

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

September 18, 2014
10:00 a.m.

- New York State Department of Health Offices at 90 Church Street, 4th Floor, Rooms 4A & 4B, NYC
- New York State Department of Health Offices, 584 Delaware Avenue, 2nd Floor Video Conference Room, Buffalo, NY 14202

I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Peter Robinson, Establishment and Project Review Member

A. Applications for Construction of Health Care Facilities

Acute Care Services - Construction

Exhibit # 1

<u>Number</u>	<u>Applicant/Facility</u>
1. 142005 C	Strong Memorial Hospital (Genesee County)

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

Acute Care Services – Establish/Construct

Exhibit # 2

<u>Number</u>	<u>Applicant/Facility</u>
1. 141248 E	White Plains Hospital Center (Westchester County)
2. 142009 E	RU System (Ontario County)
3. 142041 E	RU System (Genesee County)

Ambulatory Surgery Centers - Establish/Construct

Exhibit # 3

<u>Number</u>	<u>Applicant/Facility</u>
1. 141201 E	New York Endoscopy Center (Westchester County)
2. 141253 E	South Brooklyn Endoscopy Center (Kings County)
3. 141300 B	Greenwich Village Ambulatory Surgery Center, LLC (New York County)

Diagnostic and Treatment Centers - Establish/Construct

Exhibit # 4

<u>Number</u>	<u>Applicant/Facility</u>
1. 141060 E	Phoenix House Foundation, Inc. (New York County)
2. 141258 E	Harlem East Life Plan (New York County)
3. 142024 E	Charles Evan Health Center, Inc. (Nassau County)
4. 142031 B	LISH, Inc. d/b/a LISH at Central Islip (Suffolk County)

Dialysis Services- Establish/Construct

Exhibit # 5

<u>Number</u>	<u>Applicant/Facility</u>
1. 141221 E	True North DC, LLC d/b/a Port Washington Dialysis Center (Nassau County)
2. 142015 E	West Nassau Dialysis Center, Inc. (Nassau County)

Residential Health Care Facilities - Establish/Construct

Exhibit # 6

<u>Number</u>	<u>Applicant/Facility</u>
1. 141044 E	Saratoga Center for Care, LLC d/b/a Saratoga Center for Rehab and Skilled Nursing Care (Saratoga County) (DISTRIBUTED UNDER SEPARATE COVER)

2. 141235 E Safire Rehabilitation of Northtowns, LLC
(Erie County)
3. 141237 E Safire Rehabilitation of Southtowns, LLC
(Erie County)
4. 142029 E West Ledge Op LLC d/b/a Pinnacle Center for
Rehabilitation on the Hudson
(Westchester County)
5. 142050 E BTRNC, LLC
d/b/a Beechtree Center for Rehabilitation and Nursing
(Tompkins County)

Certified Home Health Agencies – Establish/Construct

Exhibit # 7

Number

Applicant/Facility

1. 141082 E Eddy Visiting Nurse Association
(Rensselaer County)
(DISTRIBUTED UNDER SEPARATE COVER)

C. Certificates

Certificate of Amendment of the Certificate of Incorporation

Exhibit # 8

Applicant

1. The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc.
2. New York Foundling Hospital Center for Pediatrics, Medical and Rehabilitative Care, Inc.

Certificate of Merger

Exhibit # 9

Applicant

1. Arnot Health Foundation, Inc.

Certificate of Incorporation

Exhibit # 10

Applicant

1. The St. Joseph Hospital Foundation

D. Home Health Agency Licensures

Home Health Agency Licensures

Exhibit # 11

<u>Number</u>	<u>Applicant/Facility</u>
2148 L	Apex Licensed Home Care Agency, LLC (Bronx, Queens, Kings, Richmond, New York, Westchester Counties)
2000 L	Arvut Home Care, Inc. (Bronx, Queens, Kings, Nassau, New York, and Richmond Counties)
2147 L	Attentive Licensed Home Care Agency, LLC (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)
2136 L	Beautiful Day Home Care, Inc. (Cayuga, Tompkins, Onondaga, Cortland, Oswego, and Seneca Counties)
2134 L	Best Professional Home Care Agency, Inc. (Bronx, Kings, Queens, New York, and Richmond Counties)
2371 L	CNY Helpers, LLC d/b/a Home Helpers & Direct Link #58740 (Oneida, Madison, Onondaga and Oswego Counties)
2123 L	EOM Service, Inc. d/b/a BrightStar of South Brooklyn (Kings, Bronx, Queens, Richmond, and New York Counties)
1980 L	Clear Waters Home Care Services, LLC (Bronx, Orange, and Westchester Counties)
2038 L	Gentle Hands Agency, Inc. (Bronx, New York, Queens, Kings and Richmond Counties)
2104 L	Joyful NY, LLC d/b/a Joyful Home Care Services (Suffolk, Nassau and Queens Counties)
2150 L	Professional Assistance for Seniors, Inc. (Monroe, Livingston, Wayne, Genesee, and Ontario Counties)

- 2066 L Reliance Home Care, Inc.
(Kings, Bronx, Queens, Richmond, New York and Nassau Counties)
- 1614 L Taconic Innovations, Inc.
(Westchester and Dutchess Counties)
- 1787 L The Terrance at Park Place, Inc.
d/b/a The Terrance at Park Place Lansing
(Tompkins County)
- 2223 L Alliance Nursing Staffing of New York, Inc.
(Nassau, Putnam, Dutchess, New York, Rockland, Westchester, Suffolk, Sullivan and Orange Counties)
- 2294 L Astra Home Care, Inc. d/b/a True Care
(New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)
- 2267 L Bridgewood, LLC d/b/a New Fordham Arms Assisted Living LHCSA
(Queens, Kings, New York, Bronx, and Richmond Counties)
- 2303 A Baywood, LLC d/b/a Plan and Partner Home Healthcare
(Richmond County)
- 2303 L Baywood, LLC d/b/a Plan and Partner Home Healthcare
(Queens, Kings, New York, and Richmond Counties)
- 2105 L Healthy and Long Life Care, Inc.
(New York, Bronx, Kings, Richmond, Queens and Nassau Counties)
- 1935 L Supreme Homecare Agency of NY, Inc.
(New York, Bronx, Kings, Richmond, Queens and Westchester Counties)
- 2212 L Ameritech Homecare Solutions, LLC d/b/a PC Aide Plus
(Bronx, Queens, Kings, Richmond, New York and Westchester Counties)
- 2496 L A & T Healthcare, LLC
(Dutchess, Rockland, Nassau, Suffolk, Orange, Westchester, Putnam, Bronx, Sullivan, Ulster, Kings, New York, Richmond, Queens, and Greene Counties)

- 2219 L Healthwood Assisted Living at Williamsville, Inc.
(Erie County)
- 2220 L Healthwood Assisted Living at Penfield, Inc.
(Monroe County)
- 2231 L Intergen Health, LLC
(Bronx, Queens, Kings, Nassau, New York, and
Richmond Counties)
- 2309 L Two K Management Corp. d/b/a Family Aides Home Care
(Nassau, Suffolk, Queens, Westchester, Bronx, Kings,
New York, Queens, Richmond, and Suffolk Counties)
- 2423 L Senior Care Connection, Inc. d/b/a Eddy Senior Care
(See Exhibit for Counties)
(DISTRIBUTED UNDER SEPARATE COVER)
- 2424 L Eddy Licensed Home Care Agency, Inc.
(See Exhibit for Counties)
(DISTRIBUTED UNDER SEPARATE COVER)

**II. AD HOC COMMITTEE ON FREESTANDING AMBULATORY SURGERY CENTERS
AND CHARITY CARE**

Peter Robinson, Chair

III. COMMITTEE ON CODES, REGULATIONS AND LEGISLATION

Angel Gutiérrez, M.D., Chair

Exhibit # 12

For Emergency Adoption

13-08 Amendment of Subpart 7-2 of Title 10 NYCRR (Children’s Camps)

For Adoption

14-09 Amendment of Section 2.59 of Title 10 NYCRR
(Prevention of Influenza Transmission by Healthcare and Residential Facility
and Agency Personnel)

12-26 Amendment of Sections 600.3 and 710.5 of Title 10 NYCRR
(Amendment of Certificate of Need (CON) Applications)

For Discussion

Sections of Title 10 NYCRR – Integrated Services Licensure
(DISTRIBUTED UNDER SEPARATE COVER)



Public Health and Health Planning Council

Project # 142005-C
Strong Memorial Hospital

Program: Hospital
Purpose: Construction

County: Genesee
Acknowledged: July 7, 2014

Executive Summary

Description

Strong Memorial Hospital, an 830-bed not-for-profit tertiary care teaching hospital, is requesting approval to acquire the private practice of Batavia Radiation Oncology Associates, LLP, which is located at 264 Bank Street, Batavia (Genesee County). Strong Memorial Hospital will convert the private practice in radiation oncology to an Article 28 extension clinic, and expand the location's offered services to also include medical oncology. Concurrently, Strong Memorial Hospital will purchase the building that the practice currently occupies from Sparks & Hops Real Estate, LLC and renovate the 7,796 gross square footage associated with the facility, bringing it into compliance with the required regulations.

The current members and their ownership interests for both Batavia Radiation Oncology Associates, LLP (the private practice), and Sparks & Hops Real Estate, LLC (the real property owner) are: Kevin Mudd, M.D. at 50%, and Jan Dombrowski, M.D. at 50%.

DOH Recommendation
Contingent Approval

Need Summary

The proposed project is a conversion of a private practice that has one (1) linear accelerator unit. Strong Memorial Hospital intends to purchase the practice of the Batavia Radiation Oncology Associates and the building on Bank Street to convert it to an extension clinic that will offer therapeutic radiology services to patients in Genesee, Orleans, and Wyoming Counties. Proposed services are: Linear Accelerator, Medical

Services-Primary Care, Radiology-Therapeutic, and Therapy-Occupational.

The number of projected Radiology-Therapeutic linear accelerator treatments is 4,500 in year 1 and 4,860 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

The total acquisition cost of \$4,475,981 is broken out as follows: \$1,150,000 to acquire the private practice, and \$3,325,981 to acquire and renovate the real property. Strong Memorial Hospital will provide funding from its accumulated surplus.

Budget:

Revenues:	\$5,418,966
Expenses:	<u>\$3,810,836</u>
Gain/ (Loss)	\$1,608,130

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 project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must also be uploaded into NYSE-CON. [PMU]
2. Submission of an executed real property purchase agreement, acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. The project must be completed within three years from the date of 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]
7. The anticipated construction completion date is on or before 11/1/2014. It is the applicant's responsibility to request revised construction dates if necessary. [AES]

Council Action Date

October 2, 2014

Need Analysis

Project Description

Strong Memorial Hospital (SMH) is requesting approval to certify a radiation oncology extension clinic through the conversion of a private practice at 262 Bank Street, Batavia, 14020, in Genesee County.

Background and Analysis

The proposed project is a conversion of a private practice that has one (1) linear accelerator (linac) unit. Strong Memorial Hospital's James P. Wilmot Cancer Center intends to purchase the practice of the Batavia Radiation Oncology Associates and the building on Bank Street to convert it to an Article 28 facility to improve access to cancer care for patients in Genesee, Orleans, and Wyoming Counties. Proposed services are: Linear Accelerator, Primary Medical Care O/P, Radiology-Therapeutic, and Therapeutic-Occupational. The number of projected Radiology-Therapeutic linear accelerator treatments is 4,500 in year 1 and 4,860 in year 3.

Batavia Radiation Oncology Associates is an existing practice that has one (1) linear accelerator unit and has provided radiation oncology services in Western New York since 1989. Strong Memorial Hospital seeks to purchase the practice and building at 262 Bank Street to convert it to an Article 28 facility and to expand SMH's medical oncology services.

SMH provides services to the communities of Monroe County and also to the communities of 15 counties in the region.

In 2013, SMH (Main Campus and Two Extension Clinics) provided a total of 30,998 treatments using seven (7) linear accelerator units; this is an average of 4,428 treatments per unit.

The number of Linear Accelerator Units at SMH and their utilization is as follows:

Number of Treatments @ SMH	# Linacs	# Treatments in 2013
SMH-Main Campus	5	22,092
SMH-Two Extension Clinics	2	8,906
Total	7	30,998

The need methodology set forth in 10 NYCRR Section 709.16 calculates the need for therapeutic radiology devices by health planning region. Although the operator of the proposed extension site would be Strong Memorial Hospital, which is located in the Finger Lakes Health Systems Agency (HSA) region, the clinic and the linac itself would be located in Genesee County, in the Western New York HSA region. Moreover, the applicant states that the proposed extension site will be operated to improve access to cancer care for patients in Genesee, Orleans, and Wyoming counties, all of which are located in the Western New York HSA region. Accordingly, the need for the proposed linac should be evaluated based on the need for therapeutic radiology devices in the Western New York HSA region.

The eight-county Western New York Region has a total of three facilities – two hospitals and one hospital extension clinic - providing linear accelerator services:

Current Resources	# Facilities With Linac Services				# Linac Machines		
	Hospitals	Hospital Clinics	Total		Hospitals	Hospital Clinics	Total
Eight County Western NY Region							
Genesee	0	0	0		0	0	0
Orleans	0	0	0		0	0	0
Wyoming	0	0	0		0	0	0
Allegany	0	0	0		0	0	0
Cattaraugus	0	1	1		0	1	1
Chautauqua	1	0	1		1	0	1
Erie	1	0	1		4	0	4
Niagara	0	0	0		0	0	0
Total Western NY Region	2	1	3		5	1	6
Total Three County- Genesee, Orleans, Wyoming	0	0	0		0	0	0

The table below shows a need for 17 MEV devices (linear accelerators) in the eight-county Western New York HSA region:

Linac Need in Western NY	Total W. NY
# of Cancer Cases/Year	10,063
60% will be Candidates for Radiation Therapy	6,038
50% of (2) will be Curative Patients	3,019
50% of (2) will be Palliative Patients	3,019
Course of Treatment for Curative Patients is 35 Treatments	105,666
Course of Treatment for Palliative patients is 15 Treatments	45,285
The Total Number of Treatments [(5)+(6)]	150,951
Need for MEV Machines	
(Each MEV Machine has Capacity for 6,500 Treatments)	23.22
Existing/Approved Resources (Upon Approval of 142005)	7.00
Remaining Need for MEV Machines	16.2

Based on 709.16, there is a need for two linear accelerators in the three-county area (Genesee, Orleans, and Wyoming) addressed by the applicant:

	Total for Three County Area (Genesee, Orleans, Wyoming)
# of Cancer Cases/Year	894
60% will be Candidates for Radiation Therapy	536
50% of (2) will be Curative Patients	268
50% of (2) will be Palliative Patients	268
Course of Treatment for Curative Patients is 35 Treatments	9,387
Course of Treatment for Palliative patients is 15 Treatments	4,023
The Total Number of Treatments [(5)+(6)]	13,410
Need for MEV Machines	
(Each MEV Machine has Capacity for 6,500 Treatments)	2.06
Existing/Approved Resources (Upon Approval of 142005)	1.00
Remaining Need for MEV Machines	1.1

The number of current and projected Radiology-Therapeutic and primary care visits is as follows:

	Current Year	Year 1	Year 3
Radiology-Therapeutic	11,715	11,715	12,075
Primary Care	0	1,288	1,840
Total	11,715	13,003	13,915

Conclusion and Recommendation

The proposed project will improve access to therapeutic radiology for cancer patients in Genesee, Orleans, and Wyoming counties.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Strong Memorial Hospital (SMH) seeks approval to certify a radiation oncology extension clinic through the conversion of a private practice in Batavia. Per the applicant, SMH has a long-standing relationship with Batavia Radiation Oncology Associates, a private practice located at 262 Bank Street, Batavia that provides radiation oncology services in western New York.

Strong Memorial Hospital intends to renovate the facilities and expand the services offered to medical oncology. The addition of this extension clinic will further the mission of SMH in developing a community-based, patient-centered cancer care model, while providing access to more advanced cancer treatment, molecular diagnostics, and inpatient care for more complex and challenging cancer problems.

Site	Approved Services
Strong Memorial Hospital Outpatient Extension Clinic 262 Bank Street Batavia, New York 14020	Linear Accelerator Primary Medical Care Medical Services – Primary Care Therapy – Occupational

First year staffing will consist of 20.8 FTEs, including registered nurses, technicians, and therapists. It 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

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement, which is summarized as follows:

Date: July 28, 2014
Seller: Batavia Radiation Oncology Associates, LLP
Purchaser: Strong Memorial Hospital (A Division of University of Rochester)
Acquired Assets: Acquire all furniture, fixtures, equipment, supplies, inventory and eighty-eight thousand dollars of accounts receivable free and clear of any liens, and encumbrances.
Excluded Assets: Medical records, cash, deposits, income tax refunds, Medicare provider number(s), Medicare bad debt recovery claims, software licenses and the corporate and financial records or accounts receivables in excess of eighty-eight thousand dollars.
Assumed Liabilities: Liabilities arising after closing of the Asset Purchase Agreement.
Purchase Price: \$1,150,000
Payment: \$1,150,000 at closing (equity from accumulated surplus of Strong Memorial Hospital)

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, there are no outstanding Medicaid and Assessment liabilities

Real Property Purchase Agreement

The applicant has submitted a draft real property purchase agreement, which is summarized as follows:

Seller: Sparks & Hops Real Estate, LLC
Purchaser: Strong Memorial Hospital (A Division of University of Rochester)
Acquired Assets: Acquire real property reference tax map parcel numbers 71.082-1-12 and 71.082-1-12/p located at 264 Bank Street (mailing address 262 Bank Street) Batavia, NY free and clear of all liens, security interest, and encumbrances. Includes the existing buildings, improvements, all leases, all permits, all service contracts, all site plans and reports.
Purchase Price: \$1,975,000
Payment: \$1,975,000 at closing (equity from accumulated surplus of Strong Memorial Hospital)

As noted above, the members and their interest of (Sparks & Hops Real Estate, LLC (sellers of the real property) and Batavia Radiation Oncology Associates, LLP (sellers of the private practice) are the same.

Total Project Costs

Total project costs for building acquisition, renovation and acquisition of moveable equipment is estimated at \$3,325,981, which is broken down as follows:

Building Acquisition	\$1,975,000
Renovation & Demolition	601,058
Design Contingency	60,106
Construction Contingency	60,106
Fix Equipment	15,500

Architect/Engineering Fees	54,000
Construction Manager Fees	39,000
Other Fees	341
Movable Equipment	199,933
IT including Telecommunications	300,755
CON Application Fee	2,000
CON Processing Fee	<u>18,182</u>
Total Project Cost	\$3,325,981

Project costs are based on a November 1, 2014 start date, with a one month construction period. Strong Memorial Hospital will fund total project cost from their accumulated funds.

In support of the building acquisition cost, the applicant has provided a real property appraisal from a Member of Appraisal Institute (MAI).

Funding for the proposed transactions is as follows:

Equity: For the Acquisition of the private practice	\$ 1,150,000
Equity for the Total Project Cost (including purchase of building):	<u>3,325,981</u>
Total:	<u>\$4,475,981</u>

BFA Attachment A is Strong Memorial Hospital (A Division of the University of Rochester) 2012 and 2013 certified financial statement, which shows sufficient resources to meet the equity requirement.

Operating Budget

The applicant has submitted first year's operating budget, in 2014 dollars, as summarized below:

	Current Year	Incremental Year One	Year One	Incremental Year Three	Year Three
Revenues:	\$2,487,692	\$1,961,149	\$4,448,841	\$2,931,274	\$5,418,966
Expenses:					
Operating	\$1,705,257	\$1,551,302	\$3,256,559	\$1,683,076	\$3,388,333
Capital	<u>\$498,187</u>	<u>\$(75,684)</u>	<u>\$422,503</u>	<u>\$(75,684)</u>	<u>\$422,503</u>
Total Expenses	\$2,203,444	\$1,475,618	\$3,679,062	\$1,607,392	\$3,810,836
Revenues over Expenses (Loss)	<u>\$284,248</u>	<u>\$485,531</u>	<u>\$769,779</u>	<u>\$1,323,882</u>	<u>\$1,608,130</u>
Utilization: (treatments)	11,715	1,288	13,003	2,200	13,915
Cost per Treatment	\$188.09		\$282.94		\$273.87

Utilization by Payor source for the current year and the first year subsequent to the change in operator, is summarized below:

	<u>Current Year</u>	<u>Years One & Three</u>
Medicaid Fee-For-Service	1.91%	1.91%
Medicaid Managed Care	12.55%	12.55%
Medicare Fee-For-Service	9.71%	9.71%
Medicare Managed Care	16.67%	16.67%
Commercial Fee-For-Service	49.77%	49.77%
Commercial Managed Care	1.86%	1.86%
Private Pay & All Other	7.53%	7.53%

Utilization and expense assumptions were developed using historical experience adjusted for added volume. Costs for the first year are expected to be covered at approximately 82.7% of projected volume or 10,753 visits.

Capability and Feasibility

Strong Memorial Hospital's \$4,475,981 in total acquisition costs is comprised of the following: \$1,150,000 to acquire the private practice, and \$3,325,981 to acquire and renovate the building. Strong Memorial Hospital will provide funding from its accumulated surplus. BFA Attachment A is Strong Memorial Hospital's 2012-2013 certified financial summary, which indicates the availability of sufficient resources.

Working capital requirement is estimated at \$635,139, which appears reasonable based upon two months of third years expenses and will be provided from the applicant. Review of BFA Attachment A, Strong Memorial Hospital 2012 and 2013 financial summary, indicates sufficient resources to fund the working capital.

The budget projects positive results for both first and third years at \$769,779 and \$1,608,130, 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 a positive working capital position and a positive net asset position, and for 2012 through 2013, generated an average income from operations of \$109,704,876.

BFA Attachment B is Batavia Radiation Oncology Associates, LLP and Affiliate Historic Financial Summary for the years from 2008 through 2012, which shows the facility has maintained a positive working capital position, a positive net asset position, and generated positive operating surplus during this five year time frame.

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	Financial Summary for 2012 and 2013, Strong Memorial Hospital
BFA Attachment B	Financial Summary for 2008 through 2012, Batavia Radiation Oncology Associates, LLP and Affiliate
BHFP Attachment	Map



Public Health and Health Planning Council

Project # 141248-E
White Plains Hospital Center

Program: Hospital
Purpose: Establishment

County: Westchester
Acknowledged: June 20, 2014

Executive Summary

Description

Montefiore Health System, Inc., requests approval to become the active parent and co-operator of White Plains Hospital (WPH). The proposed project, as described, does not result in any immediate changes in services at White Plains Hospital, in the projected utilization and staffing, or in any restructuring. BFA Attachment A is the organizational chart of Montefiore Health System, Inc. after the approval of the proposed application.

Montefiore Health System, Inc. is the active parent/co-operator of the following facilities: Montefiore Medical Center-Montefiore Hospital (779-bed hospital), Montefiore Medical Center-Weiler Hospital (424-bed hospital), Montefiore Medical Center-Wakefield Hospital (309-bed hospital), Wakefield Ambulatory Care Center (DTC), Montefiore Medical Center Long Term Home Health Care Program (LTHHCP), Montefiore Medical Center Home Care and Extended Services (CHHA), Montefiore New Rochelle Hospital (242-bed hospital), Montefiore Mount Vernon Hospital (176-bed hospital), Schaffer Extended Care Center (150-bed nursing home), and Montefiore Westchester Square (off-campus ED).

The applicant will exercise the following active powers:

- Approve the appointment of WPH management level employees (Chief Executive Officer, President, Chief Medical Officer and Chief Financial Officer).
- Approve WPH operating and capital budgets.
- Approve certain WPH operating policies and procedures.
- Approve certificate of need applications.

- Approve WPH debt necessary to finance the cost of compliance with operational or physical plant standards required by law.
- Approve hospital contracts for management or for clinical services, other than in the ordinary course of business.
- Approve settlements of administrative proceedings or litigation to which WPH is a party that may have a material adverse impact on WPH or MHS.

DOH Recommendation
Contingent Approval

Need Summary

This project will allow the health system to operate in a more cost effective manner, provide a more streamlined patient health system, and offer better access to care.

Program Summary

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

Financial Summary

There will no costs or budgets associated with this application.

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 project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of White Plains Hospital Medical Center, acceptable to the Department. [CSL]
3. Submission of the adopted amended Bylaws of White Plains Hospital Medical Center, acceptable to the Department. [CSL]
4. Submission of an executed Restated Certificate of Incorporation of Montefiore Health System, Inc., acceptable to the Department. [CSL]
5. Submission of the adopted Amended and Restated Bylaws of Montefiore Health System, Inc., acceptable to the Department. [CSL]

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]

Council Action Date

October 2, 2014

Need Analysis

Background

White Plains Hospital Medical Center (WPH) has proven to be a community asset, with approximately 15% of the market share in Westchester County, and is a leader in tertiary care in the area. The addition of WPH to the Montefiore Health System help enhance quaternary care in Westchester County.

There will be no changes in beds, services or utilization at WPH as a result of this project.

Table 1 White Plains Hospital Center

<u>Bed Category</u>	<u>Certified Capacity</u>
Coronary Care	8
Intensive Care	8
Maternity	28
Medical/Surgical	218
Neonatal Intensive Care	9
Neonatal Intermediate Care	6
Pediatric	15
Total	292

White Plains Hospital Center will be used as the hub for Montefiore Health System's tertiary level of hospital services.

Conclusion

This project will allow the health system to operate in a more cost effective manner, provide a more streamlined patient health system, and offer better access to care. For these reasons, approval of this project is recommended.

From a need perspective, approval is recommended.

Program Analysis

Program Description

Montefiore Health System, Inc. (MHS), an existing not-for-profit corporation, seeks approval for the establishment of Montefiore Health System, Inc. as the sole member, active parent and co-operator of White Plains Hospital Medical Center (White Plains Hospital, or WPH). The project aims to build a regional network of hospitals and community physicians closely aligned in an integrated system of care serving Westchester and the Hudson Valley. The proposed project will not result in any immediate changes in staffing or in the number and/or type of beds or authorized services at White Plains Hospital.

Montefiore Health System, Inc. (MHS) will become the active parent over:

White Plains Hospital Medical Center

WPH licensed Article 28 locations:

- Armonk Clinic
- Physical Therapy & Occupational Therapy Center at Westchester Avenue
- WPHC – Women's Imaging Center
- White Plains HC OT & PT Clinic
- White Plains Hospital Imaging at New Rochelle

WPH licensed Article 31 Programs

- White Plains Hospital Center Psychiatric Outpatient Clinic
- White Plains Hospital Continuing Day Treatment

Character and Competence

White Plains Hospital's current board members will remain on the WPH Board, and MHS may appoint three additional directors to the WPH Board. All 49 Trustees of the MHS Board were previously subjected to a character and competence review.

The officers of the Montefiore Health System, Inc. Board are:

Steven M. Safyer, MD	President/CEO
David A. Tanner	Chairman
Oded Aboodi	Vice Chairman
Kennet D. Weiser	Treasurer
Lewis Henkind	Secretary
Christopher Panczner	Assistant Secretary

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.

In a Stipulation and Order dated March 6, 2007, Montefiore Medical Center was fined \$14,000 based on a the findings of a complaint investigation into the care rendered to a child who presented with signs and symptoms of child abuse but was discharged home to an unsafe environment.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no project costs associated with this application.

BFA Attachment B are the 2012 and 2013, certified financial statements of Montefiore Health System, Inc. As shown, the entity had an average positive working capital position and an average positive net asset position from 2012 through 2013. Also, the entity achieved average income from operations of \$106,367,000 from 2012 through 2013.

BFA Attachment C are the 2012 and 2013 certified financial statements of White Plains Hospital Center. As shown, the entity had an average positive working capital position from 2012 through 2013. The entity had a negative working capital position in 2013, which was the result of \$7 million in capital spending (Major Modernization Phase II and Cancer Center Expansion and Renovation Projects) for which reimbursement was expected through either proceeds of a financing or an affiliation agreement. The agreement with Montefiore occurred in the first quarter of 2014 and the capital expenditures were reimbursed through that agreement in March 2014. Year-to-date results show a positive working capital position. Also, the entity achieved income from operations of \$5,240,645 from 2012 through 2013.

BFA Attachment D are the March 31, 2014 internal financial statements of Montefiore Health System, Inc. As shown, the entity had a positive working capital position and a positive net asset position. Also, the entity achieved an income from operations of \$6,779,000 through March 31, 2014.

BFA Attachment E are the June 30, 2014 internal financial statements of White Plains Hospital Center. As shown, the entity had a positive working capital position and a positive net asset position. Also, the entity achieved an income from operations of \$1,691,944 through June 30, 2014.

The applicant has demonstrated that 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	Organizational Chart of Montefiore Health System, Inc.
BFA Attachment B	Financial Summary- 2012 and 2013 certified financial statements of Montefiore Health System
BFA Attachment C	Financial Summary- 2013 and 2013 certified financial statements of White Plains Hospital Center
BFA Attachment D	Financial Summary- March 31, 2014 internal financial statements of Montefiore Health System
BFA Attachment E	Financial Summary- June 30, 2014 internal financial statements of White Plains Hospital Center



Public Health and Health Planning Council

Project # 142009-E
RU System

Program: Hospital
Purpose: Establishment

County: Ontario
Acknowledged: July 11, 2014

Executive Summary

Description

RU System, a/k/a Rochester Regional Health System, requests approval to become the active parent and co-operator of The Clifton Springs Sanitarium Company d/b/a Clifton Springs Hospital and Clinic (CSHC).

RU System will be the active parent/co-operator of the following facilities: Clifton Springs Hospital and Clinic (104-bed hospital) and Clifton Springs Hospital and Clinic Extended Care (108 RHCF beds). BFA Attachment A is the organizational chart of RU System. Also included in the organizational chart of RU System is the transaction in CON 141018, which was approved with contingencies by the Public Health and Health Planning Council on April 10, 2014, and received final approval on June 27, 2014. RU System became the active parent and co-operator of the licensed healthcare affiliates of both Rochester General Health System (RGHS) and Unity Health System.

The applicant will exercise the following active powers:

- Approve and interpret the statement of mission and philosophy adopted by the Corporation and to require that the Corporation operate in conformance with the Corporation's mission and philosophy.
- Set the number of trustees of the Corporation within the limits set by New York State legislation that establishes the minimum and maximum number of trustees of the Corporation.
- Appoint and remove, with or without cause, the trustees of the Corporation.
- Appoint and remove, with or without cause, the chief executive officer of the Corporation.
- Approve any amendment of the Certificate of Incorporation and the bylaws of the Corporation.
- Approve any debt of the Corporation, other than in the ordinary course of business, in excess of an amount to be fixed from time to time by the Corporation's members for a single borrowing and in

the aggregate for the preceding twelve month period, including any debt necessary to finance the cost of compliance with operational, or physical plant standards required by applicable law.

- Approve the sale, lease, exchange or disposition of all, or substantially all the assets of the Corporation, and to approve any sale, acquisition lease, transfer, mortgage, pledge or other alienation of an interest in any real or personal property of the Corporation in excess of an amount to be fixed from time to time by the Corporation's member, in a single transaction or in the aggregate for the preceding twelve month period, or otherwise outside of the ordinary course of the business.
- Approve the capital and operating budgets of the Corporation.
- Approve any plan of merger, consolidation, reorganization, dissolution or liquidation of the Corporation, including the addition of any entities as new members of the Corporation and the Corporation's participation in, or development or dissolution of, any subsidiary organizations, including corporations, partnerships or joint ventures of the Corporation and other entities.
- Approve the strategic plan of the Corporation.
- Approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund.
- Approve contracts that require Department of Health approval.
- Approve Certificate of Need applications that are to be filed with the Department of Health.

DOH Recommendation
Contingent Approval

Need Summary

This project will not change utilization, services, or beds. The project will allow RU System to oversee the two facilities and act with power to facilitate all Article 28 applicable laws. Patients will benefit by the continued access to care and the enhanced program quality and service.

There will be no change in beds or services and there are no anticipated utilization changes for this project.

Program Summary

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

Financial Summary

There will be no costs or budgets associated with this application.

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 project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of evidence of approval by the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of The Clifton Springs Sanitarium Company, acceptable to the Department. [CSL]
4. Submission of the adopted Amended and Restated Corporate Bylaws of The Clifton Springs Sanitarium Company, acceptable to the Department. [CSL]
5. Submission of an executed amended Certificate of Incorporation of RU System, Inc., acceptable to the Department. [CSL]

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]

Council Action Date

October 2, 2014

Need Analysis

Background

RU System, Inc. is seeking approval to be established as the active parent and co-operator of the Clifton Springs Sanitarium Company d/b/a Clifton Springs Hospital and Clinic ("CSHC"), a 154 bed acute care Hospital located at 2 Coulter Road, Clifton Springs (Ontario County), New York, 14432. CSHC also operates Clifton Springs Hospital and Clinic Extended Care, a 108 bed Residential Health Care Facility. Both facilities will fall under the integrated hospital system and allow RU System to exercise Article 28 powers over the facilities.

<u>Bed Category</u>	<u>Certified Capacity</u>
Chemical Dependence – Rehab	30
Intensive Care	6
Medical/Surgical	100
Psychiatric	18
Total	154

Clifton Springs Hospital and Clinic Extended Care had a 98.1% utilization rate in July, 2014.

Conclusion

This project will help the RU Health system to be more cost effective, providing a more streamlined patient health system and better access to care. Approval of this project is recommended.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Establish RU System, Inc. as the active parent and co-operator of The Clifton Springs Sanitarium Company d/b/a Clifton Springs Hospital and Clinic (CSHC).

CSHC is a 154-bed acute care hospital that also operates a residential health care facility (RHCF) in Ontario County, New York.

Upon approval, RU System will become the active parent and will have the ability, as sole corporate member, to exercise active powers over CSHC and gain oversight with respect to day-to-day operations over both The Clifton Springs Sanitarium Company d/b/a Clifton Springs Hospital and Clinic (CSHC) and Clifton Springs Hospital and Clinic Extended Care (108-bed RHCF).

The applicant's objective is to establish a coordinated, integrated system aimed at improving quality, increasing access and lowering the costs of health care in the communities served by CSHC.

CSHC will remain a separate not-for-profit corporation and no reduction in authorized services or the number and/or type of beds is planned. Further, there are no costs associated with this project and no changes to staffing are anticipated.

RU System, Inc. will be renamed Rochester Regional Health System and will operate under a Certificate of Assumed Name until its Certificate of Incorporation is amended to reflect the new name.

Character and Competence

The proposed governing board of RU System consists of 24 members who were subject to a Character and Competence review. The proposed Officers of RU System's Board are:

Name	Title
Robert A. Dobies	Chair
Michael R. Nuccitelli	Vice Chair
Robert S. Sands	Secretary
Faheem A. R. Masood	Treasurer

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.

Of the twenty-four (24) members reviewed, there were two disclosures: Mr. Leonard Olivieri revealed that his New Jersey law license was administratively revoked for failure to pay fees to maintain its active status when he ceased to practice law in New Jersey and Dr. Thomas Penn, a vascular surgeon, disclosed one pending and one settled medical malpractice case.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no project costs associated with this application.

BFA Attachment B are the 2012 and 2013 certified financial statements of Clifton Springs Hospital and Clinic and Affiliates. As shown, the entity had an average positive working capital position and an average positive net asset position from 2012 and 2013. Also, the entity incurred average historical losses of \$2,223,474 from 2012 and 2013. The applicant has indicated that the reason for the losses are as follows: In October 2011, the orthopedic group left Clifton Springs Hospital and Clinic, which represented 40% of the hospital's operating room volume. The hospital continued to experience a decrease in overall volume, including a 15% decrease in acute discharges from 2011 to 2012. As volume decreased, the hospital did not adjust its staffing levels. The applicant implemented the following steps to improve operations: At the end of 2012, Management and the Board of Trustees engaged a consulting firm that assisted with the implementation of an approximately \$6 million ongoing annual operating margin improvement plan. The plan included a \$4 million restructuring of the workforce, which took place in January 2013. The workforce reduction eliminated 92 FTE's. The balance of the plan included revenue improvements and other operating expense reductions being implemented throughout 2013 and 2014.

BFA Attachment C is the June 30, 2014 internal financial statements of Clifton Springs Hospital and Clinic and Affiliates. As shown, the entity had a positive working capital position and a positive net asset position through June 30, 2014. Also, the entity incurred an operating loss of \$396,352 through June 30, 2014. The applicant has been improving operations through June 30, 2014 from historical.

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	Organizational Chart of RU System
BFA Attachment B	Financial Summary- 2012 and 2013 certified financial statements of Clifton Springs Hospital and Affiliates
BFA Attachment C	Financial Summary- June 30, 2014 internal financial statements of Clifton Springs Hospital and Clinic and Affiliates



Public Health and Health Planning Council

Project # 142041-E
RU System

Program: Hospital
Purpose: Establishment

County: Genesee
Acknowledged: August 4, 2014

Executive Summary

Description

RU System, a/k/a Rochester Regional Health System, requests approval to become the active parent and co-operator of the United Memorial Medical Center (UMMC) a 131-bed community hospital operating at two sites in Batavia. BFA Attachment A is the organizational chart of RU System. Also included in the organizational chart of RU System, is the transaction under CON 141018, which was approved with contingencies by the Public Health and Health Planning Council on April 10, 2014, and received final approval on June 27, 2014. CON 141018 was for RU System to become the active parent and co-operator of the licensed healthcare affiliates of both Rochester General Health System and Unity Health System.

- Approve the capital and operating budgets of the Corporation.
- Approve any plan of merger, consolidation, reorganization, dissolution or liquidation of the Corporation.
- Approve the strategic plan of the Corporation.
- Approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund.
- Approve contracts that require Department of Health approval.
- Approve Certificate of Need applications that are to be filed with the Department of Health.

The applicant will exercise the following active powers:

- Approve and interpret the statement of mission and philosophy adopted by the Corporation and to require that the Corporation operate in conformance with the corporate mission and philosophy.
- Set the number of directors of the Corporation.
- Appoint and remove, with or without cause, the directors of the Corporation.
- Appoint and remove, with or without cause, the chief executive officer of the Corporation.
- Approve any amendment of the Certificate of Incorporation and the bylaws of the Corporation.
- Approve any debt of the Corporation, other than in the ordinary course of business, in excess of an amount to be fixed from time to time by the Corporation's member.
- Approve the sale, lease, exchange or disposition of all, or substantially all, of the assets of the Corporation.

DOH Recommendation
Contingent Approval

Need Summary

This project will not change utilization, services, or beds. The project will allow RU System to oversee the facility and act with power to facilitate all Article 28 applicable laws. Patients will benefit by the preservation of access to care, delivered with a more streamlined approach.

There will be no change in beds or services at UMMC and there are no anticipated utilization changes for the facility.

Program Summary

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

Financial Summary

There will be no costs or budgets associated with this application.

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 project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of evidence of approval by the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of a finalized and executed Restated Certificate of Incorporation of United Memorial Medical Center, acceptable to the Department. [CSL]
3. Submission of the adopted Amended and Restated Corporate Bylaws of United Memorial Medical Center, acceptable to the Department. [CSL]
4. Submission of an executed amended Certificate of Incorporation of RU System, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of 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

October 2, 2014

Need Analysis

Background

RU System, Inc. is seeking approval to be established as the active parent and co-operator of United Memorial Medical Center, a 131 bed community hospital having two sites in Batavia NY. The facility will fall under the integrated hospital system and allow RU System to exercise Article 28 powers over the facilities.

<u>Bed Category</u>	<u>Certified Capacity</u>
Chemical Dependence – Rehab	18
Chemical Dependence – Detox	2
Total	20

<u>Bed Category</u>	<u>Certified Capacity</u>
Coronary Care	6
Intensive Care	4
Maternity	10
Medical/Surgical	86
Pediatric	5
Total	111

Conclusion

This project will allow RU System to operate in a more cost effective manner, providing a more streamlined patient health system and better access to care. Approval of this project is recommended.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Establish RU System, Inc. as the active parent and co-operator of United Memorial Medical Center (UMMC). UMMC is a 131-bed community hospital operating at two sites in Batavia (Genesee County). UMMC also operates five (5) extension clinics in Genesee and Orleans Counties.

Upon approval, RU System will become the active parent and will have the ability, as sole corporate member, to exercise active powers over UMMC and gain oversight with respect to day-to-day-operations. The applicant's objective is to establish a coordinated, integrated system that will provide affordable, quality healthcare services to the communities served by UMMC. UMMC will remain a separate not-for-profit corporation and no reduction in authorized services or the number and/or type of beds is planned. Further, no costs are associated with this project and no staffing changes are anticipated.

RU System, Inc. will be renamed Rochester Regional Health System and will operate under a Certificate of Assumed Name until its Certificate of Incorporation is amended to reflect the new name.

Character and Competence

The proposed governing board of RU System consists of 24 members who were subject to a Character and Competence review. The proposed Officers of RU System's Board are:

Name	Title
Robert A. Dobies	Chair
Michael R. Nuccitelli	Vice Chair
Robert S. Sands	Secretary
Faheem A. R. Masood	Treasurer

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.

Of the twenty-four (24) members reviewed, there were two disclosures: Mr. Leonard Olivieri revealed that his New Jersey law license was administratively revoked for failure to pay fees to maintain its active status when he ceased to practice law in New Jersey, and Dr. Thomas Penn, a vascular surgeon, disclosed one pending and one settled medical malpractice case.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no project costs associated with this application.

BFA Attachment B is the 2012 and 2013 certified financial statements of United Memorial Medical Center and Subsidiary. As shown, the entity had an average positive working capital position and an average positive net asset position from 2012 through 2013. Also, the entity achieved an average income from operations of \$2,592,638 from 2012 through 2013.

BFA Attachment C is the May 31, 2014, internal financial statements of United Memorial Medical Center. As shown, the entity had a positive working capital position and a positive net asset position through May 31, 2014. Also, the entity achieved income from operations of \$2,411,000 for the period ending May 31, 2014.

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	Organizational Chart of RU System
BFA Attachment B	Financial Summary- 2012 and 2013 certified financial statements of United Memorial Medical Center
BFA Attachment C	May 31, 2014 internal financial statements of United Memorial Medical Center.



Public Health and Health Planning Council

Project # 141201-E
New York Endoscopy Center

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: Westchester
Acknowledged: May 9, 2014

Executive Summary

Description

New York Endoscopy Center, LLC, (Center), an existing proprietary Article 28 diagnostic and treatment center, is requesting approval to convert its limited life operating certificate to indefinite life. The original application, CON 082037, for the establishment and construction of a single specialty freestanding ambulatory surgery center specializing in gastroenterology, was contingently approved by the Public Health Council on March 13, 2009, for a five year limited life.

New York Endoscopy Center, LLC is located at 2 Westchester Park Drive, White Plains, New York and continues to operate under the original lease, which will expire in April, 2018. Note, on December 20, 2012, the Town of Harrison renamed Gannett Drive to Westchester Park Drive.

The members of New York Endoscopy Center, LLC are as follows:

Jack Rosemarin, M.D.	33.34%
Alfred Roston, M.D.	33.33%
Charles Noyer, M.D.	33.33%

DOH Recommendation

Contingent Approval for a two-year extension of limited life certification.

Need Summary

Data submission by the applicant, as a contingency of CON 082037, is completed.

Based on CON 082037, the Center projected 5,520 procedures in year 1 (2010) and 6,086 procedures in

year 3 (2012). The percent of Medicaid procedures projected was five (5) percent and that of charity was two (2) percent. Because only three of the five expected physicians chose to remain with the facility, the number of actual procedures was 1,173 in 2010 and 2,129 in year 3 (2012). The actual charity care in year 3 (2012) was 2.1 percent, but there was no significant Medicaid volume because of delays in the facility's Medicaid certification until late 2013.

Upon approval of this project, the Center projects 1,823 procedures in years 1 and 3 with five (5) percent Medicaid visits and two (2) percent charity care. There will be no changes in services.

Program Summary

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

Financial Summary

There are no project costs associated with this application.

Budget	Revenues	\$1,673,508
	Expenses	<u>852,575</u>
	Gains	\$820,933

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 project.

Office of Health Systems Management

Approval for a two-year extension of limited life certification, contingent upon:

1. Develop and implement a plan, satisfactory to the DOH, to improve Medicaid visits as projected in CON 082037. [RNR]
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. For the period 2010 to present, review and re-submit corrected data to SPARCS. [RNR]
4. Submission of an affidavit attesting that there have been no changes to the legal documentation as originally approved by the Department. [CSL]

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]

Council Action Date

October 2, 2014

Need Analysis

Background

New York Endoscopy Center, LLC (NYEC), an Article 28 diagnostic and treatment center certified as a single-specialty ambulatory surgery center providing gastroenterology procedures, is requesting permission to convert to indefinite life following a five (5) year limited life (CON 082037). The facility is located at 2 Westchester Park Drive, White Plains, 10604, in Westchester County. NYEC has two procedure rooms.

Analysis

The primary service area is Westchester County. The table below provides information on projections and utilization for years 1 and 3 based on CON 082037.

CON 082037	Projections- Procedures	Projections- Procedures	Actual- Procedures- ICR Cost Report	Actual- Procedures- ICR Cost Report
NYEC	Year 1 (2010)	Year 3 (2012)	Year 1 (2010)	Year 3 (2012)
Total	5,520	6,086	1,173	2,129

The applicant projected a total of 6,086 procedures in year 3 vs. 2,129 actual procedures in year 3 (2012). The applicant reports the reasons for not meeting the original projections are as follows:

- The operation of NYEC started in March 2010 instead of October 2009.
- NYEC did not get support from two surgeons as originally planned; one surgeon worked only part-time instead of full-time. In the end, they both left NYEC in mid-2012.
- The Medicaid certification was approved in late 2013. Negotiations with health plans were very difficult and took a long time to complete. On April 1, 2014, NYEC entered into a Provider Agreement with Hudson Health Plan, a primary Medicaid HMO in Westchester County. Recently, NYEC also entered into a Provider Agreement with Fidelis. With these agreements, NYEC will be able to reach larger populations of Medicaid patients than in previous years.

The table below provides information on NYEC's original projections by payor and its actual distributions by payor for 2012.

NYEC CON 082037 Projections	Projections Years 1 and 3 (2012)	Actual 2012
Medicaid FFS*	3%	---
Medicaid MC*	2%	---
Medicare FFS	38%	23.6%
Medicare MC	2%	0.8%
Commercial FFS	5%	73.3%
Commercial MC	45%	---
Charity Care	2%	2.1%
Private Pay	3%	0.3%
All Other	-----	-----
Total	100%	100%

Because NYEC did not receive Medicaid certification until late in 2013, the facility met none of its Medicaid projections for years 1 through 3.

Based on its experience to date and the earlier loss of two physicians, NYEC now projects a volume of 1,823 procedures per year. The table below provides payor distribution information for 2013 and projections of payor distribution for years 1 and 3 subsequent to receipt of a permanent life operating certificate.

NYEC CON 141201 Projections	Actual 2013	Projections Years 1 and 3
Medicaid FFS	0.3%	1.0%
Medicaid MC	0.1%	4.0%
Medicare FFS	26.4%	26.4%
Medicare MC	1.3%	1.3%
Commercial FFS	54.8%	50.2%
Commercial MC	---	---
Charity Care	2.0%	2.1%
Private Pay	5.6%	5.6%
All Other	9.5%	9.1%
Total:	100%	100%

Conclusion

In the first six months of 2014, Medicaid patients represented five percent of NYEC cases. However, additional time is needed to determine whether the facility can sustain a significant Medicaid caseload on an extended basis. Therefore, NYEC's limited life status should be extended for two years, to ensure the maintenance of its target of five percent Medicaid volume.

Recommendation

From a need perspective, an extension of limited life approval for two years is recommended.

Program Analysis

Program Proposal

New York Endoscopy Center, an existing Article 28 diagnostic and treatment center certified as a single-specialty ambulatory surgery center specializing in gastroenterology procedures, is requesting permission to convert to indefinite life following a five (5) year limited life. There will be no changes in services and staffing is expected to remain at 12.0 FTEs.

Compliance with Applicable Codes, Rules and Regulations

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

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

Financial Analysis

The applicant has submitted an operating budget, in 2014 dollars, for the current year and the first and third years of operations subsequent to receiving a permanent life operating certificate, as summarized below:

	<u>Current Year-2013</u>	<u>Year One</u>	<u>Year Three</u>
Revenues			
Operating	\$1,719,233	\$1,660,939	\$1,660,939
Non-Operating (a)	<u>12,569</u>	<u>12,569</u>	<u>12,569</u>
Total Revenues	<u>\$1,731,802</u>	<u>\$1,673,508</u>	<u>\$1,673,508</u>
Expenses			
Operating	\$646,654	\$646,654	\$646,654
Capital	<u>205,921</u>	<u>205,921</u>	<u>205,921</u>
Total Expenses	<u>\$852,575</u>	<u>\$852,575</u>	<u>\$852,575</u>
 Net Income or (Loss)	 \$879,227	 \$820,933	 \$820,933
 Utilization (visits)	 1,546	 1,546	 1,546
Utilization (procedures)	1,823	1,823	1,823
Cost per Procedure	\$467.68	\$467.68	\$467.68
(a) Interest income			

Projected utilization and expenses are based on current operating results.

Below is the comparison of CON 082037 projected and actual utilization for the first and third years.

<u>Utilization (procedures)</u>	<u>Year One 2010</u>	<u>Year Three 2012</u>
Projected	5,520	6,086
Actual	1,173	2,129

The applicant provides the following reasons for the difference between 2010 and 2012 projected utilization and actual utilization:

- The center started treating patients in March 2010, approximately five months after receiving their operating certificate in October 5, 2009.
- The two surgeons that were committed to practicing full-time (under CON 082037) never worked more than part-time and ultimately left the center, one in April 2012 and the other in May 2012.
- The Center did not receive Medicare certification until 2011 and did not receive Medicaid certification until the latter part of 2013.
- The Center had unexpectedly long negotiations with Hudson Health Plan (Medicaid HMO), which was finally executed in February 2014. The collaboration accounts for approximately 4% of the Center's total cases during the first half of 2014.
- The Center's contract applications with Affinity and Fidelis Health Plans have been pending for approximately six months, both are Medicaid HMO carriers.

- The Center's contract negotiations with commercial carriers have been unusually drawn out, as an example, United/Oxford contract became effective as of November 1, 2011, but the Blue Cross/Blue Shield did not become effective until July 1, 2014.

The applicant states that due to a computer/programming interface error between the New York Endoscopy Center, LLC and Statewide Planning & Research Cooperative System (SPARCS), the Center has determined that the information previously submitted is not accurate. The Center has offered to resubmit the correct 2010- 2013 data to SPARCS.

Below is the comparison of CON 082037 projected third year utilization by payor source and actual.

<u>Utilization by Payor</u>	<u>Projected Third Year-2012</u>	<u>Actual Third Year-2012</u>
Medicaid Fee-For-Service**	3%	
Medicaid Managed Care**	2%	
Medicare Fee-For-Service	38%	23.58%
Medicare Manage Care	2%	.77%
Commercial Fee-for-Service	5%	73.27%
Commercial Managed Care	45%	0%
Private Pay	3%	.28%
Charity Care*	2%	2.10%

*Includes highly discounted care to the poor and uninsured patients who otherwise would not have been able to afford the care.

**As noted above, the Center did not received its Medicaid Certification until the latter part of 2013.

The applicant has outlined a number of factors and affiliations that have and will increase its charity care and Medicaid utilization. The Center engages in community outreach programs, participants in the NYSDOH Cancer Screening Program, is involve is collaborating with Open Door Family Medical Centers (which works directly with Hudson Health Plan), Hudson River Healthcare, Inc. and Witness CARES (Community Awareness, Reach and Empowerment for Screening). As previously mentioned, the collaboration with Hudson Health Plan, a Medicaid HMO, accounted for 4% of the Center's cases during the first half of 2014.

Below is the utilization by payor source for 2013 and for the first and third years subsequent to receipt of a permanent life operating certificate.

<u>Utilization by Payor Source</u>	<u>2013</u>	<u>Year One and Three</u>
Medicaid Fee-For-Service	.26%	.97%
Medicaid Managed Care	.13%	4.01%
Medicare Fee-For-Service	26.39%	26.39%
Medicare Managed Care	1.29%	1.29%
Commercial Fee-for-Service	54.79%	50.19%
Private Pay	5.56%	5.56%
All Other	9.51%	9.51%
Charity Care	2.07%	2.08%

During the first six months of 2014, Medicaid patients represented 5% of the 785 cases and the uninsured/self-pay represented 9% of the cases which are provided at a discounted rate. In addition, from January through June 2014, approximately 4% of the Center's cases were provided to uninsured and underinsured individuals through the NYSDOH's Cancer Services Program. The applicant anticipates that its affiliation with Witness CARES will generate increased referrals for charity care and Medicaid patients.

Capability and Feasibility

There are no project costs associated with this application.

New York Endoscopy Center, LLC projects an operating surplus of \$820,933 in both of the first and third years. Revenues are based on current and projected federal and state governmental reimbursement methodologies, while commercial payers are based on experience. The budget appears reasonable.

BFA Attachment A and B are New York Endoscopy Center, LLC's 2012 and 2013 financial summaries, which show an average positive working capital and an average positive equity position, and generated an average positive net income of \$1,279,628 for the period.

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
BFA Attachment B

Financial Summary for 2012, New York Endoscopy Center, LLC
Financial Summary for 2013, New York Endoscopy Center, LLC



Public Health and Health Planning Council

Project # 141253-E
South Brooklyn Endoscopy Center

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment **Acknowledged:** June 13, 2014

Executive Summary

Description

Digestive Disease Diagnostic and Treatment Center, LLC d/b/a South Brooklyn Endoscopy Center, an existing Article 28 diagnostic and treatment center, requests approval to transfer 40% ownership interests in Digestive Disease Diagnostic and Treatment Center, LLC d/b/a South Brooklyn Endoscopy Center to four new members, as well as to remove two current individual members. The facility is certified as a single-specialty freestanding ambulatory surgical center specializing in gastroenterology procedures, with three procedure rooms located at 214 Avenue P, Brooklyn, (Kings County).

The proposed issuance of new membership interest exceeds a 25% ownership change within five years, and therefore requires the Public Health and Health Planning Council approval.

Ownership of the operations before and after the requested change is as follows:

Current Owners

Digestive Disease Diagnostic and Treatment Center, LLC d/b/a South Brooklyn Endoscopy Center

Names	Membership
Frontier Healthcare	7.73%
Beth Israel Ambulatory Care Services Corp.	11.46%
Mark Chu, M.D.	5.33%
Danny Chu, M.D.	5.33%
Lorenzo Ottaviano, M.D.	5.33%
Zhanna Gutnik, M.D.	11.33%
Jay Weissbluth, M.D.	17.32%
Alex Shapsis, M.D.	11.99%
Igor Grosman, M.D.	11.99%
Paul Cohen, M.D.	11.99%
Oleg Gutnik, M.D.	.10%
Jordan Fowler	.10%

Proposed Owners

Digestive Disease Diagnostic and Treatment Center, LLC d/b/a South Brooklyn Endoscopy Center

Names	Membership
Frontier Healthcare	4.13%
Beth Israel Ambulatory Care Services Corp	6.12%
Mark Chu, M.D.	1.75%
Danny Chu, M.D.	1.75%
Lorenzo Ottaviano, M.D.	1.75%
Zhanna Gutnik, M.D.	4.50%
Jay Weissbluth, M.D.	10.00%
Alex Shapsis, M.D.	10.00%
Igor Grosman, M.D.	10.00%
Paul Cohen, M.D.	10.00%
Dr. Rabin Rahmani	10.00%
Dr. Ian Wall	10.00%
Dr. Nison L. Badalov	10.00%
Dr. Pierre Hindy	10.00%

Ownership of Frontier Health Associates, LLC

Member Name	Membership
Oleg Gutnik, M.D.	50.00%
Jordan Fowler	50.00%

Ownership of Beth Israel Ambulatory Care Services Corp

Member Name	Membership
Beth Israel Ambulatory Care Services Corp	100%
Not For Profit Entity	

DOH Recommendation
Contingent Approval

Need Summary

There will be no Need recommendation of this application.

Program Summary

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

Financial Summary

There are no project costs associated with this proposal.

The purchase price of \$1,192,884 will be met with \$298,221 in personal equity from each of the 4 proposed new members. The new members' net worth statements are shown as BFA Attachment A.

Subject to noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, based on projected budgets for years one and three.

		<u>Year One</u>	<u>Year Three</u>
Budget:	Revenues	\$11,977,648	\$12,460,450
	Expenses	\$5,376,225	\$5,686,031
	Gain/(Loss)	\$6,601,423	\$6,774,419

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed loan commitment for Dr. Hindy acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for Dr. Wall acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of an executed amendment to the applicant's Articles of Organization, acceptable to the department. [CSL]

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]

Council Action Date

October 2, 2014

Program Analysis

Project Proposal

Digestive Diseases Diagnostic and Treatment Center, LLC d/b/a South Brooklyn Endoscopy Center, an existing single specialty (gastroenterology) Article 28 diagnostic and treatment center in Kings County, requests approval to transfer 40% membership interest in the center to four (4) new physician members who will each purchase a 10% interest in the Center. In addition, two (2) existing members of the Center will withdraw from the Center as individual members. There are no construction or other capital costs associated with this proposal.

The following table details the proposed change in ownership:

<u>Member Name</u>	<u>Current Membership Interest</u>	<u>Membership Interest Proposed</u>
Oleg Gutnik, MD	0.10%	----
Jordan Fowler	0.10%	----
Frontier Healthcare Assoc., LLC	7.73%	4.13%
Beth Israel Ambulatory Care Services, Corp.	11.46%	6.12%
Mark Chu, DO	5.33%	1.75%
Danny Chu, MD	5.33%	1.75%
Lorenzo Ottaviano, MD	5.33%	1.75%
Zhanna Gunik, MD	11.33%	4.50%
Jay Weissbluth, MD (Manager)	17.32%	10.0%
Alex Shapsis, MD	11.99%	10.0%
Igor Grosman, MD	11.99%	10.0%
Paul Cohen, MD	11.99%	10.0%
*Rabin Rahmani, MD	----	10.0%
*Ian Wall, DO	----	10.0%
*Nison Badalov, MD	----	10.0%
*Pierre Hindy, MD	----	10.0%
<i>*Members subject to review</i>		

Character and Competence

The four new proposed individual members, Rabin Rahmani, MD; Ian Wall, DO; Nison Badalov, MD; and Pierre Hindy, MD, are all practicing general surgeons, who are board-eligible in gastrointestinal endoscopy

The withdrawing members are: Oleg Gutnik, MD and Jordan Fowler (who will continue as only members of Frontier Healthcare Associates, LLC, which is an existing member of the Center).

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted for the proposed individual members 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, approval is recommended.

Financial Analysis

Membership Purchase Agreement

The applicant has submitted an executed membership purchase agreement for the change of 40% membership interest of Digestive Disease Diagnostic and Treatment Center, LLC d/b/a South Brooklyn Endoscopy Center, the terms of which are summarized below:

Purpose: The sale of 40% membership interests of Digestive Disease Diagnostic and Treatment Center, LLC d/b/a South Brooklyn Endoscopy Center,
Date: May 8, 2014
Sellers: Beth Israel Ambulatory Care Services Corp (5.34%), Mark Chu, M.D. (3.58%), Danny Chu, M.D. (3.58%), Lorenzo Ottaviano, M.D. (3.58%), Zhanna Gutnik, M.D. (6.83%), Jay Weissbluth, M.D. (7.32%), Igor Grosman, M.D. (1.99%), Paul Cohen, M.D. (1.99%), Alex Shapsis, M.D. (1.99%), Oleg Gutnik, M.D. (.10%), Jordan Fowler (.10%), Frontier Healthcare Associates, LLC (3.60%)
Purchasers: Dr. Rabin Rahmani (10.00%), Dr. Ian Wall (10.00%), Dr. Nison L Badalov(10.00%) and Dr. Pierre Hindy (10.00%)
Purchase Price: \$1,192,884 (\$29,882.10 per percent)
Payment Of Purchase Price: \$12,000 dollars (\$3,000 for each purchaser) good faith deposit at execution of the agreement held in escrow, with the remaining amount of \$1,180,884 due at closing (\$295,221 per purchaser)

Operating Budgets

Following is a summary of the submitted operating budget, presented in 2014 dollars, for the first and third year subsequent to change in ownership:

<u>Year One</u>	<u>Per Diem</u>	<u>Total</u>	<u>Year Three</u>	<u>Per Diem</u>	<u>Total</u>
Revenues:			Revenues:		
Medicaid	\$775.46	\$2,474,507	Medicaid	\$767.44	\$2,547,144
Medicare	\$649.59	\$1,213,448	Medicare	\$649.36	\$1,262,360
Commercial	\$2,294.03	\$7,971,741	Commercial	\$2,300.93	\$8,320,178
Private Pay/Other	\$6,488.82	\$317,952	Private Pay/Other	\$6,485.65	\$330,768
Charity Care		0	Charity Care		
Total		\$11,977,648	Total		\$12,460,450
Expenses:			Expenses:		
Operating		\$4,828,497	Operating		\$5,089,506
Capital		<u>\$547,728</u>	Capital		<u>596,525</u>
Total		\$5,376,225	Total		\$5,686,031
Net Income/(Loss)		\$6,601,423	Net Income/(Loss)		\$6,774,419

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

<u>Payor Sources</u>	2012 Projected <u>Utilization</u>	2012 Actual <u>Utilization</u>	Projected <u>Year 1 Utilization</u>	Projected <u>Year 3 Utilization</u>
Medicare	691	835	1,868	1,944
Medicaid	1,471	1,426	3,191	3,319
Commercial	1,235	1,585	3,475	3,616
Private Pay/Other	0	33	49	51
Charity Care	167	0	96	100
Total	3,564	3,879	8,679	9,030

The reason for the significant increase in the overall utilization from the current year (2012) to the projected for years 1 and 3, is due to the addition of 4 new doctor's to the practice, which also increases the number of staff needed in the practice to help perform the procedures. The current staffing level is at 6 FTE's and it is projected that the incremental increase is expected to be 16 FTE's, giving the facility a total of 22 FTE's. With this great of an increase in staffing, the significant increase in the overall utilization is warranted and appears reasonable. The increase in utilization also warrants the significant increase in overall revenues generated by the facility.

<u>Payor Sources</u>	2012 Projected <u>Utilization %</u>	2012 Actual <u>Utilization %</u>	Projected % Year 1 <u>Utilization</u>	Projected % Year 3 <u>Utilization</u>
Medicare	19.39%	21.53%	21.52%	21.53%
Medicaid	41.27%	36.76%	36.77%	36.76%
Commercial	34.65%	40.86%	40.04%	40.04%
Private Pay/Other	0%	.85%	.56%	.56%
Charity Care*	4.69%	0%	1.11%	1.11%

The facility is working on achieving a 2% or better charity care volume. South Brooklyn Endoscopy Center and its Board / Physician Members have been actively reviewing the Center's charity care program to ensure the Center continues to serve its local community, as well as to ensure adherence to the Center's CON commitment levels. To date, the Center has primarily been relying on Member referrals for charity care cases. While Members have diligently worked to refer charity care patients to the Center, in reviewing the Center's charity care performance, the Board has come to realize the need for additional charity care referral sources. After discussion at the Center's Board meetings and vetting of various alternatives, the Center decided to enter into a partnership with Charles B. Wang Community Health Center, an organization that is dedicated to servicing low income communities to help refer charity care patients to the Center. The partnership is on track to begin in September 2014, and the Center is hopeful that its relationship with Charles B. Wang Community Health Center and the Center's continued overall focus on charity care performance will allow the Center to increase its percentage of charity care cases to at least the 2% level if not higher. In addition to charity care cases, the Center will continue its emphasis on serving lower income populations. Charles B. Wang Community Health Center has for more than 30 years, been a leader in providing culturally competent health-care to the Asian American community. The majority of the Center's clients are low income, uninsured or under-insured Asian-Americans. In addition to providing comprehensive primary care services, the Center promotes the health of the community through innovative health education and advocacy programs, and by recruiting and training bilingual health care providers.

Capability and Feasibility

The purchase price of \$1,192,884 will be met with \$298,221 in personal equity from each new proposed member. Based on BFA Attachment A, the net worth of two of the four proposed members indicates that they do not have sufficient resources available to meet the required equity need. The two members, Dr. Pierre Hindy and Dr. Ian Wall, have provided letters of interest from Chase bank for personal loans in the amount of \$250,000 each for a five year term at a 5.00% interest rate. When these loans are secured, there will be significant resources available to fund the transaction.

The issue of feasibility is centered on the applicants' ability to offset expenses with revenue and maintain a viable operating entity. The submitted budget indicates an excess of revenues over expenses of \$6,601,423 during the first year and \$6,774,419 during the third years of operation. The budget appears reasonable.

BFA Attachment B, is the 2011 and 2012 certified financial summary for Digestive Disease Diagnostic and Treatment Center, LLC d/b/a South Brooklyn Endoscopy Center, which indicates that the facility has experienced an average positive working capital, maintained an average positive member's equity, and generated an average net income of \$2,000,657 for the period 2011-2012.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A
BFA Attachment B

Net Worth of New Members
2011-2012 Financial Summary, Digestive Disease Diagnostic and Treatment
Center, LLC d/b/a South Brooklyn Endoscopy Center



Public Health and Health Planning Council

Project # 141300-B
Greenwich Village Ambulatory Surgery Center, LLC

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment and Construction **Acknowledged:** July 11, 2014

Executive Summary

Description

Greenwich Village Ambulatory Surgery Center, LLC is requesting to establish and construct a multi-specialty, freestanding ambulatory surgery center specializing in orthopedic surgery and pain management, which will have four operating rooms and two procedure rooms, and will be located in leased space at 200 West 13th Street, Suite 400, New York, NY 10011. Greenwich Village Ambulatory Surgery Center, LLC's primary service area will be in New York County. This application has been developed with the cooperation and support of Lenox Hill Hospital and North Shore-LIJ Health System. Lenox Hill Hospital is a subsidiary member of the applicant.

Greenwich Village Ambulatory Surgery Center, LLC (GVASC), a New York State limited liability corporation, consists of fifteen individual member surgeons (26%), three individual members of NYSCA, LLC (10%), and North Shore-LIJ Ventures CCC, LLC (64%).

North Shore-LIJ Ventures CCC, LLC is a New York State not-for-profit corporation solely owned by North Shore University Hospital. All of the physician members of GVASC are surgeons with medical practices within the proposed service area of the FASC. BFA Attachment A is the proposed organizational chart of Greenwich Village Ambulatory Surgery Center, LLC.

GVASC will enter into an administrative services agreement with Surgical Care Affiliates, LLC (SCA), under which SCA will provide development, consulting, and administrative services to the proposed Center. SCA is a national provider of consulting and administrative services to ambulatory surgery centers. The three members of NYSCA, LLC are also employed

by SCA. DOH staff notes that the administrative services agreement appears to be in compliance with the principles set forth by the Department's guidelines regarding representative governance.

DOH Recommendation

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

Need Summary

The number of projected procedures is 3,125 in year 1 and 6,350 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

Project costs of \$14,299,962 will be met with \$4,679,107 in cash and a \$9,620,855 bank loan.

Budget:	Revenues:	\$19,699,291
	Expenses:	<u>13,947,552</u>
	Gain:	\$ 5,751,739

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval with an expiration of the operating certificate five (5) years from the date of its 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 an executed Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed building lease that is acceptable to the Department of Health. [BFA]
8. Submission of a loan commitment for project costs that is acceptable to the Department of Health. [BFA]
9. Submission of an Administrative Services Agreement that is acceptable to the Department of Health. [BFA]
10. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in attached BAEFP Drawing Submission Guidelines DSG-03. Hardcopy plans must be addressed as follows: Attn: Contingency Response, NYS Department of Health, Bureau of Project Management, Corning Tower Room 1842, Empire State Plaza, Albany, NY 12237. Contingent approval has been recommended in lieu of missing requirements from the DSG-01. SHC submission shall incorporate this information also required by DSG-03. All exit components; i.e. corridors, stair & landing, widths, rise/runs, shall be dimensioned on drawings. Level of exit discharge shall be shown demonstrating compliance with NFPA. [AER]
11. Submission of the applicant's executed Certificate of Amendment of its Articles of Organization,

- acceptable to the Department. [CSL]
12. Submission of a photocopy of an executed amendment to applicants Operating Agreement, acceptable to the Department. [CSL]
 13. Submission of a photocopy of the executed agreement of Lease between Lenox Hill Hospital and the applicant, that is acceptable to the Department. [CSL]
 14. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of NYSCA, LLC, acceptable to the Department. [CSL]
 15. Submission of a photocopy of an executed amendment to the Operating Agreement of North Shore-LIJ Ventures CCC, LLC, acceptable to the Department. [CSL]

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-05, prior to the applicant's start of construction. [AER]
7. The applicant shall start construction on or before 12/01/14 and complete construction by 12/31/15 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not started on or before the start date, this shall constitute abandonment of the approval. In accordance with 10 NYCRR Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
October 2, 2014

Need Analysis

Project Description

Greenwich Village Ambulatory Surgery Center, LLC, a NYS limited liability corporation, is requesting approval to establish and construct an Article 28 diagnostic and treatment center to provide multi-specialty ambulatory surgery services. It will have four operating rooms and two procedure rooms. The proposed location is 200 West 13th Street, Suite 400, New York, 10011, in New York County.

Background and Analysis

The primary service area is New York County. New York County currently has a total of 15 freestanding ambulatory surgery centers: seven (7) multi-specialty ASCs and eight (8) single specialty ASCs. Additionally, there are two freestanding multi-specialty ASCs in New York County that have been approved but are not yet operational. (Source-HFIS)

Ambulatory Surgery Total Patients 2013

PFI	Type of Facility	Facility	Total Patients
9313	Single-Specialty	Carnegie Hill Endo, LLC	10,695
3976	Multi-Specialty	Center for Specialty Care	4,174
9115	Single-Specialty	East Side Endoscopy	7,345
4295	Multi-Specialty	Fifth Avenue Surgery Center	1,665
8577	Multi-Specialty	Gramercy Park Digestive Disease Ctr	8,666
6908	Multi-Specialty	Gramercy Surgery Center, Inc.	2,550
6624	Single-Specialty	Kips Bay Endoscopy Center LLC	9,241
9274	Single-Specialty	Manhattan Endoscopy Ctr, LLC	12,014
9490	Multi-Specialty	Manhattan Surgery Center (Opened 4/1/13)	N/A
7874	Single-Specialty	Mid-Manhattan Surgi-Center	4,312
9139	Multi-Specialty	Midtown Surgery Center, LLC	3,114
8503	Single-Specialty	Retinal Ambulatory Surgery Ctr	1,862
9148	Multi-Specialty	Surgicare of Manhattan, LLC	3,648
		Total	69,286

The number of projected procedures is 3,125 in year 1 and 6,350 in year 3. These projections are based on the participating physicians' current case load. The applicant is committed to serving all persons without regard to their ability to pay or the source of payment.

Conclusion

The proposed project will improve access to ambulatory surgery services for the communities of New York County.

Recommendation

From a need perspective, contingent approval is recommended for a limited life of five years.

Program Analysis

Project Proposal

Greenwich Village Ambulatory Surgery Center, LLC (GVASC) seeks approval to establish and construct an Article 28 diagnostic and treatment center that will be certified as a multi-specialty ambulatory surgery center (ASC).

Proposed Operator	Greenwich Village Ambulatory Surgery Center, LLC
Site Address	200 West 13 th Street, Suite 400, New York, NY
Surgical Specialties	Multi-Specialty, to include: Orthopedics Pain Management
Operating Rooms	4 - Class C (2 additional Class C ORs will be constructed but not equipped at this time)
Procedure Rooms	2
Hours of Operation	Monday through Friday from 6:00 am to 6:00 pm (Will consider expanding hours as demand increases.)
Staffing (1st Year / 3rd Year)	21.50 FTEs / 30.00 FTEs
Medical Director(s)	Nicholas Sgaglione, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is expected to be provided by Lenox Hill Hospital 4.1 miles/15 minutes away
On-call service	Patients will be provided instructions at discharge and the center will have signage and an after-hours phone message.

Character and Competence

Presently, Greenwich Village Ambulatory Surgery Center, LLC is wholly owned by North Shore-LIJ Ventures CCC, LLC. However, upon approval, ownership interest will be transferred as follows:

<u>Name</u>	<u>Membership Percentage</u>
**North Shore LIJ Ventures CCC, LLC	64.00%
<i>Managers:</i> Dennis Dowling Laurence A. Kraemer John McGovern Mark Jarrett, MD Joseph Moscola	
NYSCA, LLC	10.00%
Ali Reza (33.3%)	
Christian Ellison (33.3%)	
Brian Mathis (33.3%)	
Individuals (15 physician members)	26.00%
Andrew Bazos, MD	1.00%
Fabien Bitan, MD	2.00%
Ed Cleeman, MD	2.00%
Joshua Dines, MD	1.00%
Gordon Freedman, MD	2.00%
Richard Gilbert, MD	2.00%
Elias Kassapidis, MD	2.00%
Mark Klion, MD	1.00%
Joel Kreitzer, MD	2.00%
Robert Meyerson, MD	2.00%

Robert Pae, MD	2.00%
Kevin Plancher, MD	1.00%
Andrew Sands, MD	2.00%
Vinoo Thomas, MD	2.00%
Vikas Varma, MD	2.00%
TOTAL	
100.00%	

NSLIJ Ventures CCC, LLC is a New York State not-for-profit corporation. The officers and board of trustees are employees of the North Shore-LIJ Health System (NSLIJ). The sole passive member of NSLIJ Ventures CCC, LLC is North Shore-LIJ Health System. A full Character and Competence Review was conducted on all voting members of the NSLIJ Board. Disclosures were made as part of project CON #141004 which was approved by PHHPC in June 2014.

GVASC will enter into an administrative services agreement with Surgical Care Affiliates, LLC (SCA), a national provider of consulting and administrative services to ambulatory surgery centers. The three (3) members of NYSCA, LLC are employed by SCA and bring with them considerable ASC consulting and management expertise.

The physician members of GVASC are Board-certified surgeons in their respective specialties and have medical practices within the proposed service area of the ASC.

Presently, the Managers of GVASC are all officers of NSLIJ (Dennis Dowling, Laurence Kraemer, John McGovern, Mark Jarrett, MD, and Joseph Moscola). However, upon approval and execution of GVASC's amended and restated Operating Agreement, three (3) of the NSLIJ managers will be replaced with two (2) managers appointed by the physician members. The final manager slot will be filled by one of the three owners of NYSCA, LLC. (All prospective new managers have undergone a character and competence review with this project.)

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Drs. Freedman, Kreitzer, and Thomas each disclosed one pending malpractice case and Dr. Meyerson disclosed two (2) pending malpractice cases. Dr. Bitan disclosed 7 pending malpractice cases. Dr. Dines disclosed one settled malpractice case.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

On December 11, 2008, a Stipulation and Order and \$18,000 fine was issued against North Shore University Hospital – Manhasset following a complaint investigation into the post-operative care rendered to an elderly patient. Subsequent to surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed and sustained a dislocated femur and developed renal failure. Follow-up care was delayed or inadequately administered.

In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False

Claims Act by a private whistleblower and investigated by the U.S. Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.

Integration with Community Resources

The Center is committed to providing charity care for persons without the ability to pay and a uniformly-administered system of reduced fees or financial assistance will be implemented for those who are uninsured or do not have access to the financial resources to pay for medical care.

The Center is exploring implementation of an electronic medical record (EMR) system that would best provide a rapid and accurate exchange of patient information. In the interim, the Center will use a paper medical record which, when closed, will be scanned into a virtual medical record (VMR) for archiving. The Center will consider joining a regional health information (RHIO) or qualified health information exchange (HIE).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Administrative Services Agreement

Greenwich Village Ambulatory Surgery Center, LLC will enter into an Administrative Services Agreement with Surgical Care Affiliates, LLC.

The consultant would provide certain professional business and administrative services to the ambulatory surgery center relating to the operation of the facility.

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

Facility:	Greenwich Village Ambulatory Surgery Center, LLC
Contractor:	Surgical Care Affiliates, LLC
Administrative Term:	3 Years, with option to renew for an additional terms of 2 year periods.
Compensation:	\$500,000 per annum (\$41,666.67/month) for administrative services and can never exceed \$800,000 per annum. Billing and collection services are \$45-\$60 per claim based on the complexity of client's case mix.
Duties of the Contractor:	Financial Management Services, Strategic Planning and Development, Policies and Procedures, Contracting Services, Personnel, Supplies, Utilities/Waste Management, Operating Licenses and Banking, Billing and Collection Services.

While Surgical Care Affiliates, LLC will be providing all of the above services, the Facility retains ultimate control in all of the final decisions associated with the services.

Lease Rental Agreement

The applicant will lease approximately 30,897 square feet of space on the fourth floor, Suite 400 of 200 West 13th Street, New York, NY under the terms of the proposed lease agreement summarized below:

Landlord:	Lenox Hill Hospital
Tenant:	Greenwich Village Ambulatory Surgery Center , LLC
Term:	10 Years
Rental:	The annual base rent is \$1,755,600 calculated using 114 months with the first six months free, plus supplemental rent of \$1,512,588 per annum based on the amortized cost of the Landlord's leasehold improvements over 9.5 years. The first 6 months will also be free.

Provisions: Maintenance, insurance and taxes.

The applicant has indicated that the lease will be an arm's length lease arrangement, and has submitted letters from real estate brokers attesting to the reasonableness of the base per square foot rental.

Total Project Cost And Financing

Total project costs for renovations and the acquisition of movable equipment is estimated at \$14,299,962, broken down as follows:

New Construction	\$ 6,630,612
Design Contingency	567,708
Construction Contingency	283,854
Planning Consultant Fees	170,312
Architect/Engineering Fees	454,167
Construction Manager Fees	283,854
Other Fees (Consulting)	283,854
Movable Equipment	5,159,600
Telecommunications	385,792
Application Fee	2,000
Additional Processing Fee	<u>78,209</u>
Total Project Cost	<u>\$14,299,962</u>

Project costs are based on a December 1, 2014 construction start date and a thirteen month construction period. The applicant's financing plan appears as follows:

Equity	\$ 4,679,107
Bank Loan @ 5.0% over 7 years	9,620,855

Equity contributions are based on proposed member's percentage of interest. A letter of interest has been submitted by Siemens Financial Services, Inc. for both the equipment and construction loan.

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$9,694,037	\$19,699,291
Expenses:		
Operating	\$5,493,841	\$8,480,250
Interest	1,154,778	941,900
Depreciation and Rent	<u>4,493,259</u>	<u>4,525,402</u>
Total Expenses	\$11,141,878	\$13,947,552
Net Income (Loss)	<u>\$(1,447,841)</u>	<u>\$5,751,739</u>
Utilization: (procedures)	3,125	6,350
Cost Per Procedure	\$3,565.40	\$2,196.46

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

	<u>First and Third Years</u>
Commercial Insurance-Managed Care	64.5%
Medicare Fee-For-Service	11.5%
Medicaid Managed Care	2.9%
Self-Pay	1.5%
Other (Workmen's Comp and No Fault)	17.6%
Charity Care	2.0%

Expense and utilization assumptions are based on the combined historical experience of the proposed physician members of Greenwich Village Ambulatory Surgery Center, LLC, and similar Ambulatory Surgery Centers administered by SCA. The applicant has submitted physician referral letters in support of utilization projections.

Capability and Feasibility

Project cost will be satisfied by a loan from Siemens Financial Services, Inc., for \$9,620,855 at stated terms, with the remaining \$4,679,107 from proposed member's equity.

Working capital requirements, estimated at \$2,324,592, appears reasonable based on two months of third year expenses, and will be provided through equity of the proposed members. BFA Attachments C-E are the summaries of net worth statement of the proposed members of Greenwich Village Ambulatory Surgery Center, LLC, which indicate the availability of sufficient funds for the stated levels of equity. BFA Attachment F is the pro-forma balance sheet of Greenwich Village Ambulatory Surgery Center, LLC as of the first day of operation, which indicates positive member's equity position of \$5,713,693.

The submitted budget indicates a net loss of \$1,447,841 the first year, and a net profit of \$5,751,739 the third year of operation. The budget appears reasonable.

As shown on BFA Attachment E, North Shore-LIJ has maintained positive working capital, net assets and net profit from operations for the period shown.

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	Organizational Chart of Greenwich Village Ambulatory Surgery Center, LLC
BFA Attachment B	Physician Membership Interest
BFA Attachment C	Net Worth Statement of Proposed Physician Members
BFA Attachment D	Net Worth Statement of NYSCA, LLC members
BFA Attachment E	Financial Summary of North Shore-LIJ
BFA Attachment F	Pro-forma Balance Sheet
BFA Attachment G	Amortization of Leasehold Improvements
BHFP Attachment	Map



Public Health and Health Planning Council

Project # 141060-E
Phoenix House of New York, Inc.

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: New York
Acknowledged: March 31, 2014

Executive Summary

Description

Phoenix House of New York, Inc. requests approval to become the operator of the Article 28 diagnostic and treatment center (DTC) currently operated by Phoenix House Foundation, Inc.

The aforementioned change is a transfer within the not-for-profit parent company to one of its affiliates. BFA Attachment B is the proposed organizational chart. Phoenix Houses of New York, Inc. is proposing to add the following service to its Article 28 DTC: Chemical Dependency-Rehabilitation O/P. Existing Services that will also transfer are as follows: Certified Mental Health services O/P, Dental O/P, and Medical Services-Primary Care.

In addition, the applicant seeks to change the main clinic designation from the W. 74th Street, Manhattan site to the Jay St., Brooklyn site.

DOH Recommendation
Contingent Approval

Need Summary

Phoenix House Foundation, Inc. (PHF) proposes to establish Phoenix House of New York, Inc. (PHNY)

as the new operator of PHF and to add Chemical Dependence Rehabilitation O/P services at five sites. These sites are Brooklyn, South Kourtright, LI City, New York City, and Shrub Oak sites.

PHNY is an affiliate of PHF. The applicant does not project any change in utilization.

Program Summary

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

Financial Summary

There is no project cost involved with this transfer of the Article 28 diagnostic & treatment center.

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 project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of evidence of approval by the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of a photocopy of the Certificate of Assumed Name of Phoenix Houses of New York, Inc., as acceptable to the Department [CSL]
4. Submission of a photocopy of the amended Bylaws of Phoenix Houses of New York, Inc., acceptable to the Department [CSL].
5. Submission of a photocopy of a resolution from the Board of Directors of Phoenix Houses of New York, Inc. authorizing the submission of the application, acceptable to the Department [CSL].
6. Submission of evidence of the transfer of the operational assets from Phoenix House Foundation, Inc., acceptable to the Department [CSL].

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]

Council Action Date

October 2, 2014

Need Analysis

Analysis

Chemical Dependence Rehabilitation O/P is proposed at the following locations:

50 Jay Street, Brooklyn, 11201
County Road, 513 Old Rt. 10, South Kourtright, 13842
34-11 Vernon Blvd., Long Island City, 11106
Jack Aron Bldg., 164 W. 74 th Street, NYC, 10023
Shrub Oak Clinic, 3151 Stoney Street, Shrub Oak, 10588

In addition, the Center will begin providing optometry, well child and/or family planning services at the five sites. Based upon the recommendation of the Public Health and Health Planning Council, these services no longer require certification by the Department.

The Brooklyn site is located in a Health Professional Shortage Area (HPSA) for Primary Care Services for Medicaid Eligible-Bedford/Stuyvesant.

The table below presents information on selected birth-related health indicators and well-child indicators in New York County and the State; it also presents information on the NYS Prevention Agenda 2017 Objective (PA 2017 Objective). It shows that the 'Adolescent Pregnancy Rate' is significantly higher for New York County than that for the State and the 2017 PA Objective. The percentages for the three 'Well Child' health indicators are slightly higher (that is better) for New York County than those for the State; however, these percentages are significantly below those for the PA 2017 Objective.

Birth-Related and Well Child Related Health Indicators, NYSDOH	New York County	New York State	PA 2017 Objective
Adolescent pregnancy rate per 1,000 females – Aged 15-17 years. (2012)	37.6	22.6	25.6
% of children aged 0-15 months who have had the recommended # of well child visits in government sponsored insurance programs. (2012)	83.6	83.2	91.3
% of children aged 3-6 years who have had the recommended # of well child visits in government sponsored insurance programs. (2012)	83.4	81.7	91.3
% of children aged 12-21 years who have had the recommended # of well child visits in government sponsored insurance programs. (2012)	61.4	60.4	67.1

Conclusion

The applicant does not project any change in utilization. The proposed addition of services will improve access to care for communities served by the five affected sites.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

The following six sites are currently operated by Phoenix House Foundation, Inc., (Operating certificate number 7002298R):

Site	PFI	Site	PFI
Jack Aron Building 164 W 74th St New York, NY 10023 (Current Main Site)	1567	Phoenix House Jay Street 50 Jay St Brooklyn, NY 11201	7748
Mobile Dental Van 34-11 Vernon Blvd Long Island City, NY 11106	6657	Shrub Oak Clinic Stoney Street Shrub Oak, NY 10588	3977
34-11 Vernon Boulevard Long Island City, NY 11106	2567	South Kortright Ext Clinic County Rd 513 Old Rt 10 South Kortright, NY 13842	4686

This application proposes to establish Phoenix Houses of New York, Inc. as the new Article 28 operator of these sites. Phoenix House Foundation, Inc. (the current operator), will then become the Active Parent over Phoenix Houses of New York, Inc.

Character and Competence

Phoenix Houses of New York, Inc. is an existing New York State corporation. The members of Phoenix Houses of New York, Inc. Board of Directors are:

Wole C. Coaxum, Chairman
Richard H. Block
Maureen Case
Allan H. Cohen
Tony DiSanto
Peter W. Emmerson
Tommy Gallagher
Charlie Walk

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, approval is recommended.

Financial Analysis

Lease Rental Agreements

The applicant has submitted a draft rental agreement for the following sites to be occupied for Article 28 purposes, the terms of which are summarized below:

Lessor:	Phoenix House Foundation, Inc.
Lessee:	Phoenix Houses of New York, Inc.
Premises:	* 430 sq. ft. located at 164 West 74 th St., NY, NY 10023 * 1,878 sq. located at 34-11 Vernon Blvd., Long Island City, NY 11101 * 2,700 Sq. Ft. located at 50 Jay St., Brooklyn, NY 11201
Term:	5 Years with a (5) year optional renewal
Rental:	74 th St Clinic: \$7,762 (\$18.05 per sq. ft.) Jay St Clinic: \$23,031 (\$8.53 per sq. ft.) LIC Clinic: \$16,772 (\$8.93 per sq. ft.)
Provisions:	Lessee will pay for repairs and maintenance. Lessor is responsible for all utilities.

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the first and third year of operations after the change in corporate structure as summarized below:

	<u>Year 1</u>	<u>Year 3</u>
Revenues:	\$500,669	\$584,114
Expenses:		
Operating	440,435	440,435
Capital	<u>47,565</u>	<u>47,565</u>
Total Expenses	\$488,000	\$488,000
Net Income:	<u>\$ 12,699</u>	<u>\$96,114</u>
Utilization: Visits	4,302	5,019
Cost Per Visit:	\$ 113.43	\$ 97.23

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid Fee-for-Service	85%	0%
Medicaid Managed Care	15%	100%

In 2013, Medicaid Fee-for-Service is 94% and OASAS is 6%.

Expense and utilization assumptions are based on the current Article 28 historical experience of Phoenix House Foundation, Inc. in New York County.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$81,334, which appears reasonable based on two months of first year expenses. The applicant will provide equity from its existing current operations. BFA Attachment A is the certified financial statements for 2012 and 2013 of Phoenix House Foundation, Inc. and affiliates, which reveals the availability of sufficient funds for the equity contribution.

The submitted budget indicates an incremental net income of \$12,669 and \$96,114 for first and third years, respectively. Revenues reflect current reimbursement methodologies for primary care services using historical experience.

BFA Attachment A is a financial summary of Phoenix House Foundation, Inc. and Affiliates. As shown in Attachment A the facility had average positive working capital position and an average positive net asset position. Also, the facility incurred an operating loss of \$3,529,882 and \$682,181 for years 2012 and 2013 respectively. The applicant has indicated that the reason for the losses in 2012 and 2013 were as follows: the net expenses in Phoenix House Foundation, Inc. (the Parent company) reflects a transfer of the Texas region to invest in the start-up of their insurance initiative, where a new diversification of revenues was being sought to offset the decline of government support for the adolescent programs. Also, investments were made in Phoenix Houses of California in call center costs, outreach, and other staff to diversify the types of clients served and payment sources. The applicant has indicated that with these initiatives, the entities will be profitable in 2014.

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	2012-2013 Financial Statements
BFA Attachment B	Organizational Chart



Public Health and Health Planning Council

Project # 141258-E
Harlem East Life Plan

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment **Acknowledged:** June 13, 2014

Executive Summary

Description

SES Operating Corp. d/b/a Harlem East Life Plan, an existing Article 28 diagnostic and treatment center located at 2367-2369 Second Avenue, New York, requests approval to transfer 3% of Stuart Steiner's (sole shareholder) interest via gifts to the following four individuals: 1.0% to Sheila Steiner (his wife), 1.0% to Jonathan Steiner (his son), 0.5% to Dominique Steiner (his daughter), and 0.5% to Joanne King (his employee). While the percentage ownership of the four minority shareholders does not meet the threshold requiring Public Health and Health Planning Council (PHHPC) approval, SES Operating Corp. d/b/a Harlem East Life Plan anticipates future transactions, which may cross the threshold and desires PHHPC approval of all the proposed new owners.

SES Operating Corp. d/b/a Harlem East Life Plan began operating on August 31, 1999. At that time, Stuart Steiner and Eugene Silbermann M.D. were its shareholders. On July 30, 2003, Dr. Silbermann passed away and through the redemption of his shares from his widow, Mary Ann Phipps Silbermann, and notification to the DOH on October 27, 2004, Stuart Steiner became the sole shareholder.

SES Operating Corp. d/b/a Harlem East Life Plan corporation stock will split on a five-for-one ratio in

relation to this application, increasing the number authorized shares of the corporation from 200 shares of no par value common stock to 1,000 shares of no par value common stock.

DOH Recommendation Contingent Approval

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

Financial Summary
There are no project costs associated with this application.

Subject to the noted contingency, 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 project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of evidence of approval from the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of a copy of the executed stock transfer certificate acceptable to the Department of Health. [BFA]
4. Submission of copies of a dated and executed Certificate of Amendment and a Certificate of Incorporation of SES Operating Corp., acceptable to the Department. [CSL]
5. Submission of a copy of the corporation's By-laws, acceptable to the Department. [CSL]
6. Submission of a copy of a dated and executed Consent Related to Stock Split, acceptable to the Department. [CSL]
7. Submission of copies of dated and executed Transfers of Stock Power, acceptable to the Department. [CSL]

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]

Council Action Date

October 2, 2014

Program Analysis

Project Proposal

SES Operating Corp. d/b/a Harlem East Life Plan (HELP), an existing Article 28 diagnostic and treatment center approved in 1999 to provide primary medical care and a methadone maintenance treatment program (MMTP), seeks to formally transfer 3% of shares to four (4) individuals.

While the percentage ownership of the four minority shareholders does not meet the threshold requiring the Council's approval, HELP anticipates future transactions which may cross the threshold and now requests approval of all the proposed new owners. No programmatic changes are anticipated.

Character and Competence

The proposed members and ownership percentages are as follows:

<u>Owners</u>	<u>Percentage</u>
Stuart Steiner*	97.0%
Jonathan Wesley Steiner	1.0%
Sheila A. Steiner	1.0%
Dominique S. Steiner	0.5%
Joanne A. King	0.5%

**not subject to character & competence review*

Ms. King has 17 years of experience as the Administrative Director of Harlem East Life Plan. Mr. Jonathan Steiner and Ms. Dominique Steiner are children of, and Mrs. Sheila Steiner is the wife of the majority owner, Stuart Steiner. Jonathan and Dominique have been involved with the facility since 2002 and 2007, respectively. According to the Steiners' personal statements of qualifications, as family members of the president and through his guidance, they have developed a thorough knowledge and understanding of the management of the facility.

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, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no project costs associated with this application.

Stuart Steiner, the sole shareholder of SES Operating Corp. d/b/a Harlem East Life Plan, is gifting 3% of his common stock to three family members and one employee.

BFA Attached A is SES Operating Corp.'s 2012 and 2013 financial summary which show's average positive working capital of \$1,268,754 and average positive shareholder equity of \$3,656,435. During this same two year period net operating income averaged \$3,398,744.

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 Financial Summary 2012-2013- SES Operating Corp. d/b/a Harlem East Life Plan



Public Health and Health Planning Council

Project # 142024-E
Charles Evans Health Center, Inc.

Program: Diagnostic and Treatment Center **County:** Nassau
Purpose: Establishment **Acknowledged:** July 21, 2014

Executive Summary

Description

Charles Evans Health Center, Inc. (CEHC), a proposed not-for-profit entity, is seeking approval to be established as the new operator of the existing Article 28 diagnostic and treatment center (D&TC) currently operated by Adults and Children with Learning and Developmental Disabilities, Inc. (ACLD). ACLD is a dually licensed Article 28 D&TC and Article 16 clinic facility, which began operations in September 1992. Both the Article 28 and Article 16 operations are located at 857 South Oyster Bay Road, Bethpage.

ACLD wants to convert the Article 28 D&TC to a FQHC. Due to federal program requirements that stipulate the FQHC must be a separate arms-length entity, ACLD cannot convert to a FQHC under their current operating structure. Therefore, CEHC is being formed as a separate, but related, business entity to serve as the new operator of the Article 28 D&TC, which will be eligible to apply for FQHC designation upon establishment. The sole member of Charles Evans Health Center, Inc., is Adults and Children with Learning and Developmental Disabilities, Inc.

The applicant is proposing to be the new medical home for the current patients of ACLD, and intends to expand their service area and services to the medically underserved residents of Long Island, including residents of Nassau County and the western areas of Suffolk County.

The applicant has a Letter of Intent (LOI) to become an FQHC sub-recipient of Hudson River Healthcare (HRHCare), an existing FQHC. HRHCare is a network of 22 health centers serving the 10 counties of the Hudson Valley and Long Island regions. The applicant is proposing to join HRHCare's network once they receive FQHC designation. As an FQHC, the

applicant would receive cost-based reimbursement under Medicare and Medicaid law, and would be eligible for HRSA Section 330 Grant funding. Additionally, it would be eligible for participation in the Federal Tort Claims Act, which eliminates malpractice insurance costs.

Upon approval of this CON, CEHC will operate the Article 28 D&TC currently operated by ACLD with the following changes:

- All services and staff related to the DOH Article 28 D&TC will be transferred to CEHC, which will be located on the 1st floor.
- All OMRDD Article 16 services will be relocated to the 2nd floor in order to eliminate any shared space issues that might arise.
- The Article 28 D&TC will provide the same services as currently for ACLD, plus the addition of Pediatric services.

It is noted that the majority of the patients that use the services of this D&TC are classified as individuals with developmental disabilities.

DOH Recommendation
Contingent Approval

Need Summary
The clinic will continue to provide necessary services and serve as a medical home to a special population of people with developmental disabilities.

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

Financial Summary

There are no project costs associated with this application.

The facility has completed several steps involved in the FQHC certification process and expects to receive FQHC designation before the end of the first year of operations.

FQHC Budget (Year 1)	Revenues:	\$4,091,651
	Expenses:	<u>\$4,081,150</u>
	Gain/(Loss):	\$ 10,501

FQHC Budget (Year 3)	Revenues:	\$4,503,091
	Expenses:	<u>\$4,157,390</u>
	Gain/(Loss):	\$ 345,701

As the facility is currently in the process of applying for FQHC designation, the DOH requested a sensitized budget to be provided for both year 1 and year 3 based on the current D&TC rates.

D&TC rate sensitized budget (Year 1)	Revenues:	\$3,158,893
	Expenses:	<u>\$3,157,054</u>
	Gain/(Loss):	\$1,839

D&TC rate sensitized budget (Year 3)	Revenues:	\$3,349,536
	Expenses:	<u>\$3,343,510</u>
	Gain/(Loss):	\$6,026

DOH staff has reviewed the D&TC budgets under both rate structures and has determined that the applicant can meet costs and maintain at least a break-even operating margin under current D&TC rates of payment.

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 project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of an executed building lease agreement acceptable to the Department of Health. [BFA]
3. Submission of an executed medical records custody agreement acceptable to the Department of Health. [BFA]
4. Submission of an executed movable equipment asset purchase agreement acceptable to the Department of Health. [BFA]
5. Submission of an executed subvention agreement for the movable equipment between Adults and Children with Learning and Developmental Disabilities, Inc., and Charles Evans Health Center, Inc., acceptable to the Department of Health. [BFA]
6. Submission of an executed subvention agreement for the working capital between Adults and Children with Learning and Developmental Disabilities, Inc. and Charles Evans Health Center, Inc., acceptable to the Department of Health. [BFA]
7. Submission of an executed acquisition agreement acceptable to the Department of Health. [BFA]
8. Submission of documentation of receipt of Health Resources and Services Administration (HRSA) Section 330 Grant funding acceptable to the Department of Health. [BFA]
9. Submission of a photocopy of the applicants executed bylaws, acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed and signed facility lease agreement, acceptable to the Department. [CSL]
11. Submission of an executed Certificate of Amendment to the applicants Certificate of Incorporation, acceptable to the Department. [CSL]
12. Submission of evidence of the transfer of the operational assets of Adults and Children with Learning and Developmental Disabilities, Inc. to the applicants, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of 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. Submission of documentation of Federally Qualified Health Center (FQHC) designation for the Charles Evans Health Center, Inc. [BFA]
3. Submission of an executed FQHC sub-recipient agreement between Hudson River Health Care, Inc., and Charles Evans Health Care Center, Inc. [BFA]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]
8. Charles Evans Health Center, Inc. may not commence operations until the Article 16 services have relocated to separate and distinct space. [OPWDD]

Council Action Date

October 2, 2014

Need Analysis

Background

Charles Evans Health Center, Inc. (CEHC) is requesting approval to establish ownership of an existing Article 28 diagnostic and treatment center operated by Adults and Children with Learning and Developmental Disabilities, Inc. (ACLD). The location of the D&TC is 857 South Oyster Bay Road, Bethpage, 11714, in Nassau County. CEHC is a proposed new 501(c)(3) not-for-profit entity.

Analysis

Service area includes all of Nassau County and the western section of Suffolk County having zip codes 11701, 11702, 11703, 11704, 11726, 11729, 11743, 11746, 11747, 11757, 11795, and 11798. Upon approval of this CON, CEHC will continue operations at the existing Article 28 site on South Oyster Bay Road. All services related to the Article 28 D&TC will be transferred to CEHC and be located on the 1st floor of the building, while the Article 16 services will be re-located to the 2nd floor.

The center will provide the following services:

- Medical Services – Primary Care
- Certified Mental Health Services
- Dental
- Medical Social Services
- Nutrition
- Podiatry
- Psychology
- Radiology-Diagnostic
- Therapy-Occupational
- Therapy-Physical
- Therapy-Speech Language Pathology

Total number of visits in 2013 was 16,855, 35 percent of which were primary care visits. The number of projected visits is 17,901 in year 1 and 18,804 in year 3, with 36 percent primary care visits.

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 applicant reports a total of nine zip codes within Nassau County having residents at risk; these zip codes are 11520, 11550, 11096, 11561, 11590, 11575, 11553, 11003, and 11542. The table below provides information on the PQI rates for selected major condition categories for these nine zip codes. It shows that these rates are significantly higher for the nine zip codes combined than those for New York State. (Source: NYSDOH)

PQI Rates: Hospital Admissions/100,000 Adults	Nine Zip Codes Combined	New York State
All Acute	654	526
All Circulatory	622	456
All Diabetes	336	224
All Respiratory	448	357
Total All	2,060	1,563

As mentioned earlier, the service area includes all of Nassau County and 12 zip codes (11701, 11702, 11703, 11704, 11726, 11729, 11743, 11746, 11747, 11757, 11795, and 11798) in the western section of Suffolk County. The table below provides information on PQI rates for selected major condition categories for these 12 zip codes in western Suffolk County, plus zip code 11714 where the site is

located. This table shows that these PQI rates for acute and circulatory conditions rates are higher for the 13 zip codes combined than the rates for New York State as a whole. (Source: NYSDOH)

PQI Rates: Hospital Admissions/100,000 Adults	Thirteen Zip Codes Combined*	New York State
All Acute	592	526
All Circulatory	515	456
Total	1,107	982

*Service Area 12 Zip Codes plus Project Site Zip Code 11714 Combined.

Conclusion

The clinic will continue to provide a necessary service and a medical home to a special population of people with developmental disabilities. The clinic also serves several Medically Underserved Areas (MUAs) within Nassau County.

From a need perspective, approval is recommended.

Program Analysis

Program Description

Adults and Children With Learning and Developmental Disabilities, Inc. (ACLD), a dually licensed provider (Article 28 and Article 16), located at 857 South Oyster Bay Road, Bethpage, seeks approval to transfer the site to a new, separate but related, business entity named the Charles Evans Health Center (CEHC).

The Center anticipates being designated as a Federally Qualified Health Center (FQHC) through an agreement with Hudson River Health Care, an FQHC in Long Island. However, due to federal program requirements which stipulate that FQHCs must be separate arms-length entities, ACLD created Charles Evans Health Center, Inc. to serve as the new operator of the site.

Article 28 services will be provided on the 1st floor of the clinic and Article 16 services will be relocated to the 2nd floor of the building. No construction or programmatic changes are planned.

The Center will provide the following services: Certified Mental Health; Dental; Medical Social Services; Nutrition; Podiatry; Psychology; Radiology – Diagnostic; Therapy – Occupational; Therapy – Physical; and Therapy - Speech Language Pathology; Medical Services – Primary Care

Character and Competence

The board of directors of the Charles Evans Health Center, Inc. are:

Anne Emmerson, EdD	President
Robert Dibble, PhD	Vice President
Ellen Spiegel	Secretary/Treasurer

Dr. Emmerson has 30 years of experience in academia in roles such as Associate Vice President for Academic Affairs and Associate Dean of Instruction. Presently, she serves as a part-time Adjunct Faculty Member in the Administrative Business Technology Department at Nassau Community College. Dr. Dibble has over 15 years of experience as the Director of the Center for Human Resources Studies at New York Institute of Technology. Ms. Spiegel is recently retired from Suffolk Community College where she was employed as an Adjunct Professor of Mathematics. All three of the aforementioned individuals have each served for over 18 years on the Board of Directors of Adults & Children with Learning & Developmental Disabilities.

In addition, Richard Kessler, D.O., has served as the Center's Medical Director since 1995, and he will continue to serve the Center in that role.

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.

From a programmatic perspective, approval is recommended.

Financial Analysis

Acquisition Agreement

The change in ownership of the operation will be effectuated in accordance with the terms of the draft Acquisition Agreement summarized below:

Transferor:	Adults and Children with Learning and Developmental Disabilities, Inc.
Transferee:	Charles Evans Health Center, Inc.
Assets Transferred:	ACLD's D&TC Operating Certificate only
Liabilities Assumed:	None
Purchase Price:	\$0

Medical Records Custody Agreement

The change in ownership of the facility also includes the change in ownership of the medical records of the facility and will be effectuated in accordance with the terms of the draft Medical Records Custody Agreement summarized below:

Transferor	Adults and Children with Learning and Developmental Disabilities, Inc.
Transferee:	Charles Evans Health Center, Inc.
Assets Transferred:	All medical records associated with the operation of the facility.
Purchase Price:	\$0

Moveable Equipment Asset Purchase Agreement

The change in ownership of the movable equipment of the operation will be effectuated in accordance with the terms of the draft Movable Equipment Asset Purchase Agreement summarized below:

Seller:	Adults and Children with Learning and Developmental Disabilities, Inc.
Purchaser:	Charles Evans Health Center, Inc.
Assets Transferred:	All furniture and equipment, medical and non-medical, used in the daily operations of the facility.
Assets Excluded:	None
Liabilities Assumed:	None
Purchase Price:	Net book value of the movable equipment (to be determined when final approval of the NYSDOH Public Health and Health Planning Council is issued to the purchaser for operation of an Article 28 D&TC, estimated at approximately \$277,149 as of 8/21/2014)

Financing is proposed as follows:

Cash for Movable equipment \$277,149
(Through Subvention Agreement)

Subvention Agreements

The Applicant has entered into 2 subvention agreements for the project cost of \$277,149 and for the working capital of \$1,800,000.

Date: To be determined
Subvention Grantor: Adult and Children with Learning and Developmental Disabilities (ACLD)
Subvention Grantee: Charles Evans Health Center, Inc.
Subvention Amount: \$277,149 movable equipment
 \$1,800,000 working capital

The subvention agreements bear interest in the amount of 4% per annum, but are subordinate to all other debts and liabilities of the CEHC and will only be paid back to the Grantor when the financial condition of CEHC permits the required payment to be made from the surplus of CEHC.

Lease Rental Agreement

The applicant has submitted a draft lease for the facility. The terms of the lease are summarized below:

Premise: 857 South Oyster Bay Road, Bethpage, NY (1st floor & portion of basement) 10,894 sq. ft.
Lessor: Adults and Children with Learning and Developmental Disabilities, Inc.
Lessee: Charles Evans Health Center, Inc.
Rental: \$460,816.20 (\$42.30 per sq. ft. and \$38,401.35 per month)
Term: 10 years
Provision: The lessee shall be responsible for any real estate taxes, utilities and repairs and maintenance.
Type: Arm's Length

The landlord has agreed to eliminate the rental fees for the first 3 years of operation of the facility. The rental fees will be restored once the facility achieves FQHC status.

The applicant has provided two real estate letters attesting to the reasonableness of the per square foot rental amount for the site.

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the 1st and 3rd years of operation, summarized below:

	<u>YEAR 1</u>	<u>YEAR 3</u>
FQHC Revenues*	\$4,091,651	\$4,503,091
Expenses		
Operating	\$3,323,597	\$3,524,087
Capital	<u>757,553</u>	<u>633,303</u>
Excess of Revenues over Expenses	\$10,501	\$345,701
Visits	17,901	18,804
Cost Per Visit	\$227.98	\$221.09

**Revenues include: HRSA Federal 330 Grant Funds in the amount of \$50,000 for year 1 and \$50,000 for year 3; Meaningful Use Incentives in the amount of \$85,000 for year 1 and \$85,000 for year 3; \$130,791 in 340B Pharmacy Program revenue for year 3 only; and Other Revenue classified as Non-MH Revenue Managed Care Incentives in the amount of \$174,295 for year 1 and \$218,273 for year 3.*

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

FQHC	<u>YEAR 1</u>	<u>YEAR 3</u>
Medicaid Managed Care	17.07%	17.07%
Medicare Fee-for-Service	73.53%	73.54%
Commercial Fee-for-Service	1.63%	1.62%
Self-Pay/Other	7.77%	7.77%

Expense and utilization assumptions are based on the current operating experience at ACLD. The Medicare, Medicaid and Self-Pay rates are based on cost-based FQHC rates. The Private Insurance rates are based on ACLD's experience, using their most recent AHCF cost report as the source.

The applicant has indicated that charity care utilization is lacking because ACLD's historical mission was to provide services to the developmentally disabled population, the majority of which qualified for either Medicare and/or Medicaid benefits. As such, ACLD served a specialized population and had few uninsured walk-in patients. For such uninsured patients, the facility provided eligibility assistance services to see if they could qualify for public or private insurance programs. Once the facility converts to a FQHC, their mission will be to expand their operation to include the general population as well as the developmentally disabled. As an FQHC, the facility will see all patients regardless of their ability to pay and anticipates an increase in charity care as a result of FQHC designation.

Sensitized Budget

The applicant has provided a sensitized budget for the 1st and 3rd years of operation in 2014 dollars based on the current D&TC reimbursement rates, as summarized below:

Sensitized D&TC rates	<u>YEAR 1</u>	<u>YEAR 3</u>
Revenues*	\$3,158,893	\$3,349,536
Expenses		
Operating	\$3,048,544	\$3,288,466
Capital	<u>108,510</u>	<u>55,044</u>
Total Expenses	\$3,157,054	\$3,343,510
Excess of Revenues over Expenses	\$1,839	\$6,026
Visits	17,901	18,804
Cost Per Visit	\$176.36	\$177.81

**Revenues include Meaningful Use Incentives in the amount of \$85,000 for year 1 and \$85,000 for year 3, and Other Revenue classified as Non-MH Revenue Managed Care Incentives in the amount of \$174,295 for year 1 and \$218,273 for year 3.*

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

Sensitized rates	<u>YEAR 1</u>	<u>YEAR 3</u>
Medicaid Managed Care	17.07%	17.07%
Medicare Fee-for-Service	73.53%	73.54%
Commercial Fee-for-Service	1.63%	1.62%
Self-Pay/Other	7.77%	7.77%

Budget differences resulting from the use of sensitized D&TC rate assumptions are due to the following:

- ACLD, who is both the lessor and the subvention grantor, is eliminating the rental fees for the first 3 years of operations and eliminating the subvention interest for the first year of operations. The rental fees and the subvention interest will be restored once FQHC status is achieved.
- The HRSA Section 330 Grant revenue and the 340B pharmacy revenues have been eliminated from other revenues.

- Outreach and case management administrative staff expenses have been removed from operating expenses. These operating expenses will not be incurred prior to FQHC designation.

Capability and Feasibility

The applicant has provided draft subvention agreements at the above stated terms to cover the working capital requirements, the purchase price of the required movable equipment and start-up costs for operations. The funds will come from ACLD. ACLD has provided their most current certified financial statements, shown as BFA Attachment B, which shows sufficient resource to cover this funding.

Working capital requirements based on the FQHC budgets are estimated at \$692,898 based on 2 months of year 3 expenses. This appears reasonable based on the facility achieving FQHC status.

Working capital requirements based on the sensitized D&TC rate based budgets are estimated at \$557,252 based on 2 months of year 3 expenses. This appears reasonable based on current D&TC rate assumptions.

The applicant has provided a draft subvention agreement sufficient to cover either of the working capital requirements (FQHC or D&TC) shown above. The working capital subvention agreement is for \$1,800,000 at a 4% interest rate issued by ACLD.

The submitted FQHC rate based budgets indicate a net income of \$10,501 in year 1 and \$345,701 in Year 3. Revenues are based on current reimbursement methodologies for D&TC services for Private Pay only, and are based on the FQHC rates for Medicaid, Medicare and Self-Pay. The budgets appear reasonable based on the facility receiving FQHC designation.

The submitted sensitized D&TC rate based budgets indicate a net income of \$1,839 in year 1 and \$6,026 in year 3. Revenues are based on the current reimbursement methodologies for D&TC facilities. The sensitized budgets appear reasonable.

As shown on BFA Attachment B Certified Financial Statements for ACLD, ACLD had average positive working capital and net asset positions, and generated an average net income of \$275,117 during the period 2012 through 2013.

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	Pro-forma Balance Sheet of Charles Even Center, Inc.
BFA Attachment B	Certified Financial Statements for Adults & Children with Learning & Developmental Disabilities 2012-2013



Public Health and Health Planning Council

Project # 142031-B
LISH, Inc. d/b/a LISH at Central Islip

Program: Diagnostic and Treatment Center **County:** Suffolk
Purpose: Establishment and Construction **Acknowledged:** July 25, 2014

Executive Summary

Description

LISH, Inc. (LISH), a newly formed, New York State not-for-profit corporation, is seeking approval to be established as the operator of a diagnostic and treatment center (DTC) located at 159 Carleton Avenue, Central Islip, and 6 extension clinic sites located in Suffolk and Nassau counties. LISH will take over the operation of four Article 28 DTC sites and three DTC extension clinics currently operated by four organizations that provide primary and specialty medical and dental services, predominantly to developmentally disabled individuals. These four entities are as follows:

- Developmental Disabilities Institute, Inc. (DDI)
- Family Residences and Essential Enterprises, Inc. (FREE)
- United Cerebral Palsy of Nassau County, Inc. (UCPN)
- United Cerebral Palsy of Greater Suffolk, Inc. (UCP Suffolk).

The entities are currently certified for the following Article 28 services:

- DDI: Primary Medical Care; Podiatry; Psychology; Speech, Physical and Occupational Therapies; Radiology-Diagnostic; Dental; Medical Social Services; Nursing and Nutritional services; Audiology; Physical Medicine and Rehabilitation; Certified Mental Health Services; Optometry; Clinical Laboratory service; Pediatric; Well Child Care and Clinic Part Time services.
- FREE: Primary Medical Care; Podiatry; Psychology; Speech, Physical and Occupational Therapies; Radiology-Diagnostic; Dental; Medical Social Services; Audiology; Physical Medicine and Rehabilitation; Optometry; Pediatric and Family Planning.
- UCPN: Primary Medical Care; Podiatry; Psychology; Vocational, Speech, Physical and Occupational Therapies; Dental; Medical Social Services;

Nutritional services; Audiology; Physical Medicine and Rehabilitation; Optometry; Pediatric and Certified Mental Health services.

- UCP Suffolk: Primary Medical Care; Podiatry; Psychology; Vocational, Speech, Physical and Occupational Therapies; Dental; Medical Social Services; Nursing; Audiology; Physical Medicine and Rehabilitation; Certified Mental Health services and Clinic Part Time services.

DDI, FREE, UCPN and UCP Suffolk have joined together to form LISH, Inc. for the purpose of ensuring that health services currently provided to their at-risk populations remain financially viable for the future.

DDI, FREE, UCPN and UCP Suffolk do not have an ownership percentage or a right to manage or control the operations of LISH. The intent of this new entity is to increase overall access to care and achieve efficiencies of scale by placing currently fragmented operations under one comprehensive network of community health centers. LISH intends to serve all underserved populations throughout Long Island, with a primary focus on patients with developmental disabilities.

LISH, Inc.'s main site will be located in Suffolk County at 159 Carleton Avenue, Central Islip, NY. Site control for all of the above listed locations will be done through the lease agreements. The six extension clinics that will be operated by LISH, Inc. are listed below:

- LISH at the Family Wellness Center located at 120 Plant Street, Hauppauge, NY (Suffolk County);
- LISH at the Fortunoff Treatment & Rehabilitation Center located at 380 Washington Avenue, Roosevelt, NY (Nassau County);
- LISH at Manorville located at 221 North Sunrise Highway Service Road, Manorville, NY (Suffolk County);

- LISH at Port Jefferson Station located at 51-33 Terryville Road, Port Jefferson Station, NY (Suffolk County);
- LISH at Riverhead located at 883 E. Main Street, Riverhead, NY (Suffolk County);
- LISH at Smithtown located at Landing Meadow Road, Smithtown, NY (Suffolk County).

Upon approval of this CON, LISH will change its name to Long Island Select Healthcare, Inc. and become a sub-grantee of Hudson River HealthCare (HRCCare), a Federally Qualified Health Center (FQHC) with a network of 22 health centers serving 10 counties in the Hudson Valley and Long Island. LISH, Inc. has a Letter of Interest from HRCCare to become a FQHC sub-grantee.

DOH Recommendation
Contingent Approval

Need Summary

LISH proposes to serve all underserved populations throughout Long Island, but its primary focus will be on serving patients with developmental disabilities (DD).

Upon approval of this project, LISH will change its name to Long Island Select Healthcare, Inc. and become a sub-grantee of Hudson River HealthCare, a Federally Qualified Health Center (FQHC).

The number of projected visits for all sites combined is 74,820 in year 1, of which 36 percent is expected to be primary care visits.

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 \$1,080,645 will be met with cash through a subvention agreement.

The project is comprised of seven sub-projects as follows:

<u>Project Specific Budgets:</u>	<u>Revenues</u>	<u>Expenses</u>	<u>Gain/(Loss)</u>
Central Islip	\$2,810,306	\$2,725,365	\$84,941
Family Wellness Ctr.	\$4,153,304	\$2,181,439	\$1,971,865
Fortunoff TR Ctr.	\$2,413,678	\$1,800,548	\$613,130
Manorville	\$338,736	\$217,554	\$121,182
Port Jefferson Station	\$829,870	\$412,236	\$417,634
Riverhead	\$3,153,850	\$2,530,764	\$623,086
Smithtown	\$2,377,512	\$1,651,188	\$726,324
Total	\$16,077,256	\$11,519,094	\$4,558,162
Total Proj. Budget * /**	\$16,152,256	\$15,157,131	\$995,125

* Total Project Budget Revenue includes \$75,000 in HRSA Section 330 Grant funding, anticipated in year three, which is not reflected in any of the subproject schedules.

**Total Project Budget Expenses includes \$3,638,037 for administrative office centralization that is not reflected in the site specific subprojects.

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 for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital for each of the seven (7) sites. [HSP]
4. Submission of an executed acquisition agreement acceptable to the Department of Health. [BFA]
5. Submission of an executed subvention agreement/certificate, acceptable to the Department of Health, between LISH, Inc. and Developmental Disabilities Institute, Inc., Family Residences and Essential Enterprises, Inc., United Cerebral Palsy of Nassau County, Inc. and United Cerebral Palsy of Greater Suffolk, Inc. [BFA]
6. Submission of the executed building lease agreements, acceptable to the Department of Health, for the LISH at Central Islip site, Port Jefferson Station site, Smithtown site, Manorville site, LISH at Riverhead site, Family Wellness Center and Fortunoff Treatment & Rehabilitation Center. [BFA]
7. Submission of an executed FQHC sub-grantee agreement between Hudson River HealthCare, Inc., and LISH, Inc. [BFA]
8. Submission of documentation of receipt of Health Resources and Services Administration (HRSA) Section 330 Grant funding (as a sub-grantee) acceptable to the Department of Health. [BFA]
9. Submission of evidence of site control, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of 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. LISH, Inc. may not commence operations until the Article 16 services have relocated to separate and distinct space. [OPWDD]
7. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, for record purposes prior to the applicant's start of construction. [AER]
8. Per 710.9 the applicant shall notify the appropriate Regional Office at least two months in advance of the anticipated completion of construction date to schedule any required pre-opening survey. Failure to provide such notice may result in delays affecting both the pre-opening survey and authorization by the Department to commence occupancy and/or operations. [AER]
9. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2000 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure that the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients and other building occupants, essential resident/patient support services and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on site for review by Department staff upon request. [AER]
10. The applicant shall complete construction by December 31, 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

October 2, 2014

Need Analysis

Background

LISH, Inc. is requesting approval to establish a diagnostic and treatment center (DTC) and six (6) extension clinics to serve Nassau and Suffolk counties. All sites are currently operated as Article 28 facilities by four different operators.

Analysis

LISH will take over the operations of four (4) DTCs and three (3) extension clinics, which are currently operated by four (4) human services organizations, to provide primary and specialty medical care and dental services primarily to patients with developmental disabilities.

The table below identifies the service area for each site.

<u>Proposed Sites</u>	<u>City</u>	<u>Zip Code</u>	<u>Service Area</u>
Suffolk County			
D&TC Main Site: UCPA of Greater Suffolk, Inc.-159 Carleton Avenue	Central Islip	11722	11722, 11716, 11717, 11752
Extension Clinic: Family Residence & Essential Enterprises (Fam Wellness Ctr) 120 Plant Street	Hauppauge	11788	11788, 11725, 11749, 11779
Extension Clinic: DD @Opti-Healthcare-Meadow Glen, Landing Meadow Road	Smithtown	11787	11787, 11754, 11767, 11780
Extension Clinic: DD @Opti-Healthcare 221 North Sunrise Hwy Service Road	Manorville	11941	11941, 11949, 11940, 11977, 11978
Extension Clinic: UCPA-Greater Suffolk (GS) @UCPA-GS-51-33 Terryville Road	Port Jefferson Stn.	11776	11776, 11720, 11733, 11766, 11777, 11784
Extension Clinic: Opti-Healthcare 883 E Main Street	Riverhead	11901	11901, 11792, 11933, 11948
Nassau County			
Extension Clinic: UCP Treatment And Rehab Center, 380 Washington Ave (Fortunoff T&R Ctr)	Roosevelt	11575	11575, 11520, 11550, 11549, 11553, 11590, 11530, 11554

Proposed services at the main site and the six extension clinics are Medical Services-Primary Care, Medical Services-Other Medical Specialties, and Dental Care O/P.

The number of projected visits for all sites combined is 74,820 in year 1 and 78,608 in year 3, which includes 36 percent primary care visits, as shown below.

Type	LISH	Year 1	Year 3	Year 1	Year 3
	Proposed Sites	Total Visits	Total Visits	% Primary Care	% Primary Care
Main Site	Central Islip	12,060	12,670	32.7%	32.7%
Ext. Clinic	Hauppauge-Fam Wellness Ctr	19,904	20,912	37.2%	37.2%
Ext. Clinic	Manorville	1,500	1,577	56.2%	56.2%
Ext. Clinic	Port Jefferson Station	3,430	3,604	49.4%	49.4%
Ext. Clinic	Riverhead	14,597	15,335	35.5%	35.5%
Ext. Clinic	Roosevelt-Fortunoff T&R	12,746	13,391	27.2%	27.2%
Ext. Clinic	Smithtown	10,583	11,119	42.2%	42.2%
	Total Project	74,820	78,608	36.1%	36.1%

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 such as acute conditions and respiratory. The rates are presented for the zip codes of the six sites combined in Suffolk County, the zip code of the Nassau County site, and also for the entire State.

The table shows that these rates are significantly unfavorable for these PQI conditions in the service areas. The overall total rate is significantly higher at 1,756 admissions per 100,000 adults for the Suffolk County Sites and 3,224 admissions per 100,000 adults for the Nassau County Site vs. 1,563 admissions per 100,000 adults for NYS.

Hospital Admissions per 100,000 Adult for Selected PQIs:

<u>PQI Rates</u>	<u>Suffolk County Sites*</u>	<u>Nassau County Site**</u>	<u>NYS</u>
All Acute	607	851	526
All Respiratory	362	696	357
All PQIs***	1,756	3,224	1,563

Source: NYSDOH-PQI

*Suffolk County Sites Zip Codes: Main Site (11722) plus Five Extension Clinic Sites (11788, 11787, 11941, 11776, and 11901) Combined.

**Nassau County Site Zip Code: 11575.

***All PQIs include major condition categories such as acute conditions, circulatory, diabetes, and respiratory.

Conclusion

The proposed project will reorganize these respective Article 28 clinics into a comprehensive network of community health centers, thereby increasing access to primary and specialty medical and dental care services for all underserved populations throughout Long Island. Its primary focus will be serving patients with developmental disabilities (DD).

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

LISH, Inc. (LISH), a newly-formed, New York not-for-profit corporation formed through the joining of four (4) human services organizations—Developmental Disabilities Institute, Inc., Family Residences and Essential Enterprises, Inc., United Cerebral Palsy of Nassau County, Inc., and United Cerebral Palsy of Greater Suffolk, Inc. —seeks approval to establish an Article 28 diagnostic and treatment center (D&TC) and six (6) extension clinic sites located throughout Suffolk and Nassau Counties.

As part of this proposal, LISH will take over the operations of four (4) D&TCs and three (3) extension clinics that provide primary and specialty medical and dental services primarily to patients with developmental disabilities. The clinics have been operated by the aforementioned organizations, however, by reorganizing their respective Article 28 clinic services into a comprehensive network of community health centers, the entities aim to increase access to primary and specialty medical and dental care and achieve efficiencies of scale that will ensure the financial sustainability of the organizations, resulting in preservation of essential developmental disability services.

Construction is proposed for only one site (LISH at Port Jefferson Station). The applicant does not anticipate any changes in hours or staffing from the current operators. LISH will add hours and adjust staffing as volume and demand for services increases. Upon approval, LISH, Inc. will change its name to Long Island Select Healthcare, Inc. and become a sub-grantee of Hudson River HealthCare, a Federally Qualified Health Center (FQHC).

LISH, Inc. will become the operator of the following:

Proposed Name of Site	Proposed Site Type	Address	Current Operator	PFI	OpCert#	County
LISH at Central Islip	D&TC Main Site	159 Carleton Ave. Central Islip NY 11722	United Cerebral Palsy Assoc. of Greater Suffolk, Inc.	914	5157203R	Suffolk
LISH at Port Jefferson Station	Ext Clinic	51-33 Terryville Rd. Port Jefferson Station, NY 11776	United Cerebral Palsy Assoc. of Greater Suffolk, Inc.	5718	5157203R	Suffolk
LISH at the Family Wellness Center	Ext Clinic	120 Plant St. Hauppauge, NY 11788	Family Residences and Essential Enterprises, Inc.	6240	5157205R	Suffolk
LISH at Smithtown	Ext Clinic	Landing Meadow Rd, Smithtown, NY 11787	Developmental Disabilities Institute, Inc.	4940	5155202R	Suffolk
LISH at Manorville	Ext Clinic	221 North Sunrise Highway Service Rd, Manorville, NY 11941	Developmental Disabilities Institute, Inc.	4864	5155202R	Suffolk
LISH at Riverhead	Ext Clinic	883 East Main St. Riverhead, NY 11901	Developmental Disabilities Institute, Inc.	4862	5155202R	Suffolk
LISH at the Fortunoff Treatment and Rehabilitation Center	Ext Clinic	380 Washington Ave. Roosevelt, NY 11575	United Cerebral Palsy Association of Nassau County Inc.	529	2950200R	Nassau

Character and Competence

The members of LISH, Inc. are:

<u>Name</u>	<u>Affiliation</u>
Robert McGuire	United Cerebral Palsy of Nassau County, Inc.
Robert Budd	Family Residences and Essential Enterprises, Inc.
John Lessard	Developmental Disabilities Institute, Inc.
Stephen Friedman	United Cerebral Palsy of Greater Suffolk, Inc.

Mr. McGuire has over 30 years of employ with United Cerebral Palsy of Nassau County and currently serves as its Executive Director. Similarly, Mr. Budd has been employed nearly 30 years with Family Residences and Essential Enterprises, Inc. and is its Chief Executive Officer. Mr. Lessard's background includes a Pharmacy degree and an M.B.A. For 12 years, he has been employed by Developmental Disabilities Institute, Inc., most recently as its Executive Director. Mr. Friedman has Master's degrees in Education and Business Administration (MBA). For more than 10 years, he has been employed with United Cerebral Palsy of Greater Suffolk, Inc. and currently serves as the agency's President and Chief Executive Officer. As none of the board members are physicians, disclosure information was also submitted and reviewed for James Powell, MD. Dr. Powell has greater than 10 years of experience as the Medical Director of Developmental Disabilities Institute. He has been selected to serve as the Medical Director of the D&TC and all for the extension clinic locations.

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.

Mr. Lessard disclosed a pending civil lawsuit dated July 2013 involving all former trustees of a group self-insured trust for Worker's Compensation. Mr. McGuire disclosed a pending legal matter in which a family claimed an event hurt their adult child. Dr. Powell disclosed one settled malpractice case.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Acquisition Agreement

The change in ownership of the operations will be effectuated in accordance with the terms of the draft Acquisition Agreement, as summarized below:

Transferors:	DDI, FREE, UCPN and UCP Suffolk
Transferee:	LISH, Inc.
Assets Transferred:	The Article 28 D&TC Operating Certificates for DDI, FREE, UCPN and UCP Suffolk only
Assets Excluded:	None
Liabilities Assumed:	None
Purchase Price:	\$0

DDI, FREE, UCPN and UCP Suffolk will surrender their respective Article 28 operating certificates when LISH receives all required approvals to become the operator of the D&TC clinics currently under their licensure.

Total Project Cost and Financing

Total project cost for the renovation and demolition and acquisition of movable equipment for the entire project is estimated at \$1,080,645 broken down as follows:

	Grand Total
Renovation & Demolition	\$ 21,789
Design Contingency	2,179
Construction Contingency	2,179
Movable Equipment	1,046,598
CON Fees	2,000
Additional Processing Fees	<u>5,900</u>
Total Project Cost	<u>\$1,080,645</u>

Subproject costs broken down by site are as follows:

	<u>Central Islip</u>	<u>Family Wellness</u>	<u>Fortunoff TRC</u>	<u>Subtotal</u>
Renovation/Demolition	\$0	\$0	\$0	\$0
Design Contingency	\$0	\$0	\$0	\$0
Constr. Contingency	\$0	\$0	\$0	\$0
Movable Equipment	\$209,336	\$144,714	\$214,446	\$568,496
CON Fees	\$286	\$286	\$286	\$858
Add. Processing Fees	<u>\$1,151</u>	<u>\$796</u>	<u>\$1,180</u>	<u>\$3,127</u>
Total Project Cost	<u>\$210,773</u>	<u>\$145,796</u>	<u>\$215,912</u>	<u>\$572,481</u>

	<u>Manorville</u>	* <u>Port Jefferson</u>	<u>Riverhead</u>	<u>Subtotal</u>
Renovation/Demolition	\$0	\$21,789	\$0	\$21,789
Design Contingency	\$0	\$2,179	\$0	\$2,179
Constr. Contingency	\$0	\$2,179	\$0	\$2,179
Movable Equipment	\$18,373		\$91,864	\$110,237
CON Fees	\$285	\$286	\$286	\$857
Add. Processing Fees	<u>\$101</u>	<u>\$144</u>	<u>\$505</u>	<u>\$750</u>
Total Project Cost	<u>\$18,759</u>	<u>\$26,577</u>	<u>\$92,655</u>	<u>\$137,991</u>

* Project costs are based on a construction start date of June 1, 2015 and a one month construction period.

	<u>Smithtown</u>	<u>Central Admin.</u>	<u>Subtotal</u>	<u>Grand Total</u>
Renovation/Demolition	\$0	\$0	\$0	\$21,789
Design Contingency	\$0	\$0	\$0	\$2,179
Constr. Contingency	\$0	\$0	\$0	\$2,179
Movable Equipment	\$73,491	\$294,374	\$367,865	\$1,046,598
CON Fees	\$285	\$0	\$285	\$2,000
Add. Processing Fees	<u>\$404</u>	<u>\$1,619</u>	<u>\$2,023</u>	<u>\$5,900</u>
Total Project Cost	<u>\$74,180</u>	<u>\$295,993</u>	<u>\$370,173</u>	<u>\$1,080,645</u>

Movable equipment costs of \$294,374 and associated processing fees of \$1,619 are not reflected in the subproject costs as they are specific to the centralization of administrative services.

Financing of the \$1,080,645 total project cost will be met through a subvention agreement.

Subvention Agreement

The Applicant has entered into a subvention agreement for the project cost of \$1,080,645 and the working capital of \$5,000,000.

<u>Date:</u>	<u>To be determined</u>
Subvention Grantors:	<ul style="list-style-type: none"> • DDI • FREE • UCPN • UCP Suffolk
Subvention Grantee:	LISH, Inc.
Subvention Amount:	\$1,080,645 Project cost/ \$5,000,000 Working capital
Interest Charged	0%

This agreement has no interest associated with it, and will only be paid back to the Grantors when the financial condition of LISH permits the required payment to be made without impairment of LISH's operations or injury to its creditors.

Lease Rental Agreements

The applicant has submitted draft leases for all of the sites. The terms of each lease are summarized below:

LISH at Central Islip:

Premises:	14,225 sq. ft. located at 159 Carleton Avenue, Central Islip, NY
Lessor:	UCP Suffolk
Lessee:	LISH, Inc.
Rental:	\$697,648 for year 1 with a 2.5% increase per every year thereafter (\$49.04 per sq. ft.)

Term: 10 Years with (1) 10 year renewal term
Provisions: Triple net, Non-arm's length

LISH at the Family Wellness Center:

Premises: 5,236 sq. ft. located at 120 Plant Street, Hauppauge, NY
Lessor: FREE
Lessee: LISH, Inc.
Rental: \$138,764 for year 1 with a 2.5% increase per every year thereafter (\$26.50 per sq. ft.)
Term: 10 Years with (1) 10 year renewal term
Provisions: Triple Net, Non-arm's length

LISH at Fortunoff Treatment & Rehabilitation Center:

Premises: 10,238 sq. ft. located at 380 Washington Avenue, Roosevelt, NY
Lessor: UCPN
Lessee: LISH, Inc.
Rental: \$358,140 for year 1 with a 2.5% increase per every year thereafter (\$34.98 per sq. ft.)
Term: 10 Years with (1) 10 year renewal term
Provisions: Triple Net, Non-arm's length

LISH at Manorville:

Premises: 800 sq. ft. located at 221 North Sunrise Highway Service Road, Manorville, NY
Lessor: Independent Group Home Living, Inc.
Lessee: LISH, Inc.
Rental: \$10,973 year one with a 2.5% increase each year thereafter annually (\$13.72 per sq. ft.)
Term: 5 year term, with (2) 5 year renewal terms
Provisions: Triple Net, arm's length

LISH at Port Jefferson Station:

Premises: 642 sq. ft. located at 51-33 Terryville Road, Port Jefferson Station, NY
Lessor: Mayhaven Center of Hope, Inc.
Lessee: LISH, Inc.
Rental: \$13,024 for year 1 with a 2.5% increase per every year thereafter (\$20.29 per sq. ft.)
Term: Assignment of Lease expires 12/31/15
Provisions: Triple Net, arm's length

LISH at Riverhead:

Premises: 8,672 sq. ft. located at 883 E. Main Street, Riverhead, NY
Lessor: East Riverhead Equities
Lessee/Sublessor: DDI
Sublessee: LISH, Inc.
Rental: \$494,220 for year 1 with a 2.5% increase per every year thereafter (\$56.99 per sq. ft.)
Term: Expires with Prime lease on 6/30/23
Provisions: Triple Net, Non-arm's length

LISH at Smithtown:

Premises: 4,289 sq. ft. located at Landing Meadow Road, Smithtown, NY.
Lessor: DDI
Lessee: LISH, Inc.
Rental: \$184,399 for year 1 with a 2.5% increase per every year thereafter (\$42.99 per sq. ft.)
Term: 10 Years with (1) 10 year renewal term
Provisions: Triple Net, Non-arm's length

The applicant has provided confirmation that the leases with UCP Suffolk, FREE, and DDI will be pass through rates based on costs. The lease with UCPN will be based on Fair Market Value.

Operating Budget

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

	<u>Year 1</u>	<u>Year 3</u>
Revenues*	\$14,703,921	\$16,152,256
Expenses		
Operating	\$12,519,721	\$13,008,981
Capital	<u>2,074,462</u>	<u>2,148,150</u>
Total Expenses	\$14,594,183	\$15,157,131
Excess of Revenues over Expenses	<u>\$109,738</u>	<u>\$995,125</u>
Visits	74,820	78,608
Cost Per Visit	\$195.06	\$192.82

*Revenues include \$75,000 in HRSA Federal 330 Grant Funds for both year 1 and year 3, \$176,501 in meaningful use incentives for both year 1 and year 3, \$558,428 in 340B net revenue for year 3 only, \$959,125 year 1 and \$1,007,681 year 3 Non-MH Therapy MCR/MCD Revenue and \$481,325 in Other revenue for both year 1 and year 3.

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid	27.30%	27.30%
Medicare	59.04%	59.04%
Commercial	2.52%	2.52%
Private Pay/Other*	10.88%	10.88%
Charity Care	.26%	.26%

*Other payor source is comprised of visits classified as Non- Mental Health and are included as other operating revenue under the line non-MH Therapy MCR/MCD revenue. Year 1 was \$959,125 and year 3 was \$1,007,681.

Charity care is below the recommended 2% as the clinics currently focus on the developmentally disabled population, nearly all of whom are covered by Medicaid or Medicare. Once the facility becomes a FQHC sub-grantee, they will expand to provide services to a broader array of patients including the general public. As a FQHC sub-grantee, the facility will see all types of patients regardless of their ability to pay and anticipates an increase in charity care.

The applicant has also submitted operating budgets in 2014 dollars for each of the 7 subprojects/sites, as summarized below:

LISH at Central Islip:

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$2,564,741	\$2,810,306
Expenses		
Operating	\$1,804,342	\$1,950,417
Capital	<u>739,630</u>	<u>774,948</u>
Total Expenses	\$2,543,972	\$2,725,365
Excess of Revenues over Expenses	\$20,769	\$84,941
Visits	12,060	12,670
Cost Per Visit	\$210.94	\$215.10

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid	15.86%	15.86%
Medicare	60.67%	60.67%
Commercial	5.79%	5.79%
Private Pay/Other	17.45%	17.44%
Charity Care	.23%	.24%

LISH at the Family Wellness Center:

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$3,905,268	\$4,153,304
Expenses		
Operating	\$1,849,978	\$1,998,024
Capital	<u>174,452</u>	<u>183,415</u>
Total Expenses	\$2,024,430	\$2,181,439
Excess of Revenues over Expenses	\$1,880,838	\$1,971,865
Visits	19,904	20,912
Cost Per Visit	\$101.71	\$104.32

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid	24.73%	24.73%
Medicare	67.53%	67.53%
Commercial	1.39%	1.39%
Private Pay/Other	6.24%	6.24%
Charity Care	.11%	.11%

LISH at the Fortunoff Treatment & Rehabilitation Center:

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$2,211,207	\$2,413,678
Expenses		
Operating	\$1,293,883	\$1,385,693
Capital	<u>396,108</u>	<u>414,855</u>
Total Expenses	\$1,689,991	\$1,800,548
Excess of Revenues over Expenses	\$521,216	\$613,130
Visits	12,746	13,391
Cost Per Visit	\$132.59	\$134.46

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid	34.63%	34.63%
Medicare	31.30%	31.30%
Commercial	.98%	.98%
Private Pay/Other	33.08%	33.08%
Charity Care	.01%	.01%

LISH at Manorville:

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$299,950	\$338,736
Expenses		
Operating	\$187,635	\$202,359
Capital	<u>14,639</u>	<u>15,195</u>
Total Expenses	\$202,274	\$217,554
Excess of Revenues over Expenses	\$97,676	\$121,182
Visits	1,500	1,577
Cost Per Visit	\$134.85	\$137.95

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid	32.47%	32.47%
Medicare	66.33%	66.33%
Commercial	.93%	.95%
Private Pay	.20%	.19%
Charity Care	.07%	.06%

LISH at Port Jefferson Station:

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$756,569	\$829,870
Expenses		
Operating	\$369,390	\$398,553
Capital	<u>13,024</u>	<u>13,683</u>
Total Expenses	\$382,414	\$412,236
Excess of Revenues over Expenses	\$374,155	\$417,634
Visits	3,430	3,604
Cost Per Visit	\$111.49	\$114.38

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid	19.10%	19.10%
Medicare	73.00%	73.00%
Commercial	6.97%	6.97%
Private Pay/Other	.64%	.64%
Charity Care	.29%	.29%

LISH at Riverhead:

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$2,786,318	\$3,153,850
Expenses		
Operating	\$1,846,091	\$1,993,194
Capital	<u>512,550</u>	<u>537,570</u>
Total Expenses	\$2,358,641	\$2,530,764
Excess of Revenues over Expenses	\$427,677	\$623,086
Visits	14,597	15,335
Cost Per Visit	\$161.58	\$165.03

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid	31.86%	31.86%
Medicare	61.69%	61.69%
Commercial	2.97%	2.97%
Private Pay	2.58%	2.59%
Charity Care	.90%	.89%

LISH at Smithtown:

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$2,104,868	\$2,377,512
Expenses		
Operating	\$1,521,629	\$1,636,524
Capital	<u>14,664</u>	<u>14,664</u>
Total Expenses	\$1,536,293	\$1,651,188
Excess of Revenues over Expenses	\$568,575	\$726,324
Visits	10,583	11,119
Cost Per Visit	\$145.17	\$148.50

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid	31.98%	31.98%
Medicare	65.36%	65.36%
Commercial	.94%	.94%
Private Pay	1.64%	1.64%
Charity Care	.08%	.08%

Revenue, expense and utilization assumptions are based on the historical operating experience of the seven currently operating Article 28 clinics sites along with the experience of the four entities that have run the clinics: DDI, FREE, UCPN and UCP Suffolk.

Capability and Feasibility

The project costs and the working capital will be provided by a subvention agreement from DDI, FREE, UCPN and UCP Suffolk for \$6,080,645 at the stated terms. The current certified financial statements for the four entities are provided as BFA Attachments B through E, which show sufficient resources.

Working capital requirements are estimated at \$2,526,189 based on 2 months of year 3 expenses of \$15,157,131, which appear reasonable. The applicant has provided the Department with a subvention agreement for the working capital in the amount of \$5,000,000 at the above stated terms. The additional working capital provided through the subvention agreement is to minimize any cash flow concerns that may be encountered resulting from a delay in obtaining FQHC Medicaid rates due to the rate-setting process.

The submitted budget indicates a net income of \$109,738 and \$995,125 in Year 1 and 3 respectively, and assumes receipt of stated grant funds. Revenues are based on current reimbursement methodologies for FQHC diagnostic and treatment services. HRHCare has provided a letter of interest for LISH to become a sub-grantee and will submit a change in scope request on or about October 1, 2014, to add the LISH sites to its Federal scope of project. HRSA typically approves such changes in scope requests within approximately 120 days of submission of the request, at which point the LISH sites would be eligible for FQHC Medicaid rates. The DTC is anticipated to go live on or about February 1, 2015, the same time that the FQHC sub-grantee recipient/change in scope of project approval is expected to be obtained. Hence, approvals will converge and the DTC will never be operational without the FQHC rates. The budget appears reasonable.

BFA Attachment B is the certified financial summary of DDI for 2012 and 2013, which indicates the facility experienced an average positive working capital, maintained an average positive member's equity, and generated an average net income of \$755,091 for the period.

BFA Attachment C is the certified financial summary of FREE for 2012 and 2013, which indicates the facility experienced an average negative working capital, maintained an average positive member's equity, and generated an average net income of \$654,549 for the period. The negative working capital in 2013 is a result of \$3.4 million in deferred revenue and recoveries, primarily due to the following:

- In July 2011, OPWDD issued a draft rate adjustment in FREE's Intermediate Care Facilities (ICF) program that was a reduction of about \$1.2 million per year. They were not able to get final approval on that rate until this year, and have begun to recover the overpayment this month. In the interim, FREE deferred the revenue on its financial statements.
- In 2013 FREE received retroactive payments via its Medicaid rates to pay for day rehab services for ICF residents. Since New York State had previously paid FREE directly for this service, the rate adjustment was deferred pending recovery by the State. A recoupment of approximately \$1.2 million occurred in January and February 2014.
- The remaining amount comes from other smaller contract advances and unearned revenue.

BFA Attachment D is the certified financial summary of UCPN for 2012 and 2013, which indicates the facility experienced an average positive working capital, maintained an average positive member's equity, and generated an average net income of \$1,023,363 for the period

BFA Attachment E is the certified financial summary of UCP Suffolk for 2012 and 2013, which indicates the facility experienced an average positive working capital, average positive member's equity, and generated an average net income of \$182,702 for the period.

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	Pro-forma Balance Sheet of LISH, Inc.
BFA Attachment B	2012-2013 Certified financials Developmental Disabilities Institute, Inc. and Affiliate
BFA Attachment C	2012-2013 Certified financials Family Residences & Essential Enterprises, Inc.
BFA Attachment D	2012-2013 Certified financials United Cerebral Palsy Association of Nassau County, Inc.
BFA Attachment E	2012-2013 Certified financials United Cerebral Palsy Association of Greater Suffolk, Inc.
BFA Attachment F	LISH, Inc. Org chart

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSE-CON. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital for both sites. [HSP]
3. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of an executed Consultant Agreement, acceptable to the Department. [HSP]
5. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]
6. Submission of an executed asset purchase agreement, acceptable to the Department. [BFA]
7. Submission of an executed building lease that is acceptable to the Department of Health. [BFA]
8. Submission of the applicant's executed Certificate of Amendment of its Articles of Organization, acceptable to the Department. [CSL]
9. Submission of the executed Restated Certificate of Incorporation of Knickerbocker Dialysis Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Operating Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed Consulting Agreement and Administrative Services Agreement between the applicant and Davita Healthcare Partners Inc., acceptable to the Department. [CSL]

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 applicant shall complete construction by March 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 shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

October 2, 2014

Need Analysis

Project Description

True North DC, LLC (True North) is seeking to be approved as the new owner-operator of Port Washington Dialysis Center, an existing 18 station chronic dialysis facility located at 50 Seaview Blvd., Port Washington (Nassau County). In addition, they would like to construct a home training extension clinic.

Analysis

The primary service area for Port Washington Dialysis Center is Nassau County, which had a population estimate of 1,352,146 in 2013. The percentage of the population aged 65 and over was 16.1%. The nonwhite population percentage was 72.89%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Nassau County and New York State are listed below.

Ages 65 and Over:	16.1%	State Average:	14.4%
Nonwhite:	36.7%	State Average:	42.8%
<i>Source: U.S. Census 2013</i>			

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 calculation the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 346 free standing chronic dialysis stations operating in Nassau County and 44 in pipeline for a total of 390. This project will not result in any changes to the system. The total will remain 390 chronic dialysis stations. The total stations (390) will be able to treat 1,755 patients.

Projected Need

	2012		2017	
	Total Patients Treated	Total Residents Treated	*Projected Total Patients Treated	*Projected Residents Treated
	1917	1539	2223	1733
Free Standing Stations Needed	426	342	494	386
Existing Stations	346	346	346	346
Pipeline Stations	44	44	44	44
Total Stations w/pipeline	390	390	390	390
w/Approval of This CON and Pipeline	390	390	390	390
Unmet Need With Approval	36	-44	104	-4

*Based upon an 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.

Conclusion

The facility currently accommodates a population in need of access to dialysis stations in the service area. The 390 stations in Nassau County currently serve a population of 1,352,146 residents.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

True North DC, LLC (True North) requests approval to acquire Port Washington Dialysis Center, an existing 18-station chronic renal dialysis facility in Nassau County, from the current operator, Knickerbocker Dialysis, Inc. (Knickerbocker). Additionally, True North DC, LLC seeks approval to construct an extension clinic of the Center which will operate under that name Floral Park Home Training Center. The extension clinic will provide training and support to patients suffering from end stage renal disease who elect a home treatment modality. Upon approval, the LLC will amend its articles of organization to changes its name to True North Dialysis Center, LLC.

Proposed Operator	True North DC, LLC
Doing Business As	Port Washington Dialysis Center
Site #1 Address	50 Seaview Boulevard, Port Washington (Nassau)
Approved Services	Chronic Renal Dialysis (18 Stations)
Shifts/Hours/Schedule	Open 6 days per week, hours sufficient to meet the needs of the patients.
Staffing (1st Year/3rd Year)	12.30 FTEs / 12.5 FTEs
Medical Director(s)	Lionel U. Mailloux, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by North Shore University Hospital 5.1 miles / 12 minutes

Proposed Operator	True North DC, LLC
Doing Business As	Floral Park Home Training Center
Site #2 Address	One Cisney Avenue, Floral Park (Nassau)
Approved Services	Medical Social Services Nutritional Services Renal Dialysis Home Training Home Hemodialysis Training and Support Home Peritoneal Dialysis Training and Support
Shifts/Hours/Schedule	Will operate 6 days per week by the 3 rd year and the daily operating hours will be sufficient to meet the needs of dialysis patients treated at the facility.
Staffing (1st Year/3rd Year)	3.10 FTEs / 6.10 FTEs
Medical Director(s)	Azzour Hazzan, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by North Shore University Hospital 4.4 miles / 12 minutes

Character and Competence

The members of the LLC are:

Name	Percent
Knickerbocker Dialysis, Inc. (Knickerbocker)	51.0%
DaVita of New York, Inc. (DVANY) (100%)	
North Shore – LIJ Renal Ventures, LLC (NSLIJ Renal)	49.0%
North Shore University Hospital (60%)	
Long Island Jewish Medical Center (40%)	

Knickerbocker Dialysis, Inc. is the operator of Bronx Dialysis Center, a 25-station chronic renal dialysis center with 19 dialysis extension clinics, including Port Washington Dialysis Center. DaVita of New York, Inc. (DVANY), which is owned by DaVita HealthCare Partners, Inc. (DaVita), is the sole owner of the shares of Knickerbocker. DaVita owns or operates more than 1,800 dialysis facilities across the U.S.

The Board of Trustees for the North Shore-Long Island Jewish Health System was subject to a recent full Character and Competence Review and all disclosures were made under CON #141004, a project that received PHHPC's approval in June 2014.

The Officers for True North DC, LLC are:

Name	Title
Elsie Vincens Duke	President
Luann Regensburg	Vice President
Garry M. Menzel	Treasurer
Laurence A. Kraemer	Secretary
Martha M. Ha	Assistant Secretary

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 for all Officers, Managers and Directors of NSLIJ Renal Ventures, LLC., Knickerbocker Dialysis, Inc., and True North DC, LLC. 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.

In September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the U.S. Attorney's Office, the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General's Office of the State of New York and agreed to pay a monetary settlement of \$76.4M to the federal government and \$12.4M to the state and enter into a 5-year Corporate Integrity Agreement. The settlement covered payments related to stereotactic radiosurgery treatments; provision of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.

On October 16, 2006, a Stipulation and Order and a \$14,000 fine was issued against Southside Hospital based on the findings of a complaint investigation where a patient was admitted with a large dermoid cyst on her left ovary. Although a consent was signed for left-sided surgery, the physician performed a right ovarian cystectomy. It was noted that much of the accompanying documentation referred to a right-sided cyst.

On December 8, 2006, a Stipulation and Order and a \$12,000 fine was issued against Forest Hills Hospital based on the findings of an investigation regarding a patient who entered the hospital for left sided hernias repair, however, the surgery was performed on the patient's right side.

On February 6, 2007, a Stipulation and Order and an \$8,000 fine was issued against Staten Island University Hospital based on an investigation regarding a patient admitted for a left sided mediastinotomy (insertion of a tube into the chest). The procedure was begun on the right side of the chest and the error was noticed by the anesthesiologist after ten minutes.

On July 23, 2007, a Stipulation and Order and a \$12,000 fine was issued against Staten Island University Hospital based on the findings of a complaint investigation that an overdose of a controlled substance by the hospital had caused a patient's death. The investigation revealed nursing staff administered a drug at a higher rate than was ordered and continued the administration even after it was discontinued by the surgical resident.

On December 11, 2008, a Stipulation and Order and \$18,000 fine was issued against North Shore University Hospital – Manhasset following a complaint investigation into the post-operative care rendered to an elderly patient. Subsequent to surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed and sustained a dislocated femur and developed renal failure. Follow-up care was delayed or inadequately administered.

On July 8, 2010, a Stipulation and Order and a \$42,000 fine was issued against Syosset Hospital based based on the findings of an investigation of the care to a child having an adenotonsillectomy. It was determined that the patient was improperly cleared for surgery and that despite multiple comorbidities was not kept for observation post-operatively. The patient expired after discharge.

In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the U.S. Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.

Summary of Dialysis Facility Compare Statistics

The table below compares the Summary Statistic (which is the percent of scores at, or above, the New York State average) of the dialysis facilities currently operated by Knickerbocker and Knickerbocker-affiliated entities. The Summary Statistic is intended to be a rough indicator of performance. (Higher is better.)

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Operator	Sites	Reportable Statistics per Site	Total Statistics Possible (1) x (2)	Statistics Not Available or Do Not Apply	Denominator (3)-(4)	Statistics Not Reported	Statistics below NYS Average	Numerator (6)+(7)	Summary Statistic at or above NYS Average $100 - ((8)/(5))$
NYC	11	10	110	29	81	0	6	6	74%
Other than NYC	14	10	140	28	112	10	11	21	81%

Source: <http://www.medicare.gov/DialysisFacilityCompare/search.html>

Recommendation
From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreements:

Port Washington Dialysis Center

The applicant has submitted a draft lease rental agreement for the site to be occupied, the terms of which

Premises: 8,700 Sq. Ft. located at 50 Seaview Blvd., Port Washington, NY 10050
Sub-Lessor: TRC of New York, Inc.
Sub-Lessee: Knickerbocker Dialysis, Inc.
Lessor: A.Y.C Associates, LLC.
Lessee: I.H.S. of New York, Inc.
Term: Ten year term with 2 consecutive 5 yr renewal options ending 2017
Rental: 2014 \$129,544.75 or 14.89 sq. ft.
2015 \$134,726.00 or 15.48 sq. ft.
2016 \$140,115.60 or 16.10 sq. ft.
2017 \$145,720.22 or 16.74 sq. ft.
Provisions: Alterations and repair shall be the Tenants responsibility.

The applicant has indicated via an affidavit that the lease arrangement will be an arms-length lease arrangement. The applicant submitted two real estate letters attesting to the reasonableness of the per square foot rental. Also, the applicant believes it will come to an agreement on an acceptable lease extension upon expiration of the current lease.

True North DC, LLC d/b/a Floral Park Home Training Center

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

Premises: 1 Cisney Avenue, Floral Park, New York 11001 – 4,200-4,700 sq ft.
Lessor: Hadlay, LLC
Lessee: True North DC, LLC.
Term: 10 Years
Rental: \$164,500 or \$35.00 per square ft. with 3% annual increases
Provisions: Tenant is responsible for utilities, taxes, and insurance.

The applicant has indicated via an affidavit, that the lease arrangement will be an arms-length lease arrangement. The applicant submitted two real estate letters attesting to the reasonableness of the per square foot rental.

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with the executed asset purchase agreement, the terms of which are summarized below:

Date: May 13, 2014
Buyer: NSLIJ Renal
Seller: Knickerbocker Dialysis Center
Assets Acquired: All tangible property, equipment, inventories (including office supplies and at least 15 treatment days of medical supplies, EPO and other similar drugs), goodwill, prepaid expenses and deposits.
Excluded Assets: Knickerbocker's cash, cash equivalents, short term investments of cash, accounts receivable, original patient medical records and files, inter-company receivables, income tax refunds and tax deposits.
Liabilities Assumed: Breach of any Assigned Contracts, Personal Property Leases

Excluded Liabilities: All property leased by Knickerbocker Dialysis Center; personal contracts, property leases, taxes, or benefit plans or sales taxes owed.

Member Purchase Price: *\$6,682,300 which will be paid proportionally. Knickerbocker Dialysis Center will pay \$3,407,973 for 51% with in-kind contribution as they currently own 100% of the Center. NSLIJ will be \$3,274,327 for their 49% portion in cash as of the closing date.

Consulting & Administrative Services Agreement

The applicant has provided a draft administrative service agreement, the terms of which are summarized below.

Provider: DaVita HealthCare Partners Inc.
 Facility Operator: True North DC, LLC.
 Services Provided: Administrative and Support services such as; recruitment, selection and hiring clerical staff, administering benefit plans, maintenance services, repairs for wear and tear items, ordering supplies, bookkeeping, accounting and taxes. The administrator of services will not have any authority to make any substantial changes without written authority from the board.

*Annual Compensation: Consultant Fee for Port Washington: \$181,696
 Consultant Fee for Floral Park: \$45,854
 Development Fee for Floral Park: \$41,286

Term: 15 Year Term

While DaVita HealthCare Partners Inc. will be providing all of the above services, the Facility retains ultimate control in all of the final decisions associated with the services.

Total Project Cost and Financing

Total project cost, which includes renovation and movable equipment and CON Fees, is estimated at \$1,266,025, further broken down as follows:

Moveable Equipment	\$167,102
Renovation and Demolition	817,305
Design Contingency	81,731
Construction Contingency	81,731
Architect/Engineering Fees	48,410
Telecommunications	42,292
Other Fees (Consultant, etc.)	18,540
Application Fee	2,000
Processing Fee	<u>6,914</u>
Total Project Cost	\$1,266,025

Operating Budget

True North DC, LLC d/b/a Port Washington Dialysis Center

The applicant has submitted an operating budget for the first and third years of operation in 2014 dollars.

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,598,465	\$2,804,898
Expenses:		
Operating	\$2,086,789	\$2,180,435
Capital	<u>160,982</u>	<u>171,976</u>
Total Expenses	\$2,247,771	\$2,352,411

Net Income	<u>\$350,694</u>	<u>\$452,487</u>
Utilization: (Treatments)	7,800	8,424
Cost Per Treatment	\$ 288.17	\$ 279.25

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

Commercial Fee-for Service	8%	7.4%
Commercial Managed Care	0%	3.7%
Medicare Fee-for-Service	78%	75.9%
Medicaid Fee-for-Service	14%	13.0%

With regard to charity care, patients without insurance are eligible for Medicare payment of dialysis treatment, therefore DaVita does not include charity care in their budgets.

Operating Budget

True North DC, LLC d/b/a Floral Park Home Training Center

The applicant has submitted an operating budget for the first and third years of operation.

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$563,886	\$2,057,037
Expenses:		
Operating	\$584,306	\$1,432,502
Capital	<u>229,646</u>	<u>236,408</u>
Total Expenses	\$813,952	\$1,668,910
Net Income	<u>(250,066)</u>	<u>388,127</u>
Utilization: (Treatments)	1,404	6,084
Cost Per Treatment	\$579.74	\$274.31

Cost per treatment has decreased from year one to year three due to startup costs and increased volume.

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

	<u>First Year</u>	<u>Third Year</u>
Commercial Fee-for Service	66.7%	15.4%
Commercial Managed Care	0%	7.7%
Medicare Fee-for-Service	33.3%	71.8%
Medicaid Fee-for-Service	0%	5.1%

With regard to charity care, patients without insurance are eligible for Medicare payment of dialysis treatment, therefore DaVita does not include charity care in their budgets.

Capability and Feasibility

Project cost in the amount of \$1,266,025 will be met using equity proportional from North Shore-Long Island Health System, Inc. for their 49% membership and Davita Healthcare Partners, Inc. for their 51% membership. BFA Attachments B and C indicate sufficient equity from both members to fund the proposed project proportionally.

Working capital requirements are estimated at \$392,069 for Port Washington Dialysis Center, and \$278,152 for Floral Park Home Training Center, totaling \$670,221, which appears reasonable based on two months of third year expenses. The applicant will provide equity proportionally from Davita Healthcare Partners Inc. and North Shore-Long Island Jewish Health System, Inc. BFA Attachments B and C indicate sufficient equity to fund the proposed project proportionally.

The submitted combined budget indicates a net income of \$100,628 and \$840,614 during the first and third years, respectively.

BFA Attachment B is a financial summary of North Shore-Long Island Health System, Inc. As shown on Attachment B, the facility had an average positive working capital position and an average positive net asset position from 2012-2013. Also, the facility achieved an average operating gain of \$90,912 from 2012 thru 2013.

BFA Attachment C is a financial summary of Davita Healthcare Partners, Inc. As shown on Attachment C, the facility had an average positive working capital position and an average positive net asset position from 2012-2013. Also, the facility achieved an average operating income \$1,423,609 from 2012 thru 2013.

BFA Attachment D is the pro-forma balance sheet of True North DC, LLC, as of the first day of operation, which indicates a positive member's equity position of \$571,606 for Port Washington Dialysis and \$1,544,176 for Floral Parking Training Center.

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	Organizational Chart
BFA Attachment B	Financial Summary- North Shore-Long Island Health System, Inc.
BFA Attachment C	Financial Summary- Davita Healthcare Partners, Inc.
BFA Attachment D	Pro-forma Balance Sheet
HSP Attachment A	Dialysis Facility Compare



Public Health and Health Planning Council

Project # 142015-E
West Nassau Dialysis Center, Inc.

Program: Diagnostic and Treatment Center **County:** Nassau
Purpose: Establishment **Acknowledged:** July 16, 2014

Executive Summary

Description

West Nassau Dialysis Center, Inc. is an existing proprietary business corporation that operates a 24-station renal dialysis facility located in Valley Stream. The facility leases its premises from an unrelated party. This application proposes a change in corporate ownership through the requested recognition of five shareholders to be approved by the Public Health and Health Planning Council. Three of the existing shareholders, who collectively own 91% of the shares, will sell 11% of their shares to the new shareholders. Ownership of the corporation before and after the requested change appears below.

<u>Member Name</u>	<u>Current</u>	<u>Proposed</u>
Jodumutt G. Bhat, M.D.	30.34%	30.00%
Nirmal K. Mattoo, M.D.	30.33%	30.00%
Vincent S. Avila, M.D.	30.33%	20.00%
Audrey Goncharuk, M.D.	2.25%	5.00%
Madhu Korrapati, M.D.	1.5%	3.34%
Mario Marotta, M.D.	2.25%	5.00%
Binny Koshy, M.D.	1.5%	3.33%
Eduard Bover, M.D.	1.5%	3.33%

In accordance with the terms of the shareholders' agreement, the purchase price per share is \$2,003.20.

There will be no change in the day-to-day operation of the Center as a result of the membership change.

DOH Recommendation
Contingent Approval

Need Summary
This project will not result in any change to the number of dialysis stations or services in Nassau County.

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

Financial Summary
There are no project costs or budget associated with this application. The purchase price per share is \$2,003.20 and will be paid in cash.

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 project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a shareholders affidavit for each shareholder of the applicant, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of 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

October 2, 2014

Need Analysis

Background

West Nassau Dialysis Center Inc., an existing 24 station chronic dialysis center located in Nassau County at 75 Rockaway Ave. Valley Stream, NY 11580 requests approval to transfer a portion of the Center's membership interests to five (5) new shareholders. There will be no change in the scope of the services to the existing center.

Analysis

The primary service area for West Nassau Dialysis Center is Nassau County, which had a population estimate of 1,352,146 in 2013. The percentage of the population aged 65 and over was 16.1%. The nonwhite population percentage was 72.89%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Nassau County and New York State are listed below.

Nassau County

Ages 65 and Over:	16.1%	State Average:	14.4%
Nonwhite:	36.7%	State Average:	42.8%

Source: U.S. Census 2013

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 calculation the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 346 free standing chronic dialysis stations operating in Nassau County and 44 in pipeline for a total of 390. This project will not result in any changes to the system. The total will remain 390 chronic dialysis stations. The total stations (390) will be able to treat 1,755 patients.

	2012		2017	
	Total Patients Treated	Total Residents Treated	*Projected Total Patients Treated	*Projected Residents Treated
	1917	1539	2223	1733
Free Standing Stations Needed	426	342	494	386
Existing Stations	346	346	346	346
Pipeline Stations	44	44	44	44
Total Stations w/pipeline	390	390	390	390
w/Approval of This CON and Pipeline	390	390	390	390
Unmet Need With Approval	36	-44	104	-4

**Based upon an 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.

Conclusion

The facility currently accommodates a population in need of access to dialysis stations in the service area. The 390 stations in Nassau County currently serve a population of 1,352,146 residents.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

West Nassau Dialysis Center Inc., an existing Article 28 end stage renal disease center requests approval to transfer a portion of the Center's ownership interests to five (5) new shareholders. There will be no change in the scope of the services to the existing center.

Character and Competence

The following table details the proposed ownership:

<u>Member Name</u>	<u>Proposed Ownership</u>
Jodumutt G. Bhat, MD (President)	30.00%
Nirmal Mattoo, MD (Secretary)	30.00%
Vincent S. Avila, MD (Vice-President)	20.00%
Audrey Goncharuk, MD**	5.00%
Madhu Korrapati, MD**	3.34%
Mario Marotta, MD**	5.00%
Binny Koshy, MD**	3.33%
Eduard Bover, DO**	3.33%

***individuals in this application subject to C&C review*

All five of the new members are practicing physicians with experience 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, approval is recommended.

Financial Analysis

Financial Analysis

There are two separate stock purchase agreements. The first agreement involves the corporate entity West Nassau Dialysis Center, Inc. selling 175.823 shares of Treasury Stock at \$2003.20 per share for a total of \$352,208.64, which were previously authorized, but not issued. The second Stock Purchase Agreement involves the five physicians purchasing shares from seller.

Common Stock Purchase Agreement

The applicant has submitted an executed common stock purchase agreement for the change in ownership interests of West Nassau Dialysis Center, Inc., the terms of which are summarized below:

Date: August 27, 2013
Company: West Nassau Dialysis Center, Inc.
Purchaser: Andrey Goncharuk, M.D., Madhu Korrapatti, M.D., Mario Marotta, M.D., Binny Koshy, M.D, Eduard Bover, M.D., Jodumutt G. Bhat, M.D, and Nirmal K. Mattoo, M.D.
Purpose: The sale of 175.823 shares of common stock ownership of West Nassau Dialysis Center, Inc., of which each proposed shareholder will acquire a certain number of shares.
Purchase Price: \$2003.20/ share for a total purchase price of \$352,208.64.

BFA Attachment D is the schedule of Common Stock purchasers. The sale will take place upon final approval by the Public Health and Health Planning Council.

Stock Purchase Agreement

The applicant has submitted an executed stock agreement for the change in ownership interests of West Nassau Dialysis Center, Inc., the terms of which are summarized below:

Date: August 27, 2013
Seller: Vincent S. Avila, M.D.
Purchaser: Andrey Goncharuk, M.D., Madhu Korrapatti, M.D., Mario Marotta, M.D., Binny Koshy, M.D., and Eduard Bover, M.D.
Purpose: The sale of 50 shares stock ownership of West Nassau Dialysis Center, Inc., of which each proposed shareholder will acquire a certain number of shares.
Purchase Price: \$2003.20/ share for a total purchase price of \$100,160.

BFA Attachment D is the schedule of the stock purchase. The sale will take place upon final approval by the Public Health and Health Planning Council. Dr. Vincent Avila will be selling 50 of his 250 shares among the five new members to be recognized by the Public Health and Health Planning Council.

Andrey Goncharuk, M.D., Madhu Korrapatti, M.D., Mario Marotta, M.D., Binny Koshy, M.D., and Eduard Bover, M.D., will satisfy the payment of the purchase price, as shown on BFA Attachment D, of \$100,160, from personal funds. BFA Attachment A are the net worth statements showing sufficient funds available.

Capability and Feasibility

Each proposed shareholder will pay \$2003.20 per share to acquire shares of the corporation. Review of BFA Attachment A reveals the availability of sufficient funds from each proposed shareholder for the stated purpose.

The change in ownership has no impact on existing operations. BFA Attachment B indicates that the facility generated positive working capital and net equity and average annual net operating income of

\$1,214,512 during 2012- 2013. BFA Attachment C indicates that the facility generated positive working capital, net equity, and net operating income of \$439,102 as of June 30, 2014.

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	Summary Net Worth Statement
BFA Attachment B	Financial Summary, West Nassau Dialysis Center, Inc., 2012-2013
BFA Attachment C	Financial Summary, West Nassau Dialysis Center, Inc., June 30, 2014
BFA Attachment D	Schedule of Common Stock Purchase and Stock Purchase

141044 E

Saratoga Center for Care, LLC d/b/a Saratoga Center
for Rehab and Skilled Nursing Care
(Saratoga County)

Distributed under separate cover



Public Health and Health Planning Council

Project # 141235-E
Safire Rehabilitation of Northtowns, LLC

County: Erie
Purpose: Establishment

Program: Residential Health Care Facility
Acknowledged: June 3, 2014

Executive Summary

Description

Safire Rehabilitation of Northtowns, LLC is requesting approval to become the new operator of Sheridan Manor, LLC d/b/a Sheridan Manor Nursing Home, an existing proprietary LLC and a 100-bed Residential Health Care Facility (RHCF) located at 2799 Sheridan Drive, Tonawanda. Ownership of the facility operation before and after the requested change is as follows:

Far Rockaway. As of August of 2013, Robert Schuck has 25.0% membership in South Shore Healthcare Facility, a 100-bed RHCF located in Freeport.

DOH Recommendation
Contingent Approval

Need Summary

Sheridan Manor LLC's utilization was 95.9% in 2010, 94.5% in 2011, and 96.0% in 2012. Current utilization, as of August 6, 2014, is 96.0%. While the county falls below the Department's planning optimum, the facility has exceeded the county overall utilization and expects it to increase following approval of this application.

The change in ownership will not result in any change in beds or services.

Program Summary

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

<u>Current</u>	
Sheridan Manor, LLC	
<u>Name</u>	<u>Percentages</u>
William Richard Zacher	30.34%
Laura Z. Otterbein	30.33%
Wendy Zacher Schmidt	30.33%
Richard Platschek	4.50%
Solomon Abramczyk	4.50%

<u>Proposed</u>	
Safire Rehabilitation of Northtowns, LLC	
<u>Name</u>	<u>Percentages</u>
Moshe Steinberg	4.0%
Judy Landa	32.0%
Richard Platschek	32.0%
Solomon Abramczyk	16.0%
Robert Schuck	16.0%

As of October of 2012, Solomon Abramczyk and Richard Platschek have 4.5% membership interest each in Williamsville Suburban Nursing Home, a 220-bed RHCF located in Williamsville, and Ridgeview Manor Nursing Home, a 120-bed RHCF located in Buffalo. Solomon Abramczyk also has 63% membership in Park Gardens Rehabilitation and Nursing Center, a 200-bed RHCF located in Riverdale.

Judy Landa has 25.75% membership in West Lawrence Care Center, a 215-bed RHCF located in

Financial Summary

There are no project costs associated with this application.

BUDGET:	Revenues:	\$7,899,643
	Expenses:	<u>6,943,836</u>
	Gain:	\$ 955,807

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 project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed building lease acceptable to the Department of Health. [BFA]
2. The submission of a commitment signed by the applicant which indicates that, within two years from the date of 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 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. [RNR]
4. Submission of an annual report, for two years, to the DOH demonstrating substantial progress with the implementation of the plan. The report 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]
5. Submission of an Asset and Real Estate Purchase Agreement that accurately designates both the buyers and the sellers and is acceptable to the Department. [LTC]
6. Submission of Asset and Real Estate Purchase Agreements (from Sheridan Manor to Mr. Platschek and then from Mr. Platschek to Safire Rehabilitation of Northtowns, LLC) that are acceptable to the Department. [CSL]
7. Submission of an executed Operating Agreement that is acceptable to the Department. [CSL]
8. Submission of an executed Articles of Organization that is acceptable to the Department. [CSL]
9. Submission of a fully executed, proposed Certificate of Amendment to Sheridan Manor, LLC's Articles of Organization or Articles of Dissolution, as the case may be. [CSL]

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]

Council Action Date

October 2, 2014

Need Analysis

Background

Safire Rehabilitation of Northtowns, LLC seeks approval to become the established operator of Sheridan Manor LLC, a 100-bed Article 28 residential health care facility, located at 2799 Sheridan Drive, Tonawanda, 14150 in Erie County.

Analysis

There is currently a surplus of 457 beds in Erie County as indicated in Table 1 below. The overall occupancy for Erie County is 91.2% for 2012 as indicated in Table 2.

Table 1: RHCF Need – Erie County

2016 Projected Need	5,291
Current Beds	5,748
Beds Under Construction	0
Total Resources	5,748
Unmet Need	-457

Sheridan Manor LLC's utilization was 95.9% in 2010, 94.5% in 2011, and 96.0% in 2012. Although the county utilization falls below the Department's 97% planning optimum, the facility is very close to it and because of the facility's modest size (100 beds) the 96.0% occupancy rate represents a vacancy of only one bed below the 97% optimum.

Table 2: Sheridan Manor LLC/Erie County

<u>Facility/County/Region</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>	<u>% Occupancy 2012</u>
Sheridan Manor LLC	95.9%	94.5%	96.0%
Erie County	93.9%	92.1%	91.2%

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.

Sheridan Manor LLC's Medicaid admissions rates for 2011 and 2012 were 6.4% and 9.9%, respectively. This facility did not exceed the Erie County 75% rates in 2011 and 2012 of 23.4% and 22.1%, respectively, and will be required to follow the contingency plan as noted below.

Conclusion

Approval of this application will result in maintaining a necessary community resource.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

<u>Facility Information</u>	<u>Existing</u>	<u>Proposed</u>
Facility Name	Sheridan Manor, LLC	Safire Nursing and Rehabilitation Care of Northtowns
Address	2799 Sheridan Drive Tonawanda, NY. 14150	Same
RHCF Capacity	100	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Proprietary	Proprietary
Class of Operator	Limited Liability Company	Limited Liability Company
Operator	Sheridan Manor, LLC	Safire Rehabilitation of Northtowns, LLC <u>Managing Members</u> Richard Platschek 32% Solomon Abramczyk 16% <u>Members</u> Judy Landa 32% Robert Shuck 16% Moshe Steinberg 4%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Brookhaven Rehabilitation and Health Care Center	09/2004 to 02/2009
Fort Tryon Center for Rehabilitation and Nursing	09/2004 to 01/2009
Franklin Center for Rehabilitation and Nursing	09/2004 to 01/2009
Highfield Gardens Care Center of Great Neck (formerly Wedgewood Care Center)	09/2004 to 11/2005
West Lawrence Care Center	09/2004 to present
Park Gardens Rehabilitation and Nursing Center LLC	09/2004 to present
Silver Lake Specialized Rehabilitation and Care Center	06/2008 to 04/2014
Dumont Center for Rehabilitation and Nursing Care	07/2010 to present
Williamsville Suburban LLC	10/2012 to present
Ridge View Manor LLC	10/2012 to present
Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	02/2014 to present

Individual Background Review

Richard Platschek lists his occupation as sales at Stat Portable X-ray, a portable x-ray service located in Oakland Gardens, New York. He has been employed there since January 2007. Previously, Mr. Platschek was employed at Treetops Rehabilitation Care Center as a purchasing agent. Richard (Aryeh) Platschek discloses the following ownership interests in health facilities:

Williamsville Suburban LLC	10/2012 to present
Ridge View Manor LLC	10/2012 to present
Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	02/2014 to present

Solomon Abramczyk is a non-registered certified public accountant. He has been employed at Park Gardens Rehabilitation and Nursing Center LLC as the operator and Executive Director for the last ten years. Mr. Abramczyk discloses the following ownership interests in health facilities:

Park Gardens Rehabilitation and Nursing Center LLC	2002 to present
Silver Lake Specialized Rehabilitation and Care Center	06/2008 to 04/2014
Dumont Center for Rehabilitation and Nursing Care	07/2010 to present

Williamsville Suburban LLC	10/2012 to present
Ridge View Manor LLC	10/2012 to present
Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	02/2014 to present

Judy Landa reports no employment during the past ten years. Ms. Landa discloses the following ownership interest in health care facilities:

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

Robert Schuck is a non-registered certified public accountant. He has been employed at Hempstead Park Nursing Home as the Chief Financial Officer for the last ten years. Mr. Schuck discloses the following ownership interest in health care facilities:

South Shore Rehabilitation and Nursing Center	02/2014 to present
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Moshe Steinberg lists his employment as the president of LTC Bill Right, a medical supplies company located in Lakewood, New Jersey. Previously, Mr. Steinberg was employed as the vice president of Amazing Surgical Supply, Inc., a surgical equipment and supplies company located in Brooklyn, New York. Mr. Steinberg discloses no ownership interest in health facilities.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of Brookhaven Rehabilitation & Health Care Center, LLC for the period identified above reveals that 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 operations for Brookhaven Rehabilitation & Health Care Center, LLC 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 Highfield Gardens Care Center of Great Neck, Fort Tryon Center for Rehabilitation and Nursing, Franklin Center for Rehabilitation and Nursing, West Lawrence Care Center, Park Gardens Rehabilitation and Nursing Center LLC, Silver Lake Specialized Rehabilitation and Care Center, Dumont Center for Rehabilitation and Nursing Care, Williamsville Suburban LLC, Ridge View Manor LLC, and Sheridan Manor LLC reveals that a substantially consistent high level of care has been provided since there were no enforcements for the time period reviewed.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset and Real Estate Purchase Agreement

The change in ownership will be effectuated in accordance with an executed asset, and real estate purchase agreement, the terms of which are summarized below:

Date:	July 6, 2012
Seller:	Sheridan Manor, LLC d/b/a Sheridan Manor Nursing Home
Purchaser :	Richard Platschek as Buyer's designee to be transferred to Safire Rehabilitation of Northtowns, LLC once all necessary approvals have been obtained.
Purchased Assets:	The real property and all assets used in operation of the facility. Facilities, equipment, supplies and inventory, prepaid expenses, documents and records, assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos, resident trust funds, deposits, accounts and notes receivable, cash, deposits and cash equivalents.
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity, any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Assumed Liabilities:	Those associated with purchased assets
Purchase Price:	\$0 for the operating interest and real property.

Since the liabilities exceed the assets of the company being acquired, no cash will exchange hands as of the change of ownership date. After change of ownership, the buyers intend to take a mortgage and retire all outstanding liabilities.

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.

Assignment and Assumption Agreement

An executed assignment and assumption agreement has been submitted by the applicant assigning all assets and liabilities as stated in the Asset Purchase Agreement from Richard Platschek to Safire Rehabilitation of Northtowns, LLC.

Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Premises:	A 100 bed RHCf located at 2799 Sheridan Drive, Tonawanda
Landlord:	Sheridan DR HC, LLC
Tenant:	Safire Rehabilitation of Northtowns, LLC
Terms:	10 years commencing on the execution of the lease.
Rental:	Annual rent is \$29,004 (\$2,417 per month).
Provisions:	Tenant is responsible for general liability insurance, utilities and maintenance and is a triple net lease.

The lease arrangement is an arm's length agreement. The proposed members have no ownership interest in the current holding company which owns the premises. Effective at the time of closing, Richard Platschek will assign the real property to Sheridan Dr HC, LLC, the ownership of which is as follows: Solomon Abramczyk (16%), Robert Schuck (16%), Richard Platschek (32%), Benjamin Landa (32%) and Moshe Steinberg (4%).

Operating Budget

Following is a summary of the submitted operating budget, presented in 2014 dollars, for the first year subsequent to the change in ownership:

<u>Revenues:</u>	
Medicaid	\$4,399,221
Medicare	2,005,147
Private Pay/Other	<u>1,495,275</u>
Total	\$7,899,643

<u>Expenses:</u>	
Operating	\$6,772,983
Capital	<u>170,852</u>
Total	\$6,943,836

Net Income \$955,807

Total Patient Days 34,770

- Medicaid capital component includes lease rental payment.
- Medicare and private pay revenues are based on current payment rates.
- Medicaid rates are based on 2014 Medicaid pricing rates adjusted for CMI increase with no trend.
- Overall utilization is projected at 95.3%
- Utilization by payer source is anticipated as follows:

Medicaid	76 %
Medicare	12%
Private/Other	12%
- Breakeven utilization is projected at 83.73 %.

Capability and Feasibility

There are no project costs associated with this application. Since the liabilities exceed the assets of the company being acquired, no cash will exchange hands as of the change of ownership date. After change of ownership, the buyers intend to take a mortgage and retire all outstanding liabilities.

Working capital requirements are estimated at \$1,157,306 based on two months' of first year expenses and will be satisfied from the proposed member's equity. An affidavit from proposed applicant member, Judy Landa, states that she is willing to contribute resources disproportionate to her ownership percentage. Review of BFA Attachment A, net worth of proposed members, reveals sufficient resources to satisfy the working capital requirements for the RHCF change in ownership.

The submitted budget indicates that a net income of \$955,807 would be maintained during the first year following change in ownership. BFA Attachment G is the budget sensitivity analysis based on May 31, 2014 utilization of 96.3% for the facility, which shows the budgeted revenues would decrease by \$777,582 resulting in a net income in year one of \$178,225. BFA Attachment B is the pro-forma balance sheet of Sheridan Manor, LLC. As shown, the facility will initiate operation with negative \$1,404,496 members' equity due to the proposed members retiring the current debt obligation through a mortgage after closing. 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 Sheridan Manor, shows negative working capital, net equity and a net profit from operations of \$88,426 and \$279,551 as of December 31, 2013 and May 31, 2014, respectively. Richard Platschek and Solomon Abramczyk acquired membership interest in Ridgeview Manor as of October of 2012, and were able to obtain the following financial improvements:

- Additional third party revenues of \$650,000 in Medicaid rate increases,
- \$200,000 in Medicare rate increases,
- Increased facility efficiencies, such as renegotiate purchase contracts, by approximately \$750,000.

Review of Attachment D, financial summaries of proposed member Richard Platschek's affiliated homes, shows the three RHCs had experienced negative working capital and net equity and maintained positive net income for the period shown. The negative working capital and net equity for the affiliated homes were due to bankruptcy related liabilities and Medicaid payments being withheld.

Review of Attachment E, financial summary of West Lawrence Care Center, shows the RHC had negative working capital, positive equity and an average net loss of \$584,209 for 2011-2013. The facility has since revised their financial management practices by renegotiating contracts and securing payer rate increases and has maintained a net income of \$481,774 as of May 31, 2014.

Review of Attachment F, financial summary of Park Gardens Rehabilitation and Nursing Center, shows the RHC had positive net income of \$5,025,153 as of June 30, 2014.

Based on the preceding and subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members
BFA Attachment B	Pro-forma Balance Sheet, Safire Rehabilitation of Northtowns, LLC
BFA Attachment C	Financial Summary, Sheridan Manor Nursing Home, 2011- June 30, 2014
BFA Attachment D	Financial Summary of proposed member, Richard Platschek, affiliated Nursing Homes
BFA Attachment E	Financial Summary, West Lawrence Care Center
BFA Attachment F	Financial Summary, Park Gardens Rehabilitation and Nursing Center
BFA Attachment G	Budget Sensitivity Analysis
BNHLC Attachment A	Quality Measures and Inspection Report



Public Health and Health Planning Council

Project # 141237-E
Safire Rehabilitation of Southtowns, LLC

County: Erie
Purpose: Establishment

Program: Residential Health Care Facility
Acknowledged: June 4, 2014

Executive Summary

Description

Safire Rehabilitation of Southtowns, LLC, is requesting to become the new operator of Ridge View Manor, LLC d/b/a Ridgeview Manor Nursing Home, an existing proprietary 120-bed Residential Health Care Facility (RHCF) located at 300 Dorrance Avenue, Buffalo. Ownership of the facility operation before and after the requested change is as follows:

Far Rockaway. As of August of 2013, Robert Schuck has 25.0% membership in South Shore Healthcare Facility, a 100-bed RHCF located in Freeport.

DOH Recommendation
Contingent Approval

Need Summary

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 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

There are no project costs associated with this application.

Budget:	Revenues:	\$10,621,649
	Expenses:	<u>8,993,029</u>
	Gain:	\$ 1,628,620

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

Current

Ridge View Manor, LLC

<u>Name</u>	<u>Membership</u>
William Richard Zacher	30.34%
Laura Z. Otterbein	30.33%
Wendy Zacher Schmidt	30.33%
Richard Platschek	4.50%
Solomon Abramczyk	4.50%

Proposed

Safire Rehabilitation of Southtowns, LLC

<u>Name</u>	<u>Membership</u>
Moshe Steinberg	4.0%
Judy Landa	32.0%
Richard Platschek	32.0%
Solomon Abramczyk	16.0%
Robert Schuck	16.0%

As of October 2012, Solomon Abramczyk and Richard Platschek have 4.5% membership interest each in Williamsville Suburban Nursing Home, a 220-bed RHCF located in Williamsville, and Sheridan Manor Nursing Home, a 100-bed RHCF located in Tonawanda. Solomon Abramczyk also has 63% membership in Park Gardens Rehabilitation and Nursing Center, a 200-bed RHCF located in Riverdale.

Judy Landa has 25.75% membership in West Lawrence Care Center, a 215-bed RHCF located in

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily 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. [RNR]
3. Submission of an annual report for two years to the DOH, demonstrating substantial progress with the implementation of the plan. The report 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]
4. Submission of an Asset and Real Estate Purchase Agreement that accurately designates both the buyers and the sellers and is acceptable to the Department. [LTC]
5. Submission of an executed building lease acceptable to the Department of Health. [BFA]
6. Submission of an Asset and Real Estate Purchase Agreements (from Ridge View Manor) to Mr. Platschek and then from Mr. Platschek to Safire Rehabilitation of Southtowns, LLC that are acceptable to the Department. [CSL]
7. Submission of an executed Operating Agreement that is acceptable to the Department. [CSL]
8. Submission of an executed Articles of Organization that is acceptable to the Department. [CSL]
9. Submission of a fully executed, proposed Certificate of Amendment to Ridge View Manor, LLC's Articles of Organization or Articles of Dissolution, as the case may be. [CSL]

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]

Council Action Date

October 2, 2014

Need Analysis

Background

Safire Rehabilitation of Southtowns, LLC, seeks approval to become the established operator of Ridge View Manor LLC, a 120-bed Article 28 residential health care facility, located at 298 Dorrance Avenue, Buffalo, 14220 in Erie County.

Analysis

There is currently a surplus for 457 beds in Erie County as indicated in Table 1 below. The overall occupancy for Erie County is 91.2% for 2012 as indicated in Table 2.

Table 1: RHCF Need – Erie County

2016 Projected Need	5,291
Current Beds	5,748
Beds Under Construction	0
Total Resources	5,748
Unmet Need	-457

Ridge View Manor LLC's utilization was 95.1% in 2010, 92.6% in 2011, and 92.5% in 2012. The applicant noted the reason for the soft utilization is due to mismanagement by the former operators. During this period the former operator, William Zacher, died, and the subsequent operators did not perform any audits or file any cost reports, which resulted in the forgoing of all capital-based reimbursements. This further resulted in the owners becoming financially challenged, undergoing bankruptcy, and losing talented staff after failing to meet payroll. The facility's reputation in the community began to suffer as well, which adversely affected the utilization rates. Furthermore, the Berger Commission's recommendation to close one of the operator's facilities resulted in an even further decline in utilization at this location.

Utilization as of August 6, 2014, was 95.8%. Utilization has increased during the period the proposed operators have been involved with the facility's operation. The proposed operators plan to increase utilization by addressing deficiencies that contributed to the previous substandard occupancy. Remedies to be instituted include:

- Retaining accountants to prepare backlogged cost reports;
- Submission of cost reports that will allow for the resumption of reimbursements;
- Using reimbursement revenue to perform improvements to resident's rooms;
- Recruitment of talented staff; and
- Restoring the reputation of the facility.

Table 2: Ridge View Manor LLC/Erie County

<u>Facility/County/Region</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>	<u>% Occupancy 2012</u>
Ridge View Manor LLC	95.1%	92.6%	92.5%
Erie County	93.9%	92.1%	91.2%

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.

Ridge View Manor LLC's Medicaid admissions for 2011 and 2012 was 3.9% and 7.7%, respectively. This facility did not exceed the Erie County 75% rates in 2011 and 2012 of 23.4% and 22.1%, respectively, and will be required to follow the contingency plan as noted below.

Conclusion

It is expected that approval of the proposed change of ownership will result in more consistent utilization rates and better management of the facility and help maintain a needed source of RHCf care for the community.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	<u>Existing</u>	<u>Proposed</u>
Facility Name	Ridge View Manor, LLC	Safire Nursing and Rehabilitation Care of Southtowns
Address	298 Dorrance Avenue Buffalo, NY. 14220	Same
RHCf Capacity	120	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Proprietary	Proprietary
Class of Operator	Limited Liability Company	Limited Liability Company
Operator	Ridge View Manor, LLC	Safire Rehabilitation of Southtowns, LLC <u>Managing Members:</u> Richard Platschek 32% Solomon Abramczyk 16% <u>Members:</u> Judy Landa 32% Robert Shuck 16% Moshe Steinberg 4%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Brookhaven Rehabilitation and Health Care Center	09/2004 to 02/2009
Fort Tryon Center for Rehabilitation and Nursing	09/2004 to 01/2009
Franklin Center for Rehabilitation and Nursing	09/2004 to 01/2009
Highfield Gardens Care Center of Great Neck (formerly Wedgewood Care Center)	09/2004 to 11/2005
West Lawrence Care Center	09/2004 to present
Park Gardens Rehabilitation and Nursing Center LLC	09/2004 to present
Silver Lake Specialized Rehabilitation and Care Center	06/2008 to 04/2014
Dumont Center for Rehabilitation and Nursing Care	07/2010 to present
Williamsville Suburban LLC	10/2012 to present
Ridge View Manor LLC	10/2012 to present
Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	02/2014 to present

Individual Background Review

Richard Platschek lists his occupation as sales at Stat Portable X-ray, a portable x-ray service located in Oakland Gardens, New York. He has been employed there since January 2007. Previously, Mr. Platschek was employed at Treetops Rehabilitation Care Center as a purchasing agent. Richard (Aryeh) Platschek discloses the following ownership interests in health facilities:

Williamsville Suburban LLC	10/2012 to present
Ridge View Manor LLC	10/2012 to present
Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	02/2014 to present

Solomon Abramczyk is a non-registered certified public accountant. He has been employed at Park Gardens Rehabilitation and Nursing Center LLC as the operator and Executive Director for the last ten years. Mr. Abramczyk discloses the following ownership interests in health facilities:

Park Gardens Rehabilitation and Nursing Center LLC	2002 to present
Silver Lake Specialized Rehabilitation and Care Center	06/2008 to 04/2014
Dumont Center for Rehabilitation and Nursing Care	07/2010 to present
Williamsville Suburban LLC	10/2012 to present
Ridge View Manor LLC	10/2012 to present
Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	02/2014 to present

Judy Landa reports no employment during the past ten years. Ms. Landa discloses the following ownership interest in health care facilities:

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

Robert Schuck is a non-registered certified public accountant. He has been employed at Hempstead Park Nursing Home as the Chief Financial Officer for the last ten years. Mr. Schuck discloses the following ownership interest in health care facilities:

South Shore Rehabilitation and Nursing Center	02/2014 to present
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Moshe Steinberg lists his employment as the president of LTC Bill Right, a medical supplies company located in Lakewood, New Jersey. Previously, Mr. Steinberg was employed as the vice president of Amazing Surgical Supply, Inc., a surgical equipment and supplies company located in Brooklyn, New York. Mr. Steinberg discloses no ownership interest in health facilities.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of Brookhaven Rehabilitation & Health Care Center, LLC for the period identified above reveals that 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 operations for Brookhaven Rehabilitation & Health Care Center, LLC 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 Highfield Gardens Care Center of Great Neck, Fort Tryon Center for Rehabilitation and Nursing, Franklin Center for Rehabilitation and Nursing, West Lawrence Care Center, Park Gardens Rehabilitation and Nursing Center LLC, Silver Lake Specialized Rehabilitation and Care Center, Dumont Center for Rehabilitation and Nursing Care, Williamsville Suburban LLC, Ridge View Manor LLC, and Sheridan Manor LLC reveals that a substantially consistent high level of care has been provided since there were no enforcements for the time period reviewed.

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.

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, contingent approval is recommended.

Financial Analysis

Asset and Real Estate Purchase Agreement

The change in ownership will be effectuated in accordance with an executed asset and real estate purchase and sale agreement, the terms of which are summarized below:

Date:	July 6, 2012
Seller:	Ridgeview Manor, LLC d/b/a Ridgeview Manor Nursing Home
Purchaser :	Richard Platschek as Buyer's designee to be transferred to Safire Rehabilitation of Southtowns, LLC once all necessary approvals have been obtained.
Purchased Assets:	The real property and all assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents;
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Assumed Liabilities:	Those associated with purchased assets.
Purchase Price:	\$0 for the operating interest and real property.

Since the liabilities exceed the assets of the company being acquired, no cash will exchange hands as of the change of ownership date. After change of ownership, the buyers intend to take a mortgage and retire all outstanding liabilities.

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.

Assignment and Assumption Agreement

An executed assignment and assumption agreement has been submitted by the applicant assigning all assets and liabilities as stated in the Asset Purchase Agreement from Richard Platschek to Safire Rehabilitation of Southtowns, LLC.

Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Premises: A 120-bed RHCf located at 298 Dorrance Avenue, Buffalo, NY
Landlord: Dorrance Ave HC, LLC
Tenant: Safire Rehabilitation of Southtowns, LLC
Terms: 10 years commencing on the execution of the lease.
Rental: Annual rent is \$29,004 (\$2,417 per month).
Provisions: Tenant is responsible for general liability insurance, utilities and maintenance and is a triple net lease.

The lease arrangement is an arm's length agreement. The proposed members have no ownership interest in the current holding company which owns the premises. Effective at the time of closing, Richard Platschek will assign the real property to Dorrance Ave HC, LLC. Ownership of Dorrance Ave HC, LLC is as follows: Solomon Abramczyk (16%), Robert Schuck (16%), Richard Platschek (32%), Benjamin Landa (32%) and Moshe Steinberg (4%).

Operating Budget

Following is a summary of the submitted operating budget, presented in 2014 dollars, for the first year subsequent to change in ownership:

Revenues:	
Medicaid	\$4,934,417
Medicare	4,023,460
Private Pay/Other	<u>1,663,772</u>
Total	\$10,621,649
Expenses:	
Operating	\$8,708,796
Capital	<u>284,233</u>
Total	\$8,993,029
Net Income	\$1,628,620
Total Patient Days	41,724

- Medicaid capital component includes lease rental payment.
- Medicare and private pay revenues are based on current payment rates.
- Medicaid rates are based on 2014 Medicaid pricing rates adjusted for CMI increase with no trend.
- Overall utilization is projected at 95.3%.
- Utilization by payor source is anticipated as follows:

Medicaid	70 %
Medicare	19%
Private/Other	11%
- Breakeven utilization is projected at 80.7%.

Capability and Feasibility

There are no project costs associated with this application. Since the liabilities exceed the assets of the company being acquired, no cash will exchange hands as of the change of ownership date. After change of ownership, the buyers intend to take a mortgage and retire all outstanding liabilities.

Working capital requirements are estimated at \$1,498,838 based on two months' of first year expenses and will be satisfied from the proposed member's equity. An affidavit from proposed applicant member, Judy Landa, states that she is willing to contribute resources disproportionate to her ownership percentage. Review of BFA Attachment A, net worth of proposed members, reveals sufficient resources to satisfy the working capital requirements for the RHCF change in ownership.

The submitted budget indicates that a net income of \$1,628,620 would be maintained during the first year following change in ownership. BFA Attachment G is the budget sensitivity analysis based on May 31, 2014 current total utilization of 94.1% for the facility, which shows the budgeted revenues would decrease by \$1,601,528 resulting in a net income in year one of \$27,092. BFA Attachment B presents the pro-forma balance sheet of Ridgeview Manor, LLC. As shown, the facility will initiate operation with negative \$245,829 members' equity due to the proposed members retiring the current debt obligation through a mortgage after closing. 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 Ridgeview Manor, shows negative working capital, net equity and a net profit from operations of \$276,510 and \$139,107 as of December 31, 2013 and May 31, 2014, respectively. Richard Platschek and Solomon Abramczyk acquired membership interest in Ridgeview Manor as of October of 2012, and were able to obtain the following financial improvements:

- Additional third party revenues of \$850,000 in Medicaid rate increases,
- \$250,000 in Medicare rate increases,
- Increased facility efficiencies, such as renegotiate purchase contracts, by approximately \$900,000.

Review of Attachment D, financial summaries of proposed member Richard Platschek's affiliated homes, shows the three RHCFs experienced negative working capital and net equity and maintained positive net income for the period shown. The negative working capital and net equity for the affiliated homes were due to bankruptcy related liabilities and Medicaid payments being withheld.

Review of Attachment E, financial summary of West Lawrence Care Center, shows the RHCF had negative working capital, positive equity and an average net loss of \$584,209 for 2011-2013. The facility has since revised their financial management practices by renegotiating contracts and securing payer rate increases and has maintained a net income of \$481,774 as of May 31, 2014.

Review of Attachment F, financial summary of Park Gardens Rehabilitation and Nursing Center, shows the RHCF had positive net income of \$5,025,153 as of June 30, 2014.

Based on the preceding and subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members
BFA Attachment B	Pro-forma Balance Sheet, Safire Rehabilitation of Southtowns, LLC
BFA Attachment C	Financial Summary, Ridgeview Manor Nursing Home, 2011- June 30, 2014
BFA Attachment D	Financial summary of proposed member, Richard Platschek, affiliated Nursing Homes
BFA Attachment E	Financial Summary, West Lawrence Care Center
BFA Attachment F	Financial summary, Park Gardens Rehabilitation and Nursing Center
BFA Attachment G	Budget Sensitivity Analysis
BNHLC Attachment A	Quality Measures and Inspection Report



Public Health and Health Planning Council

Project # 142029-E
 West Ledge Op LLC d/b/a Pinnacle Center for Rehabilitation
 on the Hudson

Program: Residential Health Care Facility
Purpose: Establishment

County: Westchester
Acknowledged: July 21, 2014

Executive Summary

Description

West Ledge Op, LLC, an existing limited liability company, requests approval to be established as the operator of West Ledge Rehabilitation and Nursing Center, an existing 100-bed residential health care facility located at 2000 Main Street, Peekskill, New York.

West Ledge Op, LLC entered into an Operational Transfer and Surrender Agreement on September 18, 2013, with WLOP LLC for the sale and acquisition of the operating interest of West Ledge Rehabilitation and Nursing Center. The applicant indicates that the real estate ownership is not affected by this application. On August 1, 2013, WLOP LLC entered into a Consulting Agreement with MN Consulting NY LLC. The applicant states that the purpose of the Consulting Agreement was to engage MN Consulting NY, LLC to assist with the operation of the facility and restore profitability and stability to the overall operations. The Consulting Agreement names Mark Friedman and Neal Einhorn, members of MN Consulting NY LLC and members of West Ledge OP LLC, as the President and Chief Operating Officer of West Ledge Rehabilitation and Nursing Center. Mr. Friedman and Mr. Neil Einhorn have been involved in the operation of the Facility since the Consulting Agreement was executed. The applicant stated that the consulting services agreement would cease upon approval of this application.

The current and proposed operator is as follows:

<u>Current</u>		<u>Proposed</u>	
WLOP LLC		West Ledge Op, LLC	
Members:		Members:	
Moshe Scheiner	60%	Mark Friedman	42.50%
Nathan Stein	40%	Neal Einhorn	42.50%
		Yossie Zucker	8.00%
		Shaindl Shur	3.00%
		Ahiva Rudner	2.00%
		Steven Sax	2.00%

DOH Recommendation

Disapproval on the basis of Character

Program Summary

A recommendation for disapproval is being made based on the fact that the proposed managing members, Mark Friedman and Neal Einhorn, have been operating the facility since August 1, 2013 under an agreement that violates Title 10 NYCRR §600.9 (d).

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

DOH Recommendation

Disapproval on the basis of Character

Council Action Date

October 2, 2014

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	West Ledge Rehabilitation and Nursing Center	Pinnacle Center for Rehabilitation on the Hudson
Address	2000 Main Street Peekskill, NY. 10566	Same
RHCF Capacity	100	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Proprietary	Proprietary
Class of Operator	Limited Liability Company	Limited Liability Company
Operator	WLOP, LLC Moshe Scheiner 60% Nathan Stern 40%	West Ledge Op LLC Managing Members: Mark Friedman 42.50% Neal Einhorn 42.50% Members: Yossie Zucker 8.00% Shaindl Shur 3.00% Akiva Rudner 2.00% Steven Sax 2.00%

Project Review

No changes in the program or physical environment are proposed in this application.

Mark Friedman and Neal Einhorn are the proposed managing members of the applicant, representing 85% of West Ledge Op LLC's membership. On August 1, 2013, a Consulting Agreement (*Exhibit A*) was entered into between the current operator, WLOP LLC, and MN Consulting. Department staff were able to confirm that the terms of the Consulting Agreement were put in place effective August 1, 2013 and that MN Consulting NY LLC has participated in the operation of the facility since the effective date. The Consulting Agreement will terminate upon the closing of the Operations Transfer and Surrender Agreement, after PHHC approval of the CON. The Consulting Agreement names Mark Friedman and Neal Einhorn as the President and Chief Operating Officer of West Ledge Rehabilitation and Nursing Center.

While the agreement was labeled a Consulting Agreement, Department staff concluded that the agreement in content constitutes a management agreement prohibited by Title 10 NYCRR §600.9 (d). Department staff determined that the executed agreement was an improper delegation of the current operator's responsibilities based on the duties and authority outlined in section 3(a) of the Consulting Agreement. Specifically, the agreement gives Mark Friedman and Neal Einhorn:

- authority over the day-to-day operations of the facility;
- power to establish and control the operating accounts for the facility;
- duty to operate the facility in compliance with all applicable laws;
- authority over the collection of accounts receivable;
- authority over payment of accounts payable and liabilities;
- authority over preparation of budgets and financial reports;
- authority to obtain any consents that may be required to assign the contracts being assumed by the buyer pursuant to the Operations Transfer and Surrender Agreement;

- power to enter into, negotiate, and/or terminate agreements, leases and other arrangements relating to the facility in the normal course of business; and
- authority to participate in labor negotiations.

Section 3(a) of the agreement also clearly delineates the effective date of the agreement as the date of transfer for financial responsibility of the operator. Separate operating accounts were established to process payables and receivables prior to the effective date and on and after the effective date. Payment of liabilities and collection of receivables are treated differently based on whether they were incurred prior to or on or after the effective date of the agreement.

Department staff did recognize and take into account section 6 of the Consulting Agreement, which states the Governing Body's retention of legal responsibilities. This section reiterates the authority that is required to be retained under Title 10 NYCRR §600.9 (d). However, the duties and authority outlined in section 3 of the agreement contradict the notion that the Governing Body retained the required authority under the implemented Consulting Agreement.

Conclusion

The Consulting Agreement that was put in place on August 1, 2013 constituted an unauthorized transfer of ownership from the current operator WLOP LLC to the managing members of the proposed operator, West Ledge Op LLC. The terms of the Consulting Agreement, specifically section 3, are prohibited under Title 10 NYCRR §600.9 (d). Department staff believe that the facility has been operating under the terms of section 3 of the agreement since August 1, 2013 and has confirmed such through inquiry to the applicant during the CON review process.

As Mr. Friedman and Mr. Einhorn are both experienced and established Article 28 RHCF operators, they should have been aware of Title 10 NYCRR §600.9 (d) regarding governing operators' reserved powers and refrained from entering into an agreement whose terms would require the current operator to violate this regulatory requirement. Failure to recognize their actions and culpability with respect to such a violation is cause for the Department to recommend that these two proposed operators lack the character required of an Article 28 RHCF operator in good standing.

Recommendation

From a programmatic perspective, disapproval of the application is recommended.

Attachments

Exhibit A Consulting Agreement



Public Health and Health Planning Council

Project # 142050-E
 BTRNC, LLC d/b/a Beechtree Center for Rehabilitation and Nursing

Program: Residential Health Care Facility **County:** Tompkins
Purpose: Establishment **Acknowledged:** August 12, 2014

Executive Summary

Description

BTRNC, LLC d/b/a Beechtree Center for Rehabilitation and Nursing (BTRNC) is seeking approval to be established as the new operator of Reconstruction Home and Health Care Center, Inc. d/b/a Beechtree Care Center, an existing 120-bed voluntary residential health care facility (RHCF) located at 318 South Albany Street, Ithaca, NY (Tompkins County). Upon the change in ownership, the facility will transition from a voluntary/not-for-profit to a proprietary facility.

BTRNC, LLC is the current receiver of Beechtree Care Center. On September 1, 2013, the current operator of Beechtree Care Center entered into an Operations Transfer Agreement with BTRNC, LLC to sell and acquire the operating interests of the 120-bed facility. The purchase price for the operations of Beechtree Care Center is \$10.

Ownership of the operation before and after the requested change is as follows:

Current Owner

Reconstruction Home and Health Care Center, Inc., d/b/a Beechtree Care Center	<u>Membership</u>
Reconstruction Home and Health Care Center	100.00%

Current Receiver - Proposed Operator/Owner

BTRNC, LLC, d/b/a Beechtree Center for Rehabilitation and Nursing	<u>Membership</u>
Efraim Steif	39.90%
Uri Koenig	60.00%
David Camerota	0.10%

Also, a separate but related real estate company, 318 South Albany Street, LLC, will acquire the facility's property. Ownership of the real estate before and after the requested change is as follows:

Current Owner

Reconstruction Home and Health Care Center, Inc., d/b/a Beechtree Care Center	<u>Membership</u>
Reconstruction Home and Health Care Center	100.00%

Proposed Owner

318 South Albany Street, LLC	<u>Membership</u>
Efraim Steif	40.00%
Uri Koenig	60.00%

BFA Attachment A presents a summary net worth statement of the proposed members of BTRNC. All 3 of the proposed members have ownership interest in the following RHCF facilities: Bridgewater Center for Rehabilitation & Nursing, LLC; Central Park Rehabilitation and Nursing Center; and Pine Valley Center for Rehabilitation and Nursing.

DOH Recommendation
 Contingent Approval

Need Summary

There will be no change to beds or services as a result of this application.

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

BTRNC will acquire the operating interest in the RHCF for \$10, and 318 South Albany Street, LLC will acquire the RHCF real property for \$4,534,158 by taking over

the facility's liabilities, as stated in the asset purchase agreement.

There are no project costs associated with this proposal.

Year 1 budget total	Revenues	\$8,608,375
	Expenses	<u>\$8,606,963</u>
	Gain/(Loss)	\$1,412

Year 3 budget total	Revenues	\$8,824,840
	Expenses	<u>\$8,649,764</u>
	Gain/(Loss)	\$175,076

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 project.

Office of Health Systems Management

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily 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;
 - 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 evidence of site control acceptable to the Department. [CSL]
4. Submission of a copy of a Certificate of Amendment to the Articles of Organization for BTRNC, LLC acceptable to the Department. [CSL]
5. Submission of a copy of an amended Operating Agreement for BTRNC, LLC acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of 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

October 2, 2014

Need Analysis

Background

BTRNC, LLC seeks approval to become the established operator of Reconstruction Home and Health Care Center, Inc., d/b/a Beechtree Care Center, a 120-bed Article 28 residential health care facility located at 318 South Albany Street, Ithaca, 14850, in Tompkins County.

Analysis

There is currently a need for 118 beds in Tompkins County as indicated in Table 1 below. However, the overall occupancy for Tompkins County is 92.9% for 2012, as indicated in Table 2, well below the 97 percent planning optimum.

Table 1: RHCF Need – Tompkins County

2016 Projected Need	478
Current Beds	420
Beds Under Construction	-60
Total Resources	360
Unmet Need	118

Beechtree Care Center's utilization was 97.9% in 2010, 98.1% in 2011, and 97.1% in 2012. This facility has historically exceeded the Department's planning optimum and continues to do so under the current receiver.

Table 2: Beechtree Care Center/ Tompkins County Occupancy

Facility/County	% Occupancy	% Occupancy	% Occupancy
	2010	2011	2012
Beechtree Care Center	97.9%	98.1%	97.1%
Tompkins County	96.2%	96.5%	92.9%

Current utilization, as of August 6, 2014 was 99.2%. The applicant is the current receiver for the facility and noted the reason utilization has increased above the Department's planning optimum is due to the following:

- Hiring a new admissions director with experience in LTC admissions and external marketing;
- Hiring a new Medical Director, who in turn hired a nurse practitioner at the facility 3 days a week to help reduce hospitalizations. The nurse practitioner is a new service to the facility;
- Hiring a new therapy company to provide services, which has improved outcomes, length of stay management, and quality of care; and
- Hiring a contractor to screen Medicaid patients within the catchment area to ease admissions of Medicaid-eligible residents to the facility.

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 Health Systems Agency percentage, whichever is applicable.

Highland Park Rehabilitation and Nursing & Hudson Park Rehabilitation and Nursing	06/2011 to present
Vestal Park Rehabilitation and Nursing	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Beechtree Center for Rehabilitation and Nursing	09/2013 to present
Folts Center for Rehabilitation and Nursing	10/2013 to present
Northeast Center for Rehabilitation and Brain Injury	11/2013 to present

Diagnostic and Treatment Center:

Bridgewater Center for Dialysis	03/2012 to present
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Adult Day Health Care:

Riverside Manor Adult Care (closed)	09/2009 to 07/2010
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Adult Home:

The Pavillion at Claxton Manor (on Folts Campus)	10/2013 to present
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Individual Background Review

Uri Koenig is a CPA in good standing and owner of JK Koenig & Co., an accounting firm located in Spring Valley, NY. Mr. Koenig discloses the following health facility interests:

Bridgewater Center for Rehabilitation & Nursing	08/2006 to present
Pine Valley Center for Rehabilitation and Nursing	01/2008 to present
Central Park Rehabilitation and Nursing Center	03/2012 to present
Van Duyn Center for Rehabilitation and Nursing	12/2013 to present
Bridgewater Center for Dialysis (operator)	03/2012 to present

Receiverships:

Highland Park Rehabilitation and Nursing Center & Hudson Park Rehabilitation and Nursing Center	06/2011 to present ²
Vestal Park Rehabilitation and Nursing Center	06/2011 to present ¹
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present ²
Cortland Park Rehabilitation and Nursing Center	06/2011 to present ²
Colonial Park Rehabilitation and Nursing Center	06/2011 to present ²
Riverside Center for Rehabilitation and Nursing	03/2012 to present ²
Capstone Center for Rehabilitation and Nursing	03/2012 to present ²
Beechtree Center for Rehabilitation and Nursing	09/2013 to present
Folts Center for Rehabilitation and Nursing	10/2013 to present
Northeast Center for Rehabilitation and Brain Injury	11/2013 to present
The Pavillion at Claxton Manor (on Folts Campus)	10/2013 to present

¹PHHPC Approved 12/2013 as Operator; in process to complete transfer.

² PHHPC Approved 04/2014 as Operator; in process to complete transfer.

Efraim Steif is a licensed nursing home administrator in good standing in the States of New York and New Jersey. Mr. Steif is the President of FRS Healthcare Consultants, Inc., and formerly served as Administrator of Record at Forest View Center for Rehab and Nursing in Forest Hills from 2000 to 2005. Mr. Steif discloses the following health care facility interests:

Bridgewater Center for Rehabilitation & Nursing (Rec/Op)	02/2005 to present
Pine Valley Center for Rehabilitation and Nursing (Rec/Op)	12/2004 to present
Central Park Rehabilitation and Nursing Center (Rec/Op)	11/2008 to present
Van Duyn Center for Rehabilitation and Nursing	12/2013 to present
Bridgewater Center for Dialysis	03/2012 to present
Riverside Manor Adult Care (closed)	09/2009 to 07/2010

Receiverships:

Westchester Center for Rehabilitation and Nursing	01/2003 to 12/2006
Chestnut Park Rehabilitation and Nursing	06/2011 to present ²
Cortland Park Rehabilitation and Nursing	06/2011 to present ²
Colonial Park Rehabilitation and Nursing	06/2011 to present ²
Highland Park Rehabilitation and Nursing &	06/2011 to present ²
Hudson Park Rehabilitation and Nursing	06/2011 to present ²
Vestal Park Rehabilitation and Nursing	06/2011 to present ¹
Riverside Center for Rehabilitation and Nursing	03/2012 to present ²
Capstone Center for Rehabilitation and Nursing	03/2012 to present ²
Beechtree Center for Rehabilitation and Nursing	09/2013 to present
Folts Center for Rehabilitation and Nursing	10/2013 to present
Northeast Center for Rehabilitation and Brain Injury	11/2013 to present
The Pavillion at Claxton Manor (on Folts Campus)	10/2013 to present

¹PHHPC Approved 12/2013 as Operator; in process to complete transfer.

² PHHPC Approved 04/2014 as Operator; in process to complete transfer.

David Camerota is a licensed NY nursing home administrator in good standing. He is currently employed as chief operating officer with Upstate Services Group, LLC, which provides administrative and operational support to its affiliated skilled nursing facilities throughout New York. Mr. Camerota has served nearly continuously as administrator for the past eleven years at several upstate New York skilled nursing facilities. Mr. Camerota discloses the following health care facility interests:

Pine Valley Center for Rehabilitation and Nursing	06/2011 to present
Central Park Rehabilitation and Nursing Center	02/2012 to present
Van Duyn Center for Rehabilitation and Nursing	12/2013 to present
Bridgewater Center for Rehabilitation and Nursing	03/2011 to present
Bridgewater Center for Dialysis	03/2012 to present

Receiverships:

Highland Park Rehabilitation and Nursing &	06/2011 to present ²
Hudson Park Rehabilitation and Nursing Center	06/2011 to present ²
Vestal Park Rehabilitation and Nursing Center	06/2011 to present ¹
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present ²
Cortland Park Rehabilitation and Nursing Center	06/2011 to present ²
Colonial Park Rehabilitation and Nursing Center	06/2011 to present ²
Riverside Center for Rehabilitation and Nursing	03/2012 to present ²
Capstone Center for Rehabilitation and Nursing	03/2012 to present ²
Northeast Center for Rehabilitation and Nursing	11/2013 to present
Folts Center for Rehabilitation and Nursing	10/2013 to present
Beechtree Center for Rehabilitation and Nursing	09/2012 to present
The Pavillion at Claxton Manor (on Folts Campus)	10/2013 to present

¹PHHPC Approved 12/2013 as Operator; in process to complete transfer.

² PHHPC Approved 04/2014 as Operator; in process to complete transfer.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of Bridgewater Center for Rehabilitation & Nursing, LLC for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-13-016 issued May 29, 2013 for surveillance findings on July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters and 415.26(f)(3) Emergency Procedure/Drills.

A review of Central Park Rehabilitation and Nursing Center for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-10-064 issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.

A review of operations for Bridgewater Center for Rehabilitation & Nursing, LLC, and Central Park Rehabilitation and Nursing Center, for the period identified above, results in a conclusion of consistent high level of care since there were no repeat enforcements.

A review of operations for the Beechtree Center for Rehabilitation and Nursing, Capstone Center for Rehabilitation and Nursing, Chestnut Park Rehabilitation and Nursing Center, Colonial Park Rehabilitation and Nursing Center, Cortland Park Rehabilitation and Nursing Center, Folts Center for Rehabilitation and Nursing, Highland Park Rehabilitation and Nursing Center, Hudson Park Rehabilitation and Nursing Center, Pine Valley Center for Rehabilitation and Nursing, Riverside Center for Rehabilitation and Nursing, Vestal Park Rehabilitation and Nursing Center, Westchester Center for Rehabilitation and Nursing, Riverside Manor Adult Care, Van Duyn Center for Rehabilitation and Nursing, The Pavillion at Claxton Manor, and Bridgewater Center for Dialysis for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application.

Conclusion

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.

Recommendation

From a programmatic perspective, approval is recommended.

<h2>Financial Analysis</h2>

Operations Transfer Agreement

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

Date:	September 1, 2013
Transferor:	Reconstruction Home and Health Care Center, Inc., d/b/a Beechtree Care Center
Transferee:	BTRNC, LLC
Purchase Price:	\$10 Payable at closing

Assets Transferred: All rights, title and interest in the assets including trade name, leasehold improvements, equipment and furniture, supplies and inventory, prepaid expenses, all documents and records, assignable licenses and permits including Medicare and Medicaid provider numbers, phone numbers, fax numbers and all logos, names, trade names, trademarks and service marks, assignable software, resident trust funds, deposits and prepayments, cash and cash equivalents, Medicare and Medicaid provider agreements and medical records custody agreement.

Assumed Liabilities: Obligations of transferor under or which may arise in connection with the provider agreement and the assets, assumed by transferee pursuant to the terms hereof and the assignment of provider agreement.

Asset Purchase Agreement

The change in ownership of the real estate has been effectuated in accordance with an executed asset purchase agreement, the terms of which are summarized below:

Date: September 1, 2013
 Seller: Reconstruction Home and Health Care Center, Inc.
 Purchaser: 318 South Albany Street, LLC
 Purchased Assets: Seller's right, title and interest in that certain plot, piece and parcel of land and building, fixtures, equipment, improvements and depreciable assets occupied by or used by the facility and located at 318 South Albany Street, Ithaca, NY, the land lying in the bed of any street or highway in front of or adjoining the land to the center line thereof, any unpaid award for any taking by condemnation or any damage to the land or the improvements by reason of a change in grade of any street or highway, all easements, licenses, rights and appurtenances relating to any of the foregoing, any intangible property of seller, the warranties, the permits and all reserves maintained by or for seller with respect to the HUD loans or underlying bonds thereof and all of the goodwill symbolized and associated with the facility, and any other assets located at or used in connection with the facility.

Liabilities Assumed : The only liabilities the purchaser is assuming are as follows:

- The outstanding balance of the HUD loans (\$4,065,000)
- The outstanding interest on bonds (\$175,062)
- Prepayment penalty (\$45,200)
- Trustee fees (\$30,000)
- Cayuga county legal and publication costs (\$25,000)
- Title and Recording fees (\$45,000)
- Seller's legal fees (\$50,000)
- Cain Brothers Fees (\$150,000)
- OMIG liability (\$589,782)
- Medicaid retro (\$207,691)
- Fees due to Berkadia (estimated late fees) (\$12,500)
- Settlement agreement with Cayuga Medical Center at Ithaca, Inc. (\$250,000)

Total liabilities listed above are approximately \$5,645,235. However, the total liabilities to be assumed by the purchaser equals \$4,534,158, as it excludes an estimated amount held by the bond trustee of approximately \$1,111,077.

Purchase Price: \$4,534,158
 Payment of Purchase Price: Assumption of liabilities at closing which was on December 20, 2013

The purchase price of operations and real estate is proposed to be satisfied as follows:

Operations - Equity from BTRNC Members	\$10
Real Estate - HUD loan (22 years and 9 months @ 4.24%)	<u>\$5,304,600</u>
Total	\$5,304,610

BFA Attachments A and B are the proposed members' net worth summaries for BTRNC and 318 South Albany Street, LLC, which reveal sufficient resources to meet the equity requirements.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Lease Agreement (Company to Agency)

The applicant has submitted an executed Company to Agency lease agreement, the terms of which are summarized as follows:

Date: December 20, 2013
Premises: A 120-bed RHCF located at 318 South Albany Street, Ithaca, NY
Lessor: 318 South Albany Street, LLC
Lessee: Tompkins County Industrial Development Agency
Term: 10 years 1 month terminating 2/1/2024
Rental: \$1 per year
Provisions: Triple net lease

Leaseback Agreement (Agency to Company)

The applicant has submitted an executed leaseback agreement, the terms of which are summarized as follows:

Date: December 20, 2013
Premises: A 120-bed RHCF located at 318 South Albany Street, Ithaca, NY
Lessor: Tompkins County Industrial Development Agency
Lessee: 318 South Albany Street, LLC
Term: 10 years 1 month terminating 2/1/2024
Rental: \$10 per year
Provisions: Triple net lease

Reimbursement Lease Agreement and Medicaid Capital

The applicant has submitted an executed reimbursement lease agreement, the terms of which are summarized as follows:

Date: December 20, 2013
Premises: A 120-bed RHCF located at 318 South Albany Street, Ithaca, NY
Lessor: 318 South Albany Street, LLC
Lessee: BTRNC, LLC
Term: 23 year lease
Rental: \$599,877 per year (\$49,989.75 per month)
Provisions: Triple net lease

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.

With the change from a voluntary to a proprietary facility, the reimbursement methodology would be changed from reimbursement based on interest and depreciation for the HUD mortgage to reimbursement based on interest and amortization for the remainder of the 22 years 9 months HUD mortgage term. The facility however, does not have a mortgage as the facility is leased from a related entity. The related entity is charging the rent based on interest and amortization owed on the current HUD mortgage loan.

Operating Budget

Following is a summary of the submitted RHCF operating budget, presented in 2014 dollars, for the first and third years subsequent to the change in ownership:

	<u>Per Diem</u>	<u>Year 1 Total</u>	<u>Year 3 Total</u>
Revenues:			
Medicaid	\$155.32	\$4,054,905	\$4,156,829
Medicare	322.85	1,506,098	1,543,964
Private Pay/Other	281.15	<u>3,047,372</u>	<u>3,124,046</u>
Total		\$8,608,375	\$8,824,839
Expenses:			
Operating		\$8,007,076	\$ 8,027,633
Capital		<u>599,887</u>	<u>622,131</u>
Total		\$8,606,963	\$8,649,764
Net income/loss		<u>\$1,412</u>	<u>\$ 176,076</u>
Utilization: (patient days)		41,610	42,657
Occupancy		95.00%	97.39%

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

- Utilization by payor source is expected as follows: Medicaid 62.74%; Medicare 11.21%; Private Pay/Other 26.05%.
- Breakeven utilization is projected at approximately 95% for the RHCF.

Capability and Feasibility

On September 1, 2013, through an Operational Transfer Agreement, BTRNC acquired the operating interest of Reconstruction Home and Health Care Center, Inc., an existing 120-bed voluntary residential health care facility.

BTRNC will acquire the operating interest in the RHCF for \$10, and 318 South Albany Street, LLC will acquire the RHCF's real property for \$4,534,158 through the acquisition of the above listed liabilities of the facility. There is a relationship via similar members between 318 South Albany Street, LLC (the landlord) and BTRNC (the nursing home operator). There are no project costs associated with this proposal.

Working capital requirements for total operations are estimated at \$1,434,494, based on two months of year 1 expenses, which appears reasonable. Working capital will be satisfied from the applicant members' equity. This is presented on BFA Attachment A, which shows adequate resources to cover the working capital requirements.

BFA Attachment C is the pro-forma balance sheet of BTRNC, which indicates positive members' equity of \$1,434,494 as of 12/31/2012.

BFA Attachment D is the pro-forma balance sheet for 318 Albany Street, LLC, which indicates negative equity of \$872 as of 12/20/2013. The owners indicate that they will cover any losses of the entity. As shown on BFA Attachment B, the net worth of the owners of 318 Albany Street, LLC, the realty owners have enough resources available to cover any losses.

The submitted total budget indicates that a net income of \$1,412 would be generated in the first year after the change in ownership. The following is a comparison of the 2012 historical and projected revenue and expense:

Total projected income Year 1	\$8,608,365
Total projected expenses Year 1	8,606,953
Total projected net income Year 1	\$1,412
Total annual 2012 income	\$7,556,226
Total annual 2012 expense	8,752,359
Total annual 2012 net income (loss)	(\$1,196,133)
Total incremental net income (loss)	\$1,197,545

Medicaid revenues are expected to decrease by \$861,015 as the result of a decrease in patient days from 2012 to 2015 and a decrease in the average daily rate from \$156.49 per patient day in 2012, to \$155.32 per patient day in 2015. However, it is estimated that net revenue across all payors will increase by approximately \$1,197,545 as the results of the following:

- Medicare and Private Pay/Other revenues are expected to increase in total by approximately \$1,697,499 from 2012 to 2015.
- The average daily rate for Medicare will be increasing from \$300.45 per patient day in 2012, to \$322.85 per patient day in 2015.
- The average daily rate for Private Pay/Other will be going from \$213.29 per patient day in 2012, to \$281.14 per patient day in 2015.
- Patient days are anticipated to increase by 1,801 for Medicare and 2,459 for Private Pay/Other.
- The remaining increase in revenues is classified as “all other” and incorporates non-patient specific revenues, e.g., cafeteria services. The amount associated with this is an increase of \$208,134 over the current year.
- Despite a cost increase related to rental expense, there is an overall net decrease in cost of approximately \$145,396 due to the complete elimination of interest expense.

Based on the above, the budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price, with cost-based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

As shown on BFA Attachment E for the year 2012, BTRNC generated an average net loss of \$1,134,680, had an average negative net asset position and had an average negative working capital position. The reason for the 2012 loss is due to several operational difficulties over the last few years, which include inefficiencies in admissions, operational issues with the previous medical director and operational issues with the previous therapy company. These issues impacted the ability of the facility to generate profits from operations.

In order to resolve these issues the facility has done the following:

- The receiver has installed a new admissions director to improve the facility's presence in the community, as well as allow for quicker admission decisions at the facility.
- A new medical director was hired to improve care and avoid patient hospitalizations.
- A new nurse practitioner was hired to work 3 days per week to provide better medical management and help to reduce hospitalizations.
- The facility revised internal nursing and medical policies and processes to improve the care and outcomes of the patients.
- The facility also hired a new therapy company to provide necessary therapy services, with the objective to improve therapy outcomes, length of stay management and quality of care.

As shown on BFA Attachment F, for the years 2010 through 2012, Bridgewater Center for Rehabilitation and Nursing, LLC generated an average operating surplus of \$288,457, had an average positive net asset position of \$461,913, and had an average positive working capital position of \$222,964.

As shown on BFA Attachment G, for the years 2010 through 2012, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing generated an average operating surplus of \$434,863, had an average positive net asset position of \$2,600,993, and had an average positive working capital position of \$4,631,666.

As shown on BFA Attachment H, for the years 2010 through 2012, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center generated an average operating surplus of \$287,300, the net asset position turned positive in 2011, and as of 2012, it was a positive \$15,200. During this time period, the RHC had an average positive working capital position of \$2,239,042.

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	Net Worth of BTRNC LLC d/b/a Beechtree Center for Rehabilitation and Nursing Proposed Members
BFA Attachment B	Net Worth of 318 Albany Street, LLC Proposed Members
BFA Attachment C	Pro-forma Balance Sheet, BTRNC LLC d/b/a Beechtree Center for Rehabilitation and Nursing Proposed Members
BFA Attachment D	Pro-forma Balance Sheet, 318 Albany Street, LLC
BFA Attachment E	Financial Summary, BTRNC LLC d/b/a Beechtree Center for Rehabilitation and Nursing
BFA Attachment F	Financial Summary, Bridgewater Center for Rehabilitation and Nursing, LLC
BFA Attachment G	Financial Summary, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing
BFA Attachment H	Financial Summary, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center
BNHLC Attachment A	Quality Measures and Inspection Report

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Eddy Visiting Nurse Association
(Rensselaer County)

Distributed under separate cover



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council
FROM: James E. Dering, General Counsel *JED*
DATE: July 24, 2014
SUBJECT: Certificate of Amendment of the Certificate of Incorporation of The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. ("the corporation")

The above-referenced and attached proposed Certificate of Amendment, dated March 13, 2014, is being submitted for Public Health and Health Planning Council approval. The corporation operates an Article 28-A nursing home company, and therefore, pursuant to sections 2854 and 2855 of the Public Health Law, amendments to its certificate of incorporation require the approval of the Public Health and Health Planning Council as well as the Commissioner's consent.

As explained more fully in the attached letter dated March 14, 2014 from Tamar R. Rosenberg, attorney for the corporation, the proposed amendments are necessary to explicitly include among the corporation's purposes the support of the charitable, scientific and educational purposes of Brookdale Hospital Medical Center, an affiliated entity ("Brookdale"). The inclusion of this purpose is to ensure that the corporation is legally authorized to guaranty Brookdale's payment obligations on financing that Brookdale will be receiving under the New York State Health Facility Restructuring Program. Pursuant to section 2856 (3) (c), the corporation is obliged to obtain the approval of the Department prior to making a guaranty of payment or encumbering its real property.

Please note that the attorney's letter also refers to a Certificate of Amendment of the Certificate of Incorporation of The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund, Inc., a related entity that is not established pursuant to either Article 28 or Article 28-A. Therefore the filing of its Certificate of Amendment does not require the approval of the Public Health and Health Planning Council.

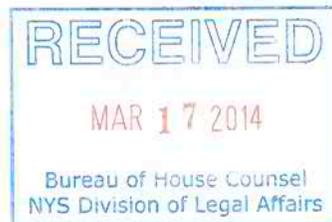
The proposed Certificate of Amendment of the Certificate of Incorporation of The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. is in legally acceptable form.

Attachments

EPSTEIN
BECKER
GREEN

Attorneys at Law

Tamar R. Rosenberg
T: 212.351.4514
F: 212.878.8600
TRosenberg@ebglaw.com



March 14, 2014

VIA FEDERAL EXPRESS

Mary Callahan, Esq.
Director, Bureau of House Counsel
Division of Legal Affairs
New York State Department of Health
Corning Tower, Rm 2484
Empire State Plaza
Albany, New York 12237

Expedited Review
Requested

**Re: Certificate of Amendment – The Schulman and Schachne
Institute for Nursing and Rehabilitation, Inc.**

Dear Ms. Callahan:

I am writing to request the consent of the New York State Department of Health (“NYSDOH”) to the filing with the New York Secretary of State of the proposed Certificate of Amendment to the Certificate of Incorporation of (i) The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. (“SSI”) enclosed as *Exhibit 1-a*; and (ii) The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund, Inc. (“SBSI Fund”) enclosed as *Exhibit 2-a*.

We respectfully request that the two Certificates of Amendment be reviewed as quickly as possible, given that they are required to be filed by The Dormitory Authority of the State of New York (“DASNY”) in conjunction with critical financing provided through the New York State Health Facility Restructuring Program, as described below.

SSI and SBSI Fund are affiliates of Brookdale Hospital Medical Center (“Brookdale Hospital”), an Article 28 licensed hospital located in Brooklyn, New York. SSI’s purposes are to operate a licensed nursing home. SBSI Fund’s purposes are to conduct fundraising and engage in grantmaking and other activities to promote the health of the community.

DASNY is providing up to \$78 million in critical financing to Brookdale Hospital pursuant to the New York State Health Facility Restructuring Program under Section 2815 of the New York State Public Health Law, to fund Brookdale Hospital’s capital improvement projects and cash flow needs. As a condition of the loan transaction, DASNY is requiring that SSI and

Mary Callahan, Esq.
New York State Department of Health
March 14, 2014
Page -2-

SBSI Fund (together with other affiliates of Brookdale Hospital) guaranty Brookdale Hospital's payment obligations through a mortgage on their real property and a security interest in their other property and assets. The governing boards of SSI and SBSI Fund have each determined that issuing the guaranty and the related mortgage and security interest to DASNY is in the best interests of each respective entity and have duly authorized the Certificate of Amendment of each entity pending receipt of all required approvals thereto.

Although SSI and SBSI Fund have historically operated in support of and in conjunction with Brookdale Hospital and its various affiliated organizations, the purposes set forth in their Certificate of Incorporation do not expressly provide for supporting Brookdale Hospital. For SSI and SBSI Fund to each have the clear authority to issue the guaranty, mortgage and security interest to DASNY, their Certificates of Incorporation must be amended to provide that their purposes include supporting Brookdale Hospital and its charitable health care mission. The enclosed Certificates of Amendment would modify their purposes accordingly.

The consent of the NYSDOH is required for the filing of SSI's and SBSI Fund's Certificates of Amendment under Section 803(a)(i) of the New York Not-for-Profit Corporation Law. A copy of SSI's Certificate of Incorporation, together with all amendments thereto, is enclosed as *Exhibit 1-b*, and a copy of SBSI Fund's Certificate of Incorporation, together with all amendments thereto, is enclosed as *Exhibit 2-b*.

Thank you for your assistance. Please call me at (212) 351-4514 if you have any questions or require additional information.

Very truly yours,



Tamar R. Rosenberg

Enclosures

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE SCHULMAN AND SCHACHNE INSTITUTE FOR NURSING AND
REHABILITATION, INC.**

**Under Section 803 of the
New York State Not-For-Profit Corporation Law**

The undersigned, Arthur J. Fried, Esq., hereby certifies that he is the Assistant Secretary of The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc., a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify as follows:

1. The name of the corporation is The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. (the "Corporation").
2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on January 11, 1968 under Section 402 of the NPCL. The name under which the Corporation was formed is Brookdale Hospital Center Nursing Home Company, Inc.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL and is a Type D corporation under Section 201 of the NPCL and shall continue to be a Type D corporation after this Certificate of Amendment becomes effective.
4. Paragraph II of the Corporation's Certificate of Incorporation, which sets forth the Corporation's purposes, including to provide nursing home accommodations and engage in related activities, is hereby amended to clarify and expand the purposes of the Corporation to include benefitting, promoting, supporting and furthering the charitable, scientific and educational purposes of the constituent entities of the Brookdale Health System, including in particular, The Brookdale Hospital Medical Center, and improving and enhancing the general health and well-being of, the communities of Brooklyn, New York served by the constituent entities of the Brookdale Health System, including The Brookdale Hospital Medical Center, and said Paragraph II of the Corporation's Certificate of Incorporation is hereby amended to read in its entirety as follows:

"II. The Company is organized and shall be operated exclusively for the charitable, scientific and educational purposes of promoting, facilitating and improving 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 of Brooklyn, New York served by the "Brookdale Health System," a system of affiliated health care providers and related corporations, by:

(i) providing nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of Article 28-A of the New York State Public Health Law; and

(ii) benefitting, promoting, supporting and furthering the charitable, scientific and educational purposes of the constituent entities of the Brookdale Health System that are exempt from federal income tax under Section 501(a) of the Code as organizations described in Section 501(c)(3) of the Code, including, in particular, The Brookdale Hospital Medical Center, a Type B New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law, including through the provision of financial and/or other support to such entities, as shall be determined by the Company's Board of Directors from time to time."

5. This Certificate of Amendment of the Corporation's Certificate of Incorporation was authorized by the unanimous approval of the Corporation's sole member, acting through its Board of Trustees, at a duly constituted meeting of such Board of Trustees, in accordance with Section 802(a)(1) of the NPCL.
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is: One Brookdale Plaza, Brooklyn, New York 11212, Attn: General Counsel.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Amendment on March 13, 2014.

A handwritten signature in black ink, appearing to read "Arthur J. Fried". The signature is written in a cursive style with a large initial "A".

By: Arthur J. Fried, Esq.
Title: Assistant Secretary

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE SCHULMAN AND SCHACHNE INSTITUTE FOR NURSING AND
REHABILITATION, INC.**

**Under Section 803 of the
New York State Not-For-Profit Corporation Law**

Filed By:

Jay E. Gerzog, Esq.
Epstein Becker & Green, P.C.
250 Park Avenue
New York, New York 10177



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

DATE: July 16, 2014

SUBJECT: Proposed Certificate of Amendment to the Certificate of Incorporation of New York Foundling Hospital Center for Pediatric, Medical and Rehabilitative Care, Inc.

Attached is the proposed Certificate of Amendment to the Certificate of Incorporation of New York Foundling Hospital Center for Pediatric, Medical and Rehabilitative Care, Inc. This not-for-profit corporation seeks approval to change its corporate name to "Elizabeth Seton Pediatric Center," its current assumed name. The Public Health Council established the corporation as the operator of a nursing home in New York County in 1987. Public Health and Health Planning Council approval for a change of corporate name is therefore required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (1).

Also attached is a letter dated April 15, 2014 from Marsena M. Farris, attorney for the corporation. As explained in that letter, the name change is intended to more accurately reflect the corporation's sponsorship by the Sisters of Charity of St. Vincent de Paul of New York and to honor St. Elizabeth Seton.

The Department has no objection to the Proposed Certificate of Amendment of the Certificate of Incorporation, which is in legally acceptable form.

JED: sls
Attachments

April 15, 2014

VIA FEDERAL EXPRESS

Mary Callahan, Esq.
Director, Bureau of House Counsel
Division of Legal Affairs
New York State Department of Health
Corning Tower, Room 2484
Empire State Plaza
Albany, New York 12237-0031

Re: New York Foundling Hospital Center for Pediatric,
Medical and Rehabilitative Care, Inc.

Dear Ms. Callahan:

I enclose for the consent of the Public Health & Health Planning Council pursuant to Section 804 of the Not-for-Profit Corporation Law the proposed Certificate of Amendment of New York Foundling Hospital Center for Pediatric, Medical and Rehabilitative Care, Inc. (the "Corporation"), a licensed Article 28 facility. The Corporation seeks to change its corporate name to "Elizabeth Seton Pediatric Center" by filing the enclosed Certificate of Amendment to its Restated Certificate of Incorporation executed by Patricia Tursi and dated January 13, 2014.

Elizabeth Seton was the first native-born American Catholic Saint and was the forerunner of the Sisters of Charity of St. Vincent de Paul of New York. The Sisters of Charity are the corporate members of the Corporation under the Not-for-Profit Corporation Law. The purpose of the proposed name change is to more accurately reflect the Corporation's sponsorship by the Sisters of Charity and to honor St. Elizabeth Seton. The Board of Directors of the Corporation has determined that changing the Corporation's name to "Elizabeth Seton Pediatric Center" is in the Corporation's best interest and the Sisters of Charity, the members, have consented. Currently, the Corporation operates under the d/b/a "Elizabeth Seton Pediatric Center" pursuant to a Certificate of Assumed Name filed by the Department of State.

Also enclosed are copies of the Certificate of Incorporation of the Corporation filed on February 17, 1987 and its Restated Certificate of Incorporation filed on October 26, 2012.

Mary Callahan, Esq.
April 15, 2014

Please call me at (212) 504-6095 if you have any questions or comments. Thank you in advance for your assistance.

Sincerely yours,

A handwritten signature in cursive script that reads "Marsena M. Farris".

Marsena M. Farris

MMF/er
Enclosures

cc: Ms. Colleen Frost, Public Health & Health Planning Council
Ms. Patricia Tursi
Brian T. McGovern, Esq.

CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
NEW YORK FOUNDLING HOSPITAL CENTER FOR PEDIATRIC, MEDICAL AND
REHABILITATIVE CARE, INC.
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, being the Chief Executive Officer of New York Foundling Hospital Center for Pediatric, Medical and Rehabilitative Care, Inc., does hereby certify that:

1. The name of the corporation is NEW YORK FOUNDLING HOSPITAL CENTER FOR PEDIATRIC, MEDICAL AND REHABILITATIVE CARE, INC. (the "Corporation").

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on February 19, 1987. The law under which the Corporation was formed was the New York Not-for-Profit Corporation Law.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is a Type B corporation as defined in Section 201 of that law.

4. The Certificate of Incorporation is amended to change the Corporation's name. Article First of the Certificate of Incorporation is hereby amended to read in its entirety as follows:

"The name of the corporation is ELIZABETH SETON PEDIATRIC CENTER (hereinafter called the "Corporation")."

5. The above amendment to the Certificate of Incorporation was authorized by a vote of the majority of the Members of the Corporation at a duly convened and held meeting in accordance with Section 802 of the Not-for-Profit Corporation Law.

6. The Corporation designates the Secretary of State of the State of New York as its agent 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 served upon him or her as follows:

300 Corporate Boulevard South
Yonkers, New York 10701

IN WITNESS WHEREOF, I have signed this Certificate of Amendment to the Certificate of Incorporation this 13th day of January, 2014, and I affirm that the statements contained herein are true under penalties of perjury.



Patricia Tursi
Chief Executive Officer

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 24, 2013.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

DRAWDOWN ACCOUNT #52

Vanguard Corporate Services, Ltd.

RESTATED CERTIFICATE OF INCORPORATION
OF
NEW YORK FOUNDLING HOSPITAL CENTER FOR
PEDIATRIC, MEDICAL AND REHABILITATIVE CARE, INC.
(Under Section 805 of the New York Not-for-Profit Corporation Law)

The NEW YORK FOUNDLING HOSPITAL CENTER FOR PEDIATRIC, MEDICAL AND REHABILITATIVE CARE, INC. (the "Corporation"), does hereby certify:

1. The name of the Corporation is
NEW YORK FOUNDLING HOSPITAL CENTER FOR PEDIATRIC,
MEDICAL AND REHABILITATIVE CARE, INC.
2. The Certificate of Incorporation of the Corporation was filed with the Department of State on February 19, 1987 under the Not-for-Profit Corporation Law of the State of New York.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation law of the State of New York and is a type B corporation under Section 201 of said Law.
4. The Members and the Board of Directors of the Corporation have declared it necessary and advisable that the Certificate of Incorporation of the Corporation be amended to effect certain changes consistent with the requirements of the Not-for-Profit Corporation Law of the State of New York and the Internal Revenue Code of 1986, as amended. To effect such amendment, the Certificate of Incorporation is amended as follows:
 - (a) ARTICLE THIRD, which sets forth the corporate purposes, shall be amended by replacing the text in subsection V(b) of such Article with the following:

Upon the liquidation or dissolution of the Corporation or the winding up of its affairs, whether voluntary, involuntary or by operation of law, no director, member or individual shall be entitled to any distribution or division of its remaining property or the proceeds of the same, and the balance of all money and other property received by the Corporation from any source, including its operations, after the payment of all debts and obligations of the Corporation of whatever kind and nature, shall be distributed, except as otherwise provided by law and subject to the approval of a Justice of the Supreme Court of the State of New York, to an organization or organizations which (1) is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, (2) has corporate purposes that are consistent with the general purposes set forth in this Certificate of Incorporation, and (3) would be operated by the Sisters of Charity of St. Vincent de Paul of New York, or if not possible, would be operated by another organization under the auspices or recognition of the Roman Catholic Church.
 - (b) ARTICLE FIFTH, shall be amended to change the county in which the office of the Corporation is located from the county of New York, State of New York to the County of Westchester, State of New York.

(c) ARTICLE SIXTH, shall be amended to change the office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her as agent of the Corporation to 300 Corporate Boulevard South, Yonkers, New York 10701.

(d) ARTICLE NINTH provides that there shall be eleven Members of the Corporation from the community of Sisters of Charity of St. Vincent de Paul of New York. This Article shall be amended to read as follows:

NINTH: The Corporation shall have members who at all times shall consist of three to eleven persons who are members of the religious community known as the Sisters of Charity of St. Vincent de Paul of New York or who are members of any successor Roman Catholic organization or order that is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code. There are no holders of any certificates evidencing capital contributions or subventions.

(e) ARTICLE TENTH provides that each subscriber of the initial Certificate is at least nineteen years old. This Article shall be deleted in its entirety.

(f) ARTICLE ELEVENTH sets forth provisions required by the Secretary of the Department of Housing and Urban Development in connection with financing for the Corporation's development project in the City of Yonkers, New York. This Article shall be renumbered and amended by replacing "ARTICLE ELEVENTH" with "ARTICLE TENTH" wherever such term appears.

5. The Members and Board of Directors of the Corporation have declared that it would be in the best interests of the Corporation for its Certificate of Incorporation to be restated so that all of the above amendments and all previous amendments are reflected in one current document. Therefore, the Certificate of Incorporation is hereby restated as amended to read as set forth in the attached.

6. At meetings held on June 25th, 2012 and June 25th, 2012, the Members and the Board of Directors of the Corporation, respectively, adopted, by resolution, the foregoing amendments to the Certificate of Incorporation of the Corporation and authorized the restatement of the Certificate of Incorporation of the Corporation.

ARTICLES OF INCORPORATION

OF

NEW YORK FOUNDLING HOSPITAL CENTER FOR
PEDIATRIC, MEDICAL AND REHABILITATIVE CARE, INC.

(Under the New York Not-for-Profit Corporation Law)

FIRST:

The name of the Corporation is

**NEW YORK
FOUNDLING HOSPITAL
AND REHABILITATIVE CARE, INC.**

NEW YORK FOUNDLING HOSPITAL CENTER FOR PEDIATRIC, MEDICAL
AND REHABILITATIVE CARE, INC.

SECOND:

The Corporation is a corporation as defined in subparagraph (a)(5) of
Section 102 of the Not-for-Profit Corporation Law. It shall be a type B corporation under
Section 201 of said Law.

THIRD:

The purposes for which the Corporation is formed are:

I.

To provide care, services and accommodations for ill, infirm,
disabled, handicapped and adolescent children.

To provide residential health related facility care, services and
accommodations for children with supportive services.

To provide day care, supportive services, recreational facilities,
therapeutic services, counseling and such other services and facilities as may be useful in
supporting and meeting the needs of medically ill children.

II.

To lease, alter, reconstruct, operate, maintain, supervise, manage, conduct and operate
residential health care and facilities subject to obtaining the approval of the Public Health
Council and/or the Commissioner of Health, as appropriate, pursuant to law providing for the
foregoing.

III.

To solicit contributions for the attainment and accomplishment of all of
the foregoing purposes.

IV.

The Corporation shall have and may exercise all powers necessary or
convenient to effect, or which are conducive to the attainment of, any or all of the foregoing
purposes, subject to such limitations as are provided by law.

V.

With respect to the foregoing purposes, however, the Corporation shall be
subject to the following limitations and restrictions:

(a)

The Corporation shall not be operated for pecuniary profit or
financial gain and no part of the net earnings of the Corporation shall inure to the benefit of any
director, member or individual having a personal and private interest in the activities of the
Corporation, nor shall any of such net earnings be used otherwise than for charitable, religious,
educational, humanitarian or scientific purposes, nor shall any part of the activities of the
Corporation consist of carrying on propaganda, or otherwise attempting to influence legislation,
or participating in, or intervening in (including the publishing or distributing of statements), any
political campaign on behalf of any candidate for public office.

(b) Upon the liquidation or dissolution of the Corporation or the winding up of its affairs, whether voluntary, involuntary or by operation of law, no director, member or individual shall be entitled to any distribution or division of its remaining property or the proceeds of the same, and the balance of all money and other property received by the Corporation from any source, including its operations, after the payment of all debts and obligations of the Corporation of whatever kind and nature, shall be distributed, except as otherwise provided by law and subject to the approval of a Justice of the Supreme Court of the State of New York, to an organization or organizations which (1) is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, (2) has corporate purposes that are consistent with the general purposes set forth in this Certificate of Incorporation, and (3) would be operated by the Sisters of Charity of St. Vincent de Paul of New York, or if not possible, would be operated by another organization under the auspices or recognition of the Roman Catholic Church.

(c) The Corporation shall not carry on any activities not permitted to be carried on by an organization exempt from Federal income tax under Section 501(c)(3) or by any organization contributions to which are deductible under Section 170(c)(2).

FOURTH: The duration of the Corporation shall be perpetual.

FIFTH: The office of the Corporation is to be located in the County of Westchester, State of New York.

SIXTH: The Secretary of State of the State of New York is hereby designated the 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 served upon him/her as agent of the Corporation is 300 Corporate Boulevard South, Yonkers, New York 10701.

SEVENTH: The Corporation shall be governed by a Board of Directors who shall be natural persons over the age of eighteen (18) years and citizens of the United States. They shall be elected or appointed by the Membership of the Corporation as provided by the By-laws and the laws of the State of New York. The names and residences of the initial Directors of the Corporation, each of whom is of full age and a citizen of the United States, until the first annual meeting of the Corporation are as follows:

<u>NAMES</u>	<u>ADDRESSES</u>
William J. Flynn	Mutual of America 666 Fifth Avenue New York, New York 10019
Fioravante G. Perrotta	Rogers & Wells 200 Park Avenue New York, New York 10166
H. Clay Johnson	McCarthy, Fingar, Donovan, Glatthaar 175 Main Street White Plains, New York 10601

Regulatory Agreement and other documents required by the Secretary in connection with the HUD-insured loan.

V. Notwithstanding any other provisions of this Certificate of Incorporation or the By-laws of the Corporation, upon any dissolution, no title or right to possession and control of the Project, and no right to collect the rents from the Project, shall pass to any person who is not bound by the Regulatory Agreement in a manner satisfactory to the Secretary.

VI. Notwithstanding any other provisions of this Certificate of Incorporation or the By-laws of the Corporation, if any of the provisions of the Certificate of Incorporation or By-laws of the Corporation conflict with the terms of the note, mortgage, security agreement or Regulatory Agreement ("HUD Loan Documents"), the provisions of the HUD Loan Documents will control.

VII. The Corporation may not voluntarily be dissolved or converted to another form of entity without the prior written approval of HUD.

VIII. Notwithstanding any other provisions of this Certificate of Incorporation or the By-laws of the Corporation, any cash distributions may only be made in accordance with the terms of the Regulatory Agreement.

IX. Notwithstanding any other provisions of this Certificate of Incorporation or the By-laws of the Corporation, any costs incurred by the Corporation as a result of indemnification provided to its Directors and Officers, or any other person or entity, will only be paid from surplus cash and from residual receipts, if applicable, to the extent available, as that term is defined by the Regulatory Agreement.

X. The Officers, Directors and Members of the Corporation, agree to be liable in their individual capacity to HUD for:

(a) Funds or property of the Project coming into their possession, which by the provisions of the Regulatory Agreement they are not entitled to retain;

(b) Their own acts and deeds, or acts and deeds of others which they have authorized, in violation of the provisions of the Regulatory Agreement;

(c) The acts and deeds of affiliates, as defined in the Regulatory Agreement, which they have authorized in violation of the provisions of the Regulatory Agreement; and

(d) As otherwise provided by law.

XI. Notwithstanding any other provisions of this Certificate of Incorporation or the By-laws of the Corporation, the provisions contained in this Article TENTH shall be deemed to take precedent and have priority over any of the other provisions contained in the Certificate of Incorporation. In the event that any of the provisions of this Article TENTH conflict with any other provision of the Certificate of Incorporation or the By-laws of the Corporation, the provisions contained in this Article TENTH shall be deemed to apply and take precedence over the other conflicting provisions.

XII. The Corporation has designated Patricia Tursi as its official representative for all matters concerning the project which require HUD consent or approval. The signature of this person will bind the Corporation in all such matters. The Corporation may from time to time

appoint a new representative to perform this function, but within 3 business days of doing so, will provide HUD with written notification of the name, address, and telephone number of its new representative. When a person other than the person identified above has full or partial authority of management of the project, the Corporation will promptly provide HUD with the name of that person and the nature of that person's management authority.

IN WITNESS WHEREOF, the Corporation has caused this Restated Certificate of Incorporation to be executed on its behalf by and attested by its Secretary of Members of Corporation, thereunto duly authorized this 25th day of June 2012.

By: Eileen McGrory, SC
Eileen McGrory, SC
Secretary of Members of Corporation
New York Foundling Hospital Center for
Pediatric, Medical and Rehabilitative Care, Inc.

121026000413

RESTATED CERTIFICATE OF INCORPORATION
OF

NEW YORK FOUNDLING HOSPITAL CENTER FOR PEDIATRIC, MEDICAL AND
REHABILITATIVE CARE, INC.

Under Section 805 of the Not-For-Profit Corporation Law

My

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED OCT 26 2012

TAX \$ _____ =

BY: _____ *DWL*

CID. NY

Mon West

FILER:

Bleakley Platt & Schmidt, LLP
One North Lexington Avenue
White Plains, New York 10601

RECEIVED

2012 OCT 26 AM 9:13

FILED

2012 OCT 26 AM 10:45

DRAWDOWN ACCOUNT #52
Vanguard Corporate Services, Ltd.
Customer Reference: 121883

121026000458

State of New York }
Department of State } ss:

I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on **July 6, 2005**



A handwritten signature in black ink, appearing to read "R. M. A. S.", is written over the printed title.

Secretary of State

CERTIFICATE OF INCORPORATION

OF

NEW YORK FOUNDLING HOSPITAL CENTER FOR

PEDIATRIC, MEDICAL AND REHABILITATIVE CARE, INC.

UNDER

SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, a natural person over the age of eighteen (18) years, for the purpose of forming a corporation under Section 402 of the Not-for-Profit Corporation Law of the State of New York, does hereby certify as follows:

FIRST: The name of the Corporation is:

NEW YORK FOUNDLING HOSPITAL CENTER FOR
PEDIATRIC, MEDICAL AND REHABILITATIVE CARE,
INC.

SECOND: The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law. It shall be a type B corporation under Section 201 of said law.

THIRD: The purposes for which the Corporation is formed are:

I. (a) To provide care, services and accommodations for ill, infirm, disabled, handicapped and convalescent children.

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(b) To provide residential health related facility care, services and accommodations for children with supportive services.

(c) To provide day care, supportive services, recreational facilities, therapeutic services, counselling and such other services and facilities as may be useful in supporting and meeting the needs of medically ill children.

II. To establish, organize, plan, construct, sponsor, erect, build, acquire, own, lease, alter, reconstruct, rehabilitate, repair, maintain, supervise, manage, conduct and operate residential health care and other facilities subject to obtaining the approval of the Public Health Council and/or the Commissioner of Health, as appropriate, pursuant to law providing for the foregoing.

III. To solicit contributions for the attainment and accomplishment of all of the foregoing purposes.

IV. The Corporation shall have and may exercise all powers necessary or convenient to effect, or which are conducive to the attainment of, any or all of the foregoing purposes, subject to such limitations as are provided by law.

V. With respect to the foregoing purposes, however, the Corporation shall be subject to the following limitations and restrictions:

(a) The Corporation shall not be operated for pecuniary profit or financial gain and no part of the net earnings of the Corporation shall enure to the benefit of any director, member or individual having a personal and private interest in the activities of the Corporation, nor shall any of such net earnings be used otherwise than for charitable, religious, educational, humanitarian or scientific purposes, nor shall any part of the activities of the Corporation consist of carrying on propaganda, or otherwise attempting to influence legislation, or participating in, or intervening in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(b) Upon the liquidation or dissolution of the Corporation or the winding up of its affairs, whether voluntary, involuntary or by operation of law, no director, member or individual shall be entitled to any distribution or division of its remaining property or the proceeds of the same, and the balance of all money and other property received by the Corporation from any source, including its operations, after the payment of all debts and obligations of the Corporation of whatever kind and nature, shall be distributed, except as otherwise provided by law and subject to the approval of a Justice of the Supreme Court of the State of New York, to an organization or organizations (1) which would then qualify under Section 501(c)(3) (all Section references herein are to the Internal Revenue Code of 1954, as amended, and to corresponding provisions of any subsequent Federal tax laws) and (2) the general purposes set forth in this Certificate.

(c) The Corporation shall not carry on any activities not permitted to be carried on by an organization exempt from Federal income tax under Section 501 (c)(3) or by any organization contributions to which are deductible under Section 170(c)(2).

FOURTH: The duration of the Corporation shall be perpetual.

FIFTH: The principal office of the Corporation is to be located in the County of New York, State of New York.

SIXTH: The Secretary of State of the State of New York is hereby designated the 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 served upon him as agent of the Corporation is 1175 Third Avenue, New York, New York.

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SEVENTH: The Corporation shall be governed by a Board of Directors who shall be natural persons over the age of eighteen (18) years and citizens of the United States. They shall be elected or appointed by the membership of the corporation as provided by the by-laws and the laws of the State of New York. The names and residences of the initial Directors of the Corporation, each of whom is of full age and a citizen of the United States, until the first annual meeting of the Corporation are as follows:

<u>NAMES</u>	<u>ADDRESS</u>
William J. Flynn	Mutual of America 666 Fifth Avenue New York, New York 10019
Fioravante G Perrotta	Rogers & Wells 200 Park Avenue New York, New York 10166
H. Clay Johnson	McCarthy, Fingar, Donovan Glatthaar 175 Main Street White Plains, New York 10601
Robert H. McCooey	Henderson-Brothers, Inc. 61 Broadway - 9th Floor New York, New York 10004
Martin Shea	Morgan Guaranty Trust Company 9 West 57th Street New York, New York 10019

EIGHTH: The number of directors shall not be less than three nor more than thirty-five.

NINTH: The Corporation shall have members which at all times shall consist of eleven persons who are members of the religious community known as the Sisters of Charity of St. Vincent de Paul. There are no holders of any certificates evidencing capital contributions or subventions.

TENTH: - Each of the subscribers is of the age of
nineteen years or over.

IN WITNESS WHEREOF, the undersigned Incorporator has
made, submitted and acknowledged this certificate has been
signed by the subscriber this 6th day of February, 1987.

Gerald E. Bodell
GERALD E. BODELL
INCORPORATOR

Office and Post Office Address:

100 Park Avenue
New York, New York 10017
(212) 972-0909

STATE OF NEW YORK)
)
) : SS.:
)
COUNTY OF NEW YORK)

On this 6th day of February, 1987 before me personally came Gerald E. Bodell, to me known and known to me to be the person described in and who executed the foregoing Certificate of Incorporation and he duly acknowledged to me that he executed the same.

Dorothy M. Cooper
NOTARY PUBLIC

DOROTHY M. COOPER
Notary Public, State of New York
No. 31-476563S
Qualified in New York County
Commission Expires March 30, 1988

October 31,

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of

NEW YORK FOUNDLING HOSPITAL CENTER
FOR PEDIATRIC, MEDICAL AND
REHABILITATIVE CARE, INC.

APPLICATION FOR
APPROVAL OF CERTI-
FICATE OF INCORPO-
RATION

For an Order approving a Certificate
of Incorporation and authorizing
filing of the Certificate of Incorpora-
tion pursuant to Section 402 of the
Not-for-Profit Corporation Law.

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss.:

GERALD E. BODELL, being duly sworn, says:

I am an attorney of the State of New York, having
my offices at 100 Park Avenue, New York, New York, and am
the attorney for the above-named New York Foundling Hospital
Center for Pediatric, Medical and Rehabilitative Care,
Inc.

I make this affidavit in support of an order for
the approval for filing with the Secretary of State, a
Certificate of Incorporation for the Corporation to be known
as:

New York Foundling Hospital Center for Pediatric,
Medical and Rehabilitative Care, Inc.

The purposes for which this Corporation is formed
are as follows:

A. To provide care, services and accommodations

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for ill, infirm, disabled, handicapped and convalescent children.

B. To provide residential health related facility care, services and accommodations for children with supportive services.

C. To provide day care, ~~supportive services~~, recreational facilities, therapeutic services, counselling and such other services and facilities as may be useful in supporting and meeting the needs of medically ill children.

D. To establish, organize, plan, construct, sponsor, erect, build, acquire, own, lease, alter, reconstruct, rehabilitate, repair, maintain, supervise, manage, conduct and operate residential health care and other facilities subject to obtaining the approval of the Public Health Council and/or the Commissioner of Health, as appropriate, pursuant to law providing for the foregoing.

This proposed corporation has applied to and received approval from the Public Health Council of the New York State Department of Health to file the attached Certificate of Incorporation and to fulfill its purposes. A true copy of said approval Certification dated January 16, 1987 is attached hereto.

The Corporation upon filing with the Secretary of State will be exempt from all Federal and State Taxes under Section 501(c)(3) of the Internal Revenue Code by virtue of a Group Ruling granting recognition to those Corporations recommended by the United States Catholic Conference of Bishops and listed in the Kenady Directory.

The corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

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Notice of this application has been made to the
Attorney General of the State of New York.

No previous or other application has been made for
the approval of the proposed Certificate of Incorporation to
any Supreme Court Justice.

WHEREFORE, deponent prays for an order:

(a) Approving the annexed Certificate of
Incorporation, and

(b) Authorizing the filing of the Certificate of
Incorporation with the Secretary of State in the form annexed
hereto.

Gerald E. Bodell
GERALD E. BODELL

Sworn to before me this
6th day of *February*, 1987
Dorothy M. Cooper
Notary Public

DOROTHY M. COOPER
Notary Public, State of New York
No. 31-4785336
Qualified in New York County
Commission Expires March 28, 1988

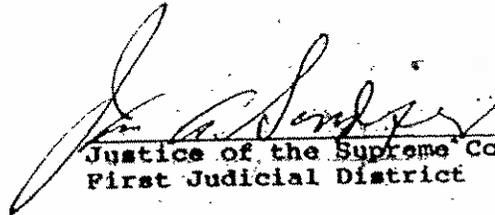
Oct 31,

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0000 1830

I, the undersigned, a Justice of the Supreme Court of the State of New York, First Judicial District, hereby approve the foregoing Certificate of Incorporation of New York Foundling Hospital Center for Pediatric, Medical and Rehabilitative Care, Inc. and consent that the same be filed with the Secretary of State.

Dated: NEW YORK, N. Y.

FEB 18 1987


Justice of the Supreme Court
First Judicial District

JAWN A. SANDIFER

February 17, 1987
THE UNDERSIGNED HAS NO OBJECTION
TO THE GRANTING OF JUDICIAL
APPROVAL HEREON AND WAIVES
STATUTORY NOTICE.

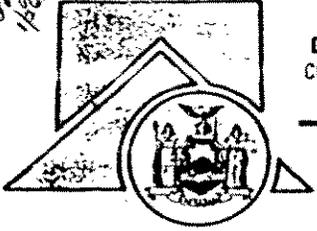
ROBERT ABRAMS, ATTORNEY GEN.
STATE OF NEW YORK

by Howard Holt
HOWARD HOLT
Associate Attorney

10

0000 1831

Rec'd
1/20/87



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

Morton P. Hyman
Chairman

January 16, 1987

REC'D
JAN 20 1987

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of New York Foundling Hospital Center for Pediatric Medical and Rehabilitative Care, Inc. (No. 841053) is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of June 27, 1986. The Certificate of Incorporation, dated July 17, 1986, is also approved.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Karen S. Westervelt
Karen S. Westervelt
Acting Executive Secretary

Sister Cecilia Schnieder
Executive Director
New York Foundling Hospital Center for
Pediatric Medicine & Rehabilitative
Care, Inc.
39 Valley Green Drive
North Woodmere, NY 11581

Copy sent to:

Mr. Jerald E. Bodel
Bodel & Gross
100 Park Avenue
24th Floor
New York, NY 10017

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Star-Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Dated,

BODELL & GROSS

YOUTH, INC.

Attorney for

Office and Post Office Address
100 Park Avenue
NEW YORK, NY 10017

To

Attorney(s) for

NOTICE OF SETTLEMENT

Star-Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the Judges of the within named Court, at

at M.

19

Dated,

YOUTH, INC.

BODELL & GROSS

Attorney for

Office and Post Office Address
100 Park Avenue
NEW YORK, NY 10017

To

Attorney(s) for

Index No. ^{Year 1987} 12
SUPREME COURT OF THE STATE OF
NEW YORK, COUNTY OF NEW YORK

In the Matter of the Application of

NEW YORK FOUNDLING HOSPITAL CENTER
FOR PEDIATRIC, MEDICAL AND
REHABILITATIVE CARE, INC.

For an Order approving a Certificate of Incorporation and authorizing filing of the Certificate of Incorporation pursuant to Section 402 of the Not-for-Profit Corporation Law.

NOTICE OF SETTLEMENT/ORDER/
APPLICATION FOR APPROVAL OF
CERTIFICATE OF INCORPORATION

BODELL & GROSS

Attorney for Petitioner

Office and Post Office Address: Palmyra

100 Park Avenue
NEW YORK, NY 10017

(212) 972-0909

To

Attorney(s) for

800 208

Service of a copy of the within

Dated,

Is hereby returned

Attorney(s) for

[Handwritten signatures and initials]

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED FEB 19 1987

AMT. OF CHECK \$ 6.00
FILING FEE \$ 1.00
TAX \$.00
COURT FEE \$.00
COPY \$.00
REFUND \$.00
REG. HANDLE \$ 1.00

FEB 19 3 1987

FEB 19 3 47 PM '87

FILED

5581 1853



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

November 16, 2004

Patricia Tursi
Executive Director
The Pediatric Center of the New York Foundling
590 Avenue of Americas
New York, New York 10011

RE: D/B/A Approval for New York Foundling
Hospital Center for Pediatric, Medical and
Rehabilitative Care, Inc.

Dear Ms. Tursi:

The request to use an assumed name for **New York Foundling Hospital Center for Pediatric, Medical and Rehabilitative Care, Inc.** has been reviewed by the Bureau of Licensure and Certification. In accordance with the regulations set forth in NYCRR 401.3(b), the Department hereby approves the **New York Foundling Hospital Center for Pediatric, Medical and Rehabilitative Care, Inc.** to conduct business under the assumed name **Elizabeth Seton Pediatric Center.**

A revised operating certificate displaying the assumed name will be issued upon notification that the assumed name has been filed with the Secretary of State. A copy of the filing receipt faxed to Janet Fox, Health Facilities Certificate Coordinator at (518) 402-0931 will serve as notification.

Sincerely,

A handwritten signature in black ink, appearing to read 'Diane M. Smith', written over a printed name.

Diane M. Smith
Acting Director
Information and Technology Services Group

cc: Mr. D. Reilly
MARO - M. Lewis
HFCU

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STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel *JED*

DATE: August 18, 2014

SUBJECT: Proposed Certificate of Merger of Arnot Health Foundation, Inc. ("the Foundation")

The attached proposed Certificate of Merger of Arnot Health Foundation, dated December 20, 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 funds or funds of property, both real and personal, and to use and apply the income therefrom exclusively for the benefit of Arnot Ogden Medical Center and St. Joseph's Hospital, 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); Not-For-Profit Corporation Law § 404(o); and 10 NYCRR § 610.2.

The following documents and information are attached in support of the Foundation's request for approval.

1. A letter dated February 7, 2014, from Aaron T. Alsheimer, requesting the creation of the Foundation through the merger of St. Joseph's Hospital Foundation – Elmira, N.Y. Inc. and Arnot Ogden Medical Center Foundation, Inc.;
2. A letter dated July 22, 2014, from Aaron T. Alsheimer, responding to a request for additional information;
3. The proposed Certificate of Merger of the Foundation;
4. The proposed bylaws for the Foundation;
5. A letter from the intended beneficiary, Arnot Ogden Medical Center, acknowledging and approving of the Foundation's proposed fund-raising activities on its behalf;

6. A letter from the intended beneficiary, St. Joseph's Hospital, acknowledging and approving of the Foundation's proposed fund-raising activities on its behalf;
7. A generalized description of the fundraising activities to be undertaken by the Foundation;
8. Profiles of the initial Board of Directors of the Foundation;
9. A description of the organizational relationship between Arnot Health Foundation, Inc. and its Article 28 beneficiaries; and
10. A description of the manner in which the Foundation is able to influence the operations of Arnot Health Foundation, Inc.

The proposed Certificate of Merger is in legally acceptable form.

Attachments

JD/DY

SAYLES & EVANS
ATTORNEYS AT LAW
ONE WEST CHURCH STREET
ELMIRA, NEW YORK 14901

(607) 734-2271
FAX (607) 734-1754

JOHN H. ALEXANDER
LAWRENCE LACLAIR
CLOVER M. DRINKWATER
STEVEN E. AGAN
CONRAD R. WOLAN
ANTHONY F. PAGANO
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DARCY L. WOOD
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ALAN PARSONS
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J. PHILIP HUNTER
CYNTHIA S. HUTCHINSON
JAMES E. YOUNG
OF COUNSEL

February 7, 2014

Ms. Colleen Frost, Executive Secretary
Public Health and Health Planning Council
New York State Department of Health
Corning Tower, Room 1805
Albany, New York 12237

Re: Request for Public Health and Health Planning Council Approval
of Merger of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc.
and Arnot Ogden Medical Center Foundation, Inc. into Arnot
Health Foundation, Inc.

Dear Ms. Frost:

I write on behalf of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. ("St. Joseph's Foundation") and Arnot Ogden Medical Center Foundation, Inc. ("Arnot Ogden Foundation" and, together with the St. Joseph's Foundation, the "Foundations") to request Public Health and Health Planning Council ("Council") approval of the merger of the St. Joseph's Foundation and the Arnot Ogden Foundation into Arnot Health Foundation, Inc.

The St. Joseph's Foundation exists to raise funds in support of St. Joseph's Hospital, located in Elmira, New York. Similarly, the Arnot Ogden Foundation exists to raise funds in support of Arnot Ogden Medical Center, also located in Elmira. St. Joseph's Hospital and Arnot Ogden Medical Center are now affiliated entities having a common corporate parent, Arnot Health, Inc. In light of this affiliation, the directors of the Foundations have determined that it is appropriate to merge their organizations into a single entity operated for the benefit of both St. Joseph's Hospital and Arnot Ogden Medical Center.

The plan of merger adopted by the respective Foundations calls for the St. Joseph's Foundation to be merged into the Arnot Ogden Foundation, which will be the surviving entity and will change its name to Arnot Health Foundation, Inc. upon completion of the merger. The certificate of incorporation of the surviving entity also will be amended upon closing to reflect its

revised purpose, which shall be to solicit and maintain funds to be used in support of both St. Joseph's Hospital and Arnot Ogden Medical Center.

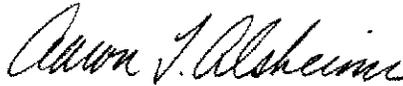
Enclosed herewith please find the following items which are submitted for the Council's consideration:

- (1) Plan of Merger of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and Arnot Ogden Medical Center Foundation, Inc. into Arnot Health Foundation, Inc.;
- (2) Certificate of Merger of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and Arnot Ogden Medical Center Foundation, Inc. into Arnot Health Foundation, Inc.;
- (3) Resolutions of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc., Arnot Ogden Medical Center Foundation, Inc., and St. Joseph's Hospital (the sole member of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc.); and
- (4) Proposed petition for judicial approval of the merger of the Foundations.

Should the Council require additional documentation or have any questions concerning this request, please do not hesitate to contact me at the address or telephone number set forth above. You also may reach me via email at aalsheimer@saylesevans.com. Once the Council completes its review and consents to the proposed merger, please provide evidence of such consent suitable for filing with the Supreme Court of the State of New York.

Thank you very much for your assistance.

Very truly yours,



Aaron T. Alsheimer

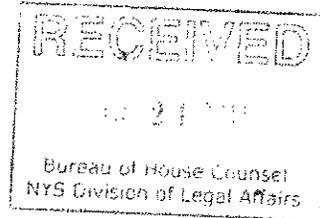
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JAMES F. YOUNG
OF COUNSEL



July 22, 2014

Diana Yang, Senior Attorney
Division of Legal Affairs
New York State Department of Health
Corning Tower, Room 2482
Empire State Plaza
Albany, New York 12237

**Re: Merger of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc.
and Arnot Ogden Medical Center Foundation, Inc. into Arnot
Health Foundation, Inc.**

Dear Ms. Yang:

Please find enclosed the following items, which are submitted in response to your request for additional information concerning the above referenced merger:

- (1) Copy of Certificate of Merger, paragraph 4(b) of which has been revised to include all required limitations on the activities of the merged entity (please note that the constituent organizations have indicated they have no objection to the insertion of pages 2 and 3, as revised, into the Certificate of Merger previously submitted to your office);
- (2) Copy of the proposed Bylaws of Arnot Health Foundation, Inc.;
- (3) Letter from Arnot Ogden Medical Center acknowledging that it will accept funds raised by Arnot Health Foundation, Inc.;
- (4) Letter from St. Joseph's Hospital acknowledging that it will accept funds raised by Arnot Health Foundation, Inc.;
- (5) General description of fundraising activities to be undertaken by Arnot Health Foundation, Inc.;

- (6) Profiles of the initial directors of Arnot Health Foundation, Inc. (as indicated in the Plan of Merger, all individuals serving as directors of the constituent foundations will, upon completion of the merger, be directors of Arnot Health Foundation, Inc.):
- (7) Description of the organizational relationship between Arnot Health Foundation, Inc. and its Article 28 beneficiaries, Arnot Ogden Medical Center and St. Joseph's Hospital; and
- (8) Description of manner in which Arnot Health, Inc. is able to influence the operations of Arnot Health Foundation, Inc. (please note that this description is provided in lieu of your request for a list of entities which control or are controlled by Arnot Health Foundation, Inc.; as noted in the enclosed description, Arnot Health, Inc. exerts influence over, but does not control, the Foundation).

Should you have any questions regarding the enclosed items or require further documentation in connection with the review of the proposed merger, please do not hesitate to contact me.

Thank you very much for your assistance with this matter.

Very truly yours,



Aaron T. Alsheimer

Enclosures

PLAN OF MERGER

- of -

ST. JOSEPH'S HOSPITAL FOUNDATION-ELMIRA, N. Y. INC.

- and -

ARNOT OGDEN MEDICAL CENTER FOUNDATION, INC.

- into -

ARNOT HEALTH FOUNDATION, INC.

Pursuant to Section 902 of the Not-for-Profit Corporation Law

The following plan of merger has been adopted by the board of directors of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and the board of directors of Arnot Ogden Medical Center Foundation, Inc.

I. Constituent Corporations; Surviving Corporation.

(a) The corporations to be merged pursuant to this plan of merger are St. Joseph's Hospital Foundation-Elmira, N. Y. Inc., a New York not-for-profit corporation, and Arnot Ogden Medical Center Foundation, Inc., a New York not-for-profit corporation formed under the name Arnot Ogden Memorial Hospital Foundation, Inc.

(b) Arnot Ogden Medical Center Foundation, Inc. shall be the surviving corporation, and upon the effective date of the merger the name of the surviving corporation shall be changed to Arnot Health Foundation, Inc.

II. Membership in Constituent Corporations.

(a) The sole corporate member of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. is St. Joseph's Hospital, a New York not-for-profit corporation. There is no certificate evidencing capital contributions of such member.

(b) Arnot Ogden Medical Center Foundation, Inc. has no members.

III. Terms and Conditions of Merger.

The terms and conditions of the proposed merger are as follows:

CERTIFICATE OF MERGER

- of -

ST. JOSEPH'S HOSPITAL FOUNDATION-ELMIRA, N. Y. INC.

- and -

ARNOT OGDEN MEDICAL CENTER FOUNDATION, INC.

- into -

ARNOT HEALTH FOUNDATION, INC.

Under Section 904 of the Not-for-Profit Corporation Law

The undersigned, being respectively the chairman of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and the chairman of Arnot Ogden Medical Center Foundation, Inc., hereby certify:

1. The names of the constituent corporations are St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and Arnot Ogden Medical Center Foundation, Inc. The name under which Arnot Ogden Medical Center Foundation, Inc. was formed is Arnot Ogden Memorial Hospital Foundation, Inc.

2. Arnot Ogden Medical Center Foundation, Inc. shall be the surviving corporation, and on the effective date of the merger the name of the surviving corporation shall be changed to Arnot Health Foundation, Inc.

3. Membership in the constituent corporations is as follows:

(a) The sole member of St. Joseph's Hospital Foundation-Elmira, N.Y. Inc. is St. Joseph's Hospital, a New York not-for-profit corporation, which holds all rights and

powers of membership granted under New York law. There is no certificate evidencing capital contributions of such member.

(b) Arnot Ogden Medical Center Foundation, Inc. has no members.

4. The amendments to the certificate of incorporation of Arnot Ogden Medical Center Foundation, Inc., the surviving corporation, which are to be effected by the merger are as follows:

(a) Article 1, relating to the name of the surviving corporation, shall be amended to read in its entirety as follows:

“1. The name of the Corporation is Arnot Health Foundation, Inc.”

(b) Article 2, relating to the purposes of the surviving corporation, shall be amended so that the following statement of purposes is substituted for the existing statement purposes set forth at the beginning of said Article:

“To solicit, receive and maintain a fund or funds of property, both real and personal, and to use and apply the income therefrom and the principal thereof exclusively for the benefit of Arnot Ogden Medical Center and St. Joseph’s Hospital, each of which is a New York not-for-profit corporation established to operate and maintain a hospital in the City of Elmira, New York. Notwithstanding the foregoing, nothing herein shall authorize Arnot Health Foundation, Inc. to establish, operate or maintain a hospital, a home care services agency, a hospice, a health maintenance organization or a comprehensive health services plan, as provided for by Articles 28, 36, 40 and 44, respectively, of the Public Health Law, to provide hospital service or health related service, to establish, operate or maintain an adult care facility, as provided for by Article 7 of the Social Services Law, or to solicit any funds, contributions or grants, from any source, for the establishment or operation of any adult care facility.”

(c) Article 2, relating to the purposes of the surviving corporation, shall be further amended so that the final paragraph of said Article 2 is amended to read as follows:

“In the event of the liquidation, dissolution, or winding up of the corporation, the Directors of the corporation shall dispose of the total assets of the corporation by transfer to Arnot Ogden Medical Center and St. Joseph’s Hospital, or to the sole member of said entities, Arnot Health, Inc., a New York not-for-profit corporation;

provided, however, that if each of the aforementioned entities is dissolved or is no longer qualified under Section 501(c)(3) of the Internal Revenue Code (as the same may from time to time be amended), disposition of the assets shall be to such organizations exempt from federal income tax under the provisions of Section 501(c)(3) of the Internal Revenue Code (as the same may from time to time be amended) as the Directors of the corporation by majority vote determine.”

5. The certificate of incorporation of St. Joseph’s Hospital Foundation-Elmira, N. Y. Inc. was filed by the Department of State on April 12, 1985. The certificate of incorporation of Arnot Ogden Medical Center Foundation, Inc. was filed by the Department of State on July 3, 1978, and a certificate of amendment of the certificate of incorporation of Arnot Ogden Medical Center Foundation, Inc. was filed by the Department of State on August 12, 1993.

6. The merger of the constituent corporations was authorized as follows:

(a) The plan of merger of the constituent corporations was adopted by vote of a majority of the directors present at a meeting of the board of directors of St. Joseph’s Hospital Foundation-Elmira, N. Y. Inc., duly called and held on November 12, 2013, a quorum being present at the time of the vote. Said plan of merger was thereafter approved by vote of a majority of the directors present at a meeting of the board of directors of St. Joseph’s Hospital, the sole member of St. Joseph’s Hospital Foundation-Elmira, N. Y. Inc., duly called and held on December 9, 2013, a quorum being present at the time of the vote.

(b) The plan of merger of the constituent corporations was adopted by vote of a majority of the directors present at a meeting of the board of directors of Arnot Ogden Medical Center Foundation, Inc., duly called and held on November 22, 2013, a quorum being present at the time of the vote. There being no members of Arnot Ogden Medical Center Foundation, Inc., the adoption by the board of directors resulted in approval of the plan of merger.

IN WITNESS WHEREOF, the undersigned have, on behalf of each constituent corporation, execute this Certificate of Merger and hereby affirm it as true under the penalties of perjury this 20 day of December, 2013.



CHRISTOPHER P. BAKER, Chairman
St. Joseph's Hospital Foundation-Elmira, N. Y. Inc.



PETER C. WALLIN, Chairman
Arnot Ogden Medical Center Foundation, Inc.

CERTIFICATE OF MERGER

- of -

ST. JOSEPH'S HOSPITAL FOUNDATION-ELMIRA, N. Y. INC.

- and -

ARNOT OGDEN MEDICAL CENTER FOUNDATION, INC.

- into -

ARNOT HEALTH FOUNDATION, INC.

Under Section 904 of the Not-for-Profit Corporation Law

Filer: Aaron T. Alsheimer
Sayles & Evans; Attorneys at Law
One West Church Street
Elmira, New York 14901

CERTIFICATE OF MERGER

- of -

ST. JOSEPH'S HOSPITAL FOUNDATION-ELMIRA, N. Y. INC.

- and -

ARNOT OGDEN MEDICAL CENTER FOUNDATION, INC.

- into -

ARNOT HEALTH FOUNDATION, INC.

Under Section 904 of the Not-for-Profit Corporation Law

Filer: Aaron T. Alsheimer
Sayles & Evans, Attorneys at Law
One West Church Street
Elmira, New York 14901

ARNOT HEALTH FOUNDATION, INC.

BYLAWS

ARTICLE I

MEMBERSHIP

Section 1. **Members.** There shall be no members of the corporation.

ARTICLE II

GIFTS TO THE CORPORATION

Section 1. **Solicitation.** The corporation shall conduct a bona fide continuous program of solicitation for new and additional grants, gifts, devises, bequests and legacies from a wide range of governmental, other foundations and corporate and individual donors. The solicitation shall be conducted in such fashion as to call attention to the corporation as a potential recipient of grants and the like for the benefit of the objectives of the corporation.

Section 2. **Form.** All amounts and properties so given, devised or bequeathed and the income therefrom shall be funds, assets and income of the corporation as such terms are used herein or in the Certificate of Incorporation, whether given, devised or bequeathed directly to the corporation or to a bank or trust company for the corporation.

Section 3. **Refusal of Gifts.** The corporation shall refuse or renounce all grants, gifts, devises, bequests and legacies, the acceptance of which would cause it to be treated as other than a charitable organization duly qualified under Section 509(a)(3) of the Internal Revenue Code of 1986 or any similar section in any subsequent Federal tax law.

Section 4. **Reservation of Powers by Corporation.** All grants, gifts, devises, bequests and legacies to the corporation are made and accepted subject to all the terms, restrictions, requirements and powers contained in these Bylaws and the Certificate of Incorporation, as such documents may be amended, whether before or after the making of such grant or the like, and the donor or testator by making such grant or the like, and in consideration of the acceptance thereof by the corporation, accepts and agrees to such terms, restrictions, requirements and powers.

Section 5. **Grantor's Directions.** A grantor may with respect to a grant or the like to the corporation give directions:

(a) as to the field of charitable purposes or objects for which the gift is to be held and used;

(b) as to whether such gift shall be a permanent fund or whether both principal and income may be utilized by the corporation.

The corporation will use its best efforts to follow the directions of the grantor and to carry out the grantor's intent and purposes but all gifts to the corporation are made and accepted subject to the provisions of Section 4 of this Article II of these Bylaws and the power and duty of the Directors to modify any such directions, restrictions or conditions, in accordance with applicable law, if the distribution of funds

for the specified charitable purposes becomes, in the sole judgment of the Directors, unnecessary or incapable of fulfillment.

ARTICLE III
BOARD OF DIRECTORS

Section 1. **Number.** The number of Directors of the corporation shall be not less than three (3) nor more than thirty (30) and, upon the effective date of the merger of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and Arnot Ogden Medical Center Foundation, Inc. into Arnot Health Foundation, Inc., shall be twenty-seven (27). All Directors shall be at least eighteen (18) years of age.

Section 2. **Meetings.** The Board of Directors shall hold its annual meeting in April, on a date and at a time and place determined by the Board.

Regular meetings of the Board may be held without formal notice at such times and such places as the Board shall determine.

Special meetings of the Board shall be held upon the written request of the President or any two (2) Directors at the time and place stated in the notice thereof and at such meetings any business of the corporation may be transacted.

Meetings of the Board of Directors may be held in New York at such place as may be determined from time to time by the Board of Directors.

Section 3. **Notice of Special Meeting.** Notice of each special meeting of the Board of Directors shall be served personally or by mail, telephone or e-mail upon each Director at least one (1) day before the date of the meeting, and shall state the time when and the place where the meeting is to be held.

Section 4. **Waiver of Notice of Meetings.** Notice of any meeting of the Board of Directors may be waived in writing by any Director either before or after the meeting.

Section 5. **Powers.** The Board of Directors shall have and may exercise full power in the management and control of the business and affairs of the corporation.

Section 6. **Consent of Directors Without Meeting.** Any action required or permitted to be taken by the Board of Directors or a committee thereof may be taken without a meeting if all members of the Board or committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

Section 7. **Appointment and Term.**

(a) At all times three (3) Directors shall be Directors by virtue of their positions as directors of Arnot Health, Inc. The board of directors of Arnot Health, Inc. shall select from amongst its members three (3) directors to serve as Directors of Arnot Health Foundation, Inc., one in each class described in the following paragraph (b). Thereafter, the board of directors of Arnot Health, Inc. shall select one (1) director each year to fill the Director's post in the class of Arnot Health Foundation, Inc. Directors which expires in that year.

(b) Once the Board is constituted at twenty-seven (27) Directors, the Board by lot shall select out of those Directors not acting pursuant to paragraph (a) above eight (8) Directors to serve for a term to expire at the next annual meeting of the Board,

eight (8) Directors to serve for a term to expire at the second succeeding annual meeting and eight (8) Directors to serve for a term to expire at the third succeeding annual meeting. Thereafter the term of all Directors shall be three (3) years following the annual meeting at which he/she takes office. No Director shall serve for more than two (2) consecutive three (3) year terms. A member may be elected to an additional three (3) year term or terms if serving as an officer of the Board of Directors.

(c) Prior to each meeting at which the election of Directors is in order a Nominating Committee appointed by the Chairperson of the Board shall convene to consider candidates for openings to be filled exclusive, however, of those Directors appointed pursuant to paragraph (a) above. The consent to serve of the candidates shall be obtained by the Nominating Committee before the election. A proposed slate shall be presented to the Board at the meeting. The Directors whose terms are to expire upon the election and qualification of their successors shall have no vote in such election. The Directors whose terms are to expire shall be entitled to vote on all other matters until their elected successors are qualified.

Section 8. **Vacancies, Resignation and Removal.** Any Director can resign at any time and any such resignation shall be effective upon delivery thereof in writing to the corporation without necessity for acceptance by the Board. Any Director may be removed at any time, with or without cause, by the Board. Vacancies occurring in the Board shall be filled as soon as practical. The newly appointed Director shall serve the term of his predecessor. Thereafter, the individual is eligible to serve two (2) three (3) year terms in his or her own right.

If the Bylaws are amended to increase or decrease the number of Directors, such changes shall be apportioned among the Directors in order to keep the number of Directors whose terms of office expire in any year as nearly equal in number as possible.

Section 9. **Quorum.** A majority of the Board of Directors shall constitute a quorum at any meeting of the Board, but fewer than a quorum shall have power to adjourn any meeting, from time to time, without notice other than announcement at the meeting, until a quorum is present. The act of a majority of the Directors present at any duly assembled meeting of the Board at which a quorum is present shall be an act of the Board except as may be otherwise specifically provided by law or herein.

Section 10. **Annual Report.** The Board of Directors shall present at each annual meeting of the Board a report, verified by the President and Treasurer or certified by an independent public or certified public accountant or a firm of such accountants selected by the Board, showing in appropriate detail the following:

(1) The assets and liabilities, including the trust funds, of the corporation as of the end of a twelve (12) month fiscal period terminating not more than six (6) months prior to said meeting.

(2) The principal changes in assets and liabilities, including trust funds, during the year immediately preceding the date of the report.

(3) The revenue or receipts of the corporation, both restricted and unrestricted to particular purposes, for the year immediately preceding the date of the report.

(4) The expenses or disbursements of the corporation, for both general and restricted purposes, during the year immediately preceding the date of the report.

The annual report of the Directors shall be filed with the minutes of the annual meeting of the Board.

Section 11. **Indemnification.** The corporation, to the fullest extent permitted by the New York Not-for-Profit Corporation Law or other applicable law as the same may be amended from time to time, shall indemnify each person, or if deceased, such person's personal representatives, against the reasonable expenses, attorney's fees, judgments, fines, and amounts paid in settlement in any action or proceeding, civil or criminal, if such person is made or threatened to be made a party by reason of the fact such person or his or her testator or testatrix or intestate is or was (1) an officer, director or employee of the corporation, or (2) an officer, director or employee of or served in any capacity in any other corporation, partnership, joint venture, trust or other enterprise, at the request of this corporation, provided that in the case of a person serving in any capacity in any other corporation, partnership, joint venture, trust or other enterprise, that such person was at the time he or she was so designated to serve by this corporation, an employee of this corporation, or (3) the occupant of a position or a member of a committee or board or a person having responsibilities under federal or state law, who was appointed to such position or to such committee or board by the Board of Directors of this corporation or by an officer of this corporation or who served in such position or on such committee or board at the request or direction of the Board of Directors of this corporation or of an officer of this corporation or who assumed such responsibilities at

the request or direction of the Board of Directors of this corporation or of any officer of this corporation.

The corporation's obligation under this section shall be reduced by the amount of any insurance which is available to any such person whether such insurance is purchased by the corporation or otherwise. The corporation shall purchase insurance for indemnification of directors and officers in such amounts and upon such terms as may from time to time be determined by the Board of Directors. The right of indemnity created herein shall be personal to the officer, director, employee or other person and their respective legal representatives and in no case shall any insurance carrier be entitled to be surrogated to any rights created herein.

ARTICLE IV COMMITTEES

Section 1. **Executive Committee.** The Board of Directors, by resolution adopted by a majority of the entire Board, may designate from among its members an Executive Committee, consisting of three (3) or more members. The Executive Committee shall have all the authority of the Board, except it shall have no authority as to the following matters:

- (a) The filling of vacancies in the Board or in any Committee;
- (b) The fixing of compensation of the Directors for serving on the Board or on any Committee;
- (c) The amendment or repeal of the Bylaws, or the adoption of new Bylaws;

(d) The amendment or repeal of any resolution of the Board which, by its terms, shall not be so amendable or repealable.

Any reference in these Bylaws to the Board of Directors shall include the Executive Committee unless the context or express provision otherwise provides.

Section 2. **Finance Committee.** The Board of Directors shall appoint a Finance Committee consisting of five (5) Directors, three (3) of whom shall be the Directors who hold their positions as Directors by virtue of their positions as members of the board of directors of Arnot Health, Inc.

(a) The Finance Committee shall recommend to the Board the projects, programs, equipment and grant needs of Arnot Ogden Medical Center and St. Joseph's Hospital which it deems most worthy of support by Arnot Health Foundation, Inc.

(b) The Finance Committee shall, recognizing the projects, programs, equipment and grant needs of Arnot Ogden Medical Center and St. Joseph's Hospital, recommend to the Board from time to time a policy and program for the investment of the assets and funds of Arnot Health Foundation, Inc. and the means of implementing the same.

Section 4. **Committees.** The Board of Directors may designate from among its members additional committees, each of which shall consist of three (3) or more Directors and shall have such authority as provided in the resolutions designating the committee, except such authority shall not exceed the authority conferred on the Executive Committee by Section 1 above.

Section 5. **Meetings.** Meetings of the committees shall be held at such time and place as shall be fixed by the President, the Chairperson of the Committee or by vote of a majority of all of the members of the Committee.

Section 6. **Quorum and Manner of Acting.** Unless otherwise provided by resolution of the Board of Directors, a majority of all of the members of a committee shall constitute a quorum for the transaction of business and the vote of a majority of all of the members of the committee shall be the act of the committee. Any corporate action to be taken by a committee shall mean such action to be taken at a meeting of the Committee. The procedures and manner of acting of the Executive Committee and of the other committees shall be subject at all times to the directions of the Board of Directors.

ARTICLE V OFFICERS

Section 1. **Officers.** The Board of Directors shall elect a President, a Vice President, a Secretary, and a Treasurer. The President shall be the Chairperson of the Board. The Board may also appoint such other officers as the Board or a duly authorized committee of the Board may in its discretion elect. Any two or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. **Powers of Officers.** The President shall be the chief executive officer of the corporation and shall be charged with the supervision of its business and affairs, subject to the direction of the Board of Directors. No employee of the corporation shall serve as the President.

The Vice President shall, in the absence of the President, perform the functions and have the powers and duties of the President. The Vice President shall have such other powers and perform such other duties as may from time to time be prescribed by the Board.

The Secretary shall keep the minutes of all meetings of the Board and of the members of the corporation, and shall have the custody of the seal of the corporation and shall affix the same to documents when authorized so to do. He/she shall perform all other duties usual to that office.

The Treasurer shall be the custodian of the funds and securities of the corporation and shall perform all the duties customary to that office. The Board of Directors may require that he/she having custody of funds of the corporation shall give bond for the faithful performance of their duties.

Section 3. **Compensation of Directors and Officers.** No Director or officer of the corporation shall receive directly or indirectly any compensation or other payment from the corporation unless authorized by the concurring vote of two-thirds of all the Directors then in office and in no event shall any compensation or payment be paid or made except reasonable compensation for services actually rendered or reimbursement for disbursements actually incurred. No director or other officer of the corporation shall be interested, directly or indirectly, in any contract relating to the operations conducted by the corporation nor in any contract for furnishing supplies thereto unless authorized in accordance with the New York Not-for-Profit Corporation Law and the conflict of interest policy of the corporation.

Section 4. **Election of Officers.** The elected officers of the corporation shall be elected, and the appointed officers shall be appointed, by the Board of Directors at the annual meeting of the Board, except for vacancies which may be filled at any regular or special meeting. The Directors whose terms are due to expire at the annual meeting shall be entitled to vote in the election of officers at such meeting. All officers, whether elected or appointed, shall hold office until the next annual meeting of the Board and until their successors shall have been elected and shall have qualified, unless removed from office prior thereto by action of the Board which power of removal hereby is granted to the Board. Vacancies resulting from such action by the Board, or from the death or resignation of an officer, shall be promptly filled by the Board.

Section 5. **Nominating Committee.** The Nominating Committee shall be appointed by the Board of Directors. The Nominating Committee shall recommend at the annual meeting of Directors a slate of officers. The consent to serve of each proposed nominee shall be obtained by the Committee before nominations are made.

ARTICLE VI

EXECUTIVE DIRECTOR

Section 1. **Appointment.** The Board of Directors may appoint an Executive Director who shall serve at the pleasure of the Board.

Section 2. **Duties.** The Executive Director shall manage the day-to-day affairs of the corporation subject to the supervision of the President and the Board of Directors. The Executive Director shall consult regularly with the Chief Executive Officer of Arnot Health, Inc. and work with him to coordinate the efforts of Arnot Health

Foundation, Inc. with the needs of Arnot Ogden Medical Center and St. Joseph's Hospital. The Executive Director shall also perform such other duties as may be assigned to him from time to time by the Board.

Section 3. **Compensation.** The compensation of the Executive Director shall be determined by the Board of Directors.

ARTICLE VII
CONTRACTS, CHECKS, DRAFTS AND BANK ACCOUNTS

Section 1. **Execution of Contracts.** The Board of Directors 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 Directors, 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 2. **Loans.** No loans shall be contracted on behalf of the corporation unless specifically authorized by the Board of Directors.

Section 3. **Checks, Drafts, etc.** All checks, drafts and other orders for the payment of money out of the funds of the corporation, and all notes or other evidences of indebtedness of the corporation, shall be signed on behalf of the corporation in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. **Deposits.** 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 Directors may select.

ARTICLE VIII
OFFICE, BOOKS AND SEAL

Section 1. **Office.** The office of the corporation shall be in Elmira, New York.

Section 2. **Books and Records.** There shall be kept at the office of the corporation (1) correct and complete books and records of account, (2) minutes of the proceedings of the Board of Directors and the Executive Committee, (3) a current list of the Directors and officers of the corporation and their residence addresses and (4) a copy of these Bylaws.

Section 3. **Seal.** The seal of the corporation shall be circular in form and shall contain the name of the corporation, the year of incorporation and the state of its incorporation.

ARTICLE IX
FISCAL YEAR

Section 1. **Fiscal Year.** The fiscal year of the corporation shall be the calendar year.

ARTICLE X
AMENDMENTS

The Certificate of Incorporation and these Bylaws may be added to, amended or repealed in whole or in part by the affirmative vote of a majority of the entire Board of Directors at any regular or special meeting of Directors provided ten (10) days written notice of such meeting shall have been given each director specifying the amendments to be considered.

ArnotHealth

Arnot Ogden Medical Center

600 Roe Avenue
Elmira, NY 14905

PH: (607) 737-4100

arnothealth.org

July 18, 2014

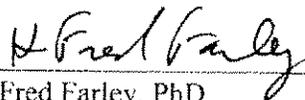
Public Health and Health Planning Council
New York State Department of Health
Corning Tower, Room 1805
Albany, New York 12237

**Re: Merger of St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.
and Arnot Ogden Medical Center Foundation, Inc. into Arnot
Health Foundation, Inc.**

To Whom It May Concern:

By this letter, Arnot Ogden Medical Center ("Medical Center") acknowledges that Arnot Health Foundation, Inc. ("Foundation") intends to solicit contributions on the Medical Center's behalf and confirms that the Medical Center will accept funds raised for its benefit by the Foundation.

Sincerely,



H. Fred Farley, PhD

President, Arnot Ogden Medical Center

Arnot*Health*

St. Joseph's Hospital

555 St. Joseph's Boulevard
Elmira, NY 14901

PH: (607) 733-6541

stjosephs.org

July 18, 2014

Public Health and Health Planning Council
New York State Department of Health
Corning Tower, Room 1805
Albany, New York 12237

**Re: Merger of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc.
and Arnot Ogden Medical Center Foundation, Inc. into Arnot
Health Foundation, Inc.**

To Whom It May Concern:

By this letter, St. Joseph's Hospital ("Hospital") acknowledges that Arnot Health Foundation, Inc. ("Foundation") intends to solicit contributions on the Hospital's behalf and confirms that the Hospital will accept funds raised for its benefit by the Foundation.

Sincerely,



H. Fred Farley, PhD

President, St. Joseph's Hospital

**Request for Approval of Merger of
St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and
Arnot Ogden Medical Center Foundation, Inc. into
Arnot Health Foundation, Inc.**

General Description of Fundraising Activities of Foundation

Arnot Health Foundation, Inc. ("Foundation") is to be established through the merger of Arnot Ogden Medical Center Foundation, Inc. (which presently exists to raise funds in support of Arnot Ogden Medical Center, located at 600 Roe Avenue, Elmira, New York) and St. Joseph's Hospital Foundation-Elmira, N.Y. Inc. (which presently exists to raise funds in support of St. Joseph's Hospital, located 555 St. Joseph's Boulevard, Elmira, New York). Upon completion of said merger, the Foundation will be engaged in the solicitation of grants, gifts, devises, and bequests from a broad range of donors, including individuals, other foundations, corporations, and governmental agencies. All such solicitations shall occur on behalf and for the benefit of Arnot Ogden Medical Center and/or St. Joseph's Hospital, the Foundation's Article 28 beneficiaries.

The Foundation's executive director will be primarily responsible for organizing and carrying out the fundraising activities of the Foundation. The executive director may be assisted in such activities by other Foundation employees and, from time to time, professional fundraisers.

**Request for Approval of Merger of
St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and
Arnot Ogden Medical Center Foundation, Inc. into
Arnot Health Foundation, Inc.**

Profiles of Individuals Serving as Foundation Directors upon Completion of Merger

Carol Balmer

Address: 1657 Pennsylvania Avenue, Pine City, NY 14871

Occupation: Not Applicable

Employer Name and Address: Not Applicable

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Rose Byland, M.D.

Address: 600 Roe Avenue, Elmira, NY 14905

Occupation: Radiation Oncologist

Employer Name and Address: Associated Radiologists of the Finger Lakes, P.C.; 100 East 14th Street, Elmira Heights, NY 14903

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

JulieAnn Delgrosso

Address: 361 Maple Avenue, Elmira, NY 14904

Occupation: Owner/Proprietor

Employer Name and Address: The Christmas House; 361 Maple Avenue, Elmira, NY 14904

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Merry Devlin

Address: 87 Decker Parkway West, Elmira, NY 14905

Occupation: Not Applicable

Employer Name and Address: Not Applicable

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Ernest Hartman

Address: 601 County Road 64, Elmira, NY 14903

Occupation: Business Manager

Employer Name and Address: IBEW No. 139, 415 West Second Street, Elmira, NY 14901

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Kenneth Herzl-Betz, M.D.

Address: 659 Euclid Avenue, Elmira, NY 14901

Occupation: Physician

Employer Name and Address: Partner – Ivy OB-GYN Associates, 500 Ivy Street, Elmira, NY 14905

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Michael Hosey

Address: 333 East Water Street, Elmira, NY 14901

Occupation: Chief Executive Officer

Employer Name and Address: Elmira Savings Bank; 333 East Water Street, Elmira, NY 14901

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Lori Kain

Address: 711 Sullivan Street, Elmira, NY 14901

Occupation: Director

Employer Name and Address: Southern Tier Industries (Chemung ARC); 711 Sullivan Street, Elmira, NY 14901

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Robert Lambert, M.D.

Address: 909 W. Water Street, Elmira, NY 14905

Occupation: President & Chief Executive Officer

Employer Name and Address: Arnot Health, Inc., 600 Roe Avenue, Elmira, NY 14905

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Nick LaPuma

Address: 351 Stillwater Drive, Horseheads, NY 14845

Occupation: Supervisor, Wealth Strategies and Personal Services

Employer Name and Address: Corning Federal Credit Union; 1 Credit Union Plaza, Corning, NY 14830

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Michael Lares

Address: 350 Riverside Avenue, Elmira, NY 14904

Occupation: Vice President, Portfolio Manager

Employer Name and Address: Chemung Canal Trust Company; 1 Chemung Canal Plaza, Elmira, NY 14901

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Julie McInerney

Address: 1004 Hoffman Street, Elmira, NY 14905

Occupation: Manager of Member Services

Employer Name and Address: Chemung County Chamber of Commerce; 400 East Church Street, Elmira, NY 14901

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Jane Metzger

Address: 8 Kingsley Road, Pine Valley, NY 14872

Occupation: Not Applicable

Employer Name and Address: Not Applicable

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Michael Murray

Address: 102 Grandview Avenue, Elmira, NY 14905

Occupation:

Employer Name and Address: New York Financial Solutions, 244 Oakwood Avenue, Elmira, NY 14903

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Joshua Palmer

Address: 90 Morningside Drive, Elmira, NY 14905

Occupation: Vice President of Sales

Employer Name and Address: Swan & Sons-Morss Company, Inc.; 309 East Water Street, Elmira, NY 14901

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Kim Panosian, M.D.

Address: 600 Roe Avenue, Elmira, NY 14905

Occupation: Medical Director

Employer Name and Address: Arnot Medical Services, PLLC.; 600 Roe Avenue, Elmira, NY 14905

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Susan Rigo, M.A., FAHP

Address: 15 Kahler Road South, Elmira, NY 14903

Occupation: Vice President, Chief Development Officer

Employer Name and Address: Arnot Health, Inc., 600 Roe Avenue, Elmira, NY 14905

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Larry Rudawsky, Esq.

Address: 15 Ridgehaven Drive, Horseheads, NY 14845

Occupation: Retirement Services Sales Officer

Employer Name and Address: Citizens & Northern Bank, 1827 Elmira Street, Sayre, PA 18840

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Michael Ryan

Address: 14 Kent Road, Pine City, NY 14871

Occupation: Vice President

Employer Name and Address: John G. Ryan, Inc.; 14 Kent Road, Pine City, NY 14871

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Jason Sanford

Address: 333 East Water Street, Elmira, NY 14901

Occupation: Chief Financial Officer

Employer Name and Address: Elmira Savings Bank; 333 East Water Street, Elmira, NY 14901

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Kathleen Schweizer

Address: 1640 Mt. Zoar Road, Pine City, NY 14871

Occupation: Vice President

Employer Name and Address: Swift Glass Co., Inc.; 131 22nd Street, Elmira Heights, NY 14903

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Marc Stemerman

Address: 1055 Chatham Lane, Elmira, NY 14905

Occupation: President

Employer Name and Address: Chemung Supply Corporation; 2420 Corning Road, Elmira, NY 14903

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Margaret Streeter

Address: 1650 West Church Street, Elmira, NY 14905

Occupation: Not Applicable (Philanthropist/Community Volunteer)

Employer Name and Address: Not Applicable

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Kevin Sullivan

Address: 367 East Franklin Street, Horseheads, NY 14845

Occupation: Owner/Funeral Director

Employer Name and Address: Sullivan's Funeral Home; 365 East Franklin Street, Horseheads, NY 14845

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Helen Tenny

Address: 317 Marshall Street, Horseheads, NY 14845

Occupation: Not Applicable

Employer Name and Address: Not Applicable

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Peter Wallin

Address: 1364 College Avenue, Elmira, NY 14901

Occupation: Owner/Insurance Agent

Employer Name and Address: Wallin Insurance Agency; 1364 College Avenue, Elmira, NY 14901

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

**Request for Approval of Merger of
St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and
Arnot Ogden Medical Center Foundation, Inc. into
Arnot Health Foundation, Inc.**

Organizational Relationship between Foundation and Article 28 Beneficiaries

Arnot Health, Inc. has influence over the operation of the Foundation, insofar as Arnot Health, Inc. is entitled to appoint three (3) of its directors to serve on the Board of Directors of the Foundation. Arnot Health, Inc. also is the sole member/active parent of both Arnot Ogden Medical Center and St. Joseph's Hospital, the Foundation's Article 28 beneficiaries.

List of Controlling and Controlled Entities

No entity will control the Foundation. However, Arnot Health, Inc., a New York not-for-profit corporation and the sole member of both Arnot Ogden Medical Center and St. Joseph's Hospital, will be able to influence the Foundation's operations, insofar as Arnot Health, Inc. will be entitled to appoint three (3) of its directors to serve on the Foundation's Board of Directors.

No entity will be controlled by the Foundation.



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council
FROM: James E. Dering, General Counsel *JED*
DATE: September 5, 2014
SUBJECT: The St. Joseph Hospital Foundation

The St. Joseph Hospital Foundation ("the Foundation") requests that the Public Health and Health Planning Council ("PHHPC") approve the attached proposed Certificate of Incorporation. Public Health Law § 2801-a(6) and Not-for-Profit Corporation Law §§ 404(o) require that the Certificate of Incorporation of a not-for-profit foundation that solicits contributions on behalf of an Article 28 facility must be approved by PHHPC.

The Foundation's proposed beneficiary is the WSNCHS North, Inc. d/b/a St. Joseph Hospital, an Article 28 facility. The following documents and information are attached in support of the Foundation's request for approval:

- 1) A copy of the Foundation's Certificate of Incorporation;
- 2) A copy of the Foundation's proposed bylaws;
- 3) A letter, dated August 5, 2014, from a representative of the Article 28 beneficiary acknowledging that it will accept funds and other donations from the Foundation;
- 4) A letter, dated August 7, 2014, from the applicant's attorney providing: (a) a generalized description of the fundraising activities to be undertaken by the Foundation; (b) information regarding the Foundation's proposed Board of Directors; and (c) a statement identifying the organizational relationship between the Foundation and the Article 28 beneficiary.

The proposed Certificate of Incorporation is in legally acceptable form.

Attachments

CERTIFICATE OF INCORPORATION

OF

THE ST. JOSEPH HOSPITAL FOUNDATION

Under Section 402 of the New York State Not-for-Profit Corporation Law

The undersigned, for the purpose of forming a corporation under the Not-for-Profit Corporation Law of the State of New York, hereby certifies:

- FIRST:** The name of the corporation is The St. Joseph Hospital Foundation (the "Corporation").
- SECOND:** The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and shall be a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.
- THIRD:** The Corporation is formed, organized and shall be operated exclusively for the charitable purpose of supporting and assisting WSNCHS North, Inc., doing business as St. Joseph Hospital ("St. Joseph Hospital"), a New York not-for-profit corporation exempt from Federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code"). Without limiting the generality of the foregoing, the Corporation's purposes include assisting St. Joseph Hospital to develop, expand, and fund its services by: (i) soliciting contributions for St. Joseph Hospital; (ii) mobilizing and coordinating the efforts of community leaders; (iii) providing a focal point and recipient for philanthropic support; (iv) stimulating such sources of support as gifts, bequests, and devises, charitable lead and remainder trusts, pooled income funds, and providing for the effective management thereof; (v) granting or loaning funds to St. Joseph Hospital and (vi) promoting the work and charitable mission of St. Joseph Hospital through activities including publications, addresses, public relations efforts, and special events.
- FOURTH:** In furtherance of its corporate purposes, the Corporation shall have all of the general powers enumerated in Section 202 of the Not-for-Profit Corporation Law, together with the power to solicit and receive grants, bequests, and contributions for the corporate purposes.
- FIFTH:** The names and addresses of the initial Directors of the Corporation are as follows:
- | | |
|---------------------|---|
| David DeCerbo, Esq. | c/o Catholic Health Services of Long Island
992 North Village Avenue
Rockville Centre, New York 11570 |
|---------------------|---|

Alan Guerci, M.D.

c/o Catholic Health Services of Long Island
992 North Village Avenue
Rockville Centre, New York 11570

Dennis Verzi

c/o Catholic Health Services of Long Island
992 North Village Avenue
Rockville Centre, New York 11570

- SIXTH:** The Corporation shall be operated in conformity with the Ethical and Religious Directives of the Catholic Church as published the United States Conference of Catholic Bishops and as interpreted and applied by the Bishop of the Diocese of Rockville Centre,
- SEVENTH:** The Corporation has not been formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the Corporation is distributable to, or inures to the benefit of its Directors or officers, except to the extent permitted under the Not-for-Profit Corporation Law.
- EIGHTH:** Notwithstanding any other provisions of this certificate, the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Sections 501(c)(3) of the Code, or corresponding provisions of any subsequent Federal tax law. No part of the net earnings of the Corporation shall inure to the benefit of its Directors, officers, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation). No part of the activities of the Corporation shall be propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.
- NINTH:** In the event of dissolution, all of the remaining assets and property of the Corporation shall after necessary expenses and liabilities thereof have been paid, be distributed to St. Joseph Hospital or if it shall not then exist or qualify to Catholic Health System of Long Island, Inc., provided it then qualifies under Sections 501(c)(3) and 170(c)(2) of the Code, or corresponding provisions of any subsequent Federal tax law to receive charitable contributions, subject to an order of a Justice of the Supreme Court of the State of New York and/or the approval of the Attorney General, and no Trustee or officer of the Corporation or any private individual shall be entitled to share in the distribution of any corporate assets on dissolution.
- TENTH:** The office of the Corporation is to be located in the County of Nassau.
- ELEVENTH:** The sole member of this Corporation shall be St. Joseph Hospital (the "Member").
- TWELFTH:** The Corporation shall not take any action requiring the consent or approval of the Member until the Member shall have exercised the following reserved powers. Such exercise of reserved powers shall not be effective until the Corporation shall

have received written notice of the appropriate action having been taken by the Member. The following powers are reserved specifically and exclusively to the Member and no attempted exercise of any such power by anyone other than the Member shall be valid or of any force or effect whatsoever:

- a. To approve the philosophy and mission statement adopted by the Board of Directors according to which the Corporation will operate only in conformity with these purposes and the By-Laws.
- b. To require the Corporation to operate in conformity with its philosophy and mission statement.
- c. To adopt, approve, amend, repeal the By-Laws and Certificate of Incorporation of the Corporation.
- d. To fix the number of and elect, appoint, fill vacancies in and remove, with or without cause, the Directors; and elect and remove, with or without cause, the Chairperson and Vice Chairpersons of the Board of Directors of the Corporation.
- e. To approve any sale, mortgage, lease, loan, gift, or pledge of any of the Corporation's real property irrespective of amount, or of any other assets (other than real property) in excess of an amount to be fixed from time to time by the Member; to approve any acquisition of real property for the Corporation, including the acquisition of any leasehold interests irrespective of amount; to approve any acquisition by the Corporation of other assets (other than real property) whose value exceeds an amount to be fixed from time to time by the Member.
- f. To approve any merger, consolidation, or dissolution of the Corporation and to approve the disposition of the assets of the Corporation at the time of dissolution.
- g. To approve any corporate reorganization of the Corporation and the development or dissolution of any subsidiary organizations, including corporations, partnerships, or other entities.
- h. To elect and remove, with or without cause, the Chief Executive Officer of the Corporation.
- i. To approve the criteria for and the process of evaluating the performance of the Chief Executive Officer of the Corporation.
- j. In exercise of the Member's stewardship, to appoint a certified public accountant to prepare certified audits for and on behalf of the Member, in addition to the annual certified audit prepared for and on behalf of the Board of Directors.

- k. To approve settlement of any litigation to which the Corporation is a party, except when the consideration for settlement is solely monetary and the amount of such settlement is below an amount to be fixed from time to time by the Member.
- l. To review statements of the Corporate finances submitted annually by the Directors.
- m. To approve any capital or operating budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation.
- n. To approve the debt of the Corporation which is in excess of such limits as are established by the Member.

THIRTEENTH: The Secretary of State is hereby designated as the agent of the Corporation upon whom process against the Corporation may be served, and the following is designated as the address to which the Secretary of State shall mail a copy of any process received against the Corporation:

Catholic Health Services of Long Island
992 North Village Avenue
Rockville Centre, New York 11570
Attention: Senior Vice President and General Counsel

FOURTEENTH: Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Not-for-Profit Corporation Law Section 404(a-n), (p-s) and (u-v).

FIFTEENTH: Nothing herein shall authorize the Corporation within the State of New York, to (a) provide hospital services or health related services, as such terms are defined in the New State Public Health Law ("PHL"); (b) establish, operate, or maintain a hospital, home care services agency, a hospice, a managed care organization as provided for in Articles 28, 36, 40 and 44, respectively, of the PHL and implementing regulations; (c) establish and operate an independent practice association; (d) establish, operate, construct, lease, or maintain an adult home, enriched housing program, residence for adults, or an assisted living program, as provided for in Article 7 of the New York State Social Services Law; or (e) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL.

SIXTHTEENTH: Nothing herein shall authorize the Corporation within the State of New York to (a) hold itself 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.

IN WITNESS WHEREOF, this Certificate has been subscribed this 07 day of August 2014, by the undersigned, who affirms that the statements made herein are true under the penalties of perjury.



Karen E. Sosler, Esq.
Incorporator

CERTIFICATE OF INCORPORATION
OF
THE ST. JOSEPH HOSPITAL FOUNDATION
Under Section 402 of the New York State Not-for-Profit Corporation Law

File by:

Karen E. Sosler, Esq.
Iseman, Cunningham, Riester & Hyde, LLP
9 Thurlow Terrace
Albany, New York 12203
(518) 462-3000

By-Laws
of
The St. Joseph Hospital Foundation
A Charitable Corporation Under §201 of the Not-for-Profit Corporation Law

ARTICLE 1

Name of the Corporation, Organization, Goals and Objectives

Section 1.01 – Name of Corporation

The name of this Corporation shall be The St. Joseph Hospital Foundation (hereinafter referred to as the "Corporation").

Section 1.02 – Goals and Objectives of the Corporation and Adherence to Catholic Doctrine

In order to carry out the purposes, as set forth in the Corporation's Certificate of Incorporation, the objective of the Corporation shall be to assist WSNCHS North, Inc., doing business as St. Joseph Hospital ("St. Joseph Hospital"), to develop, expand, and fund its services by: (i) soliciting contributions for St. Joseph Hospital; (ii) mobilizing and coordinating the efforts of community leaders; (iii) providing a focal point and recipient for philanthropic support; (iv) stimulating such sources of support as gifts, bequests, and devises, charitable lead and remainder trusts, pooled income funds, and providing for the effective management thereof; (v) granting or loaning funds to St. Joseph Hospital and (vi) promoting the work and charitable mission of St. Joseph Hospital through activities including publications, addresses, public relations efforts, and special events. The foregoing shall be carried out in a manner at all times consistent with the *Ethical and Religious Directives for Catholic Health Services*, as published by the United States Conference of Catholic Bishops and as interpreted and applied by the Bishop of the Diocese of Rockville Centre.

ARTICLE 2
Membership

Section 2.01 – Sole Member

The St. Joseph Hospital Foundation shall have a single member, which shall be St. Joseph Hospital. All references in these By-Laws to either the Member or the Members of the Corporation shall be deemed references to the sole member, St. Joseph Hospital.

ARTICLE 3
Powers and Duties of the Member

Section 3.01 – Power to Elect Directors

The Member, at the Annual Meeting of the Member, shall elect qualified persons to the Board of Directors to fill all existing vacancies and any newly created Directorships and shall elect the Chairperson and Vice-Chairpersons of the Board of Directors.

Section 3.02 – Annual Report

At the Annual Meeting of the Member, the Member shall consider the Annual Report of the Corporation presented by the Board of Directors and verified by the President and Treasurer or by a majority of the Directors.

Section 3.03 – Reserved Powers of the Member

Subject to any further reserved powers of the Corporate Members of Catholic Health System of Long Island, Inc., the following powers are reserved specifically and exclusively to the Member and any attempted exercise of such powers by anyone other than the Member shall be void of any force or effect whatsoever. Should compliance with any of the restrictions in these provisions require the Corporation to take any action which may contravene any law or regulation to which the Corporation may now or hereafter be subject, such restriction shall be null and void.

Section 3.03.01 – Philosophy and Mission

To approve the philosophy and mission statement adopted by the Board of Directors according to which the Corporation will operate only in conformity with these purposes and By-Laws.

Section 3.03.02 – Conformity to Philosophy and Mission

To require the Corporation to operate in conformity with its philosophy and mission statement.

Section 3.03.03 – Corporate Documents

To adopt, approve, amend, repeal the By-Laws and Certificate of Incorporation of the Corporation.

Section 3.03.04 – Appointment and Removal of Directors and Board Chair

To fix the number of and elect, appoint, fill vacancies in and remove, with or without cause, the Directors; and elect and remove, with or without cause, the Chairperson and Vice Chairpersons of the Board of Directors of the Corporation.

Section 3.03.05 – Sale or Acquisition of Assets

To approve any sale, mortgage, lease, loan, gift, or pledge of any of the Corporation's real property irrespective of amount, or of any other assets (other than real property) in excess of an amount to be fixed from time to time by the Member; to approve any acquisition of real property for the Corporation, including the acquisition of any leasehold interests irrespective of amount; to approve any acquisition by the Corporation of other assets (other than real property) whose value exceeds an amount to be fixed from time to time by the Member.

Section 3.03.06 – Merger, Consolidation, Dissolution

To approve any merger, consolidation, or dissolution of the Corporation and to approve the disposition of the assets of the Corporation at the time of dissolution.

Section 3.03.07 – Reorganization and Formation of New Entities

To approve any corporate reorganization of the Corporation and the development or dissolution of any subsidiary organizations, including corporations, partnerships, or other entities.

Section 3.03.08 – Election and Removal of Chief Executive Officer

To elect and remove, with or without cause, the Chief Executive Officer of the Corporation.

Section 3.03.09 – Evaluation of Chief Executive Officer

To approve the criteria for and the process of evaluating the performance of the Chief Executive Officer of the Corporation.

Section 3.03.10 – Appointment of Auditor

In exercise of the Member's stewardship, to appoint a certified public accountant to prepare certified audits for and on behalf of the Member, in addition to the annual certified audit prepared for and on behalf of the Board of Directors.

Section 3.03.11 – Settlement of Litigation

To approve settlement of any litigation to which the Corporation is a party, except when the consideration for settlement is solely monetary and the amount of such settlement is below an amount to be fixed from time to time by the Member.

Section 3.03.12 – Financial Statements

To review statements of the Corporate finances submitted annually by the Directors.

Section 3.03.13 – Approval of Budgets

To approve any capital or operating budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation.

Section 3.03.14 – Approval of Debt

To approve the debt of the Corporation which is in excess of such limits as are established by the Member.

Section 3.04 – Power to Amend Specifically Reserved to Members of Catholic Health System of Long Island, Inc.

The power to give necessary approval to any amendment to the Certificate of Incorporation and to give necessary approval to any amendment, adoption or repeal of By-Laws is specifically reserved to the Corporate Members of Catholic Health System of Long Island, Inc. The authority to address all other aspects of legal changes for the Corporation vests in the Board of Directors of St. Joseph Hospital, as sole Member of the Corporation.

ARTICLE 4 Meetings of the Membership

Section 4.01 – Annual Meeting of the Member

The Annual Meeting of the Member shall be held within thirty (30) days of the Annual Meeting of the Corporate Members of Catholic Health System of Long Island, Inc.

Section 4.02 – Special Meetings

Special meetings of the Member shall be held only at the discretion and call of the Member. Special meetings shall be held at such hour on such day and at such place within or without the State of New York as may be determined by the Member.

Section 4.03 – Notice of Meetings

Whenever the Member is required or permitted to take any action at a meeting, written notice shall be given by the Secretary stating the place, date, and hour of the meeting and, unless it is the Annual Meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a Special Meeting (including any such meeting to be held in conjunction with an Annual Meeting) shall also state the purpose or purposes for which the meeting is called. A copy of the notice of any meeting shall be given personally, by first class mail, by facsimile telecommunication or by electronic mail, to each Member entitled to vote at such meeting not less than ten (10) nor more than fifty (50) days before the date of the meeting. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the

Member at such Member's address as it appears on the Record of Members or, if such Member shall have filed with the Secretary of the Corporation a written request that notices be mailed to some other address then directed to such Member at such other address. If sent by facsimile telecommunication or mailed electronically, such notice is given when directed to the Member's fax number or electronic mail address as it appears on the record of Members, or to such fax number or other electronic mail address as filed with the Secretary of the Corporation. Notwithstanding the foregoing, such notice shall not be deemed to have been given electronically (1) if the Corporation is unable to deliver two consecutive notices to the Member by facsimile telecommunication or electronic mail; or (2) the Corporation otherwise becomes aware that notice cannot be delivered to the Member by facsimile telecommunication or electronic mail. When a meeting is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken. At the adjourned meeting, any business may be transacted that might have been transacted on the original date of the meeting. However, if, after the adjournment, the Board of Directors fixes a new record date for the adjourned meeting, on such new record date a notice of the adjourned meeting shall be given to each Member of record who shall be entitled to notice under this Section.

Section 4.04 – Waivers of Notice

Notice of any meeting of the Member need not be given to any Member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. Waiver of notice may be written or electronic. If written, the waiver must be executed by the Member by signing such waiver or causing the Member's signature to be affixed to such waiver by any reasonable means, including but not limited to facsimile signature. If electronic, the transmission of the waiver must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Member. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by such Member.

Section 4.05 – Quorum at Meetings

The Member or Members entitled to cast a majority of the total number of votes entitled to be cast thereat shall constitute a quorum at a meeting of the Member for the transaction of any business. In absence of a quorum, the Member or Members present may adjourn any meeting to another time or place.

Section 4.06 – Written Consent of Member Without Meeting

Whenever under any provision of law or these By-Laws the Member is required or permitted to take any action by vote, such action may be taken without a meeting on written consent of the members of the Board of Trustees of the Member, setting forth the action so taken. Such consent may be written or electronic. If written, the consent must be executed by the Member by signing such consent or causing the Member's signature to be affixed to such consent by any reasonable means, including but not limited to facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Member. The resolution and the written consents thereto by the Member shall be filed with the minutes of the proceedings of the Board.

ARTICLE 5 Officers, Agents and Employees

Section 5.01 – General Provisions

The officers of the Corporation shall be a Chairperson of the Board of Directors, a Vice Chairperson of the Board of Directors, a President, a Secretary, a Treasurer, and such other Officers as the Board

of Directors may determine are necessary from time to time. All Officers shall be elected by the Member at the Annual Meeting of the Member. Any two or more offices may be held by the same person, except the offices of Chairperson, President and Secretary. The President may be a member of management of the Corporation; all other officers shall be members of the Board of Directors.

Section 5.02 – Term of Office, Vacancy and Removal

Except as otherwise provided in this Article 5, Officers shall serve for a term of one (1) year until successors are elected, such term commencing at the close of the meeting at which they are elected. Officers may be elected for successive terms. Any Officer may be removed at any time with or without cause by the Member. Any vacancy occurring in any office during the term of an Officer may be filled for the remainder of the term thereof, by the Member at any annual meeting of the Member or at any Regular Meeting of the Member, or at any Special Meeting of the Member called for that purpose. The removal of an Officer without cause shall be without prejudice to his or her contract rights, if any. The election of an Officer shall not in itself create contract rights.

Section 5.03 – Powers and Duties of the Chairperson of the Board

The Chairperson of the Board shall preside at all meetings of the Board of Directors. In the absence of the Chairperson of the Board, the Vice-Chairperson shall preside. The Chairperson of the Board shall perform such other duties as may be provided for by these By-Laws or by Resolution of the Board. No employee of the Corporation shall serve as Chairperson of the Board or hold any other title with similar responsibilities.

Section 5.04 – Powers and Duties of the Vice-Chairperson of the Board

The Vice-Chairperson of the Board, in the absence of the Chairperson of the Board, shall preside at all meetings of the Board of Directors. The Vice-Chairperson of the Board shall have such other duties and responsibilities as may be assigned to him or her by the Board of Directors.

Section 5.05 – Powers and Duties of the President

The President shall be the Chief Executive Officer of the Corporation. The President shall be an *ex officio* member of the Board of Directors and of all committees of the Board and of the Corporation. The President shall have general charge of the business and affairs of the Corporation and may employ and discharge employees and agents of the Corporation, except such as shall be appointed by the Board of Directors, and may delegate these powers. The President may vote the shares or other securities of any domestic or foreign corporation of any type or kind which may at any time be owned by the Corporation, may execute any shareholders' or other consents in respect thereof, and may delegate such powers by executing proxies, or otherwise, on behalf of the Corporation.

Section 5.06 – Powers and Duties of the Secretary

The Secretary shall prepare an agenda and issue notices, as required by law or by these By-Laws, of all meetings of the Member of the Corporation and the Board of Directors. The Secretary shall have charge of the minutes of all proceedings of the Member and of the Board of Directors. The Secretary shall have charge of the seal of the Corporation and shall attest the same whenever required. The Secretary shall have charge of such books and papers as the Board may direct and shall have all such powers and duties as generally are incident to the position of Secretary or as may be assigned by the Board of Directors.

Section 5.07 – Powers and Duties of the Treasurer

The Treasurer shall have the duty to receive and care for all monies and property belonging to the Corporation and to dispose of the same under the direction of the Board of Directors. The Treasurer shall receive and give receipts for all amounts due to the Corporation, shall endorse all funds and securities for deposit or collection when necessary, and shall deposit the same to the credit of the

Corporation in such banks or depositories as the Board of Directors may authorize. The Treasurer may endorse all commercial documents requiring endorsement for or on behalf of the Corporation. The Treasurer also shall have all such powers and duties as generally are incident to the position of Treasurer of a not-for-profit corporation or as may be assigned by the Board of Directors to him or her.

Section 5.08 – Agents and Employees

The Board of Directors may appoint agents and employees who shall have such authority and perform such duties as may be prescribed by the Board. The Board may remove any agent or employee at any time with or without cause. The removal of an agent or employee without cause shall be without prejudice to his or her contract rights, if any. The appointment of an agent or employee shall not itself create contract rights. The Corporation may pay compensation to agents and employees for services rendered to the Corporation in such reasonable amounts as may be fixed from time to time by the vote of a majority of the entire Board of Directors, but this power may be delegated to any officer, agent or employee as to persons under his or her direction or control. The Board may require any agent or employee to give security for the faithful performance of his or her duties.

ARTICLE 6
Board of Directors

Section 6.01 – Number of Directors

The number of members of the Board of Directors shall be fixed by Resolution of the Member of the Corporation and said number may be either increased or decreased by Resolution of the Member of the Corporation within the limits of not fewer than eight (8) nor more than forty (40) voting members. The number of Directors may be increased or decreased at any time and from time to time at any Annual or Special Meeting of the Member by vote of the Membership, provided, however, that no decrease shall shorten the term of any incumbent Director.

Section 6.02 – Election and Term of Office

Directors shall be elected for a three (3) year or a shorter initial term. The Directors shall be divided into three classes for the purpose of staggering their terms of office. At each Annual Meeting of the Member, the class of Directors to be elected shall be elected by the Member. Each Director shall hold office from the time of election and qualification until the Annual Meeting of the Member next succeeding such election at which is scheduled to occur the election of Directors of the class to which such Director has been assigned and until his or her successor has been elected and qualified. Directors may be elected to consecutive three (3) year terms at the discretion of the Member.

Section 6.03 – Vacancies

Vacancies occurring on the Board of Directors in the period between Annual Meetings may be filled by the Member of the Corporation. The term of office of a Director elected to fill such a vacancy shall continue until the next Annual Meeting of the Member.

Section 6.04 – Associate Directors

One or more Associate Directors may be elected from time to time by the Member at any Annual or Special Meeting of the Member, to hold office at the discretion of the Member. This Associate Directorship shall be in acknowledgement of extraordinary service and dedication to the Corporation as manifested by active participation in corporate affairs, as determined by the Member. An Associate Director shall not be entitled to vote at any Annual, Regular or Special Meeting of the Board of Directors. An Associate Director, however, may attend Annual, Regular or Special Meetings of the Board of Directors at the invitation of the Chairperson of the Board of Directors.

Section 6.05 – Ex Officio and Honorary Members of the Board

- (a) The following shall be *ex officio* members of the Board of Directors for the period of their holding their respective offices:
 - (1) The President and Chief Executive Officer of the Corporation and the Executive Vice President and Chief Administrator Officer of St. Joseph Hospital; *and*
 - (2) The President of the Medical Staff of St. Joseph Hospital and the Medical Director of St. Joseph Hospital.
- (b) The Members of the Corporation shall appoint such Honorary Directors as they may, from time to time, deem appropriate. An Honorary Director shall not be entitled to vote at any Annual, Regular or Special Meeting of the Board of Directors. An Honorary Director, however, may attend Annual, Regular or Special Meetings of the Board of Directors at the invitation of the Chairperson of the Board of Directors.

Section 6.06 – Resignations

Any Director may resign from office at any time by delivering a written resignation to the Secretary of the Corporation. The acceptance of the resignation shall not be necessary to make the resignation effective.

Section 6.07 – Removal of Directors

Any Director may be removed for cause or without cause by vote of the Member. Any Director may be removed for cause by action of the Board of Directors, provided there is a quorum of not less than a majority present at the meeting of Directors at which such action is taken.

Section 6.08 – Meetings of the Board

The Annual Meeting of the Board of Directors shall be held within ten (10) days of the Annual Meeting of the Corporate Members of Catholic Health System of Long Island, Inc.

Section 6.09 – Notice of Meetings of the Board

No notice of Annual or Regular Meetings of the Board of Directors need be given to the Directors. Special Meetings of the Board shall be held upon notice to the Directors of the place, date, hour, and purpose of the meeting. Notice of each Special Meeting of the Board shall be given by the Secretary or by the person calling the meeting, by First Class or electronic mail, by facsimile telecommunication or telephone not later than ten (10) days before the meeting or, if in person, not later than ten (10) days before the meeting. Notices shall be deemed to have been given by First Class mail when deposited in the United States mail, by electronic mail, at the time of sending, and by messenger at the time of delivery by the messenger.

Notice of a meeting need not be given to any Director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice. A waiver of notice of any meeting shall specify the purpose of such special meeting of the Board of Directors, and only the business stated in the Notice shall be transacted at the meeting. Such waiver of notice may be written or electronic. If written, the waiver must be executed by the Director signing such waiver or causing the Director's signature to be affixed to such waiver by any reasonable means, including but not limited to facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Director.

Section 6.10 – Quorum

Unless a greater proportion is required by law, by the Certificate of Incorporation, or by a By-Law adopted by the Member, one-third (1/3) of the entire number of Directors on the Board of Directors shall constitute a quorum for the transaction of business or of any specified item of business. Notwithstanding the foregoing, a quorum shall not consist of fewer than two Directors.

Section 6.11 – Action by the Board

Except as otherwise provided by law or by these By-Laws, the vote of a majority of the Directors present at a meeting at the time of the vote shall be the act of the Board of Directors, provided, however, that a quorum is present at such time.

Any one or more members of the Board of Directors or any committee thereof may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment or by electronic video screen communication allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

Section 6.12 – Written Consent in Lieu of Meeting

Unless otherwise restricted by these By-Laws, any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or the committee consent in writing to the adoption of a Resolution authorizing the action. The Resolution and the written consents thereto by the members of the Board of Directors or committee shall be filed with the Minutes of the proceedings of the Board or committee. Such consent may be written or electronic. If written, the consent must be executed by the Director by signing such consent or causing the Director's signature to be affixed to such consent by any reasonable means, including but not limited to facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Director. The resolution and the written consents thereto by the Directors or the members of the committee shall be filed with the minutes of the proceedings of the Board or committee.

Section 6.13 – Compensation of Directors

The Corporation shall not pay any compensation to Directors for services rendered to the Corporation.

**ARTICLE 7
Committees**

Section 7.01 – Types of Committees

Committees shall be committees of the Board or committees of the Corporation.

Section 7.02 – Size of Committees; Quorum

Whenever these By-Laws establish the number of persons to be on a committee, the *ex officio* members, if any, shall not be counted in that number. The presence of at least one director and twenty-five percent (25%) of the remaining committee members at a committee meeting shall constitute a quorum.

Section 7.03 – Appointment

The Chairperson of the Board of Directors shall appoint the Chair and members of the committees of the Board and of the committees of the Corporation.

Section 7.04 – Committees of the Board

The committees of the Board of Directors shall include an Executive Committee. The committees of the Board shall also include such committees, including *ad hoc* committees as the Board may determine by resolution. The committees of the Board shall be comprised of Directors only and shall have the full authority of the Board.

Section 7.05 – Committees of the Corporation

Committees, other than committees of the Board, whether created by the Board or by the Members, may be committees of the Corporation. The committees of the Corporation shall include the Development Committee and the Community Health Needs Assessment and Community Benefit Committee. The committees of the Corporation shall also include such committees, including *ad hoc* committees as the Board may determine by resolution. The committees of the Corporation shall be comprised of Directors and non-Directors, but no such committee shall have the authority to bind the Board. Such committees of the Corporation shall be elected or appointed as provided in Section 7.03 of these By-Laws.

Section 7.06 – Advisors

The Board of Directors may appoint from time to time at any Annual, Regular or Special Meeting of the Board one or more Committee Advisors to serve at the pleasure of the Board in an advisory capacity on any such committee. A Committee Advisor shall not be entitled to vote at any meeting of the committee to which he or she is appointed Advisor.

Section 7.07 – Committee Membership

The Chief Executive Officer of the Corporation and the Secretary of the Corporation shall be *ex officio* members of the Executive Committee. All other members of the Executive Committee, the Community Health Needs Assessment and Community Benefit Committee, and any other committees of the Board shall be members of the Board of Directors.

Section 7.08 – Ex Officio Members of Committees

The President and Chief Executive Officer shall be an *ex officio* member of all committees of the Board and of the Corporation. All other members of any other committees of the Board shall be members of the Board of Directors.

ARTICLE 8 Powers and Duties of Committees

Section 8.01 – Executive Committee

This Committee shall consist of the Chairperson of the Board of Directors, who shall serve as the chairperson of the Committee, the President and Chief Executive Officer of the Corporation, the Vice-Chairperson of the Board of Directors, the Secretary of the Corporation, and such other Directors as are designated annually by resolution adopted by a majority of the entire Board of Directors. It shall have the full power of the Board of Directors in any emergency situation arising between meetings of the Board of Directors. Any such action shall be reported to the Board at its next Regular Meeting.

Section 8.02 – Development Committee

This Committee shall consist of at least three (3) Directors, including the Chairperson of the Board of Directors, the President and Chief Executive Officer of the Corporation and such other Directors and/or non-Directors as are designated annually by resolution adopted by a majority of the entire Board of Directors. The Committee shall be responsible for supporting the mission, vision and overall strategic plan of St. Joseph Hospital, including its Community Health Needs Assessment and

Community Benefit Program, through committee activities designed to promote and acquire financial support. The Committee shall be responsible for the development of a comprehensive, long-range fund-raising strategy designed to meet the resource needs of the Corporation and of St. Joseph Hospital, and to establish and oversee any policy issues related to resource development for the Corporation. The Committee shall (i) establish fund-raising goals, plans and benchmarking activities, (ii) develop plans to engage other Directors in fund-raising activities, (iii) assist development staff in the identification, cultivation and solicitation of supporters, as appropriate and (iv) assist the staff in increasing the recognition and visibility of the Corporation. The Committee shall meet at least four (4) times a year.

Section 8.03 – Community Health Needs Assessment and Community Benefit Committee

This Committee shall consist of at least three (3) Directors and may include other Directors and non-Directors as are designated annually by resolution adopted by a majority of the entire Board of Directors. The Committee shall:

- (a) Assess community health care needs, including opportunity for active and continuing involvement of all community constituencies in conducting such assessment.
- (b) Evaluate the effectiveness of St. Joseph Hospital in serving the community and living out its mission and values.
- (c) Evaluate the manner in which the St. Joseph Hospital strategic plan and budget priorities respond to specific community needs.
- (d) Provide an active and continuing forum and means of communication to St. Joseph Hospital for all members of the community.
- (e) Actively solicit comments from the community concerning unmet health care needs.
- (f) Evaluate, identify and quantify St. Joseph Hospital's care for the poor and underserved.
- (g) Identify any barriers to access to care, especially for the underserved, and recommend means to improve access to care.
- (h) Prepare and recommend to St. Joseph Hospital the triennial Community Service Assessment required by Public Health Law § 2803-1 and the required annual assessment reports to the Commissioner of Health.
- (i) Prepare and recommend to St. Joseph Hospital the information pertaining to community and charitable service required on Schedule H of IRS Form 990 pursuant to IRC § 501(r).

ARTICLE 9

Powers and Duties of the Board of Directors

Section 9.01 – Power of Board and Qualification of Directors

Subject to the powers reserved to the Members in Article 3 of these By-Laws, to the Code of Canon Law, to Diocesan legislation, policies and procedures, to the New York Not-for-Profit Corporation Law, to other laws and regulations of the State of New York pertaining thereto, and to these By-Laws, the Corporation shall be managed by its Board of Directors. Each Director shall be at least eighteen (18) years of age.

Section 9.02 – Annual Report of Directors

The Board of Directors shall present at the Annual Meeting of the Member a report, verified by the President and Treasurer or by a majority of the Directors, showing in appropriate detail the following: (1) the assets and liabilities, including the trust funds, of the Corporation as of the end of the preceding fiscal year; (2) the principal changes in assets and liabilities including trust funds, during said fiscal year; (3) the revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, during said fiscal year; and (4) the expenses and disbursements of the Corporation, for both general and restricted purposes during said fiscal year. The annual report of the Directors shall be filed with the records of the Corporation and either a copy or an abstract thereof entered in the minutes of the proceedings at the Annual Meeting of the Member.

Section 9.03 – Purchase, Sale, Mortgage and Lease of Real Property

No purchase of real property shall be made by the Corporation and the Corporation shall not sell, mortgage or lease its real property unless authorized by the Member and by the vote of two-thirds (2/3) of the entire Board of Directors, provided, however, that if there are twenty-one (21) or more Directors, the vote of a majority of the entire Board of Directors shall be sufficient.

Section 9.04 – Power of Board to Make Grants and Contributions

The making of grants and contributions to St. Joseph Hospital for the purposes expressed in the Corporation's Certificate of Incorporation shall be within the exclusive power of the Board of Directors.

Section 9.05 – Mortgage or Pledge of or the Creation of a Security Interest in, Personal Property

No mortgage or pledge of; or the creation of a security interest in, all or any part of the Corporation's personal property or any interest therein, shall be made by the Corporation unless authorized by the vote of the majority of the entire Board of Directors and approved by the Member of the Corporation.

Section 9.06 – Duties of the Directors

The Directors shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions. The Board of Directors, through the Chairperson of the Board, (1) shall ensure compliance with all applicable federal, state and local statutes, laws and regulations, (2) shall establish and maintain personnel policies and practices and (3) shall develop a program for the orientation of newly elected Directors and for the continuing education of all Directors serving on the Board.

Section 9.07 – Attendance

Fifty percent (50%) attendance at Regular Meetings shall be considered active participation as a member of the Board of Directors. Less than fifty percent (50%) attendance, unless excused, shall result in the automatic termination of a Director's membership on the Board; provided, however, that this provision does not apply to *ex officio* members of the Board.

ARTICLE 10 Order of Business

Section 10.01 – Regular Meeting

The suggested order of business for Regular Meetings of the Member and Board of Directors shall be as follows:

- a. Opening of meeting and prayer
- b. Roll Call
- c. Previous Minutes
- d. Report of the Chairperson of the Board of Directors
- e. Report of the Treasurer
- f. Reports of Committees
- g. Unfinished business
- h. New business
- i. Adjournment to time, date and place.

Section 10.02 – Parliamentary Procedure

Parliamentary procedures shall be followed when not in conflict with any of these By-Laws. The rules of parliamentary procedure shall be *Robert's Rules of Order*.

ARTICLE 11 Liability and Indemnification of Directors, Officers and Employees

Section 11.01 – Liability

Except as otherwise provided by law, no Director or Officer of the Corporation serving without compensation shall be liable to any person other than the Corporation based solely on such Director's or Officer's conduct in the execution of such office unless such conduct constituted gross negligence or was intended to cause the resulting harm.

Section 11.02 – Indemnification

Except as provided in Section 8.03, the Corporation shall indemnify any person made, or threatened to be made, a party to any action or proceeding, whether civil or criminal, by reason of the fact that such person or such person's testator or intestate, is or was a Director or Officer of the Corporation, or an employee of the Corporation designated by the President as entitled to indemnification hereunder (the Board of Directors to be thereafter notified of such designation) who serves or served the Corporation or, at the request of the Corporation, serves or served any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity. In addition, the Corporation shall advance such person's related and reasonable expenses, including attorneys', experts' and consultants' fees, upon receipt of an undertaking by or on behalf of such person to repay such advancement if he or she is ultimately found not to be entitled to indemnification hereunder.

Section 11.03 – Exclusion

The Corporation shall not indemnify any person described in Section 11.02 if an adjudication adverse to such person establishes that the acts of such person or such person's testator or intestate 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 such person's testator or intestate personally gained a financial profit or other advantage to which he or she was not legally entitled.

Section 11.04 – Insurance

The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation and its Directors and Officers to the full extent such insurance is permitted by law.

ARTICLE 12
Loans to Directors or Officers

No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offering, or through ordinary deposit of funds in a bank shall be made by the Corporation to its Directors or Officers or to any other corporation, firm, association, or other entity in which one or more of its Directors or Officers are Directors or Officers or hold a substantial financial interest, provided, however, that the Corporation may make a loan to any corporation which is a Type B or charitable corporation under the Not-for-Profit Corporation Law of the State of New York.

ARTICLE 13
Corporate Seal

The seal of the Corporation shall be circular in form, shall have the name of the Corporation inscribed thereon, and shall contain the words “Corporate Seal” and “New York” and the year the Corporation was formed in the center, or shall be in such form as may be approved from time to time by the Board of Directors. The Corporation may use the seal by causing it or a facsimile to be affixed or impressed or reproduced in any manner.

ARTICLE 14
Contracts, Checks, Bank Accounts, and Investments

Section 14.01 – Checks, Notes, and Contracts

Catholic Health Services of Long Island is authorized to select the banks or depositories it deems proper for the funds of the Corporation and shall determine who shall be authorized on the Corporation’s behalf to sign bills, notes, receipts, acceptances, endorsements, checks, releases, contracts, documents, and other orders or obligations for the payment of money.

Section 14.02 – Investments

The funds of the Corporation may be retained in whole or in part in cash or be invested and reinvested from time to time in such property, real, personal, or otherwise, including stocks, bonds, or other securities, as the Investment Committee of Catholic Health Services of Long Island may deem desirable.

ARTICLE 15
Amendments

These By-Laws may be amended or repealed by a two-thirds (2/3) vote of the Board of Directors, subject to the approval of the Members of Catholic Health Services of Long Island as described in Article 3, Section 3.04, at any Annual Meeting of the Board of Directors of the Corporation or at any special meeting of the Board of Directors called for that purpose.

ARTICLE 16
Fiscal Year

The fiscal year of the Corporation shall begin on the first day of January and terminate on the last day of December in each calendar year.

ARTICLE 17
Records and Books to be Kept

The Corporation shall keep at its principal office in the State of New York correct and complete books and records of account, including a Minute Book, which shall contain: (a) a copy of the Certificate of Incorporation, (b) a copy of these By-Laws, (c) all Minutes of meetings of the Board of Directors, any Committee of the Board and any committee of the Corporation, and (d) a current list of the Directors and Officers of the Corporation and their residence addresses. Any of the books, Minutes, and records of the Corporation may be in written form or any other form capable of being converted into written form within a reasonable time.

Amendment History:

- *Adopted* _____, 2014

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St. Joseph Hospital

Catholic Health Services

At the heart of health

August 5, 2014

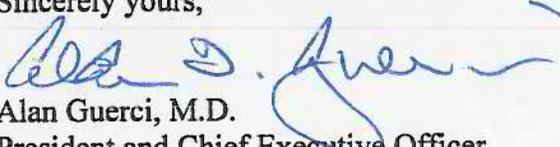
Mary T. Callahan, Esq.
Director, Bureau of House Counsel
Division of Legal Affairs
NYS Department of Health
Corning Tower, Rm 2484
Empire State Plaza
Albany, New York 12237

Re: Approval of The St. Joseph Hospital Foundation

Dear Ms. Callahan:

I am a duly authorized representative of WSNCHS North, Inc., doing business as St. Joseph Hospital, which is licensed under Article 28 of the New York State Public Health Law (Op. Cert. #2952006H) (the "Hospital"). The St. Joseph Hospital Foundation is being created to support the Hospital, and the Hospital will accept funds raised by The St. Joseph Hospital Foundation.

Sincerely yours,


Alan Guerci, M.D.
President and Chief Executive Officer

4295 Hempstead Turnpike, Bethpage NY 11714
516-579-6000 ~ www.StJosephHospitalNY.org

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August 7, 2014

VIA FEDERAL EXPRESS & EMAIL

Mary Callahan, Esq.
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: **Consent to File Certificate of Incorporation
The St. Joseph Hospital Foundation**

Dear Ms. Callahan:

Our client, St. Joseph Hospital Foundation (the "Foundation"), respectfully requests a letter of consent from the Public Health and Health Planning Council to permit the filing of the enclosed Certificate of Incorporation for the Foundation with the Secretary of State. The purpose of the Foundation is to support and assist its sole member, WSNCHS North, Inc., doing business as St. Joseph Hospital ("St. Joseph Hospital").

We submit the following information for review:

1. Certificate of Incorporation and Bylaws. Enclosed are an executed copy of the Foundation's Certificate of Incorporation and a copy of the proposed Bylaws.
2. Acknowledgement Letter from St. Joseph Hospital. We enclose an original signed letter from the President and Chief Executive Officer of St. Joseph Hospital, acknowledging the Hospital will accept funds raised by the Foundation.
3. Description of Fundraising Activities. It is anticipated that financial support for the Foundation will be received primarily from gifts, grants, and contributions from the local community as well as contributions by friends, family and acquaintances of the Foundation's

Board of Directors. The Foundation intends to support St. Joseph Hospital by conducting the following activities:

- (a) soliciting contributions for St. Joseph Hospital;
- (b) mobilizing and coordinating the efforts of community leaders;
- (c) providing a focal point and recipient for philanthropic support;
- (d) stimulating such sources of support as gifts, bequests, and devises, charitable lead and remainder trusts, pooled income funds, and providing for the effective management thereof;
- (e) granting or loaning funds to St. Joseph Hospital; and
- (f) promoting the work and charitable mission of St. Joseph Hospital through activities including publications, addresses, public relations efforts, and special events.

4. Initial Board of Directors. The following individuals will serve initially on the Foundation's Board of Directors:

Name: David DeCerbo, Esq.
Address: 426 Park Avenue, Manhasset, NY 11030
Occupation: Executive Vice President and General Counsel
Employer: Catholic Health Services of Long Island
992 North Village Avenue, Rockville Centre, NY 11570
Affiliations: Cabrini Mission Foundation (2004 – present)
Cabrini Medical Center (2004 – 2008)
Cabrini Center For Nursing and Rehabilitation (2004 – present)
St. Ignatius Retreat House (2006 – 2013)

Name: Alan D. Guerci, M.D.
Address: 290 Littleworth Lane, Sea Cliff, NY 11579
Occupation: President and Chief Executive Officer
Employer: Catholic Health Services of Long Island
992 North Village Avenue, Rockville Centre, NY 11570
Affiliations: See attached listing

Name: Dennis Verzi
Address: 144 Wilson Avenue, Long Beach, NY 11561-3836
Occupation: Executive Vice President and Chief Operating Officer
Employer: Catholic Health Services of Long Island
992 North Village Avenue, Rockville Centre, NY 11570
Affiliations: Executive Vice President, Chief Operating Officer, Catholic Health Services of Long Island (7/2013-present)
Executive Vice President and Chief Administrative Officer for St. Catherine of Siena Medical Center (8/2011-6/2013)

Mary Callahan, Esq.
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Interim Executive Vice President & Chief Executive Officer for the Eastern Division Acute Care/Executive Vice President for Continuing Care Division (1/2010-6/2010)
Executive Vice President for Continuing Care (2007-2011)
President and Chief Executive Officer for Our Lady of Consolation Nursing and Rehabilitative Care Center (2002-2007)
Auxiliary Police Officer for the City of Long Beach and Chief Recruitment Officer (2004)
Promotion to the Rank of Commissioner for the Long Beach Police Auxiliary (2013)
Member of the Board of Directors and the Certification Review Committee for the Developmental Disabilities Institute (2013)

5. Organizational Relationship. St. Joseph Hospital is the Foundation's sole member. St. Joseph Hospital is a New York not-for-profit corporation that is licensed as a hospital under Article 28 of the Public Health Law (Op. Cert. #2952006H). It is a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code.

6. Controlling Entities. The Foundation controls no entities. The Foundation's sole member is St. Joseph Hospital, to which it has reserved certain powers as specified in the Foundation's Certificate of Incorporation and Bylaws. St. Joseph Hospital's sole member is Catholic Health Services of Long Island, which has been established as the Hospital's active parent.

If you have any questions, please call me at (518) 462-3000.

Very truly yours,

ISEMAN, CUNNINGHAM, RIESTER & HYDE, LLP



Karen E. Sosler

Enc.

cc: Colleen Frost, PHHPC
Robert H. Iseman, Esq.

Mary Callahan, Esq.
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August 7, 2014

bcc: Alan Guerci, Esq.
David DeCerbo, Esq.

**Alan D. Guerci, MD.
President and Chief Executive Officer
Catholic Health Services of Long Island**

Hospital Appointments: Attending Physician, Johns Hopkins Hospital (1983-1992)
Director, Coronary Care Unit, Johns Hopkins Hospital (1984-1992)
Director of Research, St. Francis Hospital, Roslyn, New York (1992-1999)
Executive Vice President for Medical Affairs, St. Francis Hospital, Roslyn, New York (1992-1999)
Member, Board of Directors, Catholic Health Services of Long Island (1998-1999)
Chairman, Quality Improvement Committee, Catholic Health Services of Long Island (1998-1999)
Acting Medical Director, Long Island Health Network (1998-1999)
Chairman, Clinical Integration Subcommittee, Long Island Health Network (1998-1999)
President and CEO, St. Francis Hospital, Roslyn, NY (1999-Present)
President and CEO, Mercy Medical Center, Rockville Center, NY (2005-Present)
President and CEO, St. Joseph Hospital, Bethpage, NY (2011-Present)
President and CEO, Catholic Health Services of Long Island, Rockville Centre, NY (2013-Present)
President and CEO, St. Charles Hospital, Port Jefferson, NY (2013-Present)
President and CEO, Good Samaritan Medical Center, West Islip, NY (2013-Present)
President and CEO, St. Catherine of Siena Medical Center, Smithtown, NY (2013-Present)

Societies: Member, Council on Emergency Cardiac Care American College of Cardiology (1991-1997)
Member, Council for Clinical Cardiology American Heart Association (1989-Present)
Member, ACLS National Faculty American Heart Association (1990-1992)
Member, Emergency Cardiac Care Committee, Maryland Affiliate, American Heart Association (1990-1992)

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Apex Licensed Home Care Agency, LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 2148-L

Description of Project:

Apex Licensed Home Care Agency, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of Apex Licensed Home Care Agency, LLC is:

Joseph Steinfeld, 100%
Administrator, Amazing Home Care

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 687 Broadway, 2nd Floor, Suite 1, Brooklyn, New York 11206:

Bronx	Kings	New York
Queens	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	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: August 15, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Arvut Home Care, Inc.
Address: Staten Island
County: Richmond
Structure: For-Profit
Application Number: 2000-L

Description of Project:

Arvut Home Care, Inc., a for-profit 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:

Yaagu Dadashev – 100 shares Karina Mogilevskiy – 100 shares

The Board of Directors of Arvut Home Care, Inc., comprises the following individuals:

Yaagu Dadashev – President Karina Mogilevskiy, PCA – Vice President
President, YY Technical Service, Inc. Communication Director, SP Orthotic Surgical and Medical Supply

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 698 Barclay Avenue, Staten Island, New York 10312:

Bronx Kings New York Richmond
Queens Nassau

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Physical Therapy
Nutrition 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: August 13, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Attentive Licensed Home Care Agency, LLC
Address: Jamaica
County: Queens
Structure: Limited Liability Company
Application Number: 2147-L

Description of Project:

Attentive Licensed Home Care Agency, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of Attentive Licensed Home Care Agency, LLC is:

Moshe Bloom, 100%
COO, Amazing Home Care

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 146-19 Archer Avenue, 2nd Floor, Suite 201, Jamaica, New York 11435:

Bronx	Kings	New York
Queens	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	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: August 15, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Beautiful Day Home Care, Inc.
Address: Auburn
County: Cayuga
Structure: For-Profit Corporation
Application Number: 2136-L

Description of Project:

Beautiful Day Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Kelley A. Baratta owns 90 shares and Anne M. Currier owns 10 shares. The remaining one hundred shares are unissued.

The Board of Directors of Beautiful Day Home Care, Inc. comprises the following individuals:

Kelley A. Baratta, Pres., VP, Sec., Tr.
Self- employed consultant

Anne M. Currier, L.P.N., Board Member
Staff Nurse, ElderChoice, Inc.

Michael T. Baratta, Board Member
Manager, Takeda Pharmaceuticals, Inc.

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 the following counties from an office to be located in Cayuga County:

Cayuga
Tompkins

Onondaga
Cortland

Oswego
Seneca

The applicant proposes to provide the following health care services:

Nursing
Homemaker

Home Health Aide
Housekeeper

Personal Care

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: July 23, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Best Professional Home Care Agency, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2134-L

Description of Project:

Best Professional 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: Shahnoza Yuldasheva owns 80 shares, Gulchehra Yuldasheva owns 60 shares and Habib Muhammed owns 60 shares.

The Board of Directors of Best Professional Home Care Agency, Inc. is comprised of:

Shahnoza Yuldasheva, HHA, Chairwoman Head Teacher, Group Family Day Care Center	Gulchehra Yuldasheva, HHA, PCA Secretary and Treasurer Home Health Aide, Association for Services for the Aged
Habib Muhammed, HHA, PCA Vice Chairman Social Worker, Group Family Day Care Center	

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:
1002 Ditmas Avenue, Apt. 2J, Brooklyn, New York 11218

Bronx Kings Queens New York Richmond

The applicant proposes to provide the following health care services:

Nursing Personal Care 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: August 20, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: CNY Helpers, LLC d/b/a Home Helpers & Direct Link #58740
Address: Camden
County: Oneida
Structure: Limited Liability Company
Application Number: 2371L

Description of Project:

CNY Helpers, LLC d/b/a Home Helpers & Direct Link #58740, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

CNY Helpers, LLC has proposed to operate as a Franchisee of H. H. Franchising Systems, Inc. The managing member of CNY Helpers, LLC will be Ronald Scales.

The members of CNY Helpers, LLC d/b/a Home Helpers & Direct Link #58740 comprise of the following individuals:

Ronald D. Scales - President - 90% Retired Formerly a NYS EMS Paramedic President-Operator/New England Style Market Owner-Operator/Camden Country Clean	Karen M. Scales - Vice-President - 10% Account Manager/Keurig Green Mountain Sales Consultant/NRM Territory Manager/Keurig Green Mountain
---	--

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 in the following counties from an office located at 9721 Mill Street, Camden, NY.

Oneida Madison Onondaga Oswego

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	Physical Therapy
Occupational Therapy	Speech-Language Therapy	Medical Social Services
Nutrition Services	Respiratory Services	Audiology

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency:

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 5, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: EOM Services, Inc. d/b/a BrightStar of South Brooklyn
Address: Brooklyn
County: Kings
Structure: For Profit Corporation
Application Number: 2123-L

Description of Project:

EOM Services, Inc. d/b/a BrightStar of South Brooklyn, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. EOM Services, Inc. d/b/a BrightStar of South Brooklyn is an existing companion care agency operating under a franchise agreement with BrightStar Franchising, LLC.

The applicant has authorized 200 shares of stock which are owned as follows: Abe Esses owns 10 shares and Raymond Esses owns 10 shares. 180 shares remain unissued.

The members of the Board of Directors of EOM Services, Inc. d/b/a BrightStar of South Brooklyn comprise the following individuals:

Abe Esses, Chairperson, Treasurer
President, BrightStar of South Brooklyn

Raymond Esses, Vice Chairperson, Secretary
Vice President, BrightStar of South Brooklyn

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 813 Quentin Road, Suite 105, Brooklyn, New York 11223:

Kings	Queens	New York
Bronx	Richmond	

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	Homemaker	Housekeeper
Medical Social Services		

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: August 6, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Clear Waters Home Care Services, LLC
Address: New Hampton
County: Orange
Structure: Limited Liability Company
Application Number: 1980-L

Description of Project:

Clear Waters Home Care Services, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The members of the Clear Waters Home Care Services, LLC comprises the following individuals:

Charles Andoh – 50% - CEO Quality Assurance Manager, Pfizer Pharmaceuticals	Folake Latinwo, HHA – 50% - President and COO Home Health Aide, Private Patient
--	--

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the individual named above on the New York State Home Care Registry revealed that the individual is certified as a HHA, and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 144 Gardnerville Road, New Hampton, New York 10958:

Bronx Orange Westchester

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: August 11, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Gentle Hands Agency, Inc.
Address: Bronx
County: Bronx
Structure: For-Profit Corporation
Application Number: 2038L

Description of Project:

Gentle Hands Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Gentle Hands Agency, Inc. has authorized 2000 shares of stock. The shareholders comprise the following individuals:

Catherine Williams, HHA, 1000 shares	Justin Williams, 996 shares
Akosua U. Sarpong, RN, 4 shares	

The Board of Directors of Gentle Hands Agency, Inc. is comprised of the following individuals:

Catherine Williams, HHA, Director Retired	Justin Williams, Co-Director Driver, Gotham Yellow, LLC
Jacqueline U. Suh, Secretary Academic Supervisor, Catholic Guild for the Blind	Martha Wilson, Treasurer Retired

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 medical professional associated with this application.

A search of the New York State Home Care Registry revealed that Catherine Williams is certified as a HHA and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 1740 Grand Avenue, Suite 314, Bronx, New York 10453

Bronx New York Queens Kings Richmond

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: August 19, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Professional Assistance for Seniors, Inc.
Address: Rochester
County: Monroe
Structure: For-Profit Corporation
Application Number: 2150-L

Description of Project:

Professional Assistance for Seniors, 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: Mary-Joy Lipari owns 10 shares. 190 shares remain unissued.

The Board of Directors of Professional Assistance for Seniors, Inc. comprises the following individual:

Mary-Joy Lipari, President
President/Owner, Lipari & Associates, Inc. d/b/a Home Instead Senior Care (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.

The applicant proposes to serve the residents of the following counties from an office located at 97 Canal Landing Boulevard, Suite 10, Rochester, New York 14626:

Monroe	Wayne	Ontario
Livingston	Genesee	

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: August 1, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Reliance Home Care, Inc.
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 2066-L

Description of Project:

Reliance Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows:

Mei Xing Su, 140 shares Managing Director, Amy HC Consulting, Inc.	Wei Pang Koek, 30 shares Marketing Coordinator, Metropolitan Jewish Health Systems
--	--

Carline Joseph, R.N., A.N.P., 30 shares
Clinical Director, Valucare, Inc.

The Board of Directors of Reliance Home Care, Inc. comprises the following individuals:

Mei Xing Su, President (disclosed above)	Wei Pang Koek, Vice President (disclosed above)
---	--

Carline Joseph, R.N., A.N.P., Secretary (disclosed above)	Soon Keat Nyu, Treasurer Staff Accountant, Valucare, Inc.
--	--

Abosede Akingbade, R.N., Compliance
Officer
Director of Patient Services,
American Business Institute Corp.

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 licenses of the health care professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 98 Mott Street, Suite 503, New York, New York 10013:

Kings Bronx	Queens Richmond	New York Nassau
----------------	--------------------	--------------------

The applicant proposes to open a second office site in Nassau County in order to serve Nassau and Suffolk counties.

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	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: July 18, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Taconic Innovations, Inc.
Address: Mount Vernon
County: Westchester
Structure: Not-For-Profit Corporation
Application Number: 1614-L

Description of Project:

Taconic Innovations, 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 Taconic Innovations, Inc. comprises the following individuals:

John Ampah, PhD – Director
Therapeutic Counselor, Four Winds Hospital

David Haruna – Director
Life Skills Coach, Deverux Foundation, Inc.

Albert A. Adekanmi, RN – Director
Registered Nurse, Taconic Innovations, Inc.

Ali N. Sharifoon – Director
Teacher's Assistant, Mamaroneck Board of
Education

Mathias Oni-Eseleh – Director
Executive Director, Taconic Innovations, Inc.

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.

Taconic Innovations operates three Individual residential Alternative Residences and Two Group Habilitation Programs for adults. These certified sites are certified by the Office for People With Developmental Disabilities (OPWDD).

The information provided by the Office for People With Developmental Disabilities has indicated that the applicant has provided sufficient supervision in the past three years to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 25-35 Beechwood Avenue, Mount Vernon, New York 10550:

Westchester Dutchess

The applicant proposes to provide the following health care services:

Nursing	Personal Care	Home Health Aide	Occupational Therapy
Respiratory Therapy	Nutrition	Physical Therapy	Medical Social Services
Audiology	Housekeeper	Homemaker	Speech-Language Pathology

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: August 25, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: The Terrace at Park Place, Inc. d/b/a The Terrace at Park Place
 Address: Lansing
 County: Tompkins
 Structure: For-Profit Corporation
 Application Number: 1787L

Description of Project:

The Terrace at Park Place, Inc. d/b/a The Terrace at Park Place, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. This LHCSA will be associated with the Assisted Living Program to be operated by The Terrace at Park Place, Inc.

The Terrace at Park Place, Inc. has authorized 100 shares of stock. The shareholders comprise the following individuals:

Chris J. Vitale, President – 25 shares	James Vitale, Vice-President – 25 shares
Paul Vitale – Secretary – 25 shares-	Jonathan Vitale, MD, Treasurer – 25 shares

The Board of Directors of The Terrace at Park Place, Inc. is comprised of the following individuals:

<p>Chris J. Vitale, President</p> <p>Affiliations: Seneca Lake Terrace Assisted Living Center Park Terrace at Radisson The Terrace at Newark The Terrace at Woodland</p>	<p>James Vitale, Vice-President</p> <p>Affiliations: Seneca Lake Terrace Assisted Living Center Park Terrace at Radisson The Terrace at Newark The Terrace at Woodland Camillus Ridge Terrace</p>
<p>Paul Vitale – Secretary</p> <p>Affiliations: Seneca Lake Terrace Assisted Living Center Park Terrace at Radisson The Terrace at Newark The Terrace at Woodland</p>	<p>Jonathan Vitale, MD, Treasurer Family Physician, University of Illinois at Chicago/Advocate Illinois Masonic Medical Center Consultant, The Terrace at Newark</p> <p>Affiliation: The Terrace at Newark</p>

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 Assisted Living Program that will be located in Tompkins County.

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	Housekeeper	

The Office of the Professions of the State Education Department, the New York Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicates no issues with the license of the medical professional associated with this application.

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 (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Seneca Lake Terrace Assisted Living Center
Park Terrace at Radisson
The Terrace at Newark (2009-present)
The Terrace at Woodland (2009-present)
Camillus Ridge Terrace

The information provided by the Division of Adult Care Facilities and Assisted Living 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 information provided by the Division of Home and Community Based Services has indicated that the licensed home care services agencies have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 18, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Alliance Nursing Staffing of New York, Inc.
Address: Orangeburg
County: Rockland
Structure: For-Profit
Application Number: 2223L

Description of Project:

Alliance Nursing Staffing of New York, 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.

Alliance Nursing Staffing of New York, Inc. was previously approved as a home care services agency by the Public Health Council at its September 7, 2007 meeting and subsequently licensed as 1570L001.

At that time, the applicant had authorized 300 shares of stock, which were owned as follows: Gregory Solometo – 100 Shares, Diane Sirakovsky – 100 Shares and Michele Teter – 100 shares.

Through two separate Stock Purchase Agreements, both Diane Sirakovsky and Michele Teter will sell back 85 of their 100 shares of stock to the company.

Through a Subscription Agreement, Justin Kohn will purchase ninety-one point five shares (91.5) of the issued and outstanding common stock of the company in a two-step process. 21.5 shares 120 days after the filing of the “Notification of Change in Stockholder Interest” and an additional 70 shares upon the Public Health and Health Planning contingent approval of this proposal.

Through a Subscription Agreement, Gregory Solometo will purchase and additional seventy-eight point five shares (78.5) of the issued and outstanding common stock of the company.

The applicant has proposed to increase the number of authorized shares of common stock from 300 shares to 1,000 shares through a Certificate of Amendment of the Certificate of Incorporation of Alliance Nursing Staffing of New York, Inc. The shareholders will comprise:

Gregory Solometo – 178.5 shares Justin M. Kohn – 91.5 shares

Diane Sirakovsky – 15 Shares Michele Teter – 15 Shares

700 shares of common stock remain unissued.

The Board of Directors of Alliance Nursing Staffing of New York, Inc. comprises the following individuals:

Gregory Solometo, CEO – President Justin M. Kohn, COO, CFO – Director
Office Manager, Head of Operations, Alliance Nursing Staffing of New York, Inc.

Diane Sirakovsky, Director of Marketing - Director Michele Teter, Director of Patient Services - Director

Gregory Solometo, Diane Sirakovsky, and Michele Teter are exempt from character and competence review due to the fact that he was previously approved by the Public Health Council for this operator.

A search of Justin M. Kohn revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven year review of the operations of Alliance Nursing Staffing of New York, Inc. was performed as part of this review. 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.

The applicant proposes to continue to serve the residents of the following counties from an office located at 55 Northern Blvd., Suite 112, Greenvale, New York 11548:

Nassau	New York	Westchester	Sullivan
Putnam	Rockland	Suffolk	Orange
Dutchess			

The applicant proposes to provide the following health care service:

Nursing	Home Health Aide	Personal Care	Physical Therapy
Nutrition			

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: August 19, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Astra Home Care, Inc. d/b/a True Care
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2294L

Description of Project:

Astra Home Care, Inc. d/b/a True Care, a proprietary corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Astra Home Care, Inc. was previously approved as a home care services agency by the Public Health Council at its November 18, 2005 meeting and subsequently licensed as 1388L001. At that time, Tibor Klein was the sole shareholder.

Subsequently, the Astra Home Care, Inc. submitted a notice of change in stockownership in which 9.9 shares were transferred from Tibor Klein to Marvin Rubin. The Department of Health approved this transfer of stockownership in July 2011.

Astra Home Care, Inc. d/b/a True Care has authorized 100 shares of stock. The proposed shareholders comprise the following individuals:

Tibor Klein- 10 shares

Marvin Rubin – 90 shares

The Board of Directors of Astra Home Care, Inc. is comprised of the following individuals:

Tibor Klein, President/Secretary/Treasurer
Marvin Rubin, Chief Executive Officer Management, Hamilton Park Nursing and Rehabilitation Center
Affiliations: Astra Home Care, Inc. d/b/a True Care Crown Heights Center for Nursing and Rehabilitation (RHCF) Hamilton Park Nursing and Rehabilitation Center (RHCF) Hopkins Center for Rehabilitation (RHCF) Linden Center for Nursing and Rehabilitation (RHCF)

Tibor Klein is exempt from a character and competence review for this application as an individual previously approved by the Public Health Council for this operator.

The applicant proposes to continue to serve the residents of the following counties from an office located at 117 Church Avenue, Brooklyn, New York 11218

New York
Bronx

Kings
Richmond

Queens
Westchester

The applicant proposes to continue to provide the following health care services:

Nursing
Physical Therapy
Medical Social Services
Housekeeper

Home Health Aide
Speech Language Pathology
Nutrition

Personal Care
Occupational Therapy
Homemaker

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A review of the operations of the following facilities/ agencies for the time periods indicated was performed as part of this review.

Astra Home Care, Inc. d/b/a True Care (LHCSA)
Crown Heights Center for Nursing and Rehabilitation (RHCF) (April 2013 – present)
Hamilton Park Nursing and Rehabilitation Center (RHCF) (December 2012 – present)
Hopkins Center for Rehabilitation (RHCF) (March 2012 – present)
Linden Center for Nursing and Rehabilitation (RHCF) (May 2013 – present)

The information provided by the Division of Home and Community Based Services has indicated that the Licensed Home Care Services Agency has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facilities have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 26, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Bridgewood, LLC d/b/a New Fordham Arms Assisted Living LHCSA
Address: Bronx
County: Bronx
Structure: Limited Liability Company
Application Number: 2267-L

Description of Project:

Bridgewood, LLC d/b/a New Fordham Arms Assisted Living LHCSA, a limited liability company, requests approval for a change in membership of a licensed home care services agency under Article 36 of the Public Health Law. .

This LHCSA is associated with Fordham Arms Home for Adults Assisted Living Program. The applicant has submitted a Certificate of Need application for an identical change in membership of the Adult Home.

Bridgewood, LLC d/b/a New Fordham Arms Assisted Living LHCSA was previously approved as a home care services agency by the Public Health and Health Planning Council at its October 17, 2011 meeting and subsequently licensed as 1686L001. At that time it was solely owned by Charles Scharf.

The purpose of this application is for Mr. Scharf will transfer 50% of his membership interest to Willy Beer through a Membership Interest Sale and Assignment Agreement.

The members of the Bridgewood, LLC d/b/a New Fordham Arms Assisted Living comprise the following:

Charles Scharf, Co-Managing Member – 50%

Willy Beer, Co-Managing Member – 50%
Managing Member, The Battery Group, LLC
Managing Member, Bronxwood Management, LLC

Affiliations:

- Anna Erika Assisted Living (7/03-05/09)
- Bronxwood Management, LLC

Charles Scharf is exempt from Character and Competence as an individual previously approved by the Public Health and Health Planning Council for this operator.

A search of the name Willy Beer revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A 7 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Anna Erika Assisted Living (2006 – May 2009)
- Fordham Arms Home for Adults Assisted Living Program
- Bridgewood, LLC d/b/a New Fordham Arms Assisted Living LHCSA

The information provided by the Division of Assisted Living 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 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.

The applicant proposes to continue to serve the residents of the following counties from an office located at 2915 Williamsbridge Road, Bronx, New York 10467.

Queens	Kings	New York	Bronx	Richmond
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The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Speech-Language Pathology
Occupational Therapy	Physical Therapy	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: July 23, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Baywood, LLC d/b/a Plan and Partner Home Healthcare
Address: Staten Island
County: Richmond
Structure: Limited Liability Company
Application Number: 2303-A

Description of Project:

Baywood, LLC d/b/a Plan and Partner Home Healthcare, a limited liability company, requests approval for a change in membership of a limited licensed home care services agency under Article 36 of the Public Health Law. .

This Limited LHCSA is associated with Harbor Terrace Adult Home and Assisted Living Program. The applicant has submitted a Certificate of Need application for an identical change in membership of the Adult Home and Change of Ownership Application for the Licensed Home Care Services Agency.

Baywood, LLC d/b/a Plan and Partner Home Healthcare was previously approved as a home care services agency by the Public Health Council at its March 13, 2009 meeting and subsequently licensed as 1604A001. At that time it was solely owned by Daniel Stern.

The purpose of this application is for Mr. Stern will transfer 95% of his membership interest to HT ACF Management, LLC through a Membership Interest Sale and Assignment Agreement.

The members of the Baywood, LLC d/b/a Plan and Partner Home Healthcare comprise the following:

HT ACF Management, LLC – 95% Daniel Stern, Managing Member – 5%

Daniel Stern is exempt from Character and Competence as an individual previously approved by the Public Health Council for this operator.

The members of the HT ACF Management, LLC comprise the following individuals:

Willy Beer, Managing Member – 50%
Managing Member, The Battery Group, LLC
Managing Member, Bronxwood Management, LLC

Charles Scharf, Member – 25%
Executive Director, Bronxwood Management, LLC
Executive Director, Bronxwood Home for the Aged, Inc.
CEO, Restorative Management Corp.

Affiliations:

- Anna Erika Assisted Living (7/03-05/09)
- Bronxwood Management, LLC

Affiliations:

- Anna Erika Assisted Living (7/03-05/09)
- New Fordham Arms Assisted Living Adult Home and Assisted Living Program

David Scharf, NHA, Member – 25%
CFO, Restorative Management Corp.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that David Scharf NHA license #01345 holds a NHA license in good standing and the Board of Examiners of Nursing Home

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Baywood, LLC d/b/a Plan and Partner Home Healthcare
Address: Staten Island
County: Richmond
Structure: Limited Liability Company
Application Number: 2303-L

Description of Project:

Baywood, LLC d/b/a Plan and Partner Home Healthcare, a limited liability company, requests approval for a change in membership of a licensed home care services agency under Article 36 of the Public Health Law. .

This LHCSA is associated with Harbor Terrace Adult Home and Assisted Living Program. The applicant has submitted a Certificate of Need application for an identical change in membership of the Adult Home and Change of Ownership Application for the Limited Licensed Home Care Services Agency.

Baywood, LLC d/b/a Plan and Partner Home Healthcare was previously approved as a home care services agency by the Public Health Council at its March 13, 2009 meeting and subsequently licensed as 1604L001. At that time it was solely owned by Daniel Stern.

The purpose of this application is for Mr. Stern will transfer 95% of his membership interest to HT ACF Management, LLC through a Membership Interest Sale and Assignment Agreement.

The members of the Baywood, LLC d/b/a Plan and Partner Home Healthcare comprise the following:

HT ACF Management, LLC – 95% Daniel Stern, Managing Member – 5%

Daniel Stern is exempt from Character and Competence as an individual previously approved by the Public Health Council for this operator.

The members of the HT ACF Management, LLC comprise the following individuals:

Willy Beer, Managing Member – 50%
Managing Member, The Battery Group, LLC
Managing Member, Bronxwood Management, LLC

Charles Scharf, Member – 25%
Executive Director, Bronxwood Management, LLC
Executive Director, Bronxwood Home for the Aged,
Inc.
CEO, Restorative Management Corp.

Affiliations:

- Anna Erika Assisted Living (7/03-05/09)
- Bronxwood Management, LLC

Affiliations:

- Anna Erika Assisted Living (7/03-05/09)
- New Fordham Arms Assisted Living Adult Home and Assisted Living Program

David Scharf, NHA, Member – 25%
CFO, Restorative Management Corp.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that David Scharf NHA license #01345 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license. At this time Mr. Scharf has placed his license on inactive status.

A 7 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Anna Erika Assisted Living (2006 – May 2009)
- Harbor Terrace Adult Home and Assisted Living Program
- Baywood, LLC d/b/a Plan and Partner Home Healthcare
- Fordham Arms Home for Adults Assisted Living Program
- Bridgewood, LLC d/b/a New Fordham Arms Assisted Living LHCSA

The information provided by the Division of Assisted Living 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 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.

The applicant proposes to continue to serve the residents of the following counties from an office located at 110 Henderson Avenue, Staten Island, New York 10301.

Queens Kings New York Richmond

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Physical Therapy	Occupational Therapy	Nutrition	Speech-Language Pathology
Respiratory Therapy	Medical Supplies Equipment and Appliances		

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: July 23, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Healthy and Long Life Care, Inc.
Address: Maspeth
County: Queens
Structure: For Profit Corporation
Application Number: 2105-L
Description of Project:

Healthy and Long Life Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Healthy and Long Life Care, Inc. has authorized 200 shares of stock which are owned solely by Chun Kam Chun.

The members of the Board of Directors of Healthy and Long Life Care, Inc. comprise the following individual:

Chun Kam Chun, HHA, PCA, President
Coordinator/Marketer, Hopeton Care, Inc.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 60-72 60th Avenue, Maspeth, New York 11378:

New York	Kings	Queens
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Audiology	Speech-Language Pathology	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: August 28, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Supreme Homecare Agency of NY, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 1935-L

Description of Project:

Supreme 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 Robert Izsak.

The Board of Directors of Supreme Homecare Agency of NY, Inc. comprises the following individual:

Robert Izsak, President
Owner, Rizarro Real Estate Management

Affiliations:

Hollis Park Manor Nursing Home (11/01/12 – present)
Affinity Skilled Living & Rehabilitation Center (01/01/08 – present)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 3030 Ocean Avenue, Brooklyn, New York 11235:

New York	Kings	Queens
Bronx	Richmond	Westchester

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

A review of the following facilities was conducted as part of this review for the time periods indicated:

Hollis Park Manor Nursing Home (11/01/12 – present)
Affinity Skilled Living & Rehabilitation Center (01/01/08 – present)

The information provided by the Bureau of Nursing Homes Quality and Surveillance 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.

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: September 4, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Ameritech Homecare Solutions, LLC d/b/a PC Aide Plus
Address: Ridgewood
County: Queens
Structure: Limited Liability Company
Application Number: 2212-L

Description of Project:

Ameritech Homecare Solutions, LLC, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

PC Aides Plus, Inc., a business corporation, was previously approved as a home care services agency by the Public Health Council at its March 2, 2007 meeting and subsequently licensed as 1495L001. PC Aides Plus, Inc. submitted a 90 day transfer which was approved in April, 2011 for a change in shareholder interest. At this time, Soundaram Som is the sole shareholder of PC Aides Plus, Inc.

Ameritech Homecare Solutions, LLC purposes to purchase PC Aides Plus, Inc. through a Stock Purchase Agreement.

The members of Ameritech Homecare Solutions, LLC d/b/a PC Aide Plus comprise the following individuals:

Pooja Thaker – Member – 50%	Payal Thaker – Member – 25%
Pharmacist, One Source Homecare Supplies	Unemployed

Jayant K. Thaker, Pharmacist – Member – 25%
Director of Pharmacy & Home Medical
Equipment, One Source Homecare Supplies

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 medical professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 62-26 Myrtle Avenue, Suite 102, Ridgewood, New York 11385.

Bronx	Kings	New York
Queens	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Personal Care	Home Health Aide	Homemaker	Housekeeper
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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: August 13, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: A & T Healthcare, LLC
Address: New City
County: Rockland
Structure: Limited Liability Company
Application Number: 2496-L

Description of Project:

A & T Healthcare, LLC, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

A & T Healthcare, LLC was previously approved as a home care services agency by the Public Health Council at its October 22, 1999 meeting and subsequently licensed as 0935001-0935L005. At that time, Toni Babington was the sole member of the LLC.

In accordance with the Last Will and Testament of Toni Babington, A & T Healthcare, LLC is submitted an application to change the ownership of A & T Healthcare, LLC to the Marital Trust of Toni Babington.

The Board of Directors of A & T Healthcare, LLC comprises the following individuals:

Margaret A. Onody – President Vice President, A & T Healthcare, LLC Vice President, A & T Healthcare of N.J., Inc. Vice President, A & T Certified Home Care, LLC	Tom T. Babington – Vice President VP Sales and Marketing, A & T Healthcare, LLC VP Sales and Marketing, A & T Healthcare of N.J., Inc. VP Sales and Marketing, A & T Certified Home Care, LLC
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Carol E. Ianiro – Secretary
Vice President of Scheduling, A & T Healthcare, LLC
Vice President of Scheduling, A & T Healthcare of N.J., Inc.
Vice President of Scheduling, A & T Certified Home Care, LLC

The Trustees of The Marital Trust of Toni Babington are following individuals:

Margaret A. Onody - Trustee (Previously Disclosed)	Lowell T. Babington – Trustee 401K Coordinator, A & T Healthcare, LLC
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A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven year review was conducted for the following healthcare facilities:

- A & T Healthcare, LLC
- A & T Healthcare of N.J., Inc.
- A & T Certified Home Care, LLC

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.

The information provided by the State of New Jersey has indicated that the A & T Healthcare of N. J., Inc. is up-to-date with their registration, they have had no complaints against this agency and that no enforcement actions have been taken against this agency.

The applicant proposes to continue to serve the residents of the following counties from an office located at 339 North Main Street, New City, New York 10956:

Dutchess	Nassau	Orange	Putnam
Rockland	Suffolk	Westchester	Bronx

The applicant proposes to continue to serve the residents of the following counties from an office located at 20 Route 17K, Newburgh, New York 12550:

Dutchess Sullivan Orange Putnam Ulster

The applicant proposes to continue to serve the residents of the following counties from an office located at 274 Madison Avenue, Room 1301, New York, New York 10016:

Bronx Kings New York Richmond Queens

The applicant proposes to continue to serve the residents of the following counties from an office located at 344 E. Main Street, Suite 202, Mount Kisco, New York 10549:

Dutchess Orange Putnam Westchester Bronx

The applicant proposes to continue to serve the residents of the following counties from an office located at 79 North Front Street, Kingston, New York 12401:

Dutchess Greene Sullivan Ulster

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Medical Social Services
Personal Care	Physical Therapy	Speech Language Pathology
Nutritional	Occupational Therapy	Respiratory Therapy
Housekeeping	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: September 5, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Heathwood Assisted Living at Williamsville, Inc.
Address: Williamsville
County: Erie
Structure: For-Profit Corporation
Application Number: 2219-L

Description of Project:

Heathwood Assisted Living at Williamsville, Inc., a business corporation, requests approval for a change in ownership of a Licensed Home Care Services Agency (LHCSA) under Article 36 of the Public Health Law. This LHCSA is associated with Heathwood Health Care Center, Inc. d/b/a ElderWood Assisted Living at Heathwood and their Assisted Living Program (ALP).

Heathwood Health Care Center, Inc. d/b/a ElderWood Assisted Living at Heathwood was previously approved as a home care services agency by the Public Health and Health Planning Council at its August 4, 2011 meeting and subsequently licensed as 1910L001. At that time the sole shareholder was Robert Chur.

The purpose of this proposal is to purchase the existing Licensed Home Care Services Agency and continue to serve the patients of the Assisted Living Program. A corresponding application for a change of ownership of the Assisted Living Program has been submitted to the Division of Assisted Living.

The applicant has authorized 200 shares of stock which are owned as follows:

Carla C. Suero – 10 shares

190 shares of stock remain unissued.

The Board of Directors of Heathwood Assisted Living at Williamsville, Inc. comprises the following individual:

Carla C. Suero, President
Director of Assisted Living Operations, Elderwood Senior Care

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that Carla Suero NHA license #04423 placed her license on inactive status. While her NHA license was active it was in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or her license.

The applicant proposes to continue to serve the residents of Erie County from an office located at 815 Hopkins Road, Williamsville, New York 14221.

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy	Speech-Language Pathology
Occupational Therapy	Medical Social Services	Nutrition	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: August 26, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Heathwood Assisted Living at Penfield, Inc.
Address: Penfield
County: Monroe
Structure: For-Profit Corporation
Application Number: 2220-L

Description of Project:

Heathwood Assisted Living at Penfield, Inc., a business corporation, requests approval for a change in ownership of a Licensed Home Care Services Agency (LHCSA) under Article 36 of the Public Health Law. This LHCSA is associated with Elderwood Assisted Living at Penfield, LLC and their Assisted Living Program (ALP).

Elderwood Assisted Living at Penfield, LLC was previously approved as a home care services agency by the Public Health Council at its May 8, 2009 meeting and subsequently licensed as 1744L001. At that time its membership was as follows: Robert Chur – 75% and Carol Chur – 25%.

The purpose of this proposal is to purchase the existing Licensed Home Care Services Agency and continue to serve the patients of the Assisted Living Program. A corresponding application for a change of ownership of the Assisted Living Program has been submitted to the Division of Assisted Living.

The applicant has authorized 200 shares of stock, which are owned as follows:

Carla C. Suero – 10 shares

190 shares of stock remain unissued.

The Board of Directors of Heathwood Assisted Living at Penfield, Inc. comprises the following individual:

Carla C. Suero, President
Director of Assisted Living Operations, Elderwood Senior Care

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that Carla Suero NHA license #04423 placed her license on inactive status. While her NHA license was active it was in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or her license.

The applicant proposes to continue to serve the residents of Monroe County from an office located at 100 ElderWood Court, Penfield, New York 14526.

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy	Speech-Language Pathology
Occupational Therapy	Medical Social Services	Nutrition	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: August 26, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Intergen Health, LLC
 Address: Bronx
 County: Bronx
 Structure: Limited Liability Company
 Application Number: 2231-L

Intergen Health, LLC, a limited liability company, requests approval to transfer membership interests of a licensed home care services agency (LHCSA) under Article 36 of the Public Health Law.

Intergen Health, LLC, was previously approved as a home care services agency by the Public Health and Health Planning Council at its December 14, 2011 meeting and was subsequently licensed as 1763L001. At that time, ownership of the LLC consisted of Jason Newman with 25% and Esther Kazanovsky with 75% of membership interest. There were two notifications of membership transfers approved by the Department which resulted in the membership of Intergen Health, LLC consisting of Jason Newman with 91%, Abraham Grossman with 4.5% and Meyer Greisman with 4.5% membership interest.

Intergen Health, LLC, is requesting approval to transfer additional membership interests from Jason Newman to Abraham Grossman and Meyer Greisman.

Jason Newman will transfer 33% of his membership interest to Abraham Grossman and 33% membership interest to Meyer Greisman. Upon completion of this transfer, Meyer Greisman and Abraham Grossman will each own 37.5% and Jason Newman will own 25%.

The membership of Intergen Health, LLC comprises the following individuals:

Abraham Grossman – Member - 37.5% Retired Affiliations: Amazing Home Care Services	Meyer Greisman, NHA – Member - 37.5% Owner/Towne Nursing Staff Inc. Affiliations: Amazing Home Care Services
Jason Newman – Member - 25%	

Jason Newman is exempt from a character and competence review due to the fact that he was previously approved by the Public Health and Health Planning Council for this operator.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that Meyer Greisman, held a NHA license in good standing and that the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license. Mr. Greisman received his NHA license in 1976 and it is voluntarily inactive.

The applicant proposes to serve the residents of the following counties from an office located at 1601 Bronxdale Avenue, Bronx, NY 10462.

Bronx
Queens

Kings
Nassau

New York
Richmond

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care Aide
Nutrition	Homemaker	Housekeeper
Physical Therapy	Speech-Language Pathology	Medical Social Services
Occupational Therapy		

A 7 year review of the operations of the Amazing Home Care Services, LLC (a LHCSA) was performed as part of this review:

The Information provided by the Division of Home and Community Based Services has indicated that the Licensed Home Care Services Agency reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency:

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 21, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Two K Management Corp. d/b/a Family Aides Home Care
Address: Hicksville
County: Nassau
Structure: For-Profit-Corporation
Application Number: 2309-L

Description of Project:

Two K Management Corp. d/b/a Family Aides Home Care, 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.

Family Aides, Inc. was previously approved as a home care services agency by the Public Health Council at its November 14, 2008 meeting and subsequently licensed as 1662L001-1662L005. Family Aides, Inc. subsequently surrendered 1662L0002 and 1662L005 to the Department of Health.

Two K Management Corp. d/b/a Family Aides Home Care proposes to purchase Family Aides, Inc. through an Asset Purchase Agreement.

Two K Management Corp. d/b/a Family Aides Home Care has authorized 200 shares of stock, which are owned as follows:

Kathleen M. Crimi – 100 Shares

Kristine H. Mais – 100 Shares

The proposed Board of Directors of Two K Management Corp. d/b/a Family Aides Home comprises the following individuals:

Kathleen M. Crimi – Director, CEO, President & Secretary
President, Family Aides, Inc.

Kristine H. Mais – Director, Vice President- Finance & Treasurer
Vice President – Finance, Family Aides, Inc.

Affiliation:

- Director, Family Aides, Inc.
(2012-Present)

Affiliation:

- Director, Family Aides, Inc.
(2012-Present)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A review of Family Aides, Inc. was conducted from January 2012 through the present. 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.

The applicant proposes to continue to serve the residents of the following counties from an office located at 120 West John Street, STE B, Hicksville, New York 11801.

Nassau

Suffolk

Queens

Westchester

The applicant proposes to continue to serve the residents of the following counties from an office located at 91-31 Queens Avenue, STE H, Elmhurst, New York 11373.

Bronx

Kings

New York

Queens

Richmond

The applicant proposes to continue to serve the residents of the following county from an office located at 1 S Ocean Avenue, Patchogue, New York 11772.

Suffolk

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: August 13, 2014

2423 L Senior Care Connection, Inc. d/b/a Eddy Senior
Care
(See Exhibit for Counties)

2424 L Eddy Licensed Home Care Agency, Inc.
(See Exhibit for Counties)

Distributed under separate cover

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:

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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 2015 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 Public Health Law Sections 225, 2800, 2803, 3612, and 4010, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 2.59 is amended as follows:

§ 2.59 Prevention of influenza transmission by healthcare and residential facility and agency personnel

(a) Definitions.

(1) "Personnel," for the purposes of this section, shall mean all persons employed or affiliated with a healthcare or residential facility or agency, whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with influenza, they could potentially expose patients or residents to the disease.

(2) "Healthcare and residential facilities and agencies," for the purposes of this section, shall include:

(i) any facility or institution included in the definition of "hospital" in section 2801 of the Public Health Law, including but not limited to general hospitals, nursing homes, and diagnostic and treatment centers;

(ii) any agency established pursuant to Article 36 of the Public Health Law, including but not limited to certified home health agencies, long term home health

care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies; and

(iii) hospices as defined in section 4002 of the Public Health Law.

(3) "Influenza season," for the purposes of this section, shall mean the period of time during which influenza is prevalent as determined by the Commissioner.

(4) "Patient or resident," for the purposes of this section, shall mean any person receiving services from a healthcare or residential facility or agency, including but not limited to inpatients and outpatients, overnight residents, adult day health care participants, and home care and hospice patients, as well as any person presenting for registration or admission at a healthcare or residential facility or agency.

(5) "Influenza vaccine" or "vaccine," for the purposes of this section, means a vaccine currently licensed for immunization and distribution in the United States by the Food and Drug Administration (FDA), for active immunization for the prevention of influenza disease caused by influenza virus(es), or authorized for such use by the FDA pursuant to an Emergency Use Authorization (EUA) or as an Emergency Investigational New Drug (EIND).

(b) All healthcare and residential facilities and agencies shall determine and document which persons qualify as "personnel" under this section.

(c) All healthcare and residential facilities and agencies shall document the influenza vaccination status of all personnel for the current influenza season in each individual's personnel record or

other appropriate record. Documentation of vaccination must include [the name and address of the individual who ordered or administered the vaccine and the date of vaccination]:

(1) a document, prepared by the licensed healthcare practitioner who administered the vaccine, indicating that one dose of influenza vaccine was administered, and specifying the vaccine formulation and the date of administration; or

(2) for personnel employed by a healthcare employer other than the healthcare or residential facility or agency in which he or she is providing service, an attestation by the employer that the employee(s) named in the attestation have been vaccinated against influenza for the current influenza season, and that the healthcare employer maintains documentation of vaccination of those employees, as described in paragraph (1) of this subdivision; or

(3) for student personnel, an attestation by the professional school that the student(s) named in the attestation have been vaccinated against influenza for the current influenza season, and that the school maintains documentation of vaccination of those students, as described in paragraph (1) of this subdivision.

(d) During the influenza season, all healthcare and residential facilities and agencies shall ensure that all personnel not vaccinated against influenza for the current influenza season wear a surgical or procedure mask while in areas where patients or residents [may be] are typically present, except that:

(1) when personnel provide services outside the home of a patient or resident, and not inside a healthcare or residential facility, mask wear shall not be required by this section, provided that this paragraph shall not be interpreted as eliminating any requirement that

personnel wear a mask pursuant to standard and transmission-based precautions not addressed by this section;

(2) personnel required to wear a mask by this subdivision, but who provide speech therapy services, may remove the mask when necessary to deliver care, such as when modeling speech; and

(3) for any person who lip reads, personnel required to wear a mask by this subdivision may remove the mask when necessary for communication.

[Healthcare and residential facilities and agencies shall supply such masks to personnel, free of charge.]

(e) Upon the request of the Department, a healthcare or residential facility or agency must report the number and percentage of personnel that have been vaccinated against influenza for the current influenza season.

(f) All healthcare and residential facilities and agencies shall develop and implement a policy and procedure to ensure compliance with the provisions of this section. The policy and procedure shall include, but is not limited to, identification of those areas where unvaccinated personnel must wear a mask pursuant to subdivision (d) of this Section.

(g) Healthcare and residential facilities and agencies shall supply surgical or procedure masks required by this section at no cost to personnel.

(h) Nothing in this section shall be interpreted as prohibiting any healthcare or residential facility or agency from adopting policies that are more stringent than the requirements of this section.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in Public Health Law (PHL) Sections 225 (5), 2800, 2803 (2), 3612 and 4010 (4). PHL 225 (5) authorizes the Public Health and Health Planning Council (PHHPC) to issue regulations in the State Sanitary Code pertaining to any matters affecting the security of life or health or the preservation and improvement of public health in the state of New York, including designation and control of communicable diseases and ensuring infection control at healthcare facilities and any other premises.

PHL Article 28 (Hospitals), Section 2800 specifies 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, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article.”

PHL Section 2803 (2) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL

Article 28, and to establish minimum standards governing the operation of health care facilities. PHL Section 3612 authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to certified home health agencies and providers of long term home health care programs. PHL Section 4010 (4) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to hospice organizations.

Legislative Objectives:

PHL 225 empowers PHHPC to address any issue affecting the security of life or health or the preservation and improvement of public health in the state of New York, including designation and control of communicable diseases and ensuring infection control at healthcare facilities and any other premises. PHL Article 28 specifically addresses the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services of the highest quality at a reasonable cost. PHL Article 36 addresses the services rendered by certified home health agencies. PHL Article 40 declares that hospice is a socially and financially beneficial alternative to conventional curative care for the terminally ill. The requirement of surgical or procedure masks of unvaccinated healthcare and residential facility and agency personnel in these facilities promotes the health and safety of the patients and residents they serve and support efficient and continuous provision of services.

Needs and Benefits:

In general, section 2.59 of Title 10 of the NYCRR requires healthcare personnel who have not been vaccinated against influenza to wear a mask during the influenza season. These

amendments clarify certain provisions of the existing regulation and make one substantive change.

The clarifying amendments codify the Department’s interpretation of section 2.59, as published by the Department in a document entitled “Frequently Asked Questions (FAQ) Regarding Title 10, Section 2.59 ‘Regulation for Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel’”, dated September 24, 2013. The amendments clarify that the masking requirement applies in those areas where patients or residents are “typically” present, rather than “may be” present. The amendments also define “influenza vaccine” to mean a vaccine approved as an influenza vaccine by the Food and Drug Administration (FDA), or pursuant to an Emergency Use Authorization (EUA), or as an Emergency Investigational New Drug (EIND). This clarification is important because, in the event of a novel influenza virus outbreak, such as H1N1 in 2009, new vaccines and emergency use of existing vaccines may be available or necessary to meet the requirements of the regulation.

The amendments also clarify that the regulation is not intended to require mask wear while a patient or resident is receiving services outside the home or regulated facility. This regulation is based on the reasonable expectation that patients and residents should not be exposed to influenza in their homes or in medical care facilities, by the personnel who they rely upon to care for them. However, when they choose to leave the home or facility and interact with the general public in the community, they are potentially exposing themselves to influenza from any number of sources. The risk of exposure from the healthcare provider is essentially

subsumed by the risk of general community exposures. For this reason, unvaccinated healthcare personnel who are accompanying patients are not required to wear masks while away from patient homes and off facility grounds—for example, while on public transportation, at community events, and in shops.

The final clarification amendment provides that the regulation should not be interpreted as requiring mask wear by unvaccinated personnel who provide speech therapy services, during the time that such personnel are providing care. Similarly, for any person who lip reads, unvaccinated personnel may remove the mask when necessary to communicate.

These amendments also include one important substantive change, in that they revise the documentation requirement for healthcare and residential facilities and agencies. The intent of this change is to create a more flexible system for documenting vaccination status, thereby easing the regulatory burden on regulated parties. Specifically, required documentation would include only the date of vaccination and information specifying the vaccine formulation administered. Further, where the personnel of a healthcare or residential facility or agency includes contract staff and students, the facility or agency may accept an attestation from the employer or school, stating that specified persons have been vaccinated and that the employer or school maintains the required documentation.

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

These amendments do not create any new costs for regulated entities. The revised documentation requirements are expected to ease the regulatory burden on healthcare and residential facilities and agencies.

Cost to State and Local Government:

These amendments do not create any new costs for State or local government. To the extent that State or local governments operate healthcare and residential facilities and agencies, the revised documentation requirements are expected to ease the regulatory burden on these entities.

Cost to the Department of Health:

There are no additional costs to the State or local government. Existing staff will be utilized to educate healthcare and residential facilities and agencies about the revised reporting requirements.

Local Government Mandates:

There are no additional programs, services, duties or responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or any other special district.

Paperwork:

These amendments will not result in any additional paperwork or electronic reporting. The revised documentation requirements are expected to ease the regulatory burden on regulated entities.

Duplication:

This regulation will not conflict with any state or federal rules.

Alternative Approaches:

The alternative would be to leave the current regulation in its current form. However, doing so would continue documentation requirements for regulated parties that do not include the flexibility of this proposed amendment. There would also be no provision relating to persons who choose not to be vaccinated and who, for a medical reason, cannot wear a mask.

Federal Requirements:

There are no minimum standards established by the federal government for the same or similar subject areas.

Compliance Schedule:

This proposal will go into effect upon a Notice of Adoption in the *New York State Register*.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

Any facility defined as a hospital pursuant to Article 28, a home services agency by PHL Article 36, or a hospice by PHL Article 40 will be required to comply. In New York State there are approximately 228 general hospitals, 1198 hospital extension clinics, 1239 diagnostic and treatment centers, and 635 nursing homes. There are also 139 certified home health agencies (CHHAs), 97 long term home health care programs (LTHHCP), 19 hospices and 1164 licensed home care services agencies (LHCSAs).

Of those, it is known that 3 general hospitals, approximately 237 diagnostic and treatment centers, 40 nursing homes, 69 CHHAs, 36 hospices and 860 LHCSAs are small businesses (defined as 100 employees or less), independently owned and operated, affected by this rule. Local governments operate 18 hospitals, 40 nursing homes, 42 CHHAs, at least 7 LHCSAs, and a number of diagnostic and treatment centers and hospices.

Compliance Requirements:

All facilities and agencies must comply with the revised documentation requirement regarding the vaccination status of personnel.

Professional Services:

There are no additional professional services required as a result of this regulation.

Compliance Costs:

These amendments do not create any new costs for small businesses or local governments. To the extent that small businesses and local governments operate healthcare and residential facilities and agencies, the revised documentation requirements are expected to ease the regulatory burden on these entities.

Economic and Technological Feasibility:

This proposal is economically and technically feasible, as it does not impose any additional burdens.

Minimizing Adverse Impact:

This amendment does not create any adverse effect on regulated parties that would require a minimization analysis.

Small Business and Local Government Participation:

Small businesses and local governments are invited to comment during the Codes and Regulations Committee meeting of the Public Health and Health Planning Council, as well as during the official comment period.

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

Effect of Rule:

Any facility defined as a hospital pursuant to Article 28, a home services agency by PHL Article 36, or a hospice by PHL Article 40 will be required to comply. In New York State there are approximately 228 general hospitals, 1198 hospital extension clinics, 1239 diagnostic and treatment centers, and 635 nursing homes. There are also 139 certified home health agencies (CHHAs), 97 long term home health care programs (LTHHCP), 19 hospices and 1164 licensed home care services agencies (LHCSAs). Of those, it is known that 47 general hospitals, approximately 90 diagnostic and treatment centers, 159 nursing homes, 92 certified home health agencies, 19 hospices, and 26 LHCSAs are in counties serving rural areas. These facilities and agencies will not be affected differently than those in non-rural areas.

Compliance Requirements:

All facilities and agencies must document the vaccination status of each personnel member as defined in this regulation for influenza virus, in their personnel or other appropriate record.

Professional Services:

There are no additional professional services required as a result of this regulation.

Compliance Costs:

These amendments do not create any new costs for small businesses or local governments. To the extent that healthcare and residential facilities and agencies are located in rural areas, the revised documentation requirements are expected to ease the regulatory burden on these entities.

Economic and Technological Feasibility:

This proposal is economically and technically feasible, as it does not impose any additional burdens.

Minimizing Adverse Impact:

This amendment does not create any adverse effect on regulated parties that would require a minimization analysis.

Public and Local Government Participation:

The public and local governments are invited to comment during the Codes and Regulations Committee meeting of the Public Health and Health Planning Council, as well as during the official comment period.

JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act (SAPA). It is apparent, from the nature of the proposed amendment, that it will have no impact on jobs and employment opportunities.

SUMMARY OF EXPRESS TERMS

Sections 600.3 and 710.5 of 10 NYCRR require that amendments to Certificate of Need (CON) applications that have been approved by the Public Health and Health Planning Council (PHHPC) be referred to the PHHPC and the regional Health Systems Agency (HSA), if applicable, for reevaluation and recommendations. An amendment is defined as:

- 1) a change in the method or terms of financing of the approved project in excess of ten percent of the approved project costs, or \$15 million, whichever is less; or
- 2) an increase in the total basic costs of construction of the project greater than \$6 million and in excess of ten percent of approved project costs, whichever is less; or
- 3) a substantial change in the terms of agreement for the land or building involved in the project; or
- 4) a reduction in the scope of the project accounting for 15 percent or more of approved project costs; or
- 5) an increase in the number and/or types of beds or services approved for the project; or
- 6) a change in the site of construction if outside the facility's planning area; or

7) a change in the applicant.

The proposed rule changes would delete subparagraphs (1), (2), (3) and (4) of paragraph (c) of section 600.3 and subparagraphs (1), (2), (3) and (4) of paragraph (b) of section 710.5 to remove from the definition of an amendment the above changes in the method or terms of a project's financing, increases in total basic project costs, changes in the terms of agreement for a project's land or building, and reductions in project scope accounting for more than 15 percent of approved costs. Approval of the proposed rule would remove the requirement that the affected changes be referred to the PHHPC (and where applicable, the regional HSA) for reevaluation and recommendation. Removal of the cited provisions would render the affected changes modifications, making them subject only to prior approval by the Commissioner, as set forth in sections 600.3(f) and 710.1(c)(3).

Pursuant to the authority vested in the Public Health and Health Planning Council, subject to the approval of the Commissioner of Health, by sections 2801-a(1) and 2802(1) of the Public Health Law, subdivision (b) of Section 600.3 and subdivision (b) of Section 710.5 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 600.3 is amended to read as follows:

600.3 Amendments and modifications to applications. (a) A change to an application before the Public Health and Health Planning Council has approved or contingently approved the application is hereafter referred to as a [modification] revision; a change to an application which has been approved or contingently approved by the council but for which an operating certificate has not yet been issued shall be referred to as an amendment if it meets the criteria contained in subdivision (c) of this section, and shall be referred to as a modification approvable pursuant to subdivision (f) if it does not meet the criteria contained in subdivision (c) or does not meet the criteria in subdivision (e).

(b) An application made to the Public Health and Health Planning Council, pursuant to this Part, may be modified before the council has approved or contingently approved the application. Such modifications shall be made on appropriate forms supplied by the department and submitted to the council through the central office of the department in Albany and shall be governed by the following:

[(1) nine copies of a modification must be submitted;]

[(2) 1] any modification in the information contained in the original application must

be accompanied by a satisfactory written explanation as to the reason such information was not contained in the original application;

([3] 2) the department, when reviewing a competitive batch of applications, may establish deadlines pursuant to written notification for the submission of any modification to an application; and

([4] 3) if a modification is submitted after any such deadline(s), the application shall be removed from consideration within the competitive batch being reviewed.

(c) After the Public Health and Health Planning Council has approved or contingently approved an application but prior to the issuance of an operating certificate, any change as set forth in paragraphs (1) through ([7]3) of this subdivision shall constitute an amendment to the application, and the applicant shall submit [nine copies thereof] the proposed amendment to the department's central office together with appropriate documentation explaining the reason(s) for the amendment and such additional documentation as may be required in support of such amendment. The amended application shall be referred to the health systems agency having geographic jurisdiction and the [State Hospital Review] Public Health and Health Planning Council for their reevaluation and recommendations. The approval of the Public Health and Health Planning Council must be obtained for any such amendment. Each of the following shall constitute an amendment:

[(1) a change in the method or terms of financing which results in an increase in total project costs, unless the applicant can demonstrate, to the satisfaction of the commissioner, acting on behalf of the Public Health and Health Planning Council, that such change in the method or terms of financing: (a) will not result in a more expensive

project on a present-value basis for third-party payors when evaluated over the expected life of the project; or (b) will not result in an increase in the cost of the project, on a present value basis over its expected life, in excess of ten percent of approved project costs or \$15,000,000, whichever is less;

(2) an increase in the total basic costs of construction as originally approved which is in excess of ten percent or \$15,000,000, whichever is less, of the approved total basic costs of construction provided such increase exceeds \$6,000,000 and the cost increase is not a result of factors of an emergency nature, local zoning and planning issues or inflation, addressed below in subdivision (e) of this section.

(3) a reduction in construction, renovation or modernization which accounted for 15 percent or more of the total basic costs of construction of the application as approved without a corresponding reduction in the total basic costs of construction, subject to consideration of fixed costs;

(4) a substantial change in the terms of any agreement to construct, renovate, or acquire, through a purchase, lease or other arrangement, any land or building related to the application;]

[(5)1] a change in the number and/or type of beds and/or services, other than a reduction of service which would be subject to administrative review;

[(6)2] a change in the location of the site of the construction if outside the facility's service area or adjacent service area; and

[(7)3] any change in the applicant.

(d) For purposes of this section, the following terms shall have the following meanings:

(1) Total project cost means total costs for construction, including but not limited to

costs for demolition work, site preparation, design and construction contingencies, total costs for real property, for fixed and movable equipment, architectural and/or engineering fees, legal fees, construction manager and/or cost consultant fees, construction loan interest costs, and other financing, professional and ancillary fees and charges. If any asset is to be acquired through a leasing arrangement, the relevant cost shall be the cost of the asset as if purchased for cash, not the lease amount. (2) Total basic cost of construction means total project costs less the capitalized amount of construction loan interest and financing fees.

(e)(1) If the commissioner, acting on behalf of the Public Health and Health Planning Council, determines that increases in total project costs or total basic costs of construction are due to factors of an emergency nature such as labor strikes, fires, floods or other natural disasters or factors beyond the control of the applicant, or modifications to the architectural aspects of the application which are made on the recommendation of the department, the applicant may proceed without the need for the application to be referred back to the health systems agency[,the State Hospital Review and Planning Council] and the Public Health and Health Planning Council.

(2) If the applicant can document by evidence acceptable to the commissioner, acting on behalf of the Public Health and Health Planning Council, that increases in total project cost or total basic cost of construction were caused by delays in obtaining zoning or planning approvals which were beyond its control, the commissioner may permit review of the application to proceed without the need for the application to be referred back to the health systems agency[, the State Hospital Review and Planning Council]and the Public Health and Health Planning Council pursuant to this Part. The evidence shall

demonstrate clearly that the applicant had timely pursued the zoning or planning permits, has now obtained all such required permits and approvals, and is prepared to proceed with the project.

(3) If the applicant can document by evidence acceptable to the commissioner, acting on behalf of the Public Health and Health Planning Council, that increases in the total basic cost of construction were caused by inflation in excess of that estimated and approved in the application and that such inflation has affected the total basic cost of construction as a result of delays which were beyond the applicant's control, the commissioner may permit review of the application to proceed without the need for the application to be referred back to the health systems agency[, the State Hospital Review and Planning Council] and the Public Health and Health Planning Council pursuant to this Part. The evidence shall demonstrate clearly that the increase in inflation exceeds that estimated and approved in the application, and that any delays resulting in such inflationary cost increases were beyond the applicant's control.

(f) Any modification submitted subsequent to the issuance of any approval by the Council which does not constitute an amendment pursuant to the provisions of this section shall require only the prior approval of the commissioner.

(g) Failure to disclose an amendment prior to the issuance of an operating certificate shall constitute sufficient grounds for the revocation, limitation or annulment of the approval of establishment.

* * *

Section 710.5 is amended to read as follows:

710.5 Amendments. (a) Subsequent to an approval or contingent approval of an application under this Part, any change, as set forth in paragraphs (b)(1) through ([7]3) of this section, shall constitute an amendment to the application, and the applicant shall submit appropriate documentation as may be required by the commissioner pursuant to this Part in support of such amendment. The amended application shall be referred to the health systems agency having jurisdiction and the [State Hospital Review] Public Health and Health Planning Council for their reevaluation and recommendations. The approval of the commissioner shall be obtained for any such amended application.

(b) Any of the following shall constitute an amendment:

(1) a change in the method or terms of financing unless the applicant can demonstrate, to the satisfaction of the commissioner, that such change in the method or terms of financing will not result in a more expensive project on a present-value basis for third-party payors when evaluated over the expected life of the project, or that such change will not result in an increase in the cost of the project, on a present value basis over its expected life, in excess of ten percent of approved project costs or \$15 million, whichever is less;

(2) an increase in the total basic costs of construction as originally approved which is in excess of ten percent, or \$15,000,000, whichever is less, of the approved total basic costs of construction, provided such increase exceeds \$6,000,000 and the cost increase is not a result of local zoning and planning issues addressed below in paragraph (2) of subdivision (c) of this section;

(3) a reduction in construction, renovation or modernization which accounted for 15 percent or more of the total basic costs of construction of the application as approved

without a corresponding reduction in the total basic costs of construction, subject to consideration of fixed costs;

(4) a substantial change in the terms of any agreement to construct, renovate or acquire, through a purchase, lease or other arrangement, any land or building;]

([5]1) a change in the number and/or types of beds and/or services, other than a reduction of service which would be subject to administrative review;

([6]2) a change in the location of the site of the construction if outside the facility's planning area as identified in Part 709. If the change in site, within the facility's planning area, impacts geographic accessibility in such planning area, the commissioner may before making any finding that such change is in the best interest of the planning area seek the recommendation of the [State Hospital Review] Public Health and Health Planning Council and the health systems agency having geographical jurisdiction. In addition, for applications to establish diagnostic and treatment centers which were not reviewed competitively within a batch, a change of site within a planning area shall not constitute an amendment pursuant to the provisions of this section and shall require only the prior approval of the commissioner; or

([7]3) any change in the applicant.

(c)(1) If the commissioner determines that increases in total project costs or total basic costs of construction are due to factors of an emergency nature such as labor strikes, fires, floods or other natural disasters, or factors beyond the control of the applicant, or modifications to the architectural aspects of the application which are made on the recommendation of the department, the commissioner may permit review of the application to proceed without the need for the application to be referred back to the

health systems agency and the council pursuant to this Part. However, failure of the applicant to obtain financing or appropriate environmental and zoning permits or approvals shall not be deemed to be beyond the control of the applicant.

(2) If the applicant can document by evidence acceptable to the commissioner that increases in total project costs or total basic costs of construction were caused by delays in obtaining zoning or planning approvals which were beyond its control, the commissioner may permit review of the application to proceed without the need for the application to be referred back to the health systems agency and the council pursuant to this part. The evidence should clearly demonstrate that the applicant had timely pursued the zoning or planning permits and in addition that the applicant has now obtained all such required permits and approvals and is prepared to proceed with the project.

(3) If the applicant can document, by evidence acceptable to the commissioner, that increases in the total basic cost of construction were caused by inflation in excess of that estimated and approved in the application and that such inflation has affected the total basic cost of construction as a result of delays which were beyond the applicant's control, the commissioner may permit review of the application to proceed without the need for the application to be referred back to the health systems agency[, the State Hospital Review and Planning Council] and the Public Health and Health Planning Council pursuant to this Part. The evidence shall demonstrate clearly that the increase in inflation exceeds that estimated and approved in the application, and that any delays resulting in such inflationary cost increases were beyond the applicant's control.

(d) The applicant must obtain the prior approval of the commissioner for any change relating to the program scope or functional space concept of the project, total project

costs or increase in total basic costs of construction, a change in the ownership interest in the land, building or equipment relating to the proposal, a change in the location of the site of the construction, or interest rates relating to the financing of any aspect of the project, regardless of whether such change constitutes an amendment under this section.

* * *

NOTICE OF CONSENSUS RULEMAKING

Statutory Authority:

Pursuant to the authority vested in the Public Health and Health Planning Council, subject to the approval of the Commissioner of Health, by sections 2801-a(1) and 2802(1) of the Public Health Law, the Department proposes to amend subdivision (b) of Section 600.3 and subdivision (b) of Section 710.5 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Basis:

The proposed rule changes would revise provisions of section 600.3 and section 710.5 that require review by the Public Health and Health Planning Council (PHHPC) of certain changes to Certificate of Need (CON) applications for projects awaiting approval or already approved by the PHHPC but which have not yet proceeded to actual establishment or construction. These amendments to the rules would reduce the processing time for amended CON applications, which would result in cost savings for the applicants and in more timely access to the services to be delivered by proposed new entities or through construction activities proposed by established providers. Because of these benefits to hospitals, nursing homes, diagnostic and treatment centers (clinics) and other entities regulated by Article 28 of the Public Health Law, the Department anticipates no objection to the proposed rule changes. On the contrary, representatives of various health care provider associations have expressed support for these changes as part of a larger effort by the Department and the PHHPC to streamline the CON review process.

The Department also anticipates no objection to the technical changes being undertaken in the proposed rules. The first of these changes is to substitute reference to the Public Health and Health Planning Council for the former State Hospital Review and Planning Council and the former Public Health Council in sections 600.3 and 710.5. The second is to change the term “modification” to “revision” in section 600.3 where it refers to applications not yet acted upon by the Council. This is because the term “modification” in 600.3 also refers to applications acted upon by the Council for which subsequent proposed changes do not constitute amendments. The proposed change in terminology would resolve this ambiguity in the use of the term “modification” and do away with the confusion it sometimes causes for applicants in proposing changes to their CON applications, whether before or after Council approval. A third technical amendment would remove the provision in section 600.3 that requires applicants to submit nine copies of any proposed revision of an application. This change reflects the Department’s implementation of an electronic system for the submission and processing of CON applications, which eliminates the costs associated with the paper copies currently required of applicants.

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JOB IMPACT STATEMENT

The proposed rules simplify the process for the approval of amendment of approved CON applications for the establishment and construction of hospitals, nursing homes, clinics and other health care facilities subject to Article 28 of the Public Health Law. Because these rules represent only a change in application procedures, they will have no impact on jobs and employment opportunities, in the health care sector or elsewhere.

FOR DISCUSSION

Sections of Title 10 NYCRR – Integrated Services Licensure
(DISTRIBUTED UNDER SEPARATE COVER)