



# 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 149<sup>th</sup> 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 149<sup>th</sup> 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.

<b>Proposed Operator</b>	Big Apple Dialysis Management, LLC
<b>Doing Business As</b>	Big Apple Dialysis at Kings County Hospital
<b>Site #1 Address</b>	451 Clarkson Avenue, Brooklyn
<b>Approved Services</b>	Chronic Renal Dialysis (26 Stations)
<b>Shifts/Hours/Schedule</b>	Open 6 days per week, nearly 3 shifts per day.
<b>Staffing (1<sup>st</sup> Year/3<sup>rd</sup> Year)</b>	28.0 FTEs and will remain at that level by the third year of operation.
<b>Medical Director(s)</b>	Gary Briefel, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided onsite by Kings County Hospital.

<b>Proposed Operator</b>	Big Apple Dialysis Management, LLC
<b>Doing Business As</b>	Big Apple Dialysis at Lincoln Hospital
<b>Site #2 Address</b>	234 East 149 <sup>th</sup> Street, Bronx
<b>Approved Services</b>	Chronic Renal Dialysis (8 Stations)
<b>Shifts/Hours/Schedule</b>	Open 6 days per week, nearly 3 shifts per day.
<b>Staffing (1<sup>st</sup> Year/3<sup>rd</sup> Year)</b>	14.1 FTEs and will remain at that level by the third year of operation.
<b>Medical Director(s)</b>	Isaiarasi Gnanasekaran, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided onsite by Lincoln Hospital.

<b>Proposed Operator</b>	Big Apple Dialysis Management, LLC
<b>Doing Business As</b>	Big Apple Dialysis at Metropolitan Hospital
<b>Site #3 Address</b>	1901 First Avenue, Manhattan
<b>Approved Services</b>	Chronic Renal Dialysis (12 Stations)
<b>Shifts/Hours/Schedule</b>	Open 6 days per week, nearly 3 shifts per day.
<b>Staffing (1<sup>st</sup> Year/3<sup>rd</sup> Year)</b>	13.0 FTEs and will remain at that level by the third year of operation.
<b>Medical Director(s)</b>	Ashok P. Chaudhuri, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided onsite by Metropolitan Hospital

<b>Proposed Operator</b>	Big Apple Dialysis Management, LLC
<b>Doing Business As</b>	Big Apple Dialysis at Harlem Hospital
<b>Site #4 Address</b>	506 Lenox Avenue, Manhattan
<b>Approved Services</b>	Chronic Renal Dialysis (11 Stations)
<b>Shifts/Hours/Schedule</b>	Open 6 days per week, nearly 3 shifts per day.
<b>Staffing (1<sup>st</sup> Year/3<sup>rd</sup> Year)</b>	15.7 FTEs and will remain at that level by the third year of operation.
<b>Medical Director(s)</b>	LeRoy Herbert, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	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 6<sup>th</sup> floor "C" building, Metropolitan Hospital Center Site 14<sup>th</sup> floor Main hospital building, Harlem Hospital Center site 4<sup>th</sup> floor New Patient Pavilion, Lincoln Hospital Center site interim location 9<sup>th</sup> floor and permanent location 7<sup>th</sup> 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 13th day of February, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Big Apple Dialysis Management, LLC as the operator of a chronic renal dialysis diagnostic and treatment center and three extension clinics currently operated by the New York City Health and Hospitals Corporation, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

132178 E

Big Apple Dialysis Management, LLC

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]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano  
Director  
Bureau of Project Management  
NYS Department of Health  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, New York 12237