

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
SPECIAL ESTABLISHMENT AND PROJECT REVIEW COMMITTEE

AGENDA

October 2, 2014

10:00 a.m.

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

I. SPECIAL COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Peter Robinson, Chair

Applications for Establishment and Construction of Health Care Facilities

Ambulatory Surgery Center- Establish/Construct

Exhibit # 1

	<u>Number</u>	<u>Applicant/Facility</u>
1.	141300 B	Greenwich Village Ambulatory Surgery Center, LLC (New York County) Mr. Kraut – Recusal

Residential Health Care Facilities – Establish/Construct

Exhibit #2

	<u>Number</u>	<u>Applicant/Facility</u>
1.	132356 E	KPRH IV Operations, LLC (Queens County)
2.	141215 E	Dunkirk Operating, LLC d/b/a Chautauqua Nursing and Rehabilitation Center (Chautauqua County)



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 of the North Shore-LIJ Health System.

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 # 132356-E
KPRH IV Operations, LLC

Program: Residential Health Care Facility **County:** Kings
Purpose: Establishment **Acknowledged:** December 30, 2013

Executive Summary

Description

KPRH IV Operations, LLC, is requesting to become the new operator of Flushing Manor Care Center, an existing proprietary business corporation and a 278-bed Residential Health Care Facility (RHCF) located at 139-66 35th Avenue in Flushing, and to decertify 10 RHCF beds, resulting in a total of 268 remaining RHCF beds. Ownership of the facility operation before and after the requested change is as follows:

(CHHA). The CHHA will go before the Public Health and Health Planning Council at a later date since it is in the process of receiving its operating certificate.

DOH Recommendation
Contingent Approval

Need Summary

KPRH IV Operations, LLC, seeks approval to be established as the operator of Flushing Manor Care Center, Inc. Flushing Manor Care Center is a 278-bed Article 28 residential health care facility (RHCF) located at 139-66 35th Avenue, Flushing, 11354, in Queens County. The facility also seeks approval to reduce its RHCF certified bed capacity by 10 beds, resulting in a 268-bed facility.

Program Summary

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

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Financial Summary

There are no project costs associated with this application.

Budget:	Revenues:	\$24,657,843
	Expenses:	<u>24,195,341</u>
	Gain:	\$ 462,502

<u>Current</u>	
Flushing Manor Care Center, Inc.	
<u>Name</u>	<u>Percentages</u>
Michael Benenson	17.3%
Sharon Sydney Benenson	17.3%
Amy Benenson	17.3%
Blanche Benenson	17.3%
Esther Benenson	30.8%

<u>Proposed</u>	
KPRHIV Operations, LLC	
<u>Name</u>	<u>Percentages</u>
Cheskel Berkowitz	23.34%
Sheya Landa	20.00%
David Rubenstein	16.66%
Gabrielle Philipson	15.00%
Leah Freidman	10.00%
Rochel David	10.00%
Bent Philipson	5.00%

CON 132355, CON 132349 and CON 132352 went to the Public Health and Health Planning Council on June 12, 2014, for approval, and are also under the Omnibus Sale Agreement which also includes this application, as well as the sale and acquisition of the Queens-Long Island Certified Home Health Agency

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 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; and
 - 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 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]
4. Submission and programmatic approval of an acceptable name for the facility. [LTC]
5. Submission and programmatic approval of the floor plans showing the beds to be decertified. [LTC]
6. Submission of an executed building lease acceptable to the Department of Health. [BFA]
7. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by the Department of Health. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
8. Submission of an executed working capital loan acceptable to the Department of Health. [BFA]
9. Submission of a photocopy of an executed facility lease agreement, 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

The applicant proposes to decertify ten beds upon approval of this application by the Public Health and Health Planning Council, as shown in the following table:

<u>Flushing Manor Care Center</u>	<u>Current</u>	<u>Proposed Action</u>	<u>Upon Completion</u>
RHCF Beds	278	(10)	268
Total	278	(10)	268

Flushing Manor Care Center's utilization was 82.6% in 2010, 78.0% in 2011, and 81.2% in 2012. During the month of August, utilization at this facility increased to 96.5% when calculated using a bed count of 268. The proposed operator also noted that the same types of post-acute rehabilitation, bariatric, multiple sclerosis, and other programs that have been implemented to successfully turn around many of its other RHCFs will also be provided at Flushing Manor Care Center upon approval of this application. Reducing the facility's bed capacity will also result in the region's utilization moving closer to the Department's planning optimum.

Analysis

There is currently a need for 8,663 beds in the New York City Region as indicated in Table 1 below. However, the average occupancy for the New York City Region is 94.8% as indicated in Table 2.

Table 1: RHCF Need – New York City Region

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

Table 2: Flushing Manor Care Center/Queens County/New York City Region Occupancy

<u>Facility/County/Region</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>	<u>% Occupancy 2012</u>
Flushing Manor Care Center	82.6%	78.0%	81.2%
Queens County	94.7%	94.4%	94.0%
New York City Region	95.4%	94.8%	94.8%

Flushing Manor Care Center's utilization was 82.6% in 2010, 78.0% in 2011, and 81.2% in 2012. The applicant stated that utilization was low during this period primarily due to residents of Flushing Manor Nursing Home occupying a unit in Flushing Manor Care Center while multi-phase renovations to Flushing Manor Nursing Home were being performed under an approved Limited Review Application (AEP-6509). The relocation of patients occurred through an arrangement with the Metropolitan Area Regional Office and under the development of operational protocols. Once the Flushing Manor Nursing Home residents were returned to their facility, Flushing Manor Care Center began cosmetic renovations to its own facility on that same unit, which also prevented them from accepting residents.

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.

Flushing Manor Care Center's Medicaid admissions of 50.8% in 2011 and 48.3% in 2012 exceeded the Queens County 75% rates of 30.4% in 2011 and 29.7% in 2012.

Conclusion

Approval of this application will result in the maintenance of a necessary resource that provides services to both the Medicaid patient population and the community it serves.

Recommendation

From a need perspective, contingent approval is recommended.

<h2>Program Analysis</h2>

Facility Information

	Existing	Proposed
Facility Name	Flushing Manor Care Center	TBD
Address	139-62 35th Avenue Flushing, NY 11354 PFI: 1709	Same
RHCF Capacity	278	268
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Flushing Manor Care Center Inc.	KPRH IV Operations, LLC <div style="font-size: small;"> Members: Cheskel Berkowitz 23.34% Sheya Landa 20.00% David Rubinstein 16.66% Gabrielle Philipson 15.00% Leah Friedman 10.00% Rochel David 10.00% Bent Philipson 5.00% 100.00% </div>

Character and Competence - Background

Facilities Reviewed

Nursing Homes:

Avalon Gardens Rehabilitation and Health Care Center	09/2004 to present
Bay Park Center for Nursing and Rehabilitation	12/2009 to present
Crown Center for Nursing and Rehabilitation	08/2010 to present
Diamond Hill Nursing and Rehabilitation Center	08/2010 to present
Little Neck Care Center	04/2011 to present
Nassau Extended Care Facility	09/2004 to present
Park Avenue Extended Care Facility	09/2004 to present
Pathways Nursing and Rehabilitative Center (formerly Hilltop)	08/2010 to present
Rosewood Rehabilitation and Nursing Center	08/2010 to present

South Point Plaza Nursing and Rehabilitation Center (formerly Bayview Nursing and Rehabilitation Center)	09/2004 to present
The Hamptons Center for Nursing	07/2008 to present
Throgs Neck Extended Care Facility	09/2004 to present
Townhouse Center for Rehabilitation & Nursing	09/2004 to present
North Westchester Restorative Therapy & Nursing Center	12/2010 to 04/2011

<u>Home Health Agency</u> Pella Care, LLC	01/2005 to present
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Individual Background Review

Cheskel Berkowitz is the president of HHCNY, Inc., a healthcare staffing company doing business as Staff Blue, located in Brooklyn NY. Mr. Berkowitz discloses the following health facility interests:

North Westchester Restorative Therapy & Nursing Center	12/2010 to 04/2011
Pella Care, LLC (Home Care)	01/2005 to present

Sheya Landa is a licensed emergency medical technician in good standing in New York. He is employed part-time with the Richmond County Ambulance Service since 04/02/2014. Mr. Landa discloses no ownership interests in health care facilities.

David Rubinstein lists current employment as an administrator with Garden State Health Care Administrators Inc, and as owner of United Health Administrators Inc. Both companies are in the insurance industry providing health insurance benefits. Mr. Rubenstein is also owner of Tristate Nursing Staffing LLC, which provides staffing. Mr. Rubinstein discloses no ownership interests in health care facilities.

Gabrielle Philipson worked from 11/15/2009 to 04/07/2010 as an Administrative Assistant at Bay Park Center for Nursing & Rehabilitation. Ms. Philipson discloses no other employment. Ms. Philipson discloses no ownership interests in health care facilities.

Leah (Zahler) Friedman is currently employed in human resources with Confidence Management Systems, in Linden NJ, since 1997. Ms. Friedman discloses no ownership interests in health care facilities.

Rochel (Zahler) David is currently employed in human resources and payroll with Confidence Management Systems, in Linden NJ, since 1991. Ms. David discloses no ownership interests in health care facilities.

Bent Philipson lists his employment, since 1996, as executive managing partner at Woodmere Rehabilitation and Health Care Center in Woodmere, NY. Mr. Philipson discloses the following health facility interests:

Avalon Gardens Rehabilitation and Health Care Center	05/2003 to present
Bay Park Center for Nursing and Rehabilitation	12/2009 to present
Crown Center for Nursing and Rehabilitation	08/2010 to present
Diamond Hill Nursing and Rehabilitation Center	08/2010 to present
Little Neck Care Center	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Pathways Nursing and Rehabilitative Center	08/2010 to present
Rosewood Rehabilitation and Nursing Center	08/2010 to present

South Point Plaza Nursing and Rehabilitation Center (formerly Bayview Nursing and Rehabilitation Center)	04/2003 to present
The Hamptons Center for Nursing	07/2008 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Center for Rehabilitation & Nursing	07/2004 to present

Character and Competence - Analysis

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

A review of **Avalon Gardens Rehabilitation & Health Care Center, LLC** for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-09-014 issued April 21, 2009 for surveillance findings on May 23, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(1)&(2) – Quality of Care: Accidents
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-12-034 issued July 16, 2012 for surveillance findings on July 29, 2011. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Practicable Potential and 415.26 Administration.

A review of operations for the Avalon Gardens Rehabilitation and Health Care Center for the period identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of **Bay Park Center for Nursing and Rehabilitation** for the period identified above reveals the following.

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-11-009 issued March 2, 2011 for surveillance findings on December 18, 2009. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care: Highest Practicable Potential and 10 NYCRR 415.12(i)(1) - Quality of Care: Nutrition Status.
- The facility was fined \$18,000 pursuant to a Stipulation and Order NH-12-030 issued May 30, 2012 for surveillance findings on February 16, 2011. Multiple deficiencies were found under 10 NYCRR 415.4(b)(1)(i) - Free from Abuse; 10 NYCRR 415.4(b) - Development of Abuse Policies; 10 NYCRR 415.12(h)(2) - Quality of Care: Accidents; 10 NYCRR 415.12(i)(1) - Quality of Care: Nutrition; and 10 NYCRR 415.26(c)(1)(iv) - Nurse Aide Competency.

A detailed review of the enforcements listed above for Bay Park Center for Nursing and Rehabilitation leads to a determination that there was no incident of repeat enforcements. Thus, a review of operations for Bay Park Center for Nursing and Rehabilitation for the period identified above results in a conclusion of substantially consistent high level of care.

A review of **Crown Center for Nursing and Rehabilitation** for the period identified above reveals the following.

- The facility was fined \$28,000 pursuant to a Stipulation and Order NH-12-035 issued August 24, 2012 for surveillance findings on April 4, 2011 and February 17, 2011. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care: Highest Practicable Potential; 10 NYCRR 415.12 - Quality of Care: Highest Practicable Potential; 10 NYCRR 415.12(c) - Quality of Care: Pressure Sores; 10 NYCRR 415.26(a)(1) – Administration; 10 NYCRR 415.26(b)(3)(4) - Governing Body; 10 NYCRR 415.15(a)(1)(2)(4) - Medical Director; and 10 NYCRR 415.27(a)(c)(3)(i,ii,iv,v)(4) - Quality Assurance.

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

A review of operations for **Nassau Extended Care Facility** for the time period indicated above reveals that the facility was fined \$6,000 pursuant to a Stipulation and Order issued August 29, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10NYCRR 415.4(b) Prohibit Abuse/Neglect/Mistreatment, 415.5(a) Dignity and 415.26 Administration.

A review of **South Point Plaza Nursing and Rehabilitation Center** for the period identified above reveals the following.

- The facility was fined \$7,000 pursuant to a Stipulation and Order NH-05-050 issued September 29, 2005 for surveillance findings on November 16, 2004. Deficiencies were found under 10 NYCRR 415.5(h)(2) - Quality of Care: Environment; 10 NYCRR 415.12 - Quality of Care; 10 NYCRR 415.12(c)(1) - Quality of Care: Pressure Sores; and 10 NYCRR 415.12(h)(2) - Quality of Care: Accidents.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-07-046 issued June 13, 2007 for surveillance findings on December 2, 2005. Deficiencies were found under 10 NYCRR 415.11(c)(3) - Comprehensive Care Plans.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-11-065 issued December 16, 2011 for surveillance findings on December 7, 2010. Deficiencies were found under 10 NYCRR 415.12(c)(1) - Quality of Care: Pressure Sores.

A detailed review of the enforcements listed above for South Point Plaza Nursing and Rehabilitation Center formerly known as Bayview Nursing and Rehabilitation leads to a determination that there was no incident of repeat enforcements. Thus, a review of operations for South Point Plaza Nursing and Rehabilitation Center for the period identified above results in a conclusion of substantially consistent high level of care.

A review of **The Hamptons Center for Rehabilitation and Nursing** for the period identified above reveals the following.

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-065 issued December 6, 2010 for surveillance findings on September 16, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents & Supervision and 415.26 Administration.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-11-031 issued May 24, 2011 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 - Provide Care/Services for Highest Well Being.

A review of operations for The Hamptons Center for Rehabilitation and Nursing results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for Diamond Hill Nursing and Rehabilitation Center, Little Neck Care Center, Park Avenue Extended Care Facility, Pathways Nursing and Rehabilitative Center – Hilltop, Rosewood Rehabilitation and Nursing Center, Throgs Neck Extended Care Facility, North Westchester Restorative Therapy & Nursing Center, and Townhouse Center for Rehabilitation & Nursing for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Pella Care, LLC (Home Care) for the period 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. The facility is in compliance with CMS 2013 sprinkler mandates.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

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

Date:	August 21, 2013
Seller:	Flushing Manor Care Center, Inc.
Purchaser :	Kennedy Pavilion RH IV, LLC
Purchased Assets:	All assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents.
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Assumed Liabilities:	Those associated with purchased assets
Purchase Price:	\$3,708,000 for the operating interest.
Payment of Purchase Price:	\$711,600 has been paid in cash and put into escrow with the balance of \$2,996,400 to be paid at closing.

Kennedy Pavilion RH IV, LLC will be renamed KPRH IV Operations, LLC.

The proposed members have submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring interest, without releasing the transferor of its liability and responsibility.

Omnibus Sale Agreement

An Omnibus Sale Agreement has been executed between the sellers: Flushing Manor Geriatric Center, Inc. d/b/a William O. Benenson Rehabilitation Center, Flushing Manor Dialysis Center, LLC, FMNH, LLC d/b/a Flushing Manor Nursing and Rehabilitation Center, Flushing Manor Care Center, Inc. and Queens-Long Island Certified Home Health Agency, LLC and the buyers: Kennedy Pavilion RH I, LLC, Kennedy Pavilion RH II, LLC, Kennedy Pavilion RH III, LLC, KPRH IV Operations LLC and Kennedy CHHA, LLC whereas each Operating Asset Purchase Agreement and Real Estate Purchase Agreement shall simultaneously close upon receipt of the Buyer of all necessary regulatory approvals and other closing conditions. The aggregate purchase price is \$117,000,000 with the operational assets totaling \$28,457,400.

Lease Agreement

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

Premises:	RHCF located at 139-66 35 th Avenue, Flushing, NY
Landlord:	KPRH IV Realty, LLC
Tenant:	KPRH IV Operations, LLC
Terms:	26 years commencing on the execution of the lease with a ten year option to renew.
Rental:	Annual rent is equal to the Landlord's annual HUD debt service payment, HUD mortgage insurance premiums, real property taxes and property and liability insurance.
Provisions:	Tenant is responsible for general liability insurance, utilities and maintenance

The existing lease was assigned and assumed to KPRH IV Realty, LLC from 13962 Realty, LLC, on December 18, 2013.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity.

Operating Budget

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

<u>Revenues:</u>	
Medicaid	\$16,295,432
Medicare	3,554,700
Private Pay/Other	3,818,100
Assessment	<u>989,611</u>
Total RHCF	\$24,657,843
<u>Expenses:</u>	
Operating	\$21,114,243
Capital	<u>3,081,098</u>
Total	\$24,195,341

Net Income \$462,502

Total Patient Days 96,400

- 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 increases and elimination of the transition adjustment.
- Overall utilization is projected at 98.5% based on 268 beds.
- Utilization by payor source is anticipated as follows:

Medicaid	82.0%
Medicare	6.0%
Private/Other	12.0%
- Breakeven utilization is projected at 96.7%.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the operations is \$3,708,000 will be paid by \$711,600 of the proposed members' equity and the remaining \$2,966,400 will be financed through a mortgage with 4.5% interest rate over a 30 year amortization. A bank letter of interest from Greystone Funding Corporation has been submitted by the applicant.

Working capital requirements are estimated at \$4,032,557 based on two months' of first year expenses and will be satisfied from a \$655,347 bank loan over 5 years at 6% interest and the facility's existing cash and receivables and additional members' equity. Net cash and receivables (\$1,992,421) minus accounts payable (\$1,309,834) was \$682,587 at December 31, 2013, resulting in a need for additional equity of \$2,694,623 from the proposed members. A bank letter of interest from Greystone Funding Corporation has been submitted by the applicant. An affidavit from proposed applicant member, Bent Philipson, states that he is willing to contribute resources disproportionate to his ownership percentage. Review of BFA Attachment B, 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 \$462,502 would be maintained during the first year following change in ownership. As of August 31, 2014, the facility has an occupancy level of 96.5% utilizing 268-beds based on the 10 RHCF bed decertification. The first year budget is based on the current occupancy levels and payor mix between the third party payors. BFA Attachment C presents the pro-forma balance sheet of KPRH IV Operations, LLC. As shown, the facility will initiate operation with \$3,497,738 members' equity. It is noted that assets include \$3,708,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, members' equity would be negative \$2,311,053. 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 D, financial summary of Flushing Manor Care Center, shows positive net equity for the period shown and positive working capital and net equity for 2011-2013. The facility has experienced an ongoing net loss from operations for the period shown. The net losses from 2011 to 2013 were due to operational inefficiencies and low utilization in which the RHCF has currently turned around as of August 31, 2014 with an overall utilization of 96.5%. The proposed members will take the following necessary steps to achieve further financial viability:

- Reduction of staff without interruption of patient services.
- Renegotiating current purchasing contracts.
- Increasing the case mix of the residents by working with area hospitals and placement staff.

Review of BFA Attachment E, financial summaries of proposed members' affiliated facilities, shows the thirteen RHCFs had current positive net income for the period shown with the following exceptions: Bayview Nursing had an operational loss due to Hurricane Sandy and Diamond Hill Nursing has a net loss due to operational inefficiencies which are being corrected by management to reach positive margins.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Net Worth of Proposed Members
BFA Attachment C	Pro-forma Balance Sheet, KPRH IV Operations, LLC
BFA Attachment D	Financial Summary, Flushing Manor Care Center, 2011- 2013
BFA Attachment E	Financial Summary of proposed members affiliated Nursing Homes
BNHLC Attachment A	Quality Measures and Inspection Reports



Public Health and Health Planning Council

Project # 141215-E
Dunkirk Operating, LLC d/b/a Chautauqua Nursing and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Chautauqua
Acknowledged: May 15, 2014

Executive Summary

Description

Dunkirk Operating, LLC, a recently formed New York for-profit entity, is seeking approval to be established as the new operator of Chautauqua County Home, an existing 216-bed public residential health care facility (RHCF) located at 10836 Temple Road, Dunkirk. Upon CON approval the facility's name will be Chautauqua Nursing and Rehabilitation Center. A separate realty entity, Dunkirk Realty Holdings, LLC, will acquire the facility's real property.

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

<u>Current Operator:</u>	<u>Ownership</u>
County of Chautauqua	100.00%

<u>Proposed Operator</u>	<u>Ownership</u>
Dunkirk Operating, LLC	
Anthony Bacchi	23.34%
Bernadette Brinsko *	2.00%
Shannon Cayea*	3.00%
Isaac Hersh	25.33%
Deena Hersh	21.00%
Edward Farbenblum*	20.33%
Martin Farbenblum	5.00%

* Existing members of Dunkirk Operating, LLC. The remaining individuals will purchase membership interest in Dunkirk Operations, LLC via a subscription agreement at \$42,857 per unit, or approximately \$3,199,713, broken down as follows: Anthony Bacchi \$999,854; Isaac Hersh \$1,085,577; Deena Hersh \$899,997; and Martin Farbenblum \$214,285.

DOH Recommendation
Contingent Approval

Need Summary

Chautauqua County Home's utilization was 97.6% in 2010, 97.5% in 2011, and 98.3% in 2012. Current utilization, as of June 25, 2014, was 98.6%, which exceeds the County's overall utilization rate and the Department's 97% planning optimum..

Program Summary

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

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

Financial Summary

The aggregate purchase price for the real property and operating assets is \$16,000,000 which is being allocated to the real property. Project funding will be as follows: the members of Dunkirk Operating, LLC who are subject to the subscription agreement will provide \$3,199,713 in equity, and Dunkirk Realty Holdings, LLC members will provide \$2,300,287 in equity, of which \$1,600,000 has already been paid. The \$10,500,000 balance will be funded through a five year self-amortizing loan at 5.5%. A letter of interest for the loan has been provided by First Niagara Bank.

There are no project costs associated with this proposal.

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

<u>Budget:</u>	Revenues:	\$19,718,345
	Expenses:	<u>\$18,986,028</u>
	Gain:	\$732,317

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 commitment for a real property loan acceptable to the Department of Health. [BFA]
4. Submission of an executed building lease acceptable to the Department of Health. [BFA]
5. Submission of the executed Amended and Restated Articles of Dunkirk Operating, LLC, acceptable to the Department. [CSL]
6. Submission of the amended Operating Agreement of Dunkirk Operating, LLC, acceptable to the Department. [CSL]
7. Submission of an executed lease agreement between Dunkirk Realty Holdings, LLC and the applicant, 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. Certification that the facility is in full compliance with the CMS 2013 sprinkler mandate at the time of closing. [LTC]

Council Action Date

October 2, 2014

Need Analysis

Background

Dunkirk Operating, LLC seeks approval to become the established operator of Chautauqua County Home, a 216-bed Article 28 residential health care facility, located at 10836 Temple Road, Dunkirk, 14048, in Chautauqua County. Upon approval of this application, Chautauqua County Home will be Chautauqua Nursing and Rehabilitation Center.

Analysis

There is currently a surplus of 213 beds in Chautauqua County as indicated in Table 1 below. The overall occupancy for Chautauqua County is 92.1% for 2012 as indicated in Table 2.

Table 1: RHCN Need – Chautauqua County

2016 Projected Need	831
Current Beds	1,044
Beds Under Construction	0
Total Resources	1,044
Unmet Need	-213

Chautauqua County Home's utilization was 97.6% in 2010, 97.5% in 2011, and 98.3% in 2012. Chautauqua County Home has continually exceeded both the Department's 97% optimum utilization rate and the County's overall occupancy rates.

Table 2: Chautauqua County Home / Chautauqua County Occupancy

<u>Facility/County</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>	<u>% Occupancy 2012</u>
Chautauqua County Home	97.6%	97.5%	98.3%
Chautauqua County	93.7%	94.0%	92.1%

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. Chautauqua County Home's Medicaid admissions of 17.0% in 2011 and 19.0% in 2012 exceeded the Chautauqua County 75% rates of 10.9% in 2011 and 12.3% in 2012.

Conclusion

Approval of this application will result in the maintenance of a necessary community resource that provides needed services to county residents and the Medicaid population.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Chautauqua County Home	Chautauqua Nursing and Rehabilitation Center
Address	10836 Temple Road Dunkirk, NY. 14048	Same
RHCF Capacity	216	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	County	Proprietary
Class of Operator	Public	Limited Liability Company
Operator	County of Chautauqua	Dunkirk Operating, LLC Managing Member: Edward Farbenblum 20.33% Members: Isaac Hersh 25.33% Anthony Bacchi 23.33% Deena Hersh 21.00% Martin Farbenblum 5.00% Shannon Cayea 3.00% Bernadette Brinsko 2.00%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Avalon Gardens Rehabilitation and Health Care Center	09/2004 to present
Bay Park Center for Nursing and Rehabilitation	01/2005 to present
Eastchester Rehabilitation and Health Care Center	09/2004 to present
Fort Tryon Center for Nursing	09/2004 to 01/2009
Franklin Center for Rehabilitation and Nursing	09/2004 to 12/2009
Golden Gate Rehabilitation and Health Care Center	09/2004 to present
Golden Hill Nursing and Rehabilitation Center	10/2012 to present
Nassau Extended Care Facility	09/2004 to present
Nathan Miller Center for Nursing (closed)	09/2004 to 12/2009
Park Avenue Extended Care Facility	09/2004 to present
South Point Plaza Nursing and Rehabilitation Center (formerly Bayview Nursing and Rehabilitation Center)	09/2004 to present
Split Rock Rehabilitation and Health Care Center	09/2004 to 12/2009
Spring Creek Rehabilitation and Nursing Care Center	01/2009 to present
Susquehanna Nursing and Rehabilitation Center	02/2005 to present
The Hamptons Center for Rehabilitation and Nursing	09/2007 to present
Throgs Neck Extended Care Facility	09/2004 to present
Townhouse Extended Care Center	09/2004 to present
White Plains Center for Nursing	09/2004 to present
Woodmere Rehab and Health Care Center, Inc.	09/2004 to present

Diagnostic and Treatment Center

Privilege Care Diagnostic and Treatment Center	04/2008 to present
Woodmere Dialysis, LLC	09/2004 to present

Individual Background Review

Edward Farbenblum is the Vice President of the Pinetree Group, Inc., a real estate agency located in New York, New York. Mr. Farbenblum discloses the following ownership interests:

Golden Hill Nursing and Rehabilitation Center	10/2012 to present
Nassau Extended Care Facility	07/2004 to present
The Hamptons Center for Rehabilitation and Nursing	10/2007 to present
Park Avenue Extended Care Facility	07/2004 to present
Susquehanna Nursing and Rehabilitation Center	02/2005 to present
Townhouse Extended Care Center	07/2004 to present
Privilege Care Diagnostic and Treatment Center	04/2008 to present

Isaac Hersh lists his employment as Assistant Administrator of Woodmere Rehab and Healthcare Center, Inc. since March 2013. Previously, he was the Medicaid Coordinator of New Surfside Nursing Home. Mr. Hersh discloses the following ownership interests:

Fort Tryon Center for Nursing	2003 to 01/2009
Franklin Center for Rehabilitation and Nursing	2003 to 12/2009

Anthony Bacchi lists himself as a Partner in Magna Enterprises, LLC, a real estate investment firm located in Roslyn, New York since 1999. Dr. Bacchi holds a New York State physician license, currently in good standing. Dr. Bacchi discloses the following ownership interests in health facilities:

Avalon Gardens Rehabilitation and Health Care Center	05/2003 to present
Bay Park Center for Nursing and Rehabilitation	07/2007 to present
South Point Plaza Nursing and Rehabilitation Center (formerly Bayview Nursing and Rehabilitation Center)	04/2003 to present
Eastchester Rehabilitation and Health Care Center	09/2002 to present
Fort Tryon Center for Rehabilitation & Nursing	11/2002 to 1/2009
Golden Gate Rehabilitation and Health Care Center	06/2002 to present
Golden Hill Nursing and Rehabilitation Center	10/2012 to present
Nassau Extended Care Facility	07/2004 to present
Nathan Miller Center for Nursing (closed)	11/2004 to 12/2009
Franklin Center for Rehabilitation & Nursing	11/2002 to 12/2009
Park Avenue Extended Care Facility	07/2004 to present
Split Rock Rehabilitation and Health Care Center	09/2002 to 01/2009
Susquehanna Nursing & Rehabilitation	02/2005 to present
The Hamptons Center for Rehabilitation and Nursing	09/2007 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Center	07/2004 to present
White Plains Center for Nursing	11/2004 to present

Deena Hersh discloses no employment history and discloses no ownership interests in health facilities.

Martin Farbenblum is a New York State licensed Physician Assistant, and is considered to be in good standing. He is employed as a Managing Partner of Magna Enterprises, LLC since 1999. Mr. Farbenblum was involved in a civil suit in 2012, in regards to a non-healthcare business investment, which was settled in August 2012 with minimal considerations. Martin Farbenblum discloses the following ownership interests in health facilities:

Avalon Gardens Rehabilitation & HCC	2003 to present
Bay Park Center for Nursing and Rehabilitation	01/2005 to present
South Point Plaza Nursing and Rehabilitation Center (formerly Bayview Nursing and Rehabilitation Center)	2003 to present
Eastchester Rehabilitation and Health Care Center	1997 to present
Fort Tryon Center for Rehabilitation & Nursing	2003 to 01/2009
Golden Gate Rehabilitation and Health Care Center	2001 to present
Golden Hill Nursing and Rehabilitation Center	01/2013 to present
Nassau Extended Care Facility	01/2004 to present
Nathan Miller Center for Nursing (closed)	01/2004 to 12/2009
Franklin Center for Rehabilitation & Nursing	01/2003 to 12/2009
Park Avenue Extended Care Facility	01/2004 to present
Split Rock Rehabilitation and Health Care Center	2002 to 12/2009
Susquehanna Nursing & Rehabilitation	01/2005 to present
Throgs Neck Extended Care Facility	01/2004 to present
Townhouse Extended Care Center	01/2004 to present
White Plains Center for Nursing	01/2004 to present
Spring Creek Rehabilitation and Nursing Care Center	01/2009 to present
Woodmere Rehab and Health Care Center, Inc.	1996 to present
Woodmere Dialysis, LLC	1996 to present

Shannon Cayea is a licensed nursing home administrator in New York State and is considered to be in good standing. She lists her employment as the Administrator of Record at the Susquehanna Nursing and Rehabilitation Center. Ms. Cayea discloses no ownership interests in health facilities.

Bernadette Brinsko lists her employment as the controller at the Susquehanna Nursing and Rehabilitation Center. Ms. Brinsko discloses no ownership interests in health facilities.

Character and Competence – Analysis

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

A review of **Avalon Gardens Rehabilitation and Health Care Center** for the time period indicated above reveals:

- the facility was fined \$2,000 pursuant to a Stipulation and Order issued April 21, 2009 for surveillance findings on May 23, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(1)&(2) - Quality of Care: Accidents.
- the facility was also fined \$4,000 pursuant to a Stipulation and Order issued July 16, 2012 for surveillance findings on July 29, 2011. Multiple deficiencies were found under 10 NYCRR 415.12 - Quality of Care: Practical Potential and 10 NYCRR 415.26 - Administration.

A review of operations for the Avalon Gardens Rehabilitation and Health Care Center for the period identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of **Bay Park Center for Nursing and Rehabilitation** for the time period indicated above reveals:

- the facility was fined \$4,000 pursuant to a Stipulation and Order issued March 2, 2011 for surveillance findings on December 18, 2009. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care: Highest Practicable Potential and 10 NYCRR 415.12(i)(1) - Quality of Care: Nutrition Status.
- the facility was also fined \$18,000 pursuant to a Stipulation and Order issued May 30, 2012 for surveillance findings on February 16, 2011. Multiple deficiencies were found under 10 NYCRR 415.4(b)(1)(i) - Free from Abuse; 10 NYCRR 415.4(b) - Development of Abuse Policies; 10 NYCRR 415.12(h)(2) - Quality of Care: Accidents; 10 NYCRR 415.12(i)(1) - Quality of Care: Nutrition; and 10 NYCRR 415.26(c)(1)(iv) - Nurse Aide Competency.

A detailed review of the enforcements listed above for Bay Park Center for Nursing and Rehabilitation leads to a determination that there was no incident of repeat enforcements. Thus, a review of operations for Bay Park Center for Nursing and Rehabilitation for the period identified above results in a conclusion of substantially consistent high level of care.

A review of **South Point Plaza Nursing and Rehabilitation Center** formerly known as Bayview Nursing and Rehabilitation for the time period indicated above reveals:

- the facility was fined \$7,000 pursuant to a Stipulation and Order issued September 29, 2005 for surveillance findings on November 16, 2004. Deficiencies were found under 10 NYCRR 415.5(h)(2) - Quality of Care: Environment; 10 NYCRR 415.12 - Quality of Care; 10 NYCRR 415.12(c)(1) - Quality of Care: Pressure Sores; and 10 NYCRR 415.12(h)(2) - Quality of Care: Accidents.
- the facility was also fined \$2,000 pursuant to a Stipulation and Order issued June 13, 2007 for surveillance findings on December 2, 2005. Deficiencies were found under 10 NYCRR 415.11(c)(3) - Comprehensive Care Plans.
- the facility was also fined \$10,000 pursuant to a Stipulation and Order issued December 16, 2011 for surveillance findings on December 7, 2010. Deficiencies were found under 10 NYCRR 415.12(c)(1) - Quality of Care: Pressure Sores.

A detailed review of the enforcements listed above for South Point Plaza Nursing and Rehabilitation Center formerly known as Bayview Nursing and Rehabilitation led to a determination that there was no incident of repeat enforcements. Thus, a review of operations for South Point Plaza Nursing and Rehabilitation Center formerly known as Bayview Nursing and Rehabilitation for the period identified above results in a conclusion of substantially consistent high level of care.

A review of **Eastchester Rehabilitation and Health Care Center** for the time period indicated above reveals that the facility was fined \$2,000 pursuant to a Stipulation and Order issued August 9, 2008 for surveillance findings on January 15, 2008. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) - Resident Behavior and Facility Practices: Staff Treatment of Residents.

A detailed review of the enforcements listed above for Eastchester Rehabilitation and Health Care Center leads to a determination that there were no repeat enforcements.

A review of **Golden Gate Rehabilitation and Health Care Center** for the time period indicated above reveals:

- the facility was fined \$20,000 pursuant to a Stipulation and Order issued July 9, 2009 for surveillance findings on June 27, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(2) - Quality of Care: Accidents and 10 NYCRR 415.26 - Organization and Administration.
- the facility was also fined \$10,000 pursuant to a Stipulation and Order issued December 16, 2011 for surveillance findings on November 22, 2010. Deficiencies were found under 10 NYCRR 415.12(c)(2) - Quality of Care: Pressure Sores.

A review of operations for Golden Gate Rehabilitation and Health Care Center results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for **Nassau Extended Care Facility** for the time period indicated above reveals that the facility was fined \$6,000 pursuant to a Stipulation and Order issued August 29, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10NYCRR 415.4(b) Prohibit Abuse/Neglect/Mistreatment, 415.5(a) Dignity and 415.26 Administration.

A review of **Split Rock Rehabilitation and Health Care Center** for the time period indicated above reveals that the facility was fined \$6,000 pursuant to a Stipulation and Order issued March 19, 2007 for surveillance findings on December 5, 2005. Deficiencies were found under 10 NYCRR 415.4(b) - Resident Behavior and Facility Practices: Staff Treatment of Residents; 10 NYCRR 415.11(c) - Resident Assessment and Care Planning: Comprehensive Care Plans, and 10 NYCRR 415.12(k)(6) - Quality of Care: Special Needs.

A review of operations for Split Rock Rehabilitation and Health Care Center results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of **Susquehanna Rehabilitation and Health Care Center, LLC** for the time period indicated above reveals that the facility was fined \$1,500 pursuant to a Stipulation and Order issued February 13, 2007 for surveillance findings on September 25, 2006. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents.

A review of operations for Susquehanna Rehabilitation and Health Care Center, LLC results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of **The Hamptons Center for Rehabilitation and Nursing** for the time period indicated above reveals:

- the facility was fined \$3,000 pursuant to a Stipulation and Order issued June 12, 2007 for surveillance findings on February 9, 2007. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care, 415.12(a)(2) - Quality of Care: Activities of Daily Living and 415.12(j) - Quality of Care: Hydration.
- the facility was also fined \$8,000 pursuant to a Stipulation and Order issued April 26, 2009 for surveillance findings on April 21, 2008. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) – Resident Behavior and Facility Practices: Staff Treatment of Residents, 415.12 - Quality of Care, 415.12(h)(2) - Quality of Care: Accidents, and 415.26 - Organization and Administration.
- the facility was also fined \$4,000 pursuant to a Stipulation and Order issued December 6, 2010 for surveillance findings on September 16, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) – Quality of Care: Accidents & Supervision and 415.26 – Administration.
- the facility was also fined \$10,000 pursuant to a Stipulation and Order issued May 24, 2011 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 - Provide Care/Services for Highest Well Being.

A review of operations for The Hamptons Center for Rehabilitation and Nursing results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of the operations of **Nathan Miller Center for Nursing** for the time period indicated above reveals that the facility was fined \$2,000 pursuant to a Stipulation and Order on November 4, 2009 for surveillance findings on November 24, 2008. Deficiencies were found under 10 NYCRR 415.29 Physical Environment.

A review of operations for Nathan Miller Center for Nursing results in a conclusion of substantially consistent high level of care since there were no repeat enforcements. Nathan Miller Center for Nursing closed on February 7, 2011.

A review of operations for Golden Hill Nursing and Rehabilitation Center, Fort Tryon Center for Rehabilitation & Nursing, Franklin Center for Rehabilitation and Nursing, Spring Creek Rehabilitation and Nursing Care Center, Park Avenue Extended Care Facility, Throgs Neck Extended Care Facility, White Plains Center for Nursing, Woodmere Rehab and Health Care Center, Inc., and Townhouse Extended Care Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the operations for Privilege Care Diagnostic and Treatment Center for the time period indicated above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the operations for Woodmere Dialysis LLC for the time period indicated 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. 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, approval is recommended.

Financial Analysis

Asset Purchase Agreement

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

Date:	January 29, 2014
Seller:	Chautauqua County, aka Chautauqua County Nursing Home
Purchaser:	Dunkirk Realty Holdings, LLC
New Operator:	Dunkirk Operating, LLC
Purchased Assets:	Transfer, assign, convey and deliver the Real Property which consists of: Land, Improvements, FF&E, and all other structures and improvements on the land. Transfer, assign, convey and deliver the Personal Property, Intangible Property, and Accounts Receivable to the New Operator.
Excluded Assets:	Cash, short-term investments and third party settlements, except accounts receivables.
Purchase Price:	\$16,000,000
Payment of Purchase Price:	\$ 1,600,000 deposit on signing agreement; 14,400,000 due at closing

The purchase price is proposed to be satisfied as follows:

Equity – Dunkirk Operating, LLC	\$3,199,713
Equity – Dunkirk Realty Holdings, LLC	2,300,287
Loan- 5.5%, self-amortizing 5 year term	<u>10,500,000</u>
Total	\$16,000,000

A letter of interest has been provided by First Niagara Bank. BFA Attachments B and C are the proposed members' net worth summaries for Dunkirk Operating, LLC and Dunkirk Realty Holdings, LLC, respectively, which reveals sufficient resources to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Therefore, Anthony Bacchi, Edward Farbenblum, Martin Farbenblum and Benjamin Landa have provided affidavits stating that they are willing to contribute resources disproportionate to their membership interest.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. There no outstanding Medicaid and Assessment liabilities as of September 10, 2014.

Lease Agreement

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

Premises:	216-bed RHCF located at 10836 Temple Road, Dunkirk, NY 14048
Owner/Landlord:	Dunkirk Realty Holdings, LLC
Lessee:	Dunkirk Operating, LLC
Term:	Twenty-six years – with a 10-year renewal option
Rent:	\$600,000 per year (\$50,000 per month) plus landlords debt service payment bring the total rent to \$1,600,000 per year
Provisions:	Taxes, utilities, insurance, and maintenance

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity.

Operating Budget

The applicant has provided an operating budget, in 2014 dollars, for the first year of operation subsequent to the change in ownership. The budget is summarized below:

<u>Revenues:</u>	
Medicaid	\$10,273,370
Medicare	2,422,814
Private Pay	4,940,637
Assessment Revenue	677,524
Medicare Part B	410,000
Ancillary Revenue-Pharmacy	<u>994,000</u>
Total Revenues:	\$19,718,345
<u>Expenses:</u>	
Operating	\$17,386,028
Capital	<u>1,600,000</u>
Total Expenses:	\$18,986,028
Net Income:	<u>\$732,317</u>
RHFC Utilization (patient days)	76,859
RHFC Occupancy	97.5%

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

- Medicaid capital component includes lease rental payment.
- Medicaid rates are based on 2014 Medicaid pricing rates.
- Medicare and private pay revenues are based on current payment rates.
- RHCF projected utilization is 97.5%. Utilization for 2013 was 96.4%, while the average utilization from 2006 through 2012 was 97.8%. On April 9, 2014 and June 25, 2014 occupancy was 99.5% and 98.6%, respectively.
- Breakeven utilization is projected at 94%.
- RHCF utilization by payor source is anticipated as follows:

Medicaid	74.20%
Medicare	8.34%
Private	17.46%

Capability and Feasibility

There are no project costs associated with this application. The aggregate purchase price for the real property and operating assets is \$16,000,000, which is being allocated to the real property. Project funding will be as follows: Dunkirk Operating, LLC, members who are subject to the subscription agreement will provide \$3,199,713 in equity, and Dunkirk Realty Holdings, LLC members will provide \$2,300,287 in equity, of which \$1,600,000 has already been paid. The \$10,500,000 balance will be funded through a five year self-amortizing loan at 5.5%. A letter of interest for the loan has been provided by First Niagara Bank. A review of BFA Attachments B and C, the net worth summaries for the proposed members' of Dunkirk Operating, LLC and Dunkirk Realty Holdings, LLC, respectively, reveals sufficient resources to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Therefore, Anthony Bacchi, Edward Farbenblum, Martin Farbenblum and Benjamin Landa have provided affidavits stating that they are willing to contribute resources disproportionate to their membership.

The working capital requirement is estimated at \$3,164,338 and is based on two months of the first year operating expenses. In accordance with the purchase agreement, Dunkirk Operating, LLC will receive approximately \$3,474,468 in net accounts receivables which will be used to satisfy the working capital needs. DOH staff notes that, as of 2013, the net cash plus accounts receivable minus accounts payable exceeds the working capital requirements. BFA Attachment C, Dunkirk Operating, LLC pro-forma balance sheet, indicates that the entity will start off with \$3,474,468 in equity.

The submitted budget indicates that a net income of \$732,317 would be maintained during the first year following change in ownership. As of June, 2014, the facility has an occupancy level of 99.5%. DOH staff reviewed the difference between the current 2013 net operating loss of \$231,614, as shown on BFA Attachment E, and the first year budgeted net income of \$732,317. DOH has concluded that the difference is mainly due to the reduction in employee fringe benefits of \$3,394,882 and \$446,671 in administrative expenses without interruption of patient care. The facility will no longer participate in the County benefit plan. 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

As shown on BFA Attachment E, the facility maintained positive working capital, net assets and a net loss of \$231,614 for 2013. It is noted that this 2013 net loss would have been increased if the RHCF had not received a \$3,609,939 intergovernmental transfer subsidy. The county indicates it cannot maintain its current operation due to recurring losses from year-to-year and has, therefore, decided to sell the facility to a new operator who is an experienced team of nursing home providers.

BFA Attachment F, Financial Summary of the proposed members' affiliated RHCfs, shows the facilities have currently maintained positive income from operations for the periods shown with the exception of: Bayview Nursing Home, which had an operational loss due to Hurricane Sandy; Golden Gate Rehabilitation, which was due to a one-time Medicaid rate adjustment; Nassau Extended Care and Willoughby Rehabilitation, which had net losses due to operational inefficiencies which are being corrected by management to reach positive margins; and Woodmere Rehabilitation, whose net operational loss in 2012 has been corrected by management in 2013.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Proposed Members of Dunkirk Realty Holdings, LLC
BFA Attachment B	Net Worth of Proposed Members, Dunkirk Operating, LLC
BFA Attachment C	Net Worth of Proposed Members, Dunkirk Realty Holdings, LLC
BFA Attachment D	Pro-forma Balance Sheet, Dunkirk Operating, LLC
BFA Attachment E	Financial Summary, Chautauqua County Home
BFA Attachment F	Financial Summary, Affiliated Nursing Homes
BNHLC Attachment A	Quality Measures and Inspection Reports