supported Organizations, that each of the Licensed Supported Organizations will accept grant funds and other distributions raised by the Foundation.

Steven M. Safyer, MD
President and CEO
111 East 210th Street
Bronx, New York 10467
718-920-2001
ssafyer@montefiore.org

If you have any questions or require additional information, please contact the Secretary of the Licensed Supported Organizations, Christopher Panczner, Esq., at (718) 920-7787. Thank you for your attention to this matter.

Sincerely,



Steven M. Safyer, M.D.
President and CEO

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

January 30, 2014

Home Health Agency Licensures

Exhibit # 15

<u>Number</u>	<u>Applicant/Facility</u>
1565 L	Anne M. Chambers d/b/a Health Beat (Nassau, Queens, and Westchester Counties)
1646 L	F & H Homecare, Inc. d/b/a Visiting Angels (Bronx County)
1657 L	Gentle Care Home Services of NY, Inc. (Bronx, Kings, New York, Queens, and Richmond Counties)
1709 L	Gentle Touch Home Care Agency, Inc. (Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester Counties)
2140 L	Hardings Beach, LLC d/b/a Home Instead Senior Care (Monroe County)
2092 L	Igbans Home Care Services, Inc. (Bronx, Kings, Nassau, New York, Queens, and Richmond Counties)
1928 L	Marina Homecare Agency of NY, Inc. (Dutchess, Nassau, Orange, Putnam, Queens, Rockland, Suffolk, Sullivan, Ulster and Westchester Counties)
2139 L	Westchester Homecare, Inc. d/b/a FirstLight HomeCare of Westchester (Westchester County)

- 2224 L Foster Nurses Agency USA, Inc.
(Bronx, Kings, Nassau, New York, Queens and
Richmond Counties)
- 2213 L Genesee Region Home Care of Ontario County,
Inc. d/b/a Home Care Plus
(See exhibit for Counties to be served)

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Anne M. Chambers d/b/a Health Beat
Address: Inwood
County: Nassau
Structure: Sole Proprietorship
Application Number: 1565L

Description of Project:

Anne M. Chambers d/b/a Health Beat, a sole proprietor, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole proprietor of Health Beat is the following individual:

Anne Marie Chambers, Nursing Assistant
Privately employed

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 in Nassau County:

Nassau Westchester Queens

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	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: December 10, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: F & H Homecare, Inc. d/b/a Visiting Angels
Address: Bronx
County: Bronx
Structure: For-Profit Corporation
Application Number: 1646-L

Description of Project:

F & H Homecare, Inc. d/b/a Visiting Angels, a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

F & H Homecare, Inc. has proposed to operate as a Franchisee of Living Assistance Services, Inc. (Visiting Angels).

The applicant has authorized 1,000 shares of stock, which are owned as follows:

Fafa A. Mensah, RN – 500 shares Registered Nurse, Visiting Nurse Service of New York	Harris Cofie – 500 shares Retired
--	--------------------------------------

The Board of Directors of F & H Homecare, Inc. d/b/a Visiting Angels comprises the following individuals:

Fafa A. Mensah, RN – Chairman/Treasurer (Previously Disclosed)	Harris Cofie – Vice Chairman/Secretary (Previously Disclosed)
---	--

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 Bronx and Queens Counties from an office to be located in Bronx County.

The applicant proposes to provide the following health care services:

Nursing	Personal Care	Home Health Aide
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: November 11, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Gentle Care Home Services of NY, Inc.
Address: Staten Island
County: Richmond
Structure: For-Profit
Application Number: 1657-L

Description of Project:

Gentle Care Home Services of NY, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows:

Mikhail Komissarenko, 150 shares Senior Chemist, Chanel	Evelina Tuers, RN (NY & NJ) – 50 shares Registered Nurse, St. Luke’s Roosevelt Hospital
--	--

The board members of Gentle Care Home Services of NY, Inc. comprise the following individuals:

Mikhail Komissarenko – President (Previously Disclosed)	Evelina Tuers – Executive Director (Previously Disclosed)
--	--

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

Evelina Tuers is licensed as a registered nurse in the state of New Jersey, license number 13300200. The New Jersey State Board of Examiners indicates Evelina Tuers’s license is currently active and there are no issues with the licensure of this health professional.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 1 Monroe Avenue, Staten Island, New York, 10301:

Bronx	Kings	New York	Richmond
Queens			

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Occupational Therapy	Speech-language Pathology
Homemaker	Personal Care	Physical Therapy	Medical Social Services
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: November 27, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Gentle Touch Home Care Agency, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 1709-L

Description of Project:

Gentle Touch Home Care 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:

Khem C. Sharma – 100 shares Owner/President, Gemini Quality Care, Inc.	Jacques C. Antoine, MD – 100 shares President, East Brooklyn Medical
---	---

The Board of Directors of Gentle Touch Home Care Agency, Inc. comprises the following individuals:

Khem C. Sharma – President, Secretary (Previously Disclosed)	Jacques C. Antoine, MD – Vice President, Treasurer (Previously Disclosed)
---	--

The Office of the Professions of the State Education Department, the New York State Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health 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 has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

The applicant proposes to serve the residents of the following counties from an office located at 1718 Pitkin Avenue, Brooklyn, New York 11212:

Bronx	Kings	New York	Queens	Richmond
-------	-------	----------	--------	----------

The applicant proposes to establish a second site in Nassau County to service the residents of the following counties:

Nassau	Suffolk	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	

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: November 13, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Hardings Beach, LLC d/b/a Home Instead Senior Care
Address: Pittsford
County: Monroe
Structure: Limited Liability Company
Application Number: 2140L

Description of Project:

Hardings Beach, LLC d/b/a Home Instead Senior Care, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. The applicant has entered into a franchise agreement with Home Instead, Inc. The applicant currently operates a companion care agency.

The members of Hardings Beach, LLC d/b/a Home Instead Senior Care consist of:

Vesna Herbowy, Manager/Member– 51% Co-owner/operator, Home Instead Senior Care (companion care)	Christopher Parks, Member– 49% Co-owner, Home Instead Senior Care (companion care) Director, Channel Expansion Strategy, Xerox Corporation
---	--

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 Monroe County from an office located at 1159 Pittsford-Victor Road, Suite 125, Pittsford, New York 14534

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 13, 2014

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Igbans Home Care Services, Inc.
Address: Queens
County: Queens
Structure: Not-For-Profit Corporation
Application Number: 2092-L

Description of Project:

Igbans Home Care Services, Inc., a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The Board of Directors of Igbans Home Care Services, Inc. comprises the following individuals:

Nelson U. Igbanugo, HHA – Director/CEO Case Manager, City of New York Director, Igbans Institute	Juliet Mogu, HHA, CNA – Vice President (Operations) Case Manager, City of New York
--	---

Emmanuel Nwozuzu, Ph.D., RN,
Vice President (Administration)
Retired

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The New York State Home Care Registry revealed that Nelson Ugbanugo and Juliet Mofu are certified as a HHA's, and have no convictions or findings.

A search of the individual named above on the New York State Nurse Aide Registry revealed that Juliet Mogu is certified as a CNA, and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 216-19 Merrick Blvd, Queens, New York 11413:

Bronx	Kings	New York
Richmond	Queens	Nassau

The applicant proposes to provide the following health care services:

Nursing	Personal Care	Home Health Aide
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: December 31, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Marina Homecare Agency of NY, Inc.
Address: Riverhead
County: Suffolk
Structure: For-Profit Corporation
Application Number: 1928-L

Description of Project:

Marina Homecare Agency of NY, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned solely by Helene Korbin.

The Board of Directors of Marina Homecare Agency of NY, Inc. comprises the following individual:

Helene Korbin, Esq., President
Partner, Hilgendorff & Korbin
Owner, Comfort Keepers (companion care agency)

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 has been received for the attorney.

The applicant proposes to serve the residents of the following counties from an office located at 31 Main Road, Suite 9, Riverhead, New York 11901:

Nassau	Suffolk	Queens	Westchester
Rockland	Putnam	Dutchess	Orange
Ulster	Sullivan		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the disclosure information indicates that the applicant has no affiliations with other health care facilities.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: November 19, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Westchester Homecare, Inc.
d/b/a FirstLight HomeCare of Westchester
Address: Somers
County: Westchester
Structure: For Profit Corporation
Application Number: 2139-L

Description of Project:

Westchester Homecare, Inc. d/b/a FirstLight HomeCare of Westchester, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Westchester Homecare, Inc. d/b/a FirstLight HomeCare of Westchester has authorized 200 shares of stock which are owned as follows: 101 shares of stock are owned by Laura McMahon, 98 shares of stock are owned by Vincent McMahon and 1 share of stock is owned by Therese Reilly, R.N.

The members of the Board of Directors of Westchester Homecare, Inc. d/b/a FirstLight HomeCare of Westchester comprise the following individuals:

Laura McMahon, Chairperson
Retired

Vincent McMahon, Vice Chairperson
Retired

Therese Reilly, R.N., Board Member
Patient Care Supervisor,
FirstLight HomeCare of Westchester

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of Westchester County from an office located at 51 Stonehouse Road, Somers, New York 10589.

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care 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: December 16, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Foster Nurses Agency USA, Inc.
 Address: New York
 County: New York
 Structure: For Profit Corporation
 Application Number: 2224-L

Description of Project:

Foster Nurses Agency USA, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Nasreen Khan d/b/a Foster Nurses Agency was previously approved as a licensed home care services agency by the Public Health Council at its November 22, 1991 meeting and subsequently licensed as 9214L001. On June 6, 2012, the agency underwent a change of ownership from the sole proprietorship to Foster Nurses Agency USA, Inc. The corporation authorized and issued 200 shares of stock to Nasreen Khan as the sole shareholder.

Nasreen Khan and Foster Nurses Agency are currently excluded from participation in Medicaid by the Office of the Medicaid Inspector General. In March 2013 Nasreen Khan resigned her position as president of the corporation and transferred 90% of the shares to Anu Khan and 10% to Mahammed Akram Khan.

The applicant is now requesting approval for the change in ownership of this agency to Foster Nurses Agency USA, Inc. with Anu Khan owning 180 shares and Mohammad Akram Khan owning 20 shares.

The Board of Directors of Foster Nurses Agency USA, Inc. comprises the following individuals:

Anu Khan, L.P.N., Chairperson/Secretary Director of Patient Services, Foster Nurses Agency USA, Inc.	Mohammad Akram Khan, Vice Chairperson/Treasurer Bookeeping and Accounting Director, Foster Nurses Agency USA, Inc.
--	---

A search of the Medicaid Disqualified Provider List and the OIG Exclusion List revealed no matches for Anu Khan and Mohammad Akram Khan.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 316 5th Avenue, Suite 404B, New York, New York 10001:

New York	Bronx	Richmond
Kings	Queens	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Homemaker	Housekeeper	Medical Social Services
Nutrition	Audiology	Respiratory Therapy

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 14, 2014

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Genesee Region Home Care of Ontario County, Inc.
d/b/a Home Care Plus
Address: Buffalo
County: Erie
Structure: Not-For-Profit Corporation
Application Number: 2213-L

Description of Project:

Genesee Region Home Care of Ontario County, Inc. d/b/a Home Care Plus, a not-for-profit corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Excellus Acquisition, Inc. d/b/a Sibley Nursing Personnel Services was previously approved as a home care services agency by the Public Health Council at its November 11, 2003 meeting and subsequently licensed as 1200L002, 1200L003, 1200L005 and 1200L007.

The purpose of this application is the purchase of the Sibley LHCSA by Home Care Plus pursuant to the terms of an Asset Purchase Agreement.

The sole corporate member of Genesee Region Home Care of Ontario County, Inc. is North Star Home Health Management, Inc., a not-for-profit corporation. The sole corporate member of North Star Home Health Management, Inc. is Excellus Health Plan, Inc., a not-for-profit corporation. The sole corporate member of Excellus Health Plan, Inc. is Lifetime Healthcare, Inc., a not-for-profit holding company.

Genesee Region Home Care of Ontario County, Inc. d/b/a Home Care Plus and North Star Home Health Management, Inc. have a mirror Board of Directors. The Board of Directors consists of the following individuals:

Joseph F. Kurnath, M.D. – Chairman
Physician/Partner, Partners in Internal
Medicine

Affiliations:

- Director, Genesee Region Home Care of Ontario County, Inc.
- Director, Excellus Health Plan, Inc.
- Director, Genesee Region Home Care Association, Inc.

Dorothy A. Coleman, CPA – President & CEO
EVP and CFO, Excellus Health Plan

Affiliations:

- Director, Genesee Valley Group Health Association.
- Director, Sibley Nursing Personnel Services, Inc.

Charles H. Stuart – Vice Chairman
Financial Advisor, Morgan Stanley Smith Barney

Affiliations:

- Director, Genesee Region Health Care Association, Inc.
- Director, Genesee Region Health Care of Ontario County, Inc.

Jordon I. Brown – Treasurer
Executive VP, Lifetime Assistance, Inc.
(Human Services)

Affiliations:

- Director, Genesee Region Health Care Association, Inc.
- Director, Genesee Region Health Care of Ontario County, Inc.

Deborah Minor, RN – Director
Director of Public Health, Director of Patient Services, Early Intervention Official, Yates County Public Health

Affiliations:

- Director, Genesee Region Health Care Association, Inc. (3/13 – Present)
- Director, Genesee Region Health Care of Ontario County, Inc. (3/13 – Present)

Mordecai J. Kolko – Director
Retired

Elane M. Daly, RN – Director
Director of Health and Human Services, Cayuga County Health and Human Services Department

Affiliations:

- Director Genesee Region Health Care Association, Inc.
- Director, Genesee Region Health Care of Ontario County, Inc.
- Board Member, Auburn Community Hospital (2005 – January 2014)

Jagat S. Mehta, M.D. – Director
Physician, Self-employed

Affiliations:

- Director, Genesee Region Home Care Association, Inc.
- Director, Genesee Region Home Care of Ontario County, Inc.

Hilda Rosario-Escher – Director
Vice President, Ibero American Action League

Affiliations:

- Board Member, Huther-Doyle (substance abuse) (2009-present)
- Director, Genesee Region Home Care Association, Inc.
- Director, Genesee Region Health Care of Ontario County, Inc.
- Board Member, Rochester Psychiatric Center (1992-2010)
- Member, Executive Director's Committee, Office of Mental Health

Marilyn L. Dollinger, RN, FNP – Director
Associate Dean, St. John Fisher College

Affiliations:

- Board Member, St. Johns Senior Services (Senior Services) (2005-present)
- Board Member, St. John's Health Care Corporation (2000-2010)
- Director, Genesee Region Home Care Association, Inc.
- Director, Genesee Region Health Care of Ontario County, Inc.

Alfred D. Matt – Director
President and CEO, F.X. Matt Brewing Company

John J. Mahoney – Director
Founder/Principal, Summit Business Group, LLC (consulting)

Affiliations:

- Director, Genesee Region Health Care Association, Inc.
- Director, Genesee Region Health Care of Ontario County, Inc.

David D. Reh – Director
President, The Raytec Group, Inc. (administrative services)

Affiliations:

- Director, Excellus Health Plan, Inc.
- Director, Genesee Region Home Care Association, Inc.
- Director, Genesee Region Health Care of Ontario County, Inc.

Manuel M. Matos, M.D. – Director
Division Chief, Unity Health System

Affiliations:

- Director, Genesee Region Home Care Association, Inc.
- Director, Genesee Region Health Care of Ontario County, Inc.

Excellus Health Plan, Inc. and Lifetime Healthcare, Inc. have a mirror Board of Directors. The Board of Directors consists of the following individuals:

Randall L. Clark – Chairman
Chairman, Dunn Tire, LLC

Austin T. Hildebrandt, CPA – Vice Chairman
President, Hillside Children’s Foundation

Thomas E. Rattmann – Vice Chairman
Chairman, CEO, President, Columbian
Financial Group

Christopher C. Booth, Esq. – President & CEO
President and CEO, President and COO; Executive VP and
COO; Executive MP, Commercial Markets and Health Care
Affairs; Executive VP, Chief Administrative Officer, and
General Counsel, Excellus Health Plan, Inc.

Affiliations:

- Director, Genesee Valley Group Health Association
(2004 – Present)
- Director, Sibley Nursing Personnel Services, Inc.
(2005 – Present)

John G. Doyle, Jr. – Director
President, Doyle Security Systems, Inc.

Thomas Y. Hobart, Jr. – Director
Retired

Hermes L. Ames, III – Director
Retired

Natalie L. Brown – Director
Executive Director, YWCA Mohawk Valley

Affiliations:

- Director, Well Choice, Inc. (Empire
BCBS) (1999-2005)

Affiliations:

- Board Chair, Faxton-St. Luke’s Healthcare (2001-
2004)

Dennis P. Kessler – Director
Owner, The Kessler Group, Inc.
Owner, The Kessler Family, LLC
Professor, University of Rochester

Charles H. Stuart – Director
(Previously Disclosed)

Affiliations:

- Director, Genesee Region Home
Care Association, Inc.
- Director, Genesee Region Health
Care of Ontario County, Inc.
- Member, University of Rochester
Medical Center (1/04–2/12)

Alfred D. Matt – Director
(Previously Disclosed)

Joseph F. Kurnath, M.D. – Director
(Previously Disclosed)

Patrick A. Mannion – Director
Chairman, President, CEO, COO, EVP &
SVP, Unity Mutual Life Insurance Company

George F.T. Yancey, Jr. – Director
Managing Director, Delta Point Capital

Colleen E. O’Leary, M.D. – Director
Professor, SUNY Upstate Medical University
Member/Vice President, Upstate Medical
Anesthesiology Group

Jennifer C. Balbach – Director
Partner, Summer Street Capital Partners, LLC

William H. Goodrich – Director
Chief Executive Officer/President, LeChase
Construction

Marianne W. Gaige, CPA – Director
President and CEO, Cathedral Corporation

Affiliations:

- Director, Upstate Cerebral Palsy (2005-present)
- Director, St. Elizabeth Medical Center (2005-2011)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the New York State Physician Profile, and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professionals associated with this application.

A Certificate of Good Standing has been received for all attorneys.

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

A seven year review of the operations of the agencies/facilities listed below was performed as part of this review (unless otherwise noted):

Genesee Region Home Care of Ontario County, Inc. d/b/a Home Care Plus (LHCSA)
Genesee Region Home Care Association, Inc. (hospice)
Genesee Region Home Care Association, Inc. d/b/a Lifetime Care (CHHA)
Genesee Region Home Care Association, Inc. d/b/a Lifetime Care (LTHHCP)
Sibley Nursing Personnel Services, Inc. (LHCSA)
Genesee Valley Group Health Association, Inc. d/b/a Lifetime Health Medical Group (D&TC)
Excellus Health Plan, Inc. d/b/a Finger Lakes HMO, Upstate HMO & Univera Health Care (HMO)
University of Rochester Medical Center (2006 – 2/2012)
St. John's Health Care Corporation (2006-2010)
Huther-Doyle (substance abuse) (2009-present)
Rochester Psychiatric Center (2006-2010)
Upstate Cerebral Palsy (2006-present)
St. Elizabeth Medical Center (2006-2011)
Auburn Community Hospital (2005 – January 2014)

St. John's Health Care Corporation was fined ten thousand dollars (\$10,000.00) pursuant to a stipulation and order dated June 20, 2011 for surveillance findings of September 27, 2010. Deficiencies were found under 10 NYCRR 415.12 – Quality of Care: Highest Practicable Potential.

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.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Auburn Community Hospital was fined twelve thousand dollars (\$12,000.00) pursuant to a stipulation and order settled in 2012 for surveillance findings of July 19, 2010 and April 14, 2011. Deficiencies were found under 10 NYCRR 400.21(a) – Advance Directives, 405.3 – Administration, 405.6(a)(2)(v) – Quality Assurance Program, 405.7 – Patients' Rights, 405.2(a) – Governing Body and 405.6 – Quality Assurance Program.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers 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 Office of Mental Health 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 Office for People With Developmental Disabilities 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 Office of Alcoholism and Substance Abuse 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 Bureau of Managed Care Certification and Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to continue to serve the residents of the following counties from an office located at 150 Empire Drive, Buffalo, New York 14224.

Erie	Orleans	Genesee	Niagara
Wyoming	Cattaragus	Chautauqua	Allegany

The applicant proposes to continue to serve the residents of the following counties from an office located 282 North St., Suite G, Auburn, New York 13021.

Tompkins	Cayuga	Madison	Onondaga
Cortland	Oneida	Herkimer	Schuyler

The applicant proposes to continue to serve the residents of the following counties from an office located at 21107 State Route 12F, Watertown, New York 13601.

St. Lawrence	Jefferson	Lewis	Oswego
Herkimer			

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Homemaker	Housekeeper
---------	------------------	---------------	-----------	-------------

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 14, 2014