

**STATE OF NEW YORK**  
**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**

**COMMITTEE DAY**

**AGENDA**

*November 13, 2014*  
*10:00 a.m.*

*Empire State Plaza, Concourse Level,*  
*Meeting Room 6, Albany*

**I. COMMITTEE ON HEALTH PLANNING**

John Ruge, M.D. Chair

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

Peter Robinson, Chair

**III. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW**

Christopher Booth, Vice Chair

**A. Applications for Construction of Health Care Facilities**

**Acute Care Services - Construction**

**Exhibit # 1**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1. 142157 C	United Memorial Medical Center North Street Campus (Genesee County)

**Hospice Services - Construction**

**Exhibit # 2**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1. 142079 C	CareFirst/Southern Tier Hospice and Palliative Care/ Southern Tier Hospice (Steuben County)

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

**Acute Care Services – Establish/Construct**

**Exhibit # 3**

<u>Number</u>	<u>Applicant/Facility</u>
1. 142108 E	Long Island Jewish Medical Center (Queens County)
2. 142105 E	Mount St Marys Hospital and Health Center (Niagara County)
3. 142140 E	NYP Community Programs, Inc. (Westchester County)

**Ambulatory Surgery Centers - Establish/Construct**

**Exhibit # 4**

<u>Number</u>	<u>Applicant/Facility</u>
1. 132340 B	Richmond ASC, LLC d/b/a Richmond Pain Management (Richmond County)
2. 141290 B	SOW Westside, LLC d/b/a Surgicare of Westside (New York County)
3. 142039 E	North Country Orthopaedic Ambulatory Surgery Center, LLC (Jefferson County)
4. 142061 E	East Side Endoscopy (Westchester County)
5. 142073 E	Buffalo Surgery Center, LLC (Erie County)
6. 142077 E	Island Digestive Health Center (Suffolk County)

**Dialysis Services- Establish/Construct**

**Exhibit # 5**

<u>Number</u>	<u>Applicant/Facility</u>
1. 141210 B	Peninsula Continuum Services, LLC d/b/a Cassena Care Dialysis at Peninsula (Queens County)

2. 141280 E Liverpool LD, LLC d/b/a FMS-Liverpool Dialysis Center  
(Onondaga County)
3. 142058 E Massena Center, LLC d/b/a Massena Dialysis Center  
(St. Lawrence County)

**Residential Health Care Facilities - Establish/Construct**

**Exhibit # 6**

<u>Number</u>	<u>Applicant/Facility</u>
1. 132128 B	DOJ Operations Associates, LLC d/b/a Triboro Center for Rehabilitation and Specialty Healthcare (Bronx County)
2. 141213 E	Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville (Erie County)
3. 142056 E	Hope Center Operations, LLC d/b/a Hope Center For HIV and Nursing Care (Bronx County)
4. 142090 E	L&A Operations LLC d/b/a Adira at Riverside Rehabilitation (Westchester County)

**Certified Home Health Agencies – Establish/Construct**

**Exhibit # 7**

<u>Number</u>	<u>Applicant/Facility</u>
1. 142060 E	Dominican Sisters Family Health Service, Inc. (Nassau County)
2. 142068 E	Royal Care Certified Home Health Care, LLC (Queens County)
3. 142100 E	A & T Certified Home Care, LLC (Rockland County)

**C. Certificates**

**Certificate of Amendment of the Application of Authority**

**Exhibit # 8**

Applicant

1. Fletcher Allen Partners, Inc.

**D. Home Health Agency Licensures**

**Home Health Agency Licensures**

**Exhibit # 9**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
2162L	24/7 Homecare Agency of NY, Inc. (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)
2172L	Able Body Homecare Agency of NY, Inc. (Bronx, Kings, New York, Richmond, Queens and Westchester Counties)
2191L	Agincare Homecare Services, Inc. (Bronx, New York, Kings, Richmond, Queens, and Nassau Counties)
2161L	Allied Partners Home Care, LLC (Nassau and Queens Counties)
2236L	Anderson Care, LLC d/b/a Home Helpers/Direct Link (Albany and Schenectady Counties)
2187L	Angel Home Care Agency, Inc. (Kings, Richmond, New York, Queens, and Bronx Counties)
2174L	Angel's Touch Home Care, LLC (Kings, Richmond, Queens, Bronx, New York and Westchester Counties)
2252L	Axzon's Health System Corporation (Nassau, Westchester, Suffolk and Queens Counties)
2226L	Beech Development Corp. d/b/a ComForcare Senior Services – Rochester East (Monroe, Livingston, Ontario and Wayne Counties)
2207L	Blissful Healthcare, Inc. (Bronx, New York, Kings, Richmond and Queens Counties)
2060L	Compassionate Home Health Care, LLC (New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)

- 2257L Customize Care, LLC  
(Bronx, Queens, Kings, Richmond, New York and Westchester Counties)
- 2164L Eva Homecare Agency, Inc.  
(Bronx, Queens, Kings, Richmond, New York and Nassau Counties)
- 2230L First Baana Corp.  
(New York, Bronx, Kings, Richmond, Queens and Westchester Counties)
- 2232L Fun & Fit, LLC d/b/a Home Instead Senior Care  
(Westchester, Putnam, Dutchess and Bronx Counties)
- 2189L Janette Homecare of NY, Inc.  
(New York, Bronx, Kings, Richmond, Queens and Nassau Counties)
- 2087L Long Beach Home Care Services, Inc.  
(Bronx, Richmond, New York, Nassau, Kings, and Queens Counties)
- 2241L New York Congregational Licensed Home Care Services Agency, Inc.  
(Bronx, Queens, Kings, Richmond, New York and Nassau Counties)
- 2182L Safe and Prudent, LLC  
(New York, Bronx, Kings, Richmond, Queens, and Nassau Counties)
- 2201L SafeCare Home Care Agency, Inc.  
(Nassau, Suffolk and Queens Counties)
- 2208L SHARE of New Square, Inc.  
(Rockland, Sullivan, Putnam, Westchester, Dutchess, Bronx, Orange and Ulster Counties)
- 2159L Skilled Home Care Services of New York, LLC  
d/b/a Skilled Home Care Services of New York  
(Bronx, Queens, Kings, Richmond, New York and Westchester Counties)
- 1728L Supreme Generation, Inc.  
(Bronx, Queens, Kings, New York and Richmond Counties)

- 2183L The Heinlein Group, Inc.  
d/b/a Synergy HomeCare of Westchester  
(Westchester and Bronx Counties)
- 2197L Visiting Nurse Service Care at Home, Inc.  
(Albany, Montgomery, Warren, Clinton, Rensselaer,  
Washington, Essex, Saratoga, Franklin, Schenectady,  
Fulton and Schoharie Counties)
- 2316L Rehekah Rehab Licensed Home Care Services Agency,  
Inc.  
(Bronx County)
- 2449L The Gardens by Morningstar, LLC  
(Oswego, Onondaga and Cayuga Counties)
- 2055L Golden Eagle Homecare Agency, Inc.  
(Bronx, Queens, Kings, Nassau, New York, and  
Richmond Counties)
- 2391L JS Homecare Agency of NY, Inc.  
(Bronx, Richmond, Kings, Nassau, New York and Queens  
Counties)
- 2211L UCSL, LLC d/b/a focus Home Care of Central New York  
(Herkimer, Oswego, Lewis, Oneida, Madison, and  
Onondaga Counties)
- 2127L Premier Home Health Care Services, Inc.  
(Kings, New York, Queens, Richmond, and Bronx  
Counties)
- 2256L Premier Home Health Care Services, Inc.  
(Westchester, Putnam, Rockland, and Bronx Counties)



# Public Health and Health Planning Council

Project # 142157-C  
United Memorial Medical Center North Street Campus

**Program:** Hospital  
**Purpose:** Construction

**County:** Genesee  
**Acknowledged:** October 14, 2014

## Executive Summary

### Description

United Memorial Medical Center (UMMC), a 131-bed community hospital with its 111-bed main site located at 127 North Street, Batavia (Genesee County), New York 14020, proposes an expansion and service addition to improve the facility's cancer service program. The project consists of the purchase of a linear accelerator and the construction of a new 8,498 square foot cancer center building to be located on UMMC's main campus site. The new cancer center will house both Radiation (LINAC) and Medical Oncology services. Currently, no Radiation Oncology services are located in the main hospital building. The facility presently has a Medical Oncology suite (Infusion Services) located on the hospital's 2<sup>nd</sup> floor that will be relocated to the new ground level cancer center.

The proposed location for the new cancer center building is adjacent to the Imaging Department, which will allow the new Radiation Oncology service unit to use the Imaging Department's CT scanner and ultrasound rooms.

OPCHSM Recommendation  
Contingent Approval

### Need Summary

The proposed project will include the construction of an 8,498 sq. ft. cancer facility and the addition of one (1) linear accelerator unit to provide cancer treatment for people within the Western Region. The new program at UMMC also will have an affiliation with the Lipson Cancer Center at Rochester General Hospital.

### Program Summary

A favorable recommendation can be made regarding the facility's current compliance pursuant to Section 2802-(3)(e) of the New York State Public Health Law.

### Financial Summary

Project costs totaling \$6,494,004 will be met by \$650,004 in cash equity with the remaining \$5,844,000 financed through 2 separate loans from Tompkins Bank of Castile as follows:

- Construction loan for \$4,044,000 at 4.18% interest for 20 years, and
- Equipment loan for \$1,800,000 at 4.69% interest for 7 years.

Budget:	Revenues	\$6,452,115
	Expenses	<u>\$5,134,323</u>
	Net Income/(Loss)	\$1,317,792

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and 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. The check must be mailed to the Bureau of Project Management, Room 1842 Corning Tower, Albany, New York 12237. Once the check is mailed a copy of the transmittal letter should be uploaded into NYSECON as a response to this contingency. [PMU]
2. Submission of a commitment for a permanent mortgage, to be provided from a recognized lending institution at a rate of interest determined to be acceptable by the Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of an executed equipment loan commitment acceptable to the Department of Health. [BFA]
4. Submission of an executed equipment 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 applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AES]
3. 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. [AES]
4. 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. [AES]
5. The applicant must adhere to the Construction Start (08/01/2015) and Completion Dates (08/01/2016). The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AES]

Council Action Date

**December 4, 2014**

## Need Analysis

### Background

United Memorial -North Campus provides services to Genesee, Orleans, and Wyoming County. United Memorial -North Campus provided a total of 1,956 medical oncology treatments. Currently the facility does not provide therapeutic radiology.

Service	1 <sup>st</sup> Year	3 <sup>rd</sup> Year
Medical Oncology	3,912	4,057
Radiology Therapeutic	6,938	7,216
Total	10,850	11,273

The need methodology set forth in 10 NYCRR Section 709.16 calculates the need for therapeutic radiology devices (linacs) by health planning 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 as follows:

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	1	0	1
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	1	0	1

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 142157)	8.00
Remaining Need for MEV Machines	15.22

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:

	<b>Total for Three County Area (Genesee, Orleans, Wyoming)</b>
# 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 142157)	2.00
Remaining Need for MEV Machines	0.06

#### Conclusion

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

United Memorial Medical Center (UMMC), an existing 131-bed community hospital that operates at two sites in Batavia, New York (Genesee County), seeks permission to construct a new 8,498-square foot addition at the hospital's main campus located at 127 North Street, Batavia. This new addition will house Radiation (LINAC) and Medical Oncology services. Currently, no Radiation Oncology services are located in the main hospital building. However, an existing Medical Oncology Suite (Infusion Services) exists on the Hospital's second floor and will be relocated to the new ground-level Cancer Center.

During a meeting of the Public Health and Health Planning Council on October 2, 2014, contingent approval was granted for UMMC to become a member of RU System d/b/a Rochester Regional Health System (RRHS) under the active parent governing model (CON 142041). During that same meeting, contingent approval was also granted to RRHS to become the active parent and co-operator of Clifton Springs Hospital and Clinic (CON 142009). RRHS has been in discussions with a private radiation oncology practice in Clifton Springs dating back to October of 2012 regarding acquisition and redistribution of two (2) private practice linear accelerators which will ultimately become Article 28 certified. One (1) linear accelerator will operate at UMMC and one (1) will operate in Clifton Springs to better serve the current and proposed RRHS acute care facilities in Genesee, Ontario and Wayne counties. Additionally with this application, UMMC seeks to add "Radiology – Therapeutic" to its complement of services.

Staffing is projected to increase by 9.75 FTEs the first year after completion and will 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

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Purchase Agreement

The applicant has provided a draft purchase agreement for the Linear Accelerator Unit as shown below:

Seller: Varian Medical Systems  
Purchaser: Rochester General Hospital  
Equipment: Clinac IX package (LINAC unit)  
Price: \$1,800,000

### Total Project Cost and Financing

Total project cost for new construction and the purchase of fixed and movable equipment is estimated at \$6,494,004, broken down as follows:

New Construction	\$3,136,700
Design Contingency	\$313,670
Construction Contingency	\$156,835
Fixed Equipment	\$2,060,000
Architect/Engineering Fees	\$453,376
Movable Equipment	\$99,067
Telecommunications	\$25,000
Financing Costs	\$58,440
Interim Interest Expense	\$153,405
Application Fee	\$2,000
Additional Processing Fee	<u>\$35,511</u>
Total Project Cost	\$6,494,004

Project costs are based on a construction start date of August 1, 2015 and a 12 month construction period.

The applicant's financing plan is as follows:

Cash Equity	\$650,004
Construction loan – Tompkins Bank of Castile (20 Year term @ 4.18% interest)	\$4,044,000
Equipment loan – Tompkins Bank of Castile (7 Year term @ 4.69% interest)	<u>\$1,800,000</u>
Total	\$6,494,004

The applicant has provided a letter of interest from Tompkins Bank of Castile stating available financing at the stated terms above for the construction project and equipment purchase.

#### Operating Budget

The applicant has submitted operating budgets, in 2014 dollars, for the current year of operations and for subsequent years 1 and 3, as shown below:

	<u>Current Year</u>	<u>Year 1</u>	<u>Year 3</u>
Revenues:			
Operating	\$1,343,000.00	\$6,209,860.00	\$6,452,115.00
Total Revenues	\$1,343,000.00	\$6,209,860.00	\$6,452,115.00
Expenses:			
Operating	\$1,370,000.00	\$4,340,000.00	\$4,405,000.00
Capital	\$0.00	\$771,389.00	\$729,323.00
Total Expenses	\$1,370,000.00	\$5,111,389.00	\$5,134,323.00
Net Income/(Loss)	(\$27,000.00)	\$1,098,471.00	\$1,317,792.00
Utilization (visits)	1,956	10,850	11,273
Cost per visit	\$700.41	\$471.10	\$455.45

Utilization by payor source is as follows:

	<u>Current Year</u>		<u>Year 1</u>		<u>Year 3</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial	626	32.0%	3,472	32.0%	3,607	32.0%
Medicare	822	42.0%	4,558	42.0%	4,736	42.0%
Medicaid	352	18.0%	1,937	17.8%	2,012	17.8%
Private Pay/Other	137	7.0%	760	7.0%	789	7.0%
Charity Care	19	1.0%	123	1.2%	129	1.2%
Total	1,956	100.0%	10,850	100.0%	11,273	100.0%

The expenses and utilization for this project are based upon:

- The historical experience of UMMC in providing Medical Oncology services;
- The experience of the private Radiation Oncology practice that will be brought on board at UMMC through this project; and
- The experience of Rochester General Hospital.

#### Capability and Feasibility

The total project cost of \$6,494,004 will be provided from the facility's existing cash equity in the amount of \$650,004, with the remainder of the project funding coming from 2 separate loans from Tompkins Bank of Castile. The construction loan is in the amount of \$4,044,000 and the equipment purchase loan is for \$1,800,000 at the above stated terms.

Working capital requirements are estimated at \$855,721 based on 2 months of year 3 expenses. The applicant will fund all of the working capital requirements through their existing cash equity. As shown on BFA Attachment A, the 2012 and 2013 certified financial statements for UMMC, the facility has enough available resources to cover both the equity and working capital requirements for this project.

The submitted budget indicates an excess of revenues over expenses of \$1,098,471 and \$1,317,792 in years 1 and 3, respectively. Revenues are based on current reimbursement methodologies for hospitals. The budget appears reasonable.

BFA Attachment A is the 2012 and 2013 certified financial summary for United Memorial Medical Center and Subsidiary, which shows average positive working capital and equity positions. The entity also has an average net income of \$2,792,682 for the period shown.

Subject to the noted contingencies, 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.**

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## Attachments

BFA Attachment A    2012-2013 Certified Financial Summary for United Memorial Medical Center and  
Subsidiary



# Public Health and Health Planning Council

Project # 142079-C  
CareFirst / Southern Tier Hospice and Palliative Care / Southern Tier Hospice

**Program:** Hospice  
**Purpose:** Construction

**County:** Steuben  
**Acknowledged:** August 27, 2014

## Executive Summary

### Description

CareFirst/Southern Tier Hospice and Palliative Care/Southern Tier Hospice (CareFirst), a voluntary not-for-profit Article 40 Hospice located at 11751 East Corning Road, Corning, New York (Steuben County), requests approval to renovate a school building purchased in 2013 into their new main administrative office space location. The new site, previously known as the Franklin Pierce School, is located at 3805 Meads Creek Road, Painted Post, New York 14870 (Steuben County).

The school building site will be used as the hospice's main administrative office location upon completion of renovations, and the current administrative office site will be sold. Proceeds from the sale will be used toward the cost of renovations.

### OPCHSM Recommendation Contingent Approval

### Program Summary

CareFirst NY, Inc., d/b/a CareFirst / Southern Tier Hospice and Palliative Care / Southern Tier Hospice, a voluntary not-for-profit Article 40 hospice, proposes to renovate a previously purchased school building into

the hospice's new administrative main office practice location.

### Financial Summary

Project costs of \$2,330,321 will be met as follows: \$830,321 in cash with the remaining \$1,500,000 coming from a 15 year mortgage with Corning Credit Union at 3.5% initial interest rate, with a possible revision every 5 years based on the Wall Street prime rate plus 0.25%. The interest rate will never be below 3.5%.

### Budget:

Revenues	\$9,835,861
Expenses	<u>\$9,164,263</u>
Net Income/(Loss)	\$671,598

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and 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 4006.9 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of thirty hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check needs to be uploaded into NYSE-CON [PMU]
2. Submission of an executed construction loan commitment acceptable to the Department of Health. [BFA]
3. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

**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 applicant shall complete construction by January 31, 2015 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. It is the applicant's responsibility to request approval of revised construction dates if necessary. [AER]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]

Council Action Date

**December 4, 2014**

## Program Analysis

### Review Summary

CareFirst NY, Inc. d/b/a CareFirst / Southern Tier Hospice and Palliative Care / Southern Tier Hospice, a voluntary not-for-profit Article 40 hospice, proposes to renovate a previously purchased school building for use as the hospice's new administrative main office practice location.

The hospice is currently located at 11751 East Corning Road, Corning, New York 14830 (Steuben County). The hospice has no additional satellite office practice locations and does not operate any dedicated Article 40 hospice inpatient beds or hospice residence beds. When renovation is complete and the new building is ready for occupancy, the hospice plans to relocate its main office practice location and all corporate and administrative offices to the new building, which is located at 3805 Meads Creek Road, Painted Post, New York 14870 (Steuben County), at which time the former location will be sold. No dedicated Article 40 hospice inpatient beds or hospice residence beds will be operated at the new location.

CareFirst NY, Inc. d/b/a CareFirst / Southern Tier Hospice and Palliative Care / Southern Tier Hospice, will continue to serve Chemung, Schuyler, and Steuben Counties from the new practice location.

The Division of Home and Community Based Services reports that CareFirst NY, Inc. d/b/a CareFirst / Southern Tier Hospice and Palliative Care / Southern Tier Hospice is in current compliance with all applicable codes, rules, and regulations, and had no history of enforcement actions.

### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

Total project cost for the renovations is estimated at \$2,330,321 broken down as follows:

Land acquisition	\$100,000
Building acquisition	\$480,000
Renovation and Demolition	\$1,294,185
Temporary utilities	\$9,168
Asbestos abatement or removal	\$95,000
Design contingency	\$59,000
Construction contingency	\$123,900
Architect/Engineering fees	\$116,000
Telecommunications	\$8,000
Financing costs	\$10,000
Interim interest expense	\$26,104
CON application fees	\$2,000
Additional processing fees	\$6,964
Total project cost	\$2,330,321

The applicant's financing plan appears as follows:

Cash	\$830,321
Corning Credit Union mortgage for 15 years t 3.5% interest adjustable every 5 years (prime plus 0.25% (never below 3.5%))	<u>\$1,500,000</u>
Total	\$2,330,321

## Operating Budget

The applicant has submitted the year 1 and year 3 operating budgets, in 2014 dollars, as summarized below:

	<u>Year 1</u>	<u>Year 3</u>
Total Revenues	\$7,902,493	\$9,835,861
Expenses:		
Operating	\$7,170,249	\$8,869,541
Capital	<u>\$256,172</u>	<u>\$294,723</u>
Total Expenses	\$7,426,421	\$9,164,264
Net Income/(Loss)	\$476,072	\$671,597
Utilization: (patient days)	45,625	54,750
Cost per patient day	\$162.77	\$167.38

Utilization by payor source for the current year and years 1 and 3 is as follows:

	<u>Current Year</u>	<u>Years 1 and 3</u>
Medicaid	5.03%	5.05%
Medicare	87.72%	87.70%
Private/Other	<u>7.25%</u>	<u>7.25%</u>
Total	100.00%	100.00%

Expenses and utilization are based upon CareFirst's historical operating experiences.

## Capability and Feasibility

Total project cost of \$2,330,321 will be paid with \$830,321 in cash and the remaining \$1,500,000 financed through a 15 year mortgage from Corning Credit Union at 3.5% interest, subject to possible revision every 5 years based on Wall Street prime rate plus .25%. The interest rate will never be below 3.5%.

Working capital requirements are estimated at \$1,527,377 based on 2 months of the year 3 budgeted expenses. The working capital needs will be satisfied from existing facility cash and investment accounts. As shown on BFA Attachment A, the facility has sufficient funds to cover both the equity piece of the total project cost and the working capital requirement.

BFA Attachment A is the 2012 and 2013 certified financial statements of CareFirst which show that the facility had an average positive working capital position, an average positive net asset position and generated an average net income of \$779,876 for the period shown.

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    2012 and 2013 certified financial statements for CareFirst



# Public Health and Health Planning Council

Project # 142108-E  
Long Island Jewish Medical Center

**Program:** Hospital  
**Purpose:** Establishment

**County:** Queens  
**Acknowledged:** September 11, 2014

## Executive Summary

### Description

Long Island Jewish Medical Center (LIJMC), a 1,025-bed not-for-profit acute care facility, requests approval to become the owner and co-operator of Forest Hills Hospital, a 312 bed not-for-profit acute care facility in Queens County, and Franklin Hospital, a 305 bed not-for-profit acute care facility in Nassau County. Franklin includes a Residential Health Care Facility (RHCF) known as North Shore-LIJ Orzac Center for Rehabilitation, a 120 bed RHCF also located in Nassau County. Both hospitals will become divisions of LIJMC. The Franklin Hospital Certified Home Health Agency is not a part of this application, as it is being closed and the license transferred to another entity under CON 142068.

LIJMC expects that the proposed co-operator arrangement with Forest Hills and Franklin hospitals will result in savings and efficiencies that will enable the two facilities to remain financially viable and to serve their communities more effectively. Expected benefits include;

### Cost Savings

- Reduction in management and administrative costs due to right sizing span of control.
- Improved utilization of resources through standardization of processes across the hospitals and elimination of duplicative costs.
- Integration into a single EMR, as well as a single registration and scheduling system, resulting in several back-end efficiencies in managing IT systems for three separate hospitals.

### Additional Benefits

- Facilitate the coordination and the quality of care provided in this region.

- Ensure flexibility in delivering the most appropriate level of care to patients within the North Shore – LIJ Health System’s Queens and Southwest Nassau regions.
- Streamline administrative oversight resulting in a positive impact to the communities served as measured through quality, efficiency, and patient experience scores.
- A single integrated medical staff across the campuses will improve the timeliness of provider communication, increase the integration of best clinical practices, and provide greater ability for physicians to refer and follow patients across the care continuum, regardless of which facility patients choose.

Franklin and Forest Hills are already members of the North Shore-Long Island Jewish Health System, Inc. (NS-LIJ), a comprehensive integrated delivery system formed to ensure the delivery of a broad range of quality healthcare services to the communities it serves and to achieve economies of scale through consolidation, cooperation and joint planning among its members. Also, the Hospitals are members of the NS-LIJ Obligated Group, formed to provide its members an enhanced credit position and expanded access to capital markets

OPCHSM Recommendation  
Contingent Approval

### Need Summary

This project will not change utilization, services, or beds in any of the involved facilities. They will continue to operate but as different campuses of a single article 28 facility operated by Long Island Jewish Medical Center.

There is no anticipated change in utilization rates due to this project.

### 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.

Budget:	Revenues:	\$1,654,476,100
	Expenses:	<u>\$1,647,440,500</u>
	Gain(Loss):	\$7,035,600

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of documentation of approval by the Office of Mental Health. [PMU]
2. Submission of the executed Certificate of Merger of Forest Hills Hospital into Long Island Jewish Medical Center, acceptable to the Department. [CSL]
3. Submission of the executed Agreement of Merger between Forest Hills Hospital and Long Island Jewish Medical Center, acceptable to the Department. [CSL]
4. Submission of the executed Certificate of Merger of Franklin Hospital into Long Island Jewish Medical Center, acceptable to the Department. [CSL]
5. Submission of the executed Agreement of Merger between Franklin Hospital and Long Island Jewish Medical Center, acceptable to the Department. [CSL]
6. Submission of an executed amendment to the Certificate of Incorporation of Long Island Jewish Medical Center, acceptable to the Department. [CSL]
7. Submission of executed Certificates of Assumed Name of Long Island Jewish Medical Center, 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

**December 4, 2014**

# Need Analysis

## Background

Long Island Jewish Medical Center (LIJMC) is seeking approval to integrate two hospitals within its network, and to establish them as divisions. LIJMC is a 1,025-bed hospital located at 270-05 76<sup>th</sup> Ave, New Hyde Park, 11040, in Queens County. The two facilities to be integrated are Forest Hills Hospital, a 312 bed hospital at 102-01 66<sup>th</sup> Road, Forest Hills, 11375, in Queens County and Franklin Hospital, a 305 bed hospital located at 900 Franklin Ave, Valley Stream, 11580, in Nassau County. There would be no change in beds and services at these facilities as a result of this CON. Franklin Hospital includes a Residential Health Care Facility, the North Shore-LIJ Orzac Center for Rehabilitation, a 120 bed nursing home located at 900 Franklin Ave, Valley Stream 11580.

## Analysis

The average Medicaid admission rate for residential healthcare facilities in Nassau County was 18.7% in 2012. The average occupancy rate for Nassau County in that year was 92.6%. Utilization and Medicaid admission rates for the Orzac Center for Rehabilitation are given below.

Year	Medicaid Admission Rate	Occupancy Rate
2010	6.1%	95.6%
2011	7.4%	96.2%
2012	4.9%	96.6%

This facility has Medicaid admission rates lower than the 75% of county-average Department standard; It is expected that the applicant will implement measures to increase Medicaid admissions going forward.

The bed charts for the involved hospitals are provided below. There will be no changes in bed counts upon completion of this project.

Bed Category	Certified Beds	Requested Action	Certified Capacity Upon Completion
Bone Marrow Transplant	4	0	4
Coronary Care	10	0	10
Intensive Care	62	0	62
Maternity	76	0	76
Medical / Surgical	435	0	435
Neonatal Continuing Care	4	0	4
Neonatal Intensive Care	24	0	24
Neonatal Intermediate Care	29	0	29
Pediatric	108	0	108
Pediatric ICU	37	0	37
Psychiatric	236	0	236
<b>Total</b>	<b>1025</b>	<b>0</b>	<b>1025</b>

*Table 3: Forest Hills Hospital Bed Chart*

<b>Bed Category</b>	<b>Certified Beds</b>	<b>Requested Action</b>	<b>Certified Capacity Upon Completion</b>
Intensive Care	28	0	28
Maternity	20	0	20
Medical / Surgical	251	0	251
Neonatal Continuing Care	9	0	9
Neonatal Intermediate Care	1	0	1
Pediatric	3	0	3
<b>Total</b>	<b>312</b>	<b>0</b>	<b>312</b>

*Table 4: Franklin Hospital Bed Chart*

<b>Bed Category</b>	<b>Certified Beds</b>	<b>Requested Action</b>	<b>Certified Capacity Upon Completion</b>
Coronary Care	8	0	8
Intensive Care	8	0	8
Medical / Surgical	248	0	248
Pediatric	20	0	20
Psychiatric	21	0	21
<b>Total</b>	<b>305</b>	<b>0</b>	<b>305</b>

**Conclusion**

This project will have no impact on patient access to healthcare or utilization rates. It should improve efficiencies and allow the organizations involved to more effectively deliver their services to the communities they serve in Nassau and Queens Counties.

**Recommendation**

**From a need perspective, approval is recommended.**

**Program Analysis**

**Project Proposal**

Long Island Jewish Medical Center (LIJMC) seeks approval to establish Forest Hills Hospital and Franklin Hospital as divisions of LIJMC. Franklin Hospital includes a Residential Health Care Facility known as the North Shore- LIJ Orzac Center for Rehabilitation. Upon approval, Long Island Jewish Medical Center will become the owner and co-operator (along with North Shore-LIJ Health Care, Inc.) of Forest Hills Hospital and Franklin Hospital. There are no anticipated changes to hospital services provided. [Of note, the Franklin Hospital Certified Home Health Agency (PFI 3032) is being closed and the license transferred to another entity (under CON 142068) and is not part this application.]

Combining these hospitals into a single Article 28 facility will result in a single integrated medical staff across campuses that is likely to contribute to improvements in timeliness of provider communication and the sharing best practices. Further, it will provide physicians the ability to refer and follow patients across the care continuum-- regardless of which facility they chose to receive services. In time, the three facilities will integrate into a single EMR as well as a single registrations/scheduling system. Streamlined administrative oversight should contribute to a more financially stable framework through operational effectiveness and efficiencies.

A full Character and Competence Review was conducted on all members of the Long Island Jewish Medical Center board and disclosures were made as part of project CON #141004 which was approved by PHHPC in June 2014.

In conducting the aforementioned Character and Competence Review, 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

### Operating Budget

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

<u>Inpatient and Outpatient</u>	<u>Year One and Three</u>
Total Net Patient Revenue	\$1,556,640,300
Other Operating Revenue*	<u>97,835,800</u>
Total Revenue	\$1,654,476,100
 Expense:	
Operating	\$1,533,762,700
Interest	37,433,800
Depreciation	<u>76,244,000</u>
Total Expense	\$1,647,440,500
 Excess Revenue(Loss)	 \$7,035,600
 Inpatient Discharges	 83,197
Visits	524,857

\*Other Operating Revenues are made up of physician practice revenues, net assets released from restrictions which are donations that offset operating expenses, capitation and grant revenues, distributions from the hemophilia consortium and cafeteria revenue.

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

<u>Inpatient</u>	<u>Year One and Three</u>
Commercial Managed Care	35.2%
Medicare-Fee-For-Service	20.5%
Medicare Managed Care	12.9%
Medicaid Managed Care	27.4%
Private Pay	4.0%
<u>Outpatient</u>	<u>Year One and Three</u>
Commercial Managed Care	33.3%
Medicare-Fee-For-Service	19.8%
Medicare Managed Care	6.2%
Medicaid Managed Care	31.7%
Private Pay	9.0%

Expenses and utilization assumptions are based on the combined historical operations of LIJMC, Franklin Hospital and Forest Hill Hospital, as well as market trends. Projected revenues and expenses exclude the Orzac Center for Rehabilitation, off-site CFAM ambulatory surgery and cancer clinics, home care and medical groups.

#### Capability and Feasibility

There are no project costs for this application.

The submitted budget projects a net profit for the first and third years of \$7,035,600. Management continues to focus on various initiatives such as revenue cycle improvement, supply chain savings and productivity and efficiency initiatives to counteract programmatic losses. Revenues are based on prevailing payment methodologies and current payment rates. The budget appears reasonable.

As shown on BFA Attachments B and C, for the year ending December 31, 2013, and the six-months ended June 30, 2014, LIJMC has maintained positive working capital, net asset position, and experienced net operating loss of \$2,987,000 and a net operating income of \$27,935,000, respectively. LIJMC's net loss in 2013 is due to the inclusion of the full value of certain paid time off and third party liabilities that may be resolved and paid in more than a one year period.

As shown within BFA Attachments B and C, for the year ending December 31, 2013, and the six-months ended June 30, 2014, Forest Hills and Franklin experienced negative working capital and net assets. Forest Hills had maintained positive net operating income of \$8,418,000 and \$6,006,000, respectively, and Franklin has experienced a \$3,036,000 net operating loss for the year ending December 31, 2013, and maintained a \$732,000 net operating profit as of June 30, 2014.

Management is continually working to improve net assets by managing operating expenses and investing in the facility's programs to enhance capacity. This includes:

- Strategic program growth and physician recruitment to improve volume,
- Managing overtime utilization and flexing staff levels in conjunction with volume.

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

#### Recommendation

**From a financial perspective, approval is recommended.**

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## Attachments

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BFA Attachment A	Organization Chart- Current and Proposed
BFA Attachment B	2013 Financial Summary for North Shore-Long Island Jewish System Inc. and Obligated Group
BFA Attachment C	June 30, 2014 Financial Summary for North Shore-Long Island Jewish System Inc. and Obligated Group
BFA Attachment D	Pro Forma Balance Sheet- Long Island Jewish Medical Center



# Public Health and Health Planning Council

Project # 142105-E  
Mount St Marys Hospital and Health Center

**Program:** Hospital  
**Purpose:** Establishment

**County:** Niagara  
**Acknowledged:** September 10, 2014

## Executive Summary

### Description

Catholic Health System, Inc. (CHS), a not-for-profit corporation which is currently the active parent of several licensed health care facilities and agencies in Western New York, requests approval to become the active parent/co-operator of Mount St. Mary's Hospital of Niagara Falls (Mt. St. Mary's), a 175-bed not-for-profit hospital located at 5300 Military Road (Erie County), Lewiston, NY.

Mt. St. Mary's sole corporate member is Ascension Health. Ascension Health entered into an affiliation agreement with CHS on August 18, 2014, to effectuate this CON. Upon completion of the CON CHS will replace Ascension Health as the sole corporate member and active parent.

Mt. St. Mary's is currently the sole corporate member of Our Lady of Peace, Inc. (OLP), a 250-bed freestanding not-for-profit nursing home located at 5285 Lewiston Road, Lewiston, NY, and Mount St. Mary's Child Care Center, Inc. (CCC), a not-for-profit employee daycare organization located at 5310 Military Road, Lewiston, NY. The consolidated financial statements of Mt. St. Mary's, shown as BFA Attachment C, also include the financial results of OLP and CCC.

Prior to CHS becoming the active parent of Mt. St. Mary's, Ascension Health will have OLP amend its certificate of incorporation and by-laws in order to cease Mt. St. Mary's corporate membership of OLP. Mt. St. Mary's Child Care Center, Inc. will remain with Mt. St. Mary's.

The proposed active parent/co-operator structure will allow for the following benefits and efficiencies:

- Elimination of duplicative functions by coordinating and centralizing strategic planning activities, operating and capital budgets, marketing and other administrative and management activities;
- Integration of CHS's and Mount St. Mary's quality assurance systems to improve the quality of care to the service area residents;
- Integration of the overall Western New York health care delivery system to achieve economies of scale and cost savings.

BFA Attachment B is the list of all of the licensed health care facilities and agencies operated with CHS as the active parent.

### OPCHSM Recommendation Contingent Approval

### Need Summary

The project will allow the health system to operate more efficiently with anticipated cost savings and improved quality of patient care through a more streamlined process.

There will not be any 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 are no project costs associated with this application.

Budget:	Revenues	\$99,459,000
	Expenses	<u>\$98,459,000</u>
	Net Income/(Loss)	\$1,000,000

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of documentation of approval by the Office of Alcohol and Substance Abuse Services. [PMU]
2. Submission of the revised executed Certificate of Incorporation and Bylaws for Our Lady of Peace, Inc. (OLP), showing that Mount St. Mary's Hospital of Niagara Falls is no longer a member of the facility. [BFA]
3. Submission of an executed restated Certificate of Incorporation for Mount St. Mary's Hospital of Niagara Falls, acceptable to the Department of Health. [BFA]
4. Submission of an Amended and Restated Bylaws of Mount St. Mary's Hospital of Niagara Falls, acceptable to the Department of Health. [BFA]
5. Submission of the executed Restated Certificate of Incorporation of Mount St. Mary's Hospital of Niagara Falls, acceptable to the Department. [CSL]
6. Submission of the finalized and adopted Amended and Restated Bylaws of Mount St. Mary's Hospital of Niagara Falls, acceptable to the Department. [CSL]
7. Submission of an executed amendment to the Certificate of Incorporation of Catholic Health 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

**December 4, 2014**

## Need Analysis

### Background

<u>Bed Category</u>	<u>Certified Capacity</u>
Chemical Dependence – Rehab	20
Coronary Care	6
Intensive Care	6
Maternity	10
Medical/Surgical	133
<b>Total</b>	<b>175</b>

### Conclusion

There will be no change to beds or services as a result of this CON. Benefits will include the elimination of duplicate functions, improved quality of care, and cost savings.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Program Description

Catholic Health System, Inc. (CHS) is seeking approval to become the active parent/co-operator of Mount St. Mary's Hospital of Niagara Falls. CHS is an existing not-for-profit corporation that is currently the active parent of numerous licensed health care facilities and agencies in Western New York.

Approval will allow CHS to exercise active powers over Mount St. Mary's Hospital. Further, the applicant contends that the elimination of duplicative functions and efficiencies produced through the coordination and centralization of activities will result in the preservation of health care for residents in the service area. The applicant does not anticipate any change in authorized services or number or type of beds.

### Character and Competence

The proposed members of the board for Catholic Health System are:

James R. Boldt - Chairman	Li Lin, PhD
John Notaro, MD - Vice-Chair	Michael Murray
William Buscaglia, Jr. - Treasurer	Sr. Patricia Prinzing, RSM
Arthur A. Russ, Jr. - Secretary	Sharon D. Randaccion
Louis Baumann, MD	David Rogers
Carlton N. Brock, Jr.	Joseph Saffire
Peggy Choong, PhD	Hugh B. Scott
Joseph D. McDonald	Sheldon K. Smith
Candace S. Johnson, PhD	Cynthia A. Zane, EdD
Kevin Keenan	Monsignor Robert E. Zapfel
Marsha Lewis, PhD	

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

Dr. Notaro disclosed one (1) 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 May 22, 2008, Catholic Health System was named in a class action lawsuit seeking declaratory relief and monetary damages for alleged violation of the Fair Labor Standards Act and alleged failure to pay non-exempt employees for all hours worked and/or statutory overtime for hours worked over 40 per week, violating New York State Labor Law. Mr. McDonald disclosed that he is a defendant in this open suit.

Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Affiliation Agreement

Date: August 18, 2014

Affiliation Partners: Ascension Health  
Catholic Health System, Inc.

Affiliation Goals:

- Recruit primary care physicians, specialists and mid-level providers to Niagara County to fill service gaps;
- Develop an effective primary and ambulatory care network strategy in Niagara County through investments and partnerships with like-minded providers;
- Expand home health services for Niagara County;
- Expand joint hospital/physician contracting through Catholic Medical Partners focusing on value based contracting, pay for performance and gain sharing;
- Develop new revenue streams through service line development and expand operational efficiencies to improve operating performance;
- Enhance marketing efforts to support: in-network utilization of services, clinical integration programs in collaboration with Catholic Medical Partners, and physician and ambulatory network strategies.

### Operating Budget

The applicant has submitted operating budgets, in 2014 dollars, for the current year of operations and for years 1 and 3 subsequent to becoming the active parent/co-operator of the facility, as shown below:

<u>INPATIENT</u>	<u>Current Year</u>	<u>Year 1</u>	<u>Year 3</u>
Revenues:			
Operating	\$47,485,000	\$47,442,000	\$49,872,000
Non-Operating	\$2,321,847	\$1,820,851	\$1,315,364
Total Revenues	\$49,806,847	\$49,262,851	\$51,187,364
Expenses:			
Operating	\$42,710,408	\$45,262,294	\$47,564,680
Capital	\$1,730,033	\$1,632,229	\$1,566,361
Total Expenses	\$44,440,441	\$46,894,523	\$49,131,041
Net Inpatient Income/(Loss):	\$5,366,406	\$2,368,328	\$2,056,323

OUTPATIENT

Revenues:			
Operating	\$40,245,000	\$42,886,000	\$46,951,000
Non-Operating	<u>\$2,331,153</u>	<u>\$1,828,149</u>	<u>\$1,320,636</u>
Total Revenues	\$42,576,153	\$44,714,149	\$48,271,636
Expenses:			
Operating	\$42,881,592	\$45,443,706	\$47,755,320
Capital	<u>\$1,736,967</u>	<u>\$1,638,771</u>	<u>\$1,572,639</u>
Total Expenses	\$44,618,559	\$47,082,477	\$49,327,959
Net Outpatient Income/(Loss):	(\$2,042,406)	(\$2,368,328)	(\$1,056,323)
Total Net Income/(Loss):	\$3,324,000	\$0	\$1,000,000
Utilization (inpatient discharges)	4,894	4,750	4,680
Cost per inpatient discharge	\$9,080.60	\$9,872.53	\$10,498.09
Utilization (outpatient visits)	154,437	155,100	155,100
Cost per visit	\$288.91	\$303.56	\$318.04

Inpatient utilization by payor source is as follows:

	<u>Current year</u>		<u>Year 1</u>		<u>Year 3</u>	
	<u>Disch.</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>
Commercial	1,005	20.54%	978	20.59%	978	20.90%
Medicare	2,965	60.58%	2,874	60.51%	2,804	59.91%
Medicaid	776	15.86%	726	15.28%	726	15.51%
Private Pay/Other	<u>148</u>	<u>3.02%</u>	<u>172</u>	<u>3.62%</u>	<u>172</u>	<u>3.68%</u>
Total	4,894	100.00%	4,750	100.00%	4,680	100.00%

Outpatient utilization by payor source is as follows:

	<u>Current year</u>		<u>Years 1 and 3</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial	59,518	38.54%	59,773	38.54%
Medicare	62,101	40.21%	62,367	40.21%
Medicaid	21,887	14.17%	21,981	14.17%
Private Pay/Other	<u>10,931</u>	<u>7.08%</u>	<u>10,979</u>	<u>7.08%</u>
Total	154,437	100.00%	155,100	100.00%

Capability and Feasibility

There are no project costs associated with this application.

The submitted budget indicates break even in year 1 and excess of revenues over expenses of \$1,000,000 in year 3. Revenues are based on current inpatient and outpatient reimbursement methodologies for hospitals. The budget is reasonable.

BFA Attachment C is the 2012 and 2013 consolidated certified financial summary for Mount St. Mary's Hospital and Health Center, which shows average positive working capital and equity positions. The entity also has an average net income of \$60,000 for the period shown.

BFA Attachment D is the 2012 and 2013 certified financial summary for Catholic Health Systems, Inc. and Subsidiaries, which shows average positive working capital and equity positions. The entity also has an average positive net income of \$32,394,500 for the period shown.

Subject to the noted contingency, 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.**

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## Attachments

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BFA Attachment A	Organizational Chart for Mt. St. Mary's before and after CON 142105
BFA Attachment B	List of licensed health facilities and agencies for which CHS is the active parent
BFA Attachment C	2012-2013 consolidated certified financial summary for Mount St. Mary's Hospital and Health Center
BFA Attachment D	2012-2013 certified financial summary for Catholic Health Systems, Inc. and Subsidiaries



# Public Health and Health Planning Council

Project # 142140-E  
NYP Community Programs, Inc.

**Program:** Hospital  
**Purpose:** Establishment

**County:** Westchester  
**Acknowledged:** October 6, 2014

## Executive Summary

### Description

NYP Community Programs, Inc. (NYP), an existing not-for-profit corporation, requests approval to become the active parent and co-operator of Hudson Valley Hospital Center (HVHC), which will conduct business as New York Presbyterian/Hudson Valley Hospital. HVHC is a 128-bed acute care hospital located at 1980 Crompond Road, Cortlandt Manor in Westchester County. The sole member of NYP is New York Presbyterian Hospital.

According to the applicant, the purpose of the transaction is to establish a more integrated system with the objectives of improving quality, increasing access, and lowering costs of health care in the communities served by HVHC. There will be no change in services or the number and type of beds as a result of approval of this project. Also, there are no projected changes in utilization, revenues, or expenses of HVHC as a direct result of this project. The hospital will remain a separate not-for-profit corporation.

As the active parent and co-operator, NYP will have the following rights, powers and authorities with respect to HVHC:

- Appointment of members of the Board of Trustees of HVHC;
- Appointment or dismissal of HVHC officers, managers, and medical staff;
- Approval of the operating and capital budgets and strategic and operating plans of HVHC;
- Adoption or approval of operating policies and procedures of HVHC;
- Approval of the certificate of need applications filed by or on behalf of HVHC;

- Approval of any indebtedness of HVHC;
- Approval of management or clinical services contracts by HVHC;
- Adoption or approval of any amendment, repeal, or other change to the organizational documents of HVHC; and
- Approval of settlements of administrative or other litigation or proceedings to which HVHC is a party.

### OPCHSM Recommendation Contingent Approval

### Need Summary

The project will allow NYP Community Program, Inc. to become the active parent/co-operator of Hudson Valley Hospital Center and to act within the powers that this arrangement grants.

There will be no change in beds, services or utilization through this project, but it is anticipated that patients will have better access to care in a more streamlined health care system.

### 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 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 Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of the executed Restated Certificate of Incorporation of NYP Community Programs, Inc., acceptable to the Department. [CSL]
2. Submission of the finalized bylaws of NYP Community Programs, Inc., acceptable to the Department. [CSL]
3. Submission of the executed Restated Certificate of Incorporation of Hudson Valley Hospital Center, acceptable to the Department. [CSL]
4. Submission of the finalized bylaws of Hudson Valley Hospital Center, 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

**December 4, 2014**

## Need Analysis

### Project Description

NYP Community Program, Inc. is seeking approval to be established as the active parent and co-operator of the Hudson Valley Hospital Center which will operate as New York Presbyterian/Hudson Valley Center, a 128-bed Hospital located at 1980 Crompond Rd. Cortlandt Manor, NY 10567.

### Background

*Table 1 Hudson Valley Hospital Center*

Bed Category	Certified Capacity
Intensive Care	10
Maternity	14
Medical/Surgical	90
Neonatal Intermediate Care	8
<u>Pediatric</u>	<u>6</u>
Total	128

### Designations:

Level 2 Perinatal Center  
Stroke Center

### Conclusion

This project should allow Hudson Valley Hospital Center to operate in a more cost effective manner and to offer better access to care within a more streamlined patient health system.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

NYP Community Programs, Inc. (NYP), an existing not-for-profit corporation, seeks approval to become the active parent and co-operator of Hudson Valley Hospital Center (HVHC). Hudson Valley Hospital Center is an existing 128-bed acute care hospital located at 1980 Crompond Road in Cortlandt Manor (Westchester County). HVHC also operates five (5) extension clinics in Westchester County.

The sole member of NYP is The New York and Presbyterian Hospital, which serves in a passive parent capacity. Upon approval, NYP will have the ability, as sole corporate member of HVHC, to exercise Article 28 active powers and gain oversight with respect to day-to-day-operations over the following:

#### **Hudson Valley Hospital Center (HVHC)**

*and*

#### **HVHC Extension Clinics**

HVHC Croton Diagnostic & Rehabilitation  
HVHC Croton Diagnostic & Rehabilitation  
HVHC Croton Infusion Center  
Medical Center at Cold Spring  
Waterside Diagnostic Imaging

The applicant's objective is to establish a coordinated, integrated system that will improve quality, increase access and lower the costs of health care in the communities served by HVHC. There will be 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.

Upon approval, HVHC will conduct business as New York Presbyterian/Hudson Valley Hospital Center.

Character and Competence  
The proposed directors of NYP are:

<u>Name</u>	<u>Title</u>
John J. Mack	Trustee
Jeffrey W. Greenberg	Trustee
Arthur J. Hedge, Jr.	Trustee
Alfred F. Kelly, Jr.	Trustee
Ivan G. Seidenberg	Trustee
Seymour Sternberg	Trustee
Steven J. Corwin, MD	Trustee

The proposed directors of HVHC following the establishment of NYPCP as the Hospital's active parent are:

<i>Laura L. Forese, MD, MPH</i>	<i>Phyllis Lantos</i>
<i>Gary J. Zuar</i>	<i>Brian Regan</i>
<i>Mark E. Larmore</i>	<i>Kerry DeWitt</i>
<i>Wayne Osten</i>	<i>Kimlee Roldan-Sanchez</i>
<i>Richard Gemming</i>	<i>Edward B. MacDonald, Jr.</i>
<i>Michael Delfino</i>	<i>John Dare</i>

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 2/28/08, Hudson Valley Hospital Center was fined \$10,000 based on the investigation of a death from malignant hyperthermia following a rapid cycle detoxification (RCD) procedure. It was determined that the facility failed to monitor a patient under deep anesthesia, failed to train staff in RCD, failed to follow procedures to treat malignant hyperthermia and that the physician was not credentialed to perform an RCD.

Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Capability and Feasibility

There are no issues of capability or feasibility, since there are no project costs or budget associated with this application.

BFA Attachment A is the 2012 and 2013 certified financial statements of The New York Presbyterian Hospital. As show, the hospital had an average positive working capital position and an average positive net asset position from 2012 through 2013. Also, the hospital achieved an average operating income of \$197,785,500 from 2012 through 2013.

BFA Attachment C is the 2012 and 2013 certified financial statements of Hudson Valley Hospital Center. As show, the hospital had an average positive net asset position from 2012 through 2013. Also, the hospital incurred average operating losses of \$299,266 from 2012 through 2013. The hospital incurred a loss of \$3,619,341 in 2013. The applicant has indicated that the 2013 operating loss was primarily due to significant Medicare reductions that occurred in Sequestration. The hospital addressed these losses through expense reductions and improving efficiencies.

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: Organization Chart  
BFA Attachment B: Financial Summary – New York Presbyterian Hospital  
BFA Attachment C: Financial Summary – Hudson Valley Hospital Center



# Public Health and Health Planning Council

Project # 132340-B  
Richmond ASC, LLC d/b/a Richmond Pain Management

**Program:** Diagnostic and Treatment Center  
**Purpose:** Establishment and Construction

**County:** Richmond  
**Acknowledged:** December 20, 2013

## Executive Summary

### Description

The Richmond ASC, LLC d/b/a Richmond Pain Management ASC, a recently formed limited liability company, requests approval for the establishment and construction of a single-specialty freestanding ambulatory surgery center providing pain management services, to be located in leased space at 1360 Hylan Blvd., Staten Island, New York (Richmond County). The proposed ambulatory surgery center will have three operating rooms, three pre-op bays, seven post-op bays and three step-down recovery bays, as well as all of the required support spaces.

The proposed members of Richmond ASC, LLC are as follows:

#### Members

Kenneth Chapman, MD	80%
SIUH Ventures, LLC	20%

SIUH Ventures, LLC is solely owned by North Shore University Hospital. North Shore University is a member of the North Shore-Long Island Jewish Health System, Inc.

### OPCHSM Recommendation

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

### Need Summary

The number of projected procedures is 11,974 in year 1; the applicant does not anticipate migration of

procedures from area hospitals. Richmond ASC will provide two (2) percent charity care and five (5) percent Medicaid.

### 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

Total project cost of \$2,800,749 will be met as follows: equity of \$700,000 from the proposed members' personal resources and from operations of North Shore-Long Island Jewish Health System, Inc., and a bank loan of \$2,100,749 at an interest rate of prime + 1% (approximately 4.25% as of 10/1/2014) for a seven year term.

### Budget:

Revenues	\$4,942,087
Expenses	<u>3,043,764</u>
Net Income	\$1,898,323

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and 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 bank loan commitment, acceptable to the Department. [BFA]
7. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
8. Submission of an executed building lease, acceptable to the Department. [BFA]
9. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
10. Submission of a photocopy of an executed Restated Articles of Organization of Richmond ASC, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed amendment to the Amended Operating Agreement of Richmond ASC, LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of the executed lease agreement between the applicant and 1369 Hylan Boulevard, LLC, acceptable to the Department. [CSL]
13. Submission of a signed statement from the applicant, acceptable to the Department, that the proposed transaction has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate. [CSL]

14. Submission of a photocopy of an executed Certificate of Assumed Name of Richmond ASC, LLC, indicating its intent to do business as Richmond Pain Management, acceptable to the Department. [CSL]
15. Submission of a photocopy of an executed amendment to the Operating Agreement of SIUH Veatures, 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 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]
3. The applicant shall complete construction by April 1, 2016. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

**December 4, 2014**

# Need Analysis

## Background

The Richmond ASC, LLC d/b/a Richmond Pain Management ASC is seeking approval to establish and construct an Article 28 diagnostic and treatment center to provide single-specialty ambulatory surgery services specializing in pain management; it will be located at 1360 Hylan Blvd., Staten Island, 10305, in Richmond County.

## Analysis

The primary service area of the proposed project is Richmond County, which includes the following zip codes: 10301-10310, 10312, and 10314.

The number of projected procedures is 11,974 in year 1 and 13,435 in year 3. These projections are based on the actual experience of the proposed surgeons who will be utilizing the proposed center.

Richmond County has no single specialty or multi-specialty freestanding ASCs. There are four hospitals in Richmond County that currently provide multi-specialty ambulatory surgical services.

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

<u>Ambulatory Surgery Patients</u>	<u>Total Patients 2013</u>
Richmond University Medical Center	12,566
Staten Island Hospital-North	13,066
Staten Island Hospital-South	4,072

Source: SPARCS 2014

The proposed center will have a transfer and affiliation agreement with Staten Island University Hospital located 1.03 miles and 3 minutes away.

The applicant commits to serve all patients regardless of their ability to pay or the source of payment. The applicant will work in partnership with the Community Health Center of Richmond (CHCR) to provide charity care for those patients requiring ambulatory surgical services who are uninsured or underinsured.

## Conclusion

Approval of the proposed ASC will bring into an Article 28 regulated setting a large number of ambulatory surgery procedures currently carried out in office-based environments.

## Recommendation

**From a need perspective, contingent approval is recommended.**

## Program Analysis

### Project Proposal

Richmond ASC, LLC is seeking approval to establish and construct an Article 28 single-specialty ambulatory surgery center.

Proposed Operator	Richmond ASC, LLC
Doing Business As	Richmond Pain Management
Site Address	1360 Hylan Blvd, Staten Island (Richmond County)
Surgical Specialties	Single Specialty: Pain Management
Operating Rooms	3 (2 Class B & 1 Class C)
Procedure Rooms	0
Hours of Operation	Monday and Thursday 9:00 am - 7:00 pm Tuesday, Wednesday & Friday 9:00 am - 5:00 pm Alternating Saturdays 10:00 am - 2:00 pm.
Staffing (1st Year / 3rd Year)	18.0 FTEs / 18.0 FTEs
Medical Director(s)	Kenneth Chapman, MD
Emergency, In-Patient and Backup Support Services Agreement and Distances	Expected to be provided by: Staten Island University Hospital 1.03 miles / 3 minutes
On-call service	The number for the surgeon's answering service or the on-call physician will be provided to the patient.

### Character and Competence

The members of the LLC are:

<u>Name</u>	<u>Percentage</u>
Kenneth Chapman, MD	80%
SIUH Ventures, LLC	20%

Dr. Chapman is a board-certified anesthesiologist who has been in private practice for the last 8 years. SIUH Ventures, LLC is solely owned by North Shore University Hospital. North Shore University is a member of the North Shore-Long Island Jewish Health System, Inc.

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.

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

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

### Integration with Community Resources

The center will maintain a list of all primary care resources located in Staten Island and other NYC boroughs and it will make referrals according to patients' geographic preferences. The Center will serve all patients without regard to their ability to pay and has coordinated with a community non-profit agency to provide charity care to those who are uninsured or underinsured.

The center will be fully equipped with a state-of-the-art Electronic Medical Record (EMR) and it intends on being integrated into a Health Information Exchange (HIE). In addition, the Center recognizes the benefits of and plans on exploring the establishment of a working relationship with an Accountable Care Organization (ACO).

### Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site, as summarized below:

Premises	6,932 square feet located at 1362 Hylan Boulevard, Staten Island, New York.
Lessor	Hylan Boulevard, LLC
Lessee	Richmond ASC, LLC
Term	10 years
Rental	\$291,144 annual (\$42.00 per sq.ft.) with a 3% increase each year thereafter.
Provisions	The lessee shall be responsible for insurance, utilities, and maintenance.

The applicant has indicated that there is a relationship between the lessor and the lessee. Kenneth Chapman owns the lessor entity. The applicant has submitted real estate letters attesting to the reasonableness of the per square foot rental.

### Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$2,800,749, further broken down as follows:

Renovation and Demolition	\$1,800,000
Asbestos Abatement or Removal	20,000
Design Contingency	180,200
Construction Contingency	180,200
Architect/Engineering Fees	218,040
Construction Manager Fees	50,000
Moveable Equipment	285,000
Telecommunications	50,000
CON Fee	2,000
Additional Processing Fee	15,309
Total Project Cost	\$2,800,749

Project costs are based on an August 1, 2015 construction start date and an eight month construction period.

The applicant's financing plan appears as follows:

Equity	\$700,000
Bank Loan (prime +1% approximately 4.25% as of 10/1/2014) for a seven year term	<u>2,100,749</u>
Total	\$2,800,749

#### Operating Budget

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

	<u>YEAR ONE</u>	<u>YEAR THREE</u>
Revenues:		
Medicaid Managed Care	\$227,834	\$255,629
Medicare Fee For Service	1,283,569	1,440,164
Commercial Fee For Service	1,538,420	1,726,107
Workers Compensation/ No Fault	<u>1,538,420</u>	<u>1,726,107</u>
Gross Revenues	\$4,588,243	\$5,148,007
Less:		
Charity Care	\$91,765	\$102,960
Bad Debt	<u>91,765</u>	<u>102,960</u>
Net Revenues	\$4,404,713	\$4,942,087
Expenses:		
Operating	\$2,307,691	\$2,411,324
Capital	<u>641,191</u>	<u>632,440</u>
Total Expenses	\$2,948,882	\$3,043,764
Net Income	\$1,455,831	\$1,898,323
Utilization: (Procedures)	11,974	13,435
Cost Per Procedure	\$246.27	\$226.55

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

	<u>YEAR ONE</u>	<u>YEAR THREE</u>
Medicaid Managed Care	5.00%	5.00%
Medicare Fee For Service	33.00%	33.00%
Commercial Fee For Service	30.00%	30.00%
Workers Compensation/ No Fault	30.00%	30.00%
Charity Care	2.00%	2.00%

Expenses and utilization assumptions are based on the historical experience of other single specialty ambulatory surgery centers providing pain management services in the New York downstate metropolitan area. The applicant has submitted physician referral letters in support of utilization projections.

#### Capability and Feasibility

Total project cost of \$2,800,749 will be met as follows: bank loan of \$2,100,749 at an interest rate of prime +1% (approximately 4.25% as of 10/1/2014) for a seven year term, and equity of \$700,000 to be provided from the proposed members' personal resources and from operations of North Shore-Long Island Jewish Health System.

Working capital requirements are estimated at \$507,294, which is equivalent to two months of third year expenses. Kenneth Chapman will provide a loan to Richmond ASC of \$235,647 at an interest rate of prime +1% (approximately 4.25% as of 10/1/2014) for a five year term. The remaining \$235,647 will be provided by the proposed members as cash equity. BFA Attachments A and B are the personal net worth statement of Kenneth Chapman and the 2012 and 2013 certified financial statements of North Shore-Long Island Jewish Health System, Inc., which indicates the availability of sufficient funds for the equity contributions. BFA Attachment C is the pro forma balance sheet of Richmond Pain Management ASC as of the first day of operation, which indicates a positive net asset position of \$953,647.

The submitted budget indicates a projected net income of \$1,455,831 and \$1,898,323 during the first and third years, respectively. Revenues reflect current reimbursement rates for ambulatory surgery services. The submitted budget appears reasonable.

As shown on Attachment B, North Shore-Long Island Jewish Health System, Inc. had an average positive working capital position and an average positive net asset position. Also, the entity achieved average operating revenues over operating expenses of \$90,912,000 from 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	Personal Net Worth Statement- Proposed Member
BFA Attachment B	Financial Summary- North Shore- Long Island Jewish Health System
BFA Attachment C	Pro Forma Balance Sheet



# Public Health and Health Planning Council

Project # 141290-B  
SOW Westside, LLC d/b/a Surgicare of Westside

**Program:** Diagnostic & Treatment Center      **County:** New York  
**Purpose:** Establishment and Construction      **Acknowledged:** July 3, 2014

## Executive Summary

### Description

SOW Westside, LLC, an existing general purpose limited liability company, requests approval for the establishment and construction of an Article 28 multi-specialty freestanding ambulatory surgery center to be located in leased space at 438 West 51<sup>st</sup> Street, New York, New York. The Center will consist of four operating rooms. After approval, the Center will be known as SurgiCare of Westside. Through its strategic partnership with its member North Shore LIJ Ventures Westside, LLC and its affiliate North Shore Long Island Jewish Health System, the applicant will benefit from the expertise of a leading health system in New York. The applicant will enter into an administrative services agreement with Surgem Management, LLC.

The current members of SOW Westside, LLC with ownership percentages are as follows:

John Hajjar, MD.	30.00%
Didier Demesin, MD.	1.00%
Cary Chapman, MD.	1.00%
Corey Hunter, MD.	1.00%
Amr Hosny, MD.	4.00%
Ednan Sheikh, MD.	2.00%
Andrew Feldman, MD.	3.00%
Salil Gupta, MD.	1.00%
Arash Emamil, MD.	2.00%
SOW Westside BM, LLC	5.00%
RYC Orthoventures, LLC	5.00%
Hudson Surgicare, LLC	2.00%
Paul Brisson, MD.	4.00%
North Shore LIJ Ventures Westside, LLC	10.00%
Yaser El-Gazzar, MD.	1.00%
Gregory Montalbano, MD.	3.00%
Craig Radney, MD.	1.00%
G.R.&G.T.F.O.O.M, LLC	3.00%
MWH ASC, LLC	2.00%
Michael Gerling, MD.	4.00%

Timothy Reish, MD.	1.00%
William Long, MD.	2.00%
Tribeca Orthoventures, LLC	5.00%
Kevin Wright, MD.	1.00%
Fabien Bitan, MD.	1.00%
Salvatore Lenzo, MD.	4.00%
Andrew Stein, MD.	1.00%

### OPCHSM Recommendation

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

### Need Summary

SOW Westside, LLC proposes to establish and construct an Article 28 diagnostic and treatment center to provide multi-specialty ambulatory surgery services. The number of projected procedures is 4,537 in year 1 with five (5) percent Medicaid and two (2) percent charity 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

Total project cost of \$10,676,986 will be met via equity from the current members of SOW Westside, LLC.

### Budget:

Revenues	\$20,445,329
Expenses	<u>15,371,086</u>
Net Income	\$ 5,074,243

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval with an expiration of its 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 working capital loan commitment, acceptable to the Department. [BFA]
8. Submission of an executed building lease, acceptable to the Department. [BFA]
9. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]
10. Submission of State Hospital Code (SHC) Drawings, acceptable to the department, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]
11. Submission of a photocopy of the applicants finalized and executed Amended and Restated Certificate of Formation, acceptable to the Department. [CSL]
12. Submission of a photocopy of a finalized and executed amendment to the applicants Operating Agreement, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicants finalized and executed Application for Authority, acceptable to the Department. [CSL]
14. Submission of a photocopy of the applicants finalized and executed Lease, acceptable to the Department. [CSL]

15. Submission of a photocopy of Tribeca Orthoventures LLCs finalized and executed Operating Agreement, acceptable to the Department. [CSL]
16. Submission of a photocopy of SOW Westside LLCs finalized and executed Operating Agreement, acceptable to the Department. [CSL]
17. Submission of a photocopy of North Shore-LIJ Ventures West Side, LLCs Operating Agreement, acceptable to the Department. [CSL]
18. Submission of a photocopy of North Shore-LIJ Ventures West Side, LLCs Articles of Organization, acceptable to the Department. [CSL]
19. Submission of a photocopy of Hudson Surgicare, LLCs Articles of Organization, which is acceptable to the Department. [CSL]
20. Submission of a photocopy of MWH ASC, LLCs finalized and executed Operating Agreement, acceptable to the Department. [CSL]
21. Submission of a photocopy of MWH ASC, LLCs Articles of Organization, acceptable to the Department. [CSL]
22. Submission of a photocopy of G.R. & G.T.F.O.O.M. LLCs Articles of Organization, acceptable to the Department. [CSL]
23. Submission of a photocopy of the applicants executed services 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]
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 start construction on or before July 1, 2015 and complete construction by March 1, 2016 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 Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]

Council Action Date

**December 4, 2014**

## Need Analysis

### Background

SOW Westside, LLC d/b/a Surgicare of Westside is requesting approval to establish and construct an Article 28 Diagnostic and Treatment Center to provide multi-specialty ambulatory surgery services. The proposed location is 438 West 51<sup>st</sup> Street, New York, 10019, in New York County.

### Analysis

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

PFI	Type of Facility	Facility	Total Patients 2013
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	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 2013)	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

(Source-SPARCS)

The number of projected procedures is 4,537 in year 1 and 7,378 in year 3 with five (5) percent Medicaid and two (2) percent charity care. These projections are based on the current case load of 29 participating physicians.

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 specializing in General Surgery, Urology, Pain Management, Orthopedics, Plastic Surgery, OB/GYN, and Physical Medicine in New York County.

### Recommendation

**From a need perspective, contingent approval is recommended.**

## Program Analysis

### Project Proposal

SOW Westside, LLC seeks approval to establish and construct an Article 28 diagnostic and treatment center that will be certified as a multi-specialty ambulatory surgery center. Following approval, SOW will be known as SurgiCare of Westside.

<b>Proposed Operator</b>	SOW Westside, LLC
<b>Doing Business As</b>	SurgiCare of Westside
<b>Site Address</b>	438 West 51 <sup>st</sup> Street, New York, NY
<b>Surgical Specialties</b>	Multi-Specialty, including: General Surgery Gynecology Orthopedics Pain Management
<b>Operating Rooms</b>	4 (Class C)
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 8:00 am to 6:00 pm (Extended as necessary to accommodate patient needs).
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	27.20 FTEs / 32.0 FTEs
<b>Medical Director(s)</b>	Paul-Marie Jerome Brisson, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Is expected to be provided by Lenox Hill Hospital 2.8 Miles / 11 Minutes
<b>On-call service</b>	Patients will be provided with surgeon contact information as well as the facility's on-call service during hours when the facility is closed.

### Character and Competence

The membership of SOW Westside, LLC consists of twenty-nine (29) practicing board-certified or board eligible physicians (some vis-à-vis member New York limited liability companies) and North Shore LIJ Ventures Westside, LLC.

Character and Competence Reviews were conducted on the members listed below with the exception of North Shore LIJ Ventures Westside, LLC. According to the applicant, North Shore LIJ Ventures Westside, LLC. is wholly-owned by Lennox Hill Hospital and the Lennox Hill Hospital board is identical to the North-Shore Long Island Jewish Health System (NS-LIJ) Board. A full Character and Competence Review was conducted on all voting members of the NS-LIJ Board and disclosures were made as part of project (CON #141004), which was approved by the PHHPC in June 2014.

Name	Membership Percentage
<b>**North Shore LIJ Ventures Westside, LLC</b> Dennis Dowling (Manager) Laurence Kraemer (Manager)	<b>10.00%</b>
<b>Physicians/Physician-Owned LLCs</b>	<b>90.00%</b>
John H. Hajjar	30.00%
Didier A. Demesin, MD	1.00%
Cary B. Chapman, MD	1.00%
Corey Hunter, MD	1.00%
Amr Hosny, MD	4.00%
Ednan Sheikh, MD	2.00%
Andrew Feldman, MD	3.00%

Salil Gupta, MD	1.00%
Arash Emami, MD	2.00%
Paul Marie Brisson, MD (Medical Director)	4.00%
Yaser El-Gazzar, MD	1.00%
Gregory Montalbano, MD	3.00%
Craig S. Radney, MD	1.00%
Michael Gerling, MD	4.00%
Timothy Reish, MD	1.00%
William John Long, MD	2.00%
Kevin Wright, MD	1.00%
Fabien Bitan, MD	1.00%
Salvatore Lenzo, MD	4.00%
Andrew Stein, MD	1.00%
<b>SOW Westside BM, LLC</b> Bryan Massoud, MD	5.00%
<b>RYC Orthoventures, LLC</b> Donald Rose, MD Thomas Youm, MD	5.00%
<b>Hudson Surgicare, LLC</b> Jonathann Kuo, MD Kevin Pak, MD Alexander Rances, MD	2.00%
<b>G.R. &amp; G.T.F.O.O.M, LLC</b> Charles H. Starke, II, MD	3.00%
<b>MWH ASC, LLC</b> Ebrahim S. Shahim, MD	2.00%
<b>Tribeca Orthoventures, LLC</b> Mark Mohrmann, MD	5.00%
<i>** C&amp;C previously conducted under CON #141004 which was approved by PHHPC in June 2014</i>	
<b>TOTAL</b>	<b>100.00%</b>

The Managers of SOW Westside will be:

John Hajjar, MD
Thomas Youm, MD
Dennis Dowling
Laurence Kraemer
Charles Starke, II, MD

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

Drs. Hosny and Lenzo each disclosed one (1) pending malpractice case. Dr. Montalbano disclosed three (3) pending and one (1) settled malpractice case. Dr. Stein disclosed one (1) pending malpractice and three (3) settled malpractice cases. Dr. Radnay disclosed five (5) pending malpractice cases. Dr. Bitan disclosed seven (7) pending malpractice cases.

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 October 16, 2006, the Department issued a Stipulation and Order and imposed a \$14,000 fine on Southside Hospital based on the finding 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, the Department issued a Stipulation and Order and imposed a \$12,000 fine on Forest Hills Hospital based on the findings of an investigation regarding a patient who entered the hospital for left side hernias repair. The surgery was performed on the patient's right side.

On July 23, 2007, the Department issued a Stipulation and Order and imposed a \$12,000 fine on Staten Island University Hospital based on the investigation of a complaint that an overdose of a controlled substance by the hospital had caused the patient's death. Findings included that nursing 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, the Department issued a Stipulation and Order and imposed an \$18,000 fine on North Shore University Hospital – Manhasset based on a complaint investigation related to the post-operative care rendered to an elderly patient. Following surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed resulting in a dislocated femur and developed renal failure. Follow-up care was delayed or inadequately administered.

On July 8, 2010, the Department issued a Stipulation and Order and imposed a \$42,000 fine on Syosset Hospital based on the findings of a complaint investigation into the care of 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.

#### Integration with Community Resources

The Center plans to serve patients who are referred by their community based physician, however, should patients require primary care services, the Center will expand its Transfer and Affiliation Agreement with Lenox Hill Hospital to include primary and other specialty services, as needed. Further, the Center will integrate with the community by participating in community health events and local religious institutions in an effort to educate increase awareness about the services offered at the Center. No patient will be excluded based on ability to pay. A sliding fee scale will be developed for patients without health insurance and charity care will be provided at no charge or reduced charge for those patients who are unable to pay full charges or not eligible for covered benefits or private insurance.

The applicant intends on utilizing an Electronic Medical Record (EMR) System and is currently reviewing options. While not committing to joining an Accountable Care Organization or Medical Home, the applicant does intend on developing a mutual network relationship with Lenox Hill Hospital. Additionally, the applicant has expressed a desire to integrate into the Regional Health Information Organization (RHIO) and/or Health Information Exchange (HIE) and has made inquiries to Lenox Hill hospital in an effort to establish a mutual network relationship.

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site, as summarized below:

Premises: 12,600 square feet located at 438 West 51th Street, New York.  
Lessor: Westside Manhattan Real Estate, LLC  
Lessee: SOW Westside, LLC  
Term: Fifteen years  
Rental: \$756,000 annually (\$60.00 per sq.ft.) with a 3% increase each year thereafter.  
Provisions: The lessee shall be responsible for maintenance, real estate taxes and insurance.

The applicant has submitted an affidavit indicating that there is a relationship in that John Hajjar is a member of the landlord entity.

### Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, which they will enter into as summarized below:

Administrator: Surgem Management, LLC  
Center: SOW Westside, LLC  
Services Provided: Facility maintenance; employee training and evaluation; back office and administrative support; community outreach; accounting and financial services; development of policies and procedures; reimbursement and service contract guidance; regulatory assistance; quality and utilization controls, insurance, reporting, emergency support, dispute processing, electronic medical records development and implementation and information system acquisition and support.  
Term: 10 years  
Compensation: \$1,500,000 in the first year with increasing 5% per year thereafter.

The Center retains ultimate independent authority and responsibility over the following:

- Controlling and maintaining the books and records of the Center;
- Appointment or dismissal of Center management level of employees and medical staff;
- Approval of Center operating and capital budgets;
- Adoption, approval, and enforcement of Center's operating policies and procedures affecting the Center's delivery of health care services;
- Approval of Certificate of Need Applications filed by or on behalf of Center;
- Approval of Center debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- Approval of Center contracts for management or for clinical services;
- Approval of settlements of administrative proceedings or litigation to which the Center is party; and
- Disposing of assets and incurring of liabilities on behalf of the Center.

The applicant has submitted an affidavit indicating that there is a relationship between the applicant and Surgem Management, LLC in that John Hajjar is a member of Surgem Management, LLC.

### Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$10,676,986, further broken down as follows:

Renovation and Demolition	\$5,045,783
Design Contingency	504,578
Construction Contingency	504,578
Architect/Engineering Fees	403,663
Other Fees (Consultant)	400,000
Moveable Equipment	3,757,993
CON Fee	2,000
Additional Processing Fee	<u>58,391</u>
Total Project Cost	\$10,676,986

Project costs are based on a July 1, 2015 construction start date and an eight month construction period.

The applicant will provide equity from the proposed members personal resources and North Shore-Long Island Jewish Health System.

### Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$12,391,108	\$20,445,329
Expenses:		
Operating	\$9,570,569	\$13,548,310
Capital	<u>1,639,800</u>	<u>1,822,776</u>
Total Expenses:	\$11,210,369	\$15,371,086
Net Income:	\$1,180,739	\$5,074,243
Utilization: (Procedures)	4,537	7,378
Cost Per Procedure:	\$2,470.88	\$2,083.37

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	5.00%	5.00%
Medicare Managed Care	13.00%	13.00%
Commercial Fee-For-Service	30.98%	30.99%
Commercial Managed Care	19.00%	19.00%
Private Pay	3.00%	3.00%
Other*	27.02%	27.01%
Charity Care	2.00%	2.00%

\*Other consists of No Fault and Workers Compensation.

Utilization projections are based upon the surgical volume letters as provided by the proposed surgeons who will perform surgeries at the proposed center. Expenses are based upon historical data from previous cost reports of similar ambulatory surgery centers, and experience of the applicant who participates in other ambulatory surgery centers.

## Capability and Feasibility

Project costs of \$10,676,986 will be met via equity from the proposed members.

Working capital requirements are estimated at \$2,561,847, which appears reasonable based on two months of third year expenses. The applicant will finance \$1,280,923 at an interest rate of 6% for a three year term. The remainder, \$1,280,924, will be provided in the form of equity via the proposed members of SOW Westside, LLC. BFA Attachments A and B are the personal net worth statements of the proposed members of SOW Westside, LLC and the 2012 and 2013 certified financial statements of North Shore - Long Island Jewish Health System, Inc., which indicates the availability of sufficient funds to meet the total project cost and the working capital requirements. The applicant has submitted an affidavit indicating that each member is willing to contribute resources disproportionate to ownership percentages. BFA Attachment C is the pro-forma balance sheet of SOW Westside, LLC as of the first day of operation, which indicates a positive net asset position of \$11,957,910.

The submitted budget indicates a net income of \$1,180,739 and \$5,074,243 during the first and third year, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable.

As shown on BFA Attachment B, North Shore- Long Island Jewish Health System, Inc. has maintained an average positive working capital position and an average positive net asset position from 2012 through 2013. Also, the entity achieved average operating gains of \$90,912,000 from 2102 through 2013.

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

## Recommendation

**From a financial perspective, contingent approval is recommended.**

# Supplemental Information

## Hospital Responses

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

**Facility:** Bellevue Hospital Center -- **No Response**  
First Avenue at 27<sup>th</sup> Street  
New York, NY 10016

**Facility:** Mount Sinai Roosevelt Hospital -- **No Response**  
1000 Tenth Avenue  
New York, NY 10019

**Facility:** New York Presbyterian Hospital -- **No Response**  
New York Weill Cornell Center  
525 East 68<sup>th</sup> Street  
New York, NY 10021

**Facility:** NYU Hospitals Center  
 NYU Hospital for Joint Diseases  
 301 East 17<sup>th</sup> Street  
 New York, NY 10003

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	Inpatient		
67%	10,429	4,833	2,745	Yes

The Hospital for Joint Diseases (HJD) opposes the application, stating that the thirteen Surgicare physicians credentialed at NYU Hospitals Center perform over 2,700 ambulatory surgery procedures at HJD per year, accounting for over \$21 million in revenue annually, which HJD projects would be lost to the proposed ASC. The hospital furnished no information on community-oriented services or other activities that would be adversely affected by this projected loss of revenue.

In 2012, NYU Hospitals Center had operating expenses of \$1,797,646,000 on operating revenue of \$1,980,519,000 for a gain of \$182,873,000. In 2013, operating expenses totaled \$1,981,021,000 and operating revenue was \$2,081,361,000, for a gain of \$100,340,000. NYU Hospitals Center's current assets in 2012 were \$1,109,609,000, and current liabilities were \$469,767,000, for a working capital ratio of 2.4 to 1.0. In 2013, current assets were \$682,923,000, and current liabilities were \$355,470,000, for a working capital ratio of 1.9 to 1.0. In its fiscal year 2013, NYU Hospitals Center incurred bad debt costs of \$19,583,000 and provided charity care in the amount of \$15,838,000. In fiscal year 2014, the Center incurred \$11,611,000 in bad debt costs and provided \$24,274,000 in charity care.

Supplemental Information from Applicant

**Need and Sources of Cases:** The applicant states that the projected volume of the proposed ASC is based on the actual experience of the proposed operator(s) and/or participating surgeons who have indicated an interest in performing procedures at the proposed facility. The applicant also expects that ongoing and projected growth in ambulatory surgery in general will be a source of cases for the proposed facility, as will convenience in scheduling and the location of the ASC in an out-of-hospital setting, in close proximity to transportation resources and the proposed operators' own private medical practices.

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

**Office-Based Cases:** The applicant states that the projected cases for the ASC will come from "a variety of sources." The applicant estimates that approximately 42 percent of the cases are currently being performed in private practice settings and refers to an unspecified number as coming from other ambulatory surgery centers. The applicant does not state whether any cases will be drawn from hospital-based programs.

DOH Comment

Although NYU Hospitals Center projects a loss of \$21 million annually to the proposed ASC, this assumes that all 2,745 cases currently performed by NYU-credentialed physicians associated with the Surgicare application would migrate to the proposed ASC. This seems unlikely, given that in any particular instance the patient or the physician may choose to undergo or perform a procedure in a hospital-based facility. Moreover, even if a substantial number of cases were to be transferred to the ASC, the scale of NYU Hospital Center's revenues and its robust financial condition make it doubtful that the associated loss of surgical revenue would have a major adverse effect on the Center and its member facilities. The Department also notes that in commenting on this project, NYU Hospitals Center did not describe any effects that a loss of revenue to the ASC might have on its community-oriented programs or other activities subsidized by surgical revenues.

The Department concludes that the comments of NYU Hospital Center do not provide a sufficient basis for reversal or modification of the recommendation for limited life approval of the proposed ASC, based on public need, financial feasibility and operator character and competence.

<h2>Attachments</h2>
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- |                  |  |
|------------------|--|
| BFA Attachment A | Personal Net Worth Statement   |
| BFA Attachment B | Financial Summary- 2012 and 2013 certified financial statements of North Shore- Long Island Jewish Health System |
| BFA Attachment C | Pro-forma Balance Sheet  |



# Public Health and Health Planning Council

Project # 142039-E  
North Country Orthopaedic Ambulatory Surgery Center, LLC

**Program:** Diagnostic and Treatment Center    **County:** Jefferson  
**Purpose:** Establishment    **Acknowledged:** September 8, 2014

## Executive Summary

### Description

North Country Orthopaedic Ambulatory Surgery Center, LLC, an existing limited liability company that operates a single-specialty freestanding ambulatory surgery center (FASC) in orthopedics, requests approval to add three new members, withdraw four founding members, and change the ownership interest for three existing members. There are no programmatic changes and the applicant will continue to be located at 1571 Washington Street, Watertown, New York.

North Country Orthopaedic Ambulatory Surgery Center, LLC began operating on February 24, 2003, at which time ownership interest was equally divided among seven physicians, approximately 14.2857% per member. From June 2005 through October 2012 the following four founding members sold their entire membership interest back to the company: Richard Withington, M.D., Arthur Peckham, M.D., David O. Van Eenenaam, M.D. and Perry Shuman, M.D. On December 10, 2007, and on December 28, 2007, Howard Huang, M.D. and Bruce Baird, M.D., respectively, became new members by each acquiring a 12.5% interest in the FASC.

The applicant indicates that, through an oversight, they did not file the required Certificate of Need (CON) application for the two new members. This oversight

was recently recognized when North Country Orthopaedic Ambulatory Surgery Center, LLC proposed to sell a 10.71% membership to Anel Abreu, D.O. Presented as BFA Attachment A is North Country Orthopaedic Ambulatory Surgery Center, LLC's ownership interest, as originally approved under CON 011022, and the proposed ownership interest per this application.

OPCHSM Recommendation  
Contingent Approval

Need Summary  
There will not be any changes in services as a result of this request.

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 and 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 Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of the applicants executed Operating Agreement, and any amendments thereto, acceptable to the Department. [CSL]
2. Submission of a photocopy of an executed purchase and sale agreement for membership interest being transferred and any additional transfer documents, which are 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

**December 4, 2014**

## Need Analysis

### Background

North Country Orthopaedic Ambulatory Surgery Center, LLC, an existing ambulatory surgery center, requests approval for a transfer of ownership interest for three (3) existing members, three (3) new members, and four (4) withdrawing members. The facility is located at 1571 Washington Street, Watertown, 13601, Jefferson County.

### Analysis

North Country Orthopaedic Ambulatory Surgery Center served a total of 1,574 patients in 2011, 1,547 patients in 2012, and 1,702 patients in 2013 (Source: SPARCS). There will be no changes in services as a result of this request.

### Recommendation

**From a need perspective, contingent approval is recommended.**

## Program Analysis

### Project Proposal

North Country Orthopaedic Ambulatory Surgery Center (ASC), LLC, an existing ambulatory surgery center, requests approval for a transfer of ownership interest for three (3) existing members, three (3) new members and four (4) withdrawing members. Other than the proposed changes in membership (and membership percentages), there are no programmatic changes proposed in this request.

North Country Orthopaedic ASC began operations in 2003 at which time, ownership was split equally among seven (7) physicians. Since 2003, four (4) of the founding physicians relinquished ownership in the ASC and, in 2007, two (2) physicians (Drs. Baird and Huang) became part of the ownership group. However, in an oversight, the applicant did not file the required CON applications to have the two new physician members approved. The oversight was recently recognized when the ASC initiated action to include another physician (Dr. Abreu) in the ownership group. This application seeks approval of Dr. Abreu and delayed approval for Drs. Baird and Huang.

The following table details the proposed changes in ownership:

<u>Member Name</u>	<u>Membership Interest</u>	<u>Membership Interest Proposed by this Application</u>
David O. VanEenenaam, MD	14.285%	-----
D. Peter VanEenenaam, MD	14.285%	17.858%
Richard Withington, MD	14.285%	-----
Arthur Peckham, MD	14.285%	-----
Edward N. Powell, MD	14.285%	17.858%
Perry Shuman, MD	14.285%	-----
Steven B. Fish, MD	14.285%	17.858%
Howard H. Huang, MD**	-----	17.858%
Bruce L. Baird, MD**	-----	17.858%
Anel Abreu, DO**	-----	10.710%

\*\*Members subject to review

### Character and Competence

The three new proposed individual members, Drs. Huang, Baird and Abreu are physicians who are currently performing procedures at the Center.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted for the three proposed individual members identified above 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.

The applicant has stated that both Howard Huang, M.D. and Bruce Baird, M.D. have satisfied the memberships' purchase price of \$125,000. On July 15, 2014, Anel Abreu D.O. entered into a membership interest purchase agreement to acquire 10.71% in North Country Orthopaedic Ambulatory Surgery Center, LLC for \$75,000. BFA Attachment B is the proposed members' net worth summaries which reveals sufficient resources to meet the equity requirement.

BFA Attachments C and D are North Country Ambulatory Surgery Center, LLC's 2011, 2012 and 2013 financial summaries, which show average working capital of \$407,636 and average net assets of \$1,086,891. During the three year period net operating income averaged \$321,413.

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	Ownership Interest – North Country Orthopaedic Ambulatory Surgery Center, LLC
BFA Attachment B	Net Worth of Proposed Members, North Country Orthopaedic Ambulatory Surgery Center, LLC
BFA Attachment C	Financial Summary for 2011 and 2012, North Country Orthopaedic Ambulatory Surgery Center, LLC
BFA Attachment D	Internal Financial Summary for 2013, North Country Orthopaedic Ambulatory Surgery Center, LLC



# Public Health and Health Planning Council

Project # 142061-E  
East Side Endoscopy

**Program:** Diagnostic and Treatment Center    **County:** Westchester  
**Purpose:** Establishment    **Acknowledged:** August 18, 2014

## Executive Summary

### Description

East Side Endoscopy, LLC (East Side) is an existing New York State proprietary Article 28 Diagnostic and Treatment Center (D&TC) located at 380 Second Avenue, Concourse A, New York, New York. The D&TC is certified as a single-specialty freestanding ambulatory surgical center specializing in gastroenterological procedures. Their initial application for establishment and construction under CON 082085 was approved by the Public Health Council on March 13, 2009, with a five-year limited life. Per this establishment CON, charity care utilization was anticipated to be 2% of total procedures in the first and third years of operation. The five-year limited life operating certification is scheduled to expire on January 25, 2015. As the facility has been experiencing difficulty meeting the 2% charity care level to date, the applicant will accept a one-year extension of its limited life to provide additional time to demonstrate its commitment to charity care in anticipation of ultimate indefinite life status.

East Side's operations consists of 4 procedure rooms and 14 recovery bays housed in leased space. There have been no changes to the original lease agreement submitted under CON 082085. The lease is set to expire on November 24, 2023.

East Side submitted an application in 2011, CON 111194, comprised of both a 22.5% transfer in membership interest to seven new members and renovation of the center. The renovations entailed providing 2 additional procedure rooms and 4 additional recovery bays. The CON was contingently approved by the PHHPC on June 6, 2011. The Department of Health is awaiting notification of the start of construction for this project as of this date.

### OPCHSM Recommendation

Contingent Approval for a one-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter.

### Need Summary

Based on the reports submitted by the applicant, in year 3 (2012), the applicant provided 9,164 actual visits vs. 9,102 projected; charity care provided was 0.1 percent actual vs. 2 percent projected and Medicaid utilization was 9.9 percent actual vs. 3 percent projected. More recently, in 2013, East Side provided 1 percent charity care and 15.5 percent Medicaid; from January-June 2014, the charity care was 2.7 percent. There are no anticipated changes in services or utilization; the projections for charity care and Medicaid will continue to be at two (2) percent and three (3) percent respectively. Data submission by the applicant, as a contingency of CON 082085, is only partially completed.

### 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	\$12,677,318
	Expenses	<u>\$5,401,935</u>
	Net Income/(Loss)	\$7,275,383

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 Primary Care and Health Systems Management

**Approval for a one year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:**

1. Submission of missing data on Annual Reports for years 2010 to 2013 to the DOH within three months of the approval of this project. Said reports should be completed by including the following missing data elements:
  - 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;
  - Number of nosocomial infections recorded during the year in question. [RNR]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH upon approval of this project. 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 an affidavit, acceptable to the Department, 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 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. Resubmission of 2013 revised data to SPARCS within three months of approval. [RNR]

Council Action Date

**December 4, 2014**

## Need Analysis

### Project Description

East Side Endoscopy, LLC (ESE), an existing ambulatory surgery center specializing in gastroenterology procedures, is requesting permission to convert to permanent life following a five (5) year limited life from January 25, 2010 to January 25, 2015 (CON 082085). The facility is located at 380 Second Avenue, New York, 10010, New York County. The facility has four procedure rooms.

### Analysis

The primary service area is New York County, more specifically zip code 10010, where the proposed site is located.

The table below provides information on projections based on CON 082085. Based on the annual reports provided by the applicant, the table also includes actual utilization.

<b>CON 082085</b>	<b>Year 3</b>	<b>Year 3</b>	<b>Year 3</b>	<b>Year 3</b>
<b>Projections and Actual Visits</b>	<b>Proj.</b>	<b>Proj. %</b>	<b>Actual</b>	<b>Actual %</b>
Medicare	1,820	20.0%	2,318	25.3%
Medicaid	274	3.0%	905	9.9%
Commercial	6,553	72.0%	5,847	63.8%
Private Pay/Other	273	3.0%	88	1.0%
Charity Care	182	2.0%	6	0.1%
<b>Total</b>	<b>9,102</b>	<b>100.0%</b>	<b>9,164</b>	<b>100.0%</b>

In 2013, the number of procedures was 9,540 with charity care at one (1) percent and Medicaid at 15.5 percent. From January-June 2014, the charity care was 2.7 percent, as reported by the applicant.

<b>Utilization in 2013</b>	<b>2013</b>	<b>2013</b>	<b>2013</b>	<b>2013</b>
<b>Actual</b>	<b>Procedures</b>	<b>Procedures %</b>	<b>Visits</b>	<b>Visits %</b>
Medicare	1,731	18.1%	1,687	18.4%
Medicaid	1,476	15.5%	1,449	15.8%
Commercial	6,129	64.2%	5,830	63.6%
Private Pay/Other	110	1.2%	109	1.2%
Charity Care	94	1.0%	94	1.0%
<b>Total</b>	<b>9,540</b>	<b>100.0%</b>	<b>9,169</b>	<b>100.0%</b>

Upon approval of the proposed project, ESE does not anticipate any changes in services or utilization; projections for charity care and Medicaid are two (2) percent and three (3) percent, respectively. The applicant has implemented a Charitable Care Program that provides charity care to uninsured individuals. ESE is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

### Conclusion

The applicant reports charity care at a level of 2.7 percent for the first six months of 2014. However, additional time is needed to determine whether the applicant can sustain a significant charity care caseload over a more extended period.

### Recommendation

**From a need perspective, contingent approval is recommended for a one year extension of the operating certificate.**

## Program Analysis

### Program Proposal

East Side Endoscopy, LLC (the 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 extension. The Center's initial CON Application was approved under Project No. 082085-B by the Public Health Council with a conditional, limited life of five (5) years and the current Operating Certificate will expire on January 25, 2015. There are no anticipated changes in services and staffing is expected to remain at 23.57 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

### Operating Budget

The applicant has submitted operating budgets, in 2014 dollars, for the current year of operations and for Years 1 and 3 subsequent to approval of this project as shown below:

	<u>Current year projected (2013)</u>	<u>Current year actual (2013)</u>	<u>Years 1 and 3</u>
Revenues			
Operating	\$13,766,816	\$10,918,206	\$10,756,522
Other Operating Revenue		\$1,908,467	\$1,908,467
Non-Operating		<u>\$12,329</u>	<u>\$12,329</u>
Total Revenues	\$13,766,816	\$12,839,002	\$12,677,318
Expenses			
Operating	\$4,131,586	\$4,167,049	\$4,167,049
Capital	<u>\$1,545,308</u>	<u>\$1,234,886</u>	<u>\$1,234,886</u>
Total Expenses	\$5,676,894	\$5,401,935	\$5,401,935
Net Income/(Loss)	<u>\$8,089,922</u>	<u>\$7,437,067</u>	<u>\$7,275,383</u>
Utilization (procedures)	12,756	9,540	9,540
Cost per procedure	\$445.04	\$566.24	\$566.24

The reason for the significant difference between the projected and actual 2013 procedures, revenues and expenses is due to the additional 2 procedure rooms and 4 recovery bays that were budgeted for, but have yet to be constructed. The applicant indicates that they intend to add the 2 procedure rooms and 4 recovery rooms in the near future, though a clear date to start construction has yet to be determined.

Utilization by payor source related to the submitted operating budget is as follows:

Payor Source:	Current year projected utilization (2013)	Current year actual utilization (2013)	Projected Years 1 and 3 Utilization
Medicare	4,546	1,731	1,731
Medicaid	924	1,476	1,476
Commercial	6,081	6,129	6,033
Private Pay/Other	1,072	110	110
Charity Care	133	94	190
Total	12,756	9,540	9,540

Payor Source:	Current year projected utilization % (2013)	Current year actual utilization % (2013)	Projected Years 1 and 3 Utilization
Medicare	35.64%	18.14%	18.14%
Medicaid	7.24%	15.47%	15.47%
Commercial	47.68%	64.25%	63.24%
Private Pay/Other	8.40%	1.15%	1.15%
Charity Care	1.04%	.99%	1.99%
Total	100.00%	100.00%	100.00%

East Side is projecting that they will achieve the 2% charity care requirement by year 1 and will maintain a minimum 2% for charity care going forward through year 3. The Department has reviewed East Side's certified AHCF cost reports filings for 2011 and 2012 and verified that they were unable to achieve a 1% charity care average over the course of the first two years of operations. The 2013 report, due December 5, 2014, will be reviewed to assess ongoing efforts.

East Side explained that their reason for not achieving the 2% charity care was due to the physician applicant members trying to generate charity care cases on their own, while also making the center operational and running the daily operations of the facility. From opening day in 2010 until early 2012, the physician applicant members sought charity care cases through informal channels that proved ineffective. To rectify the situation, they hired a new facility administrator in February 2012, who enacted a formal charity care/uncompensated care program with community outreach and educational components. In 2013 they collaborated on a new initiative called the NYC Community Cares Project that links uninsured patients from community health centers to endoscopy centers to provide free colonoscopy screening. In April 2014 they hired a full-time patient navigator to serve as liaison with the 7 community-based health centers that serve as the cornerstone of patient referrals to East Side's charity care program. With this formal charity care program in place, the applicant is confident that at least 2% of their cases will be charity care/uncompensated care going forward.

The Department has determined that granting a one year extension to the operating certificate is warranted at this time to allow East Side the opportunity to achieve the 2% charity care requirement.

#### Capability and Feasibility

There are no project costs associated with this application.

The submitted budget indicates an excess of revenues over expenses of \$7,275,383 during both years 1 and 3. Revenues are based on current reimbursement methodologies for FASC services. The budgets are reasonable.

BFA Attachment A is East Side's certified financial summary for 2012 and 2013 which shows an average negative working capital of \$637,270, an average negative equity position of \$1,235,946 and an average positive net income of \$7,470,783 for the period. The negative working capital position and equity position are due to a \$4.3 million membership redemption. The redemption happened in March 2012 when 2 of the members of East Side (Dr. Hon-Ming Eng and Dr. Rene Eng) redeemed all of their membership interest in the center. Each member owned 5.72368% interest in the center for a total of 11.44736% membership interest redeemed. East Side purchased the redeeming members' interest for a total of \$4.3 million. Each redeeming member received \$2.15 million. To cover the redemption, East Side incurred the following liabilities:

- \$1.3 million loan from a financial lender scheduled to terminate in May 2016,
- \$3.2 million payment plan to the 2 members which includes a 4% interest rate. This plan is paid quarterly with the last payment due on April 18, 2015.

BFA Attachment B is East Side's internal financial summary for the 6 month period ending June 30, 2014, which shows a positive working capital position of \$412,393, a positive equity position of \$1,076,111 and a positive net income of \$3,870,824 for the period.

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

Recommendation

**From a financial perspective, and approval of a one year extension to the operating certificate is recommended.**

## Attachments

BFA Attachment A	East Side Endoscopy, LLC 2012-2013 certified financial statements
BFA Attachment B	East Side Endoscopy, LLC 1/1/2014-6/30/2014 internal financial statements



# Public Health and Health Planning Council

Project # 142073-E  
Buffalo Surgery Center, LLC

**Program:** Diagnostic and Treatment Center    **County:** Erie  
**Purpose:** Establishment    **Acknowledged:** September 3, 2014

## Executive Summary

### Description

Buffalo Surgery Center (BSC), LLC, an existing for-profit, freestanding ambulatory surgery center (FASC) located at 3925 Sheridan Drive in Amherst, Erie County, proposes a change in 49.96% of the membership interest to admit nine new physicians as members of the company, and to issue additional units of ownership to one current member.

BSC has been contingently approved under CON 141116 to relocate the facility and add Gastroenterology services. BFA Attachment B, Membership Interest List, shows the timing of the changes as they relate to the not-yet-completed CON. One current member is purchasing additional units of membership and one new member is being added to the ownership prior to the completion of CON 141116. The remaining eight proposed members will become equal owners in BSC subject to the terms and conditions of a separate Purchase, Sale, and Joinder Agreement and in accordance with a new Operating Agreement that will become effective for all members once the CON 141116 is complete. Ownership for these eight prospective members is contingent on the completion of CON 141116. The proposed members have executed a guarantee of the lease for when the site is relocated.

BSC proposes to issue 100 units of ownership to 9 new members in exchange for \$131,578 each. BSC will also issue 50 additional units to Dr. Siddiqui in exchange for \$12,500. The 49.96% of ownership in the company will be transferred as part of these

transactions.

OPCHSM Recommendation  
Contingent Approval

Need Summary  
Buffalo Surgery Center, LLC is requesting approval to transfer 49.95% membership interest to nine (9) new members and one (1) current member. It is an existing Article 28 ambulatory surgery center providing orthopedic and ophthalmology surgery services. It has been contingently approved under CON 141116 to relocate and add Gastroenterology services. It is located at 3925 Sheridan Drive, Amherst, 14226, Erie County. BSC served a total of 4,822 patients in 2013.

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 or budgets associated with this application. The 49.96% of the ownership will be purchased for \$1,196,702 at \$131,578 for each of the nine new members and \$12,500 for one current member acquiring additional units.

Subject to 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 Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed building lease, acceptable to the Department. [BFA]
2. Submission of proof of completion of CON 141116 which was contingently approved on August 7, 2014. [BFA]
3. Submission of a photocopy of the applicants executed Operating Agreement, and any amendments thereto, 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

**December 4, 2014**

## Need Analysis

### Background

Buffalo Surgery Center currently provides orthopedic and ophthalmology surgery services. Under CON 141116 Buffalo Surgery Center was approved with contingencies to relocate its current site from 3925 Sheridan Drive in Amherst to 3901 Sheridan Drive in Amherst in Erie County and to add gastroenterology services. CON 141116 is not yet complete.

BSC served a total of 4,358 patients in 2011, 5,721 patients in 2012, and 4,822 patients in 2013. (Source: SPARCS)

The applicant reports the percent of charity care provided was two (2) percent and Medicaid was three (3) percent in 2013.

### Conclusion

The applicant reports that there will be no changes in services as a result of the proposed change in ownership.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Program Description

Buffalo Surgery Center, LLC (BSC), an existing Article 28 diagnostic and treatment center in Erie County, requests approval to transfer 49.95% membership interest to nine (9) new members and one (1) current member.

Upon approval, two (2) physicians (James Kelly, DO and Jafar Siddiqui, MD) will become equal owners of BSC under the company's current Operating Agreement. The remaining eight (8) prospective members (4 colorectal physicians and 4 gastrointestinal surgeons) will become equal owners in BSC in accordance with a new Operating Agreement that will eventually become effective for all members.

### Character and Competence

Buffalo Surgery Center, LLC's current and proposed ownership and membership interest is detailed in the table below:

<b>Member Name</b>	<b>Current Membership Interest</b>	<b>Proposed Final Membership Interest</b>
Lisa Daye, MD	11.80%	5.56%
Andrew Stoeckl, MD	11.80%	5.56%
Paul Paterson, MD	11.80%	5.56%
John Callahan, MD (Manager)	11.80%	5.56%
Peter Shields, MD	11.80%	5.56%
Stephen Rycyna, MD	11.80%	5.56%
David Bagnall, MD (Manager)	11.80%	5.56%
James Slough, MD (Manager)	11.80%	5.56%
Jafar Siddiqui, MD	5.55%	5.56%
<b>James Kelly, DO*</b>	---	5.56%
<b>Bryan Butler, MD*</b>	---	5.55%
<b>Matthew Cywinski, MD*</b>	---	5.55%
<b>Mohammad Fayyaz, MD*</b>	---	5.55%

<b>Alok Gupta, MD*</b>	---	5.55%
<b>Joseph Leberer, MD*</b>	---	5.55%
<b>Jehad Miqdadi, MD*</b>	---	5.55%
<b>James Piscatelli, MD*</b>	---	5.55%
<b>Jeffrey Visco, MD*</b>	---	5.55%
<b>*Members subject to review</b>		
<b>Total</b>	<b>100%</b>	<b>100%</b>

All of the incoming (new) members are practicing physicians and the 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. Fayyaz and Visco have each disclosed one (1) pending malpractice case. Drs. Kelly and Miqdadi have each disclosed one (1) settled malpractice case.

Recommendation

**From a programmatic perspective, approval is recommended.**

<b>Financial Analysis</b>
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**Purchase, Sale and Joinder Agreement**

The applicant has submitted an executed purchase, sale and joinder agreement for the change of 49.96% membership interests of BSC, the terms of which are summarized below:

<b>Date:</b>	March 1, 2014
<b>Purpose:</b>	The sale of 49.96% membership interests of Buffalo Surgery Center, LLC
<b>Sellers:</b>	Buffalo Surgery Center, LLC
<b>Purchasers:</b>	James Kelly, M.D. at 5.56%, and eight Class 1A prospective members at 5.55% membership interests.
<b>Purchase Price:</b>	Each proposed class 1A member and Dr. Kelly will purchase their membership interests for \$131,578 each for a total of \$1,184,702.
<b>Payment of Purchase Price:</b>	To be paid in full at closing.

All eight physicians who are Class 1A members and Dr. Kelly can provide equity from personal funds to pay the purchase price, but will be using a personal guaranty to fund their purchase. A letter of interest has been given for each of the eight Class 1A physicians from M&T Bank.

**Capability and Feasibility**

The proposed members' ability to meet their respective membership purchase prices will be provided from equity. Review of BFA Attachment A reveals sufficient funds for this purpose.

Ownership for eight prospective members is contingent on completion of CON 141116, contingently approved in August 2014, which is to move BSC's current site location, expand capacity, and add gastroenterology as a licensed service.

BFA Attachment C is a financial summary of Buffalo Surgery Center, LLC, which shows the facility achieved a net income of \$720,884 during 2013, and maintained positive working capital and members' equity. BFA Attachment D is a financial summary of Buffalo Surgery Center, LLC, which shows the facility achieved a net income of \$345,022 as of August 31, 2014, and maintained positive members' equity and experienced negative working capital which was due to new current debt from the financing of equipment.

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

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Current and Proposed Membership
BFA Attachment C	Financial Summary - Buffalo Surgery Center, LLC, 2013
BFA Attachment D	Financial Summary - Buffalo Surgery Center, LLC, as of August 31, 2014



# Public Health and Health Planning Council

Project # 142077-E  
Island Digestive Health Center

**Program:** Diagnostic and Treatment Center    **County:** Suffolk  
**Purpose:** Establishment    **Acknowledged:** August 22, 2014

## Executive Summary

### Description

Island Digestive Health Center (IDHC), LLC, an existing, single-specialty, freestanding ambulatory surgery center specializing in the field of gastroenterology, requests approval to add Good Samaritan Hospital Medical Center as a 51% member of the Center. In addition, John Poisson, an existing Class B member of IDHC, will withdraw from the Center's membership. IDHC is located at 471 Montauk Highway, West Islip, New York (Suffolk Co.). On December 6, 2012, the applicant received contingent Public Health and Health Planning Council approval under CON #121393 for the establishment and construction of an ambulatory surgery center with a limited life of 5 years from the date of issuance of an operating certificate. Staff notes that the applicant received its operating certificate on May 22, 2014

The applicant has indicated that there will be three classes of members defined as follows:

- Class A Member – a Physician member class comprised of Advanced GI Endoscopy, LLC members,
- Class B Member – a Non-Physician member class held by persons who are not eligible physicians,
- Class C Member – an Institutional member class comprised of Good Samaritan Hospital Medical Center.

All members, regardless of class, will have the same economic and voting rights based on their percentage ownership interest.

The current and proposed members of Island Digestive Health Center, LLC are as follows:

### CURRENT

<u>Member</u>	<u>Class</u>	<u>%</u>
Advanced GI Endoscopy, LLC	Class A	85.00%
Frank Principati	Class B	3.75%
Karen Sablyak	Class B	3.75%
Barry Tanner	Class B	3.75%
John Poisson	Class B	3.75%

### PROPOSED

<u>Member</u>	<u>Class</u>	<u>%</u>
Advanced GI Endoscopy, LLC	Class A	39.000%
Frank Principati	Class B	3.333%
Karen Sablyak	Class B	3.333%
Barry Tanner	Class B	3.333%
Good Samaritan Hospital	Class C	51.000%

OPCHSM Recommendation  
Contingent Approval

### Need Summary

Island Digestive Health Center, LLC, an existing ambulatory surgery center specializing in gastroenterology ambulatory surgery services proposes the addition of Good Samaritan Hospital Medical Center as a 51 percent member and the withdrawal of an existing member. IDHC was approved under CON 121393 for a limited life of five (5) years (May 22, 2014 to May 21, 2019). There will not be any changes in services as a result of the proposed change in ownership.

#### 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. The purchase price for Good Samaritan

Hospital Medical Center to acquire the 51% membership interest in IDHC is \$452,880. The purchase price will be met as follows: Good Samaritan has made a \$200,000 loan to IDHC in the form of a Convertible Term Promissory Note that will convert to credit for payment when Good Samaritan acquires their ownership interests, and the remaining \$252,880 will be paid via equity from Good Samaritan Hospital Medical Center.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
2. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
3. Submission of an executed Outside Manager Agreement, acceptable to the Department. [HSP]
4. Submission of an executed Certificate of Amendment to the Certificate of Incorporation of Good Samaritan Hospital Medical Center, 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

**December 4, 2014**

## Need Analysis

### Project Description

Island Digestive Health Center, LLC, (IDHC), an existing ambulatory surgery center specializing in gastroenterology ambulatory surgery services, requests approval for the addition of Good Samaritan Hospital Medical Center as a 51 percent member and the withdrawal of an existing member. The facility is located at 471 Montauk Highway, West Islip, 11795, Suffolk County.

### Background and Analysis

IDHC was approved under CON 121393 for a limited life of five (5) years (May 22, 2014 to May 21, 2019). IDHC projects a total of 6,914 procedures in year 1 with charity care at two (2) percent and Medicaid at seven (7) percent. In 2014, IDHC provided 2,035 procedures from May to September, according to the applicant. The applicant reports further that at this time, utilization data on charity care and Medicaid are not available. IDHC is working actively with the American Cancer Society and Federally Qualified Health Centers to create a formal charity care program that is expected to start on December 1, 2014. The applicant received its Provider Transaction Access Number in September 2014, which will enable them to apply for their Medicaid number.

There will be no changes in services as a result of the proposed change in ownership.

### Conclusion

From a need perspective, approval is recommended with no change to the current expiration date of the operating certificate of May 21, 2019.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

Island Digestive Health Center, LLC (IDHC), an existing single-specialty ambulatory surgery center located at 471 Montauk Highway, West Islip (Suffolk County) requests approval to add Good Samaritan Hospital Medical Center (Good Samaritan) as a 51% member of the Center. Additionally, an existing Class B member of IDHC (Mr. Poisson) will withdraw from Center membership.

Island Digestive Health Center consists of three classes of membership: Class A - physician members of Advanced GI Endoscopy, LLC; Class B - non-physician members; and Class C - institutional member Good Samaritan Hospital Medical Center. All members have the same economic and voting rights based on percentage ownership interest.

Other than the proposed changes in membership (and membership percentages), there are no programmatic changes as a result of this request. The table below details the proposed change in ownership:

<b>Member Name</b>	<b>Current Membership Interest</b>	<b>Proposed Membership Interest</b>
<b>Class A Members</b>		
<b>Advanced GI Endoscopy, LLC</b>	<b>85%</b>	<b>39%</b>
Kourosh Adhami, MD	28.24%	28.24%
Babak Danesh, MD	5.88%	5.88%
James Kohlroser, MD	25.88%	25.88%
Neil Lobo, MD	28.24%	28.24%
Krishnaiyer Subramani, MD	11.76%	11.76%

**Class B Members**

**Physicians Endoscopy, LLC**

	<b>15%</b>	<b>10%</b>
John Poisson	3.75%	---
Frank Principati	3.75%	3.33%
W. Barry Tanner	3.75%	3.33%
Karen Sablyak	3.75%	3.33%

**Class C Member**

**Good Samaritan Hospital Medical Center**

---- **51%**

The proposed managers of IDHC have been identified as:

Krishnaiyer Subramani, MD

Kourosch Adhami, MD

Robert Estes

Stephen Trapani

Donald Teplitz, DO

The applicant has entered into an Administrative Services Agreement with Physicians Endoscopy, LLC, a national provider of administrative and consulting services to gastroenterology practices. Further, Drs. Adhami and Danesh, who are affiliated with the applicant and Island Digestive Disease Consultants, P.C., have entered into a Medical Director Agreement with the applicant.

**Character and Competence**

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted for the 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.

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 June 6, 2005, the Department issued a Stipulation and Order and fined Good Samaritan Hospital \$18,000 based on an investigation of a complaint involving a small child who was admitted to the hospital for assessment of child abuse. The facility failed to do a complete physical and the child died the next day in the hospital of an undetected tear of the mesenteric artery.

**Recommendation**

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Membership Purchase Agreement

The applicant has submitted an executed membership purchase agreement which is summarized below:

Date:	July 21, 2014
Sellers:	John Poisson; Frank Principati; Karen Sablyak and Barry Tanner
Purchaser:	Good Samaritan Hospital Medical Center
Purchase Price:	\$452,880
Payment of Purchase Price:	\$200,000 loan to IDHC from Good Samaritan Hospital Medical Center \$252,880 due at Closing

The applicant has indicated that once Good Samaritan Hospital Medical Center acquires their ownership interests, the loan will be considered to be paid off.

### Operating Budget

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

	YEAR ONE	YEAR THREE
<b>Revenues:</b>		
Medicaid Managed Care	\$202,813	\$274,159
Medicaid Fee For Service	137,491	99,410
Medicare Fee For Service	534,952	489,511
Medicare Managed Care	209,866	302,607
Commercial Fee For Service	1,327,833	1,175,246
Commercial Managed Care	<u>2,160,383</u>	<u>2,523,205</u>
<b>Total Revenues</b>	<b>\$4,573,338</b>	<b>\$4,864,138</b>
<b>Expenses:</b>		
Operating	\$2,640,477	\$2,654,910
Capital	<u>1,261,239</u>	<u>1,270,854</u>
<b>Total Expenses</b>	<b>\$3,901,716</b>	<b>\$3,925,764</b>
<b>Net Income</b>	<b>\$671,622</b>	<b>\$938,374</b>
<b>Utilization: (Procedures)</b>	<b>6,914</b>	<b>7,478</b>
<b>Cost Per Procedure</b>	<b>\$564.32</b>	<b>\$524.98</b>

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

	YEAR ONE	YEAR THREE
Medicaid Managed Care	3.00%	2.00%
Medicaid Fee For Service	4.00%	5.00%
Medicare Fee For Service	13.00%	11.00%
Medicare Managed Care	6.00%	8.00%
Commercial Fee For Service	22.00%	18.00%
Commercial Managed Care	50.00%	54.00%
Charity Care	2.00%	2.00%

Expense and utilization assumptions are based on the applicant's personal experience of the participating physician, who are Board certified in gastroenterology.

### Capability and Feasibility

The purchase price of Good Samaritan Hospital Medical Center to acquire the 51% membership interest is \$452,880. The purchase price will be met as follows: the \$200,000 loan made by Good Samaritan to IDHC will be deemed paid off when Good Samaritan Hospital Medical Center acquires their ownership interests, and the remaining \$252,880 will be via equity from Good Samaritan Hospital Medical Center.

Working capital requirements are estimated at \$654,294, which is equivalent to two months of third year expenses. The applicant has indicated that Good Samaritan Medical Center will provide equity to meet the working capital requirement. BFA Attachment A is the 2013 certified financial statements and the May 31, 2014 internal financial statements of Good Samaritan Hospital Medical Center, which indicates the availability of sufficient funds to meet the purchase price and the working capital requirements.

The submitted budget indicates a net income of \$671,622 and \$938,374 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services.

As shown on BFA Attachment A, the applicant had an average positive working capital position and an average positive net asset position during the period 2013 through May 31, 2014. Also, the hospital incurred an operating loss of \$5,807,000 in 2013 and achieved an operating gain of \$8,765,000 through May 31, 2014. The applicant has indicated that the reason for the 2013 losses were the result of lower than expected volume for services. However, in 2014 the Medical Center experienced a significant turnaround in operations due to a growth in patient volumes and holding expenses to a modest growth.

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

### Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

BFA Attachment A Financial Summary- Good Samaritan Hospital Medical Center



# Public Health and Health Planning Council

Project # 141210-B

Peninsula Continuum Services, LLC d/b/a Cassena Care  
Dialysis at Peninsula

**Program: Diagnostic and Treatment Center**  
**Purpose: Establishment and Construction**

**County: Queens**  
**Acknowledged: May 15, 2014**

## Executive Summary

### Description

Peninsula Continuum Services, LLC d/b/a Cassena Care Dialysis of Peninsula requests approval for the establishment and construction of a new twenty (20) station End Stage Renal Disease facility. The proposed facility will be located in a designated space at Cardiff Bay Center for Rehabilitation and Nursing (Cardiff Bay Center), a 200-bed residential health care facility located at 50-15 Beach Channel Drive, Far Rockaway, New York (Queens County). There is a relationship between the applicant and Cardiff Bay Center, LLC, the newly established operator of Cardiff Bay Center approved under CON 122219 (completion date 4/8/2014), in that Michael Melnicke and Leopold Friedman have ownership interest in the nursing home.

The proposed members of Peninsula Continuum Services, LLC and ownership percentages are as follows:

<u>Members:</u>	<u>% Interest</u>
Michael Melnicke	23.75%
Leopold Friedman	23.75%
Pasquale DeBenedictis	23.75%
Alex Solovey	23.75%
Miles Davis	<u>5.00%</u>
Total	100.00%

The members of Cardiff Bay Center, LLC and ownership percentages are as follows:

<u>Members:</u>	<u>% Interest</u>
Joseph Brunner	37.5%
Michael Melnicke	37.5%
Leopold Friedman	<u>25.0%</u>
Total	100.0%

### OPCHSM Recommendation

Contingent Approval

### Need Summary

The need for dialysis services in Queens County continues to grow each year. In 2012 there was an unmet need of 160 stations. The addition of these 20 net new stations will help make services available to patients in need in the area. The minority population in this area is much higher than the state average. Minority populations are a target group for needing dialysis 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

Project costs of \$3,245,947 will be met as follows: Equity of \$502,065 from the proposed members, and a bank loan of \$2,743,882 at an interest rate of 6.00% for a ten year term.

### Budget:

Revenues	\$5,543,679
Expenses	<u>3,628,720</u>
Net Income	\$1,915,359

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
3. Submission of an executed sublease rental agreement that is acceptable to the Department of Health. [BFA]
4. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]
7. Submission of an executed Operating Agreement that is acceptable to the Department. [CSL]
8. Submission of an executed Amended Article of Organization that is acceptable to the Department. [CSL]
9. Submission of an executed License Agreement that is acceptable to the Department. [CSL]
10. Submission of an executed Consulting and/or Administrative Agreement that is 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 start construction on or before March 1<sup>st</sup>, 2015 and complete construction by August 31<sup>st</sup>, 2015 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 Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner [AER].
7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]

Council Action Date

**December 4, 2014**

# Need Analysis

## Analysis

The primary service area for the Cassena Care Dialysis at Peninsula is Queens County, which had a population estimate of 2,296,175 for 2013. The percentage of the population aged 65 and over was 13.2%. The nonwhite population percentage was 72.8%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Queens County and New York State are listed below.

	<u>Queens</u>	<u>NYS</u>
Ages 65 and Over:	13.2%	14.1%
Nonwhite:	72.8%	42.4%
Source: U.S. Census 2014		

## 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 556 free standing chronic dialysis stations operating in Queens County and there are an additional 66 stations in pipeline.
- Based upon DOH methodology, the 556 existing free standing stations in Queens County could treat a total of 2502 patients annually. Including the additional pipeline stations the county could treat a total of 2,799 patients.

## Projected Need

	2012		2017	
	Total Patients Treated	Total Residents Treated	*Projected Total Patients Treated	*Projected Residents Treated
	3350	3609	3884	4062
Free Standing Stations Needed	745	802	864	903
Existing Stations	556	556	556	556
Total Stations (Including Pipeline)	622	622	622	622
Net new stations from this project	20	20	20	20
Unmet Need With Approval	103	160	220	259

Resident data is accurate up to 2013 while patient data is accurate to 2012, resident data is projected out 4 years vs. 5 years for patient data.

\*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 556 stations in Queens County currently serve a population of 2,296,175. Currently there are not enough stations to treat the 3609 residents that need treatment. Approval of these 20 additional stations will help address that need.

**Recommendation**

**From a need perspective, approval is recommended.**

<b>Program Analysis</b>
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**Program Description**

Peninsula Continuum Services, LLC d/b/a Cassena Care Dialysis at Peninsula (Cassena) requests approval to establish and construct a new 20-station nursing home based chronic hemodialysis center to be located on the first floor of the Cardiff Bay Center for Rehabilitation and Nursing (Cardiff Bay), an existing skilled nursing facility located in Queens County. Cassena will enter into a licensing agreement with Cardiff Bay in an effort to establish the requisite site control.

Proposed Operator	Peninsula Continuum Services, LLC
Doing Business As	Cassena Care Dialysis at Peninsula
Site Address	5015 Beach Channel Drive, Far Rockaway (Queens County)
Approved Services	Chronic Renal Dialysis (20 Stations)
Shifts/Hours/Schedule	At least 12 hours per day, six days per week, with additional hours as indicated by demand.
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	14.4 FTEs / 25.5 FTEs
Medical Director(s)	Rajbir Chopra, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by provided by St. John's Episcopal Hospital 1.6 miles / 5 minutes

**Character and Competence**

The proposed members of Peninsula Continuum Services, LLC will be:

<u>Name</u>	<u>Percentage</u>
Pasquale DeBenedictis (Manager)	23.75%
Alex Solovey (Manager)	23.75%
Leopold Friedman	23.75%
Michael Melnicke	23.75%
Miles Davis	5.0%

Each of the aforementioned individuals has experience operating health related facilities and associated programs, including nursing home-based dialysis programs.

Disclosure information was submitted and reviewed for the proposed Medical Director. Dr. Rajbir Chopra is a New York State licensed physician, board-certified in internal medicine with a sub-certification 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.

Messrs. DeBenedictis and Solovey disclosed membership interest in Cassena Care of Norwalk (Connecticut), a 120-bed skilled nursing facility. On November 15, 2013, a Stipulation and Order was issued to Cassena for regulatory violations noted during an investigation conducted in September 2013. The facility was fined \$1020 and directed to arrange for an Independent Nurse Consultant to be at the facility for 20 hours weekly.

Mr. Melnicke disclosed ownership interest in several skilled nursing facilities, to include: Hempstead Park Nursing Home, Park Nursing Home, and Regency Extended Care Center. A Stipulation and Order and fine of \$10,000 and \$8,000, respectively, was issued to Hemstead Park for January 9, 2009 surveillance findings related to Quality of Care and September 28, 2011 surveillance findings in multiple areas (i.e., Mistreatment/Neglect; Policies and Procedures; Investigate/Report Allegations; Medically Related Social Services; and Administration). Park Nursing Home was fined \$5,000 pursuant to a Stipulation and Order for Surveillance findings on May 14, 2008 for Quality of Care issues (i.e., physician and pharmacy services). Regency Extended Care was fined \$2,000 pursuant to a Stipulation and Order for November 17, 2005 surveillance findings related to Quality of Care.

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Financial Summary

Project costs of \$3,245,947 will be met as follows: Equity of \$502,065 from the proposed members, and a bank loan of \$2,743,882 at an interest rate of 6.00% for a ten year term.

#### Budget:

Revenues	\$5,543,679
Expenses	<u>3,628,720</u>
Net Income	\$1,915,359

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.

### Lease Rental Agreement

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

Premises: 8,100 sq. ft. located at 50-15 Beach Channel Drive, Far Rockaway, New York.  
Lessor: Cardiff Bay Center, LLC  
Lessee: Peninsula Continuum Services, LLC  
Term: Fifteen Years  
Rental: Year One - \$572,208 (\$70.64 per sq. ft.)  
Year Two - \$578,283 (\$71.39 per sq. ft.)  
Year Three - \$584,540 (\$72.17 per sq. ft.)  
Year Four - \$590,985 (\$72.96 per sq. ft.)  
Year Five - \$597,624 (\$73.78 per sq. ft.)  
Year Six - \$604,461 (\$74.62 per sq.ft.)  
Year Seven - \$611,504 (\$75.49 per sq.ft.)  
Year Eight - \$618,757 (\$76.39 per sq.ft.)  
Year Nine - \$626,229 (\$77.31 per sq.ft.)  
Year Ten - \$633,925 (\$78.26 per sq.ft.)  
Year Eleven - \$272,143 (\$33.60 per sq.ft.)  
Year Twelve - \$280,307 (\$34.61 per sq.ft.)  
Year Thirteen - \$288,717 (\$35.64 per sq.ft.)  
Year Fourteen - \$297,378 (\$36.71 per sq.ft.)  
Year Fifteen - \$306,299 (\$37.81 per sq.ft.)  
Provisions: The lessee shall be responsible for maintenance, utilities and real estate taxes.

The applicant has indicated that the lease arrangement will be a non-arm's length (common membership with landlord) lease arrangement. The applicant has indicated that the lease rental payments include base rent plus improvements.

### Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$3,245,947, further broken down as follows:

Renovation and Demolition	\$2,013,193
Design Contingency	181,987
Construction Contingency	181,987
Architect/Engineering Fees	161,055
Other Fees (Consultant)	75,000
Moveable Equipment	482,320
Financing Costs	78,397
Interim Interest Expense	52,264
CON Fee	2,000
Additional Processing Fee	17,744
Total Project Cost	\$3,245,947

Project costs are based on a March 1, 2015 construction start date and a six month construction period.

The applicant's financing plan appears as follows:

Equity	\$502,065
Bank Loan (6.00% interest rate for ten year term)	<u>2,743,882</u>
Total	\$3,245,947

## Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Fee For Service	\$274,903	\$549,806
Medicare Fee For Service	2,126,592	4,338,673
Commercial Managed Care	<u>327,600</u>	<u>655,200</u>
Total Revenues	\$2,729,095	\$5,543,679
Expenses:		
Operating	\$1,650,260	\$3,023,673
Capital	<u>656,496</u>	<u>604,647</u>
Total Expenses	\$2,306,756	\$3,628,320
Net Income	\$422,339	\$1,915,359
Utilization: (Treatments)	9,360	18,720
Cost Per Treatment	\$246.45	\$193.82

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

Medicaid Fee For Service	10.00%
Medicare Fee For Service	80.00%
Commercial Managed Care	<u>10.00%</u>
Total	100.00%

Expenses and utilization assumptions are based on the historical experience of other dialysis facilities.

### Capability and Feasibility

Project costs of \$3,245,947 will be met as follows: Equity of \$502,065 and \$2,743,882, financed via a bank loan at an interest rate of 6.00% for a ten year term.

Working capital requirements are estimated at \$604,720, which is equivalent to two months of third year expenses. The applicant will finance \$302,360 at an interest rate of 7.00% for a three year term. The remainder, \$302,360, will be provided as equity via the proposed members of Peninsula Continuum Services, LLC.

BFA Attachment A is the personal net worth statements of the proposed members of Peninsula Continuum Services, LLC, which indicates the availability of sufficient funds for the equity contribution to meet the total project cost and the working capital requirements equity contributions. BFA Attachment B is the pro-forma balance sheet of Peninsula Continuum Services, LLC as of the first day of operation, which indicates a positive net asset position of \$804,425.

The submitted budget indicates a net income of \$422,339 and \$1,915,359 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for dialysis services. The submitted budget appears reasonable.

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

### Recommendation

**From a financial perspective, contingent approval is recommended.**

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## Attachments

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BFA Attachment A    Personal Net Worth Statement of Proposed Members  
BFA Attachment B    Pro-forma Balance Sheet



# Public Health and Health Planning Council

Project # 141280-E  
Liverpool LD, LLC d/b/a FMS-Liverpool Dialysis Center

**Program:** Diagnostic and Treatment Center    **County:** Onondaga  
**Purpose:** Establishment    **Acknowledged:** June 25, 2014

## Executive Summary

### Description

Liverpool LD, LLC d/b/a FMS-Liverpool Dialysis Center, a for-profit limited liability company, is requesting approval to be established as the new operator of Liverpool Dialysis Center, LLC, a for-profit diagnostic and treatment center (D&TC) that operates an existing 12-station chronic renal dialysis center. The D&TC leases space at 1304 Buckley Road, Syracuse, New York (Onondaga County).

At the time the above two agreements were executed, the members of Liverpool Dialysis Center, LLC were as follows:

St. Joseph's Hospital Health Center	50.000%
D.C. Holdings of Onondaga County, Inc.	45.835%
Herbert S. Lawson	4.165%

Ownership before and after the requested change is as follows:

<u>Current - Liverpool Dialysis Center, LLC</u>	
St. Joseph's Hospital Health Center	100%

On or before December 31, 2012, St. Joseph's Hospital Health Center became the sole member of Liverpool Dialysis Center, LLC, which the DOH approved on December 13, 2012, in accordance with Public Health Law 2801-a (4).

<u>Proposed - Liverpool LD, LLC</u>	
*New York Dialysis Services, Inc.	60%
Salil Gupta, M.D.	20%
Pawan Rao, M.D.	20%
Total	100%

On October 31, 2012, Liverpool LD, LLC entered into an Administrative Service Agreement to provide certain consulting and administrative services to Liverpool Dialysis Center, LLC

*\*New York Dialysis Services, Inc. is a wholly owned subsidiary of Fresenius Medical Care Holdings, Inc., an operator of a number of dialysis clinics in New York State.*

OPCHSM Recommendation  
Contingent Approval

As background, on October 31, 2012, New York Dialysis Services, Inc. purchased the non-Article 28 Assets of Liverpool Dialysis Center, LLC in return for a purchase price of \$3,500,000, and entered into an Operating Asset Transfer Agreement pursuant to which Liverpool Dialysis Center, LLC will sell its Article 28 assets associated with the above clinic to Liverpool LD, LLC for \$100,000, subject to receipt of all required approvals.

Need Summary  
Liverpool LD, LLC seeks approval to be established as the owner of Liverpool Dialysis Center, LLC, a 12-station chronic dialysis facility located at 1304 Buckley Rd Syracuse, NY 13212, Onondaga County. The facility will be renamed FMS Liverpool Dialysis Center.

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 \$100,000 purchase price will be provided by Fresenius Medical Care Holdings, Inc., the owner of New York Dialysis Services, Inc.

Budget:	Revenues:	\$3,302,727
	Expenses:	<u>2,440,395</u>
	Gain:	\$862,332

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 Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed administrative service agreement acceptable to the Department of Health. [BFA]
2. Submission of an executed Certificate of Assumed Name that is acceptable to the Department. [CSL]
3. Submission of a signed statement that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws that is acceptable to the Department. [CSL]
4. Submission of an executed Certificate of Amendment to the Articles of Organization of the applicant that is acceptable to the Department. [CSL]
5. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of New York Dialysis Services, Inc. that is acceptable to the Department. [CSL]
6. Submission of Bylaws of New York Dialysis Services, Inc. that is acceptable to the Department. [CSL]
7. Submission of an Assignment and Assumption of Lease/Termination of Sublease that is acceptable to the Department. [CSL]
8. Submission of an executed Operating Agreement from the applicant that is acceptable to the Department. [CSL]
9. Submission of site control that is acceptable to the Department. [CSL]
10. Submission of an executed proposed Certificate of Dissolution that is acceptable to the Department. [CSL]
11. Submission of an Administrative Services Agreement that is acceptable to the Department. [CSL]
12. Submission of a Medicaid Affidavit that is acceptable to the Department. [CSL]
13. Submission of documentation in compliance with Schedule 14B(V)(B)(1) and (2). [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

**December 4, 2014**

## Need Analysis

### Background

After approval of this application, Liverpool LD, LLC will be licensed as the operator of Liverpool Dialysis Center, which will become the FMS Liverpool Dialysis Center.

There will be no change in stations, facility structures, or services. No change in current utilization is expected.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

Liverpool LD, LLC seeks approval to become established as the new operator of a 12-station renal dialysis clinic located at 1304 Buckley Road, Syracuse which is currently operated by Liverpool Dialysis Center, LLC. Upon approval, the facility shall be known as FMS-Liverpool Dialysis Center. There are no significant physical environment or programmatic changes anticipated as a result of this proposal.

### Character and Competence

The members of Liverpool LD, LLC are:

<u>Member</u>	<u>Percentage</u>
Pawan K. Rao, M.D.	20%
Salil Gupta, M.D.	20%
New York Dialysis Services, Inc.	60%
William Valle – Director	
Ronald J. Kuerbitz – Executive Vice President	
Joseph Ruma – Vice President	
Mark Fawcett – Treasurer	
Paul Colantino – Asst. Treasurer	
Douglas Kott – Secretary	
Jessica Stewart – Asst. Secretary	

The proposed Board of Managers of Liverpool LD, LLC will be:

Salil Gupta, MD  
Pawan Rao, MD  
Michael S. Weiner  
Judith Moran, RN

Drs. Rao and Gupta are board-certified in Internal Medicine and Nephrology and have 11 and 18 years of experience, respectively. New York Dialysis Services, Inc. is a wholly owned subsidiary of Fresenius Medical Care Holdings, Inc. (FMCH) and operates dialysis clinics at various locations throughout New York. Mr. Weiner and Ms. Moran are both employed by Fresenius Medical Care as Regional Vice Presidents.

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.

#### 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 Fresenius and Fresenius-affiliated entities with the current operation of Liverpool Dialysis Center, LLC. 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 worse than NYS Average	Numerator (6)+(7)	Summary Statistic [at or better than NYS Average] 1.00-((8)/(5))
<b>Fresenius</b>	33	10	330	33	297	0	91	91	69%
<b>Liverpool Dialysis Center, LLC</b>	1	10	10	1	9	0	2	2	78%

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

#### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

#### Operating Asset Transfer Agreement

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

Date:	October 31, 2012
Seller:	Liverpool Dialysis Center, LLC
Purchaser:	Liverpool LD, LLC d/b/a FMS-Liverpool Dialysis Center
Acquired Assets:	Right title and interest, to the extent transferable, in the following assets relating to the operation of the Dialysis Business: any tangible or intangible asset which only an organization established under Articles 28 of the New York Public Health Law to operate health care facilities is permitted to own including as of the transfer date, (1) list of patients being served, (2) records pertaining to the Dialysis Business and the patients treated, (3) pharmaceuticals in inventory, (4) contracts, (5) collect account receivables arising subsequent to the dialysis business transfer date, and to bill for and collect all unbilled work in process as of the dialysis business

transfer date. The Article Assets shall be transferred free and clear of all liens and encumbrances.

Assumed Liabilities: Liabilities arising after closing.  
Purchase Price: \$100,000  
Payment: \$100,000 at closing

BFA Attachments A and B are the members' net worth statements and Fresenius Medical Care Holdings, Inc. and Subsidiaries 2013 certified financial statement, which shows sufficient resources to meet the equity requirement.

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 Liabilities.

#### Administrative Services Agreement

The applicant has submitted a draft administrative services agreement with New York Dialysis Services, Inc., which is summarized as follows:

Provider: New York Dialysis Services, Inc.  
Facility: Liverpool LD, LLC d/b/a FMS-Liverpool Dialysis Center  
Services Provided: Use of equipment, assist in selection of equipment and supplies, equipment maintenance, negotiate vendor contracts and assist in evaluation of alternate proposals. Assist in maintaining records and process approved invoices. Provide personnel to manage and operate non-physician aspects of the business. Process billings, verify patient insurance eligibility, and administer owner's collection policy. Prepare for owner's signature: cost reports and other reports to be provided by the owner. Provide standard billing, collection, accounting, tax reporting, and similar systems to the owner. Coordinate credentialing and re-credentialing services for licensed personnel. Provide or arrange accounting and financial services.  
If necessary provide working capital (subject to promissory note and security agreement). Assist in providing policies and procedures and make available to owner the opportunity to participate in Ultra Care and PSO (programs owned by the administer affiliate, Fresenius Medical Care). Perform medical record audits, conduct utilization reviews, quality assurance/control review and provide compliance training.  
Term: Twenty year term  
Compensation: \$17,500 per month, \$210,000 annually (fee adjusted annually to reflect market value rate)

The facility operator will maintain ultimate authority and responsibility for the operations.

There is a common ownership between the administrative services agreement provider and the applicant's 60% owner, New York Dialysis Services, Inc.

## Real Property Lease Agreement

The applicant has submitted an executed assignment, assumption and consent agreement and a copy of the executed lease agreement, which the DOH of has already approved under CON 071035. The terms are summarized below:

Premises:	11,974 square feet located at 1304 Buckley Road, Syracuse, New York		
Owner/ Landlord:	O'Neill Intermediary, LLC		
Lessee/Assignor:	Liverpool Dialysis Center, LLC		
Sub-lessee/Assignee:	Liverpool LD, LLC		
Rental:	Years 1-5	\$240,917	\$20.12 sq. ft.
	Years 6-10	\$255,884	\$21.37 sq. ft.
	Years 11-15	\$270,960	\$22.63 sq. ft.
	1 <sup>st</sup> 5 yr. extension	\$285,819	\$23.87 sq. ft.
	2 <sup>nd</sup> 5 yr. extension	\$300,787	\$25.12 sq. ft.
	3 <sup>rd</sup> 5 yr. extension	\$315,754	\$26.37 sq. ft.
Term:	15 year term (ending 8/31/2023) plus 3 five-year extensions		
Provisions:	Maintenance, utilities, and taxes		

The lease is an arm's length arrangement.

## Operating Budget

The applicant has submitted first and third years operating budgets, in 2014 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicare	\$1,448,011	\$1,568,901
Commercial:	1,320,015	1,430,219
All Other:	<u>280,213</u>	<u>303,607</u>
Total Revenues	\$3,048,239	\$3,302,727
Expenses:		
Operating	\$1,925,228	\$2,040,242
Capital	<u>\$349,039</u>	<u>\$400,153</u>
Total Expenses	\$2,274,267	\$2,440,395
Revenues over Expenses (Loss)	<u>\$773,972</u>	<u>\$862,332</u>
Utilization: (treatments)	8,444	8,819
Cost Per Treatment	\$269.34	\$276.72

The costs per treatment increase in the third year is due to higher labor and depreciation costs.

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

Medicare	69.4%
Commercial	20.4%
Other (Medicare Advantage payors)	10.2%

Expense and utilization assumptions are based on the applicant's historical experiences in operating similar size dialysis clinics. The projected utilization closely matches the 8,169 procedures performed in the prior twelve months. First and third years costs will be covered at approximately 6,300 and 6,500 procedures, respectively.

## Capability and Feasibility

There are no project costs associated with this application.

Total purchase price of \$100,000 will be provided by Fresenius Medical Care Holdings, Inc., the owner of New York Dialysis Services, Inc. A review of BFA Attachments A and B, members' net worth statements and Fresenius Medical Care Holdings, Inc. and Subsidiaries 2013 certified financial statement, shows sufficient resources to meet the equity requirement.

The working capital requirement is estimated at \$379,045 and is based on two months of the first year expenses which will be satisfied from Fresenius Medical Care Holdings, Inc. (FMCH). Review of BFA Attachment B, FMCH 2013 certified financial statement, indicates sufficient resources to satisfy the projects' equity requirements. BFA Attachments C and D are the pro forma balance sheet and pro-forma cash flow statement, which shows operations will start off with \$500,000 in cash and during the first year cash is expected to increase by \$318,690, closing at \$816,690.

The submitted budget indicates net income of \$773,972 and \$862,332 for the first and third year, respectively. Revenues reflect current reimbursement methodologies and commercial revenues were based on historical experience. The budget appears reasonable.

As shown on BFA Attachment B, Fresenius Medical Care Holdings, Inc. has maintained an average working capital position of \$2,467,511,000, average net asset position of \$7,657,826,500, and generated an average income from operations of \$801,324,500 for 2012 through 2013.

It appears 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	Net Worth Statements
BFA Attachment B	Financial Summary for 2012 and 2013, Fresenius Medical Care Holdings, Inc. and Subsidiaries
BFA Attachment C	Pro-forma Balance Sheet for Liverpool LD, LLC d/b/a FMS-Liverpool Dialysis Center
BFA Attachment D	Pro-forma Cash Flow Statement for Liverpool LD, LLC d/b/a FMS-Liverpool Dialysis Center
HSP Attachment A	Dialysis Facility Compare – Liverpool Dialysis Center, LLC
HSP Attachment B	Dialysis Facility Compare – Fresenius NYC & Outside NYC



# Public Health and Health Planning Council

Project # 142058-E  
Massena Center, LLC d/ba/ Massena Dialysis Center

**Program:** Diagnostic and Treatment Center    **County:** St. Lawrence  
**Purpose:** Establishment    **Acknowledged:** August 18, 2014

## Executive Summary

### Description

Massena Center, LLC d/b/a Massena Dialysis Center, an existing limited liability company, requests approval to acquire the 8-station Massena Memorial Hospital Dialysis Center, an extension site of Massena Memorial Hospital located at 290 Main Street, Massena in St. Lawrence County, via an Asset Purchase Agreement. The applicant plans to provide the same services currently provided.

The members of Massena Center, LLC are as follows:

	<u>Ownership %</u>
American Renal Associates LLC	51.00 %
Craig G. Hurwitz, MD	16.33 %
Laura G. Carbone, MD	16.33 %
Ronald G. Malseptic, MD	16.34 %

OPCHSM Recommendation  
Contingent Approval.

### Need Summary

This change in ownership will not change the number of dialysis stations in St Lawrence County. The facility in question is currently well-utilized, having an established patient base.

### 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 purchase price of \$600,000 will be provided by \$202,552 in equity from the proposed members and \$397,448 from an intercompany term loan at 5% over five years from American Renal Associates.

Budget:	Revenues:	\$2,647,497
	Expenses:	<u>2,430,615</u>
	Gain:	\$ 216,882

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 Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed Administrative Services Agreement (ASA), acceptable to the Department. [HSP]
3. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
4. Submission of an executed building lease acceptable to the Department of Health. [BFA]
5. Submission of an executed employee lease acceptable to the Department of Health. [BFA]
6. Submission of an executed equipment lease acceptable to the Department of Health. [BFA]
7. Submission of the finalized and executed lease agreement between the applicant and Massena Memorial Hospital, 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 other adjacent 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]

Council Action Date

**December 4, 2014**

# Need Analysis

## Background

Massena Center, LLC d/b/a Massena Dialysis Center is seeking approval for the acquisition of Massena Memorial Hospital Dialysis Center, an 8-station chronic renal dialysis center located at 290 Main Street, Massena, NY 13662. The Center is currently operating as an extension clinic of Massena Memorial Hospital, a 50-bed public hospital located at 1 Hospital Drive, Massena, NY 13662. Both the hospital and the clinic are located in St. Lawrence County.

Massena Memorial Hospital has stated that, due to operating losses, they may have to close Massena Memorial Hospital Dialysis Center if they are unable to sell it.

## Demographic Information

The population of St. Lawrence County in 2013 was 111,963. The population was 7.6% non-white and 15.0% over the age of 65. Those two demographics are the most at-risk for developing end stage renal disease.

	<u>St Lawrence County</u>	<u>New York State</u>
Ages 65 and over:	15.0%	14.4%
Non-white:	7.6%	42.4%

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 a 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 may treat fewer patients per year than do free-standing stations. Statewide, the majority of stations are free-standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free-standing stations.
- There are currently 32 free-standing chronic dialysis stations operating in St. Lawrence County and 0 in pipeline for a total of 32.
- Based upon DOH methodology, the 32 existing free standing stations in St. Lawrence County could treat a total of 144 patients annually. Including the additional 0 pipeline stations, the county could treat a total of 144 patients annually.

## Need Projections

	2012	2013	2017	
	Total Patients Treated	Total Residents Treated	Projected Total Patients Treated <sup>1</sup>	Projected Residents Treated <sup>2</sup>
	118	116	137	131
Free-standing Stations Needed	27	26	31	30
Existing Stations	32	32	32	32
Pipeline Stations	0	0	0	0
Total stations with Pipeline	32	32	32	32
With Approval of this CON	32	32	32	32
Unmet Need with Approval	-5	-6	-1	-2

<sup>1</sup>Patient data is from 2012 and is projected out 5 years, assuming a 3% annual rate of increase.

<sup>2</sup>Resident data is from 2013 and is projected out 4 years, assuming a 3% annual rate of 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 2013 of information.

### Conclusion

St Lawrence County is currently over-served by renal dialysis, and demand is not expected to overtake supply through 2017. However, if this facility were to close the County would be underserved. In light of the fact that this project would not add stations, and that the loss of existing resources would leave gaps in this critical service, approval is recommended.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

Massena Center, LLC d/b/a Massena Dialysis Center, an existing limited liability company, requests approval to acquire the 8-station Massena Memorial Hospital Dialysis Center, an extension site of Massena Memorial Hospital. The existing center is located at 290 Main Street, Massena, NY (St. Lawrence County). There are no significant programmatic changes anticipated as a result of this proposal. The applicant plans to provide the same services which currently appear on the Massena Memorial Hospital Dialysis Center Operating Certificate.

Proposed Operator	Massena Center, LLC
Doing Business As	Massena Dialysis Center
Site Address	290 Main Street Massena, NY (St Lawrence County)
Approved Services	Chronic Renal Dialysis (8 stations) Home Peritoneal Dialysis Training & Support
Shifts/Hours/Schedule	Three shifts per day, 6 days per week Open Monday through Saturday, 5:30am – 9pm
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	Number and mix of staff based on current operations (13.3 FTEs)

Medical Director(s)	Khurram Mumtaz, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Massena Memorial Hospital (limited acute care) 1.59 miles / 3 minutes <i>and</i> Champlain Valley Physicians' Hospital 83.14 miles / 1 hour, 39 minutes

Character and Competence

The members of the LLC are:

<u>Name</u>	<u>Percent</u>
<b>American Renal Associates, LLC (ARA)</b>	<b>51.00%</b>
American Renal Holdings, Inc. (100%)	
Manager- Joseph A. Carlucci (Pres./CEO)	
Manager - John J. McDonough (COO)	
<b>Individual Physician Owners</b>	<b>49.00%</b>
Craig G. Hurwitz, MD	16.33%
Laura G. Carbone, MD	16.33%
Ronald G. Malseptic, MD	16.34%

American Renal Holdings, Inc. (ARH) is a national provider of kidney dialysis services which owns and operates over 150 dialysis clinics in 21 states and the District of Columbia. The Company's operating model is based on shared ownership of its facilities with nephrologists practicing in the area served by the clinic. Each clinic is maintained as a separate joint venture in which the ARH owns a controlling interest.

Currently, American Renal is affiliated with three (3) dialysis centers in New York State: Elizabethtown Center, LLC; Mohawk Valley Dialysis Center, LLC; and Plattsburgh Associates, LLC.

Drs. Hurwitz, Carbone and Malseptic are local physicians, board-certified in Internal Medicine and 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.

Dr. Malseptic disclosed that, on March 7, 2011, he was disciplined by the New York State Board for Professional Medical Conduct with license suspension for 24 months stayed with probation for three (3) years and \$5,000 fine related to failure to use scientifically accepted barriers for infection control and failure to maintain accurate records. Dr. Malseptic completed the terms of his order effective on May 8, 2014.

Drs. Carbone and Hurwitz each disclosed one (1) pending 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.

### Summary of Dialysis Facility Compare Statistics

The table below provides the Summary Statistic (which is the percent of scores at, or better than, the New York State average) of the dialysis facility to be acquired and the three (3) dialysis facilities in New York State that the proposed management corporation (ARA) currently operates

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	Statistics Not Available or Do Not Apply	Denominator	Statistics Not Reported	Statistics worse than NYS Average	Numerator	Summary Statistic [at or better than NYS Average]
			(1) x (2)		(3)-(4)			(6)+(7)	1.00-((8)/(5))
Massena	1	10	10	1	9	0	2	2	78%
ARA's NY facilities	3	10	30	15	15	0	7	7	53%

Data taken from <http://www.medicare.gov/DialysisFacilityCompare/search.html> as it appeared on September 24, 2014.

### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Asset Purchase Agreement

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

Date:	August 7, 2014
Seller:	Massena Memorial Hospital
Purchaser :	Massena Center, LLC
Purchased Assets:	All assets used in the 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; 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.
Assumed Liabilities:	Those associated with purchased assets.
Excluded Liabilities:	Pre-closing debt, obligations or liabilities of seller.
Purchase Price:	\$600,000.
Payment of Purchase Price:	Cash to be paid at closing.

The proposed members will commit to capital contributions of \$202,552 based on their membership interest, with the remaining \$397,448 to be financed. BFA Attachment D is the schedule of capital contributions.

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.

#### Administrative Services Agreement

Massena Center, LLC will enter into an Administrative Services Agreement with American Renal Management, LLC. The consultant would provide certain professional business and administrative services to the renal dialysis center relating to the operation of the facility.

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

Date:	August 7, 2014
Facility:	Massena Center, LLC d/b/a Massena Dialysis Center
Contractor:	American Renal Management, LLC
Administrative Term:	3 years, with option to renew for three additional terms of 3 year periods.
Compensation:	\$200,000 per annum (\$16,666.67/month) for administrative services, billing and collection.
Duties of the Contractor:	Financial Management Services, Strategic Planning and Development, Policies and Procedures, Contracting Services, Personnel, Supplies, Maintenance and repair of equipment, Operating Licenses and Banking, Billing and Collection Services.

While American Renal Management, LLC will be providing all of the above services, the Facility retains ultimate control in all of the final decisions associated with the services through their managing committee which is comprised of the CEO and COO of American Renal Associates, Dr. Craig Hurwitz and Dr. Laura Carbone.

#### Lease Agreement

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

Premises:	6,120 square feet located at 290 Main Street, Massena, New York
Landlord:	Massena Memorial Hospital
Tenant:	Massena Center, LLC
Term:	10 Years with two additional 5 year renewals.
Rental:	\$119,340 per annum (\$19.50 per sq. ft.) or \$9,945 per month
Provisions:	The lessee shall be responsible for utilities.

The proposed lease agreement is an arm's length transaction since neither party is related. Letters of opinion from license commercial real estate brokers have been submitted indicating rent reasonableness.

#### Leased Employee Agreement

The applicant has submitted a draft lease employee agreement whereas Massena Memorial Hospital will lease qualified and licensed employees to Massena Center, LLC for a period of five years with five successive 5 year renewals at a fee of \$1,111,472 and \$ 1,176,669 for the first and third years, respectively, based on job description and title of current hospital employees. These fees represent salaries, wages and benefits passed through to the applicant by the Hospital.

### Equipment Lease Agreement

The applicant has submitted a draft lease rental agreement whereas Massena Memorial Hospital will lease certain equipment to Massena Center, LLC for a period of 12 months at a fee of \$1,000 per month.

### Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Total Revenues	\$2,500,808	\$2,647,497
Expenses:		
Operating	\$2,108,448	\$2,212,530
Capital	<u>223,477</u>	<u>218,085</u>
Total Expenses	\$2,331,925	\$2,430,615
Net Income(Loss)	<u>\$168,883</u>	<u>\$216,882</u>
Utilization: (treatments)	6,947	7,354
Cost Per Treatment	\$335.67	\$330.52

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

Medicare Fee-For-Service	78.83%
Medicaid Managed Care	6.84%
Commercial Fee-For-Service	9.87%
Other	4.46%

Expense and utilization assumptions are based on historical data from Massena Memorial Hospital and comparable clinics from the geographical area.

### Capability and Feasibility

There are no project costs associated with this application. The purchase price of \$600,000 will be provided by \$202,552 in equity from the proposed members and \$397,448 from an intercompany term loan at 5% over five years from American Renal Associates.

Working capital requirements, estimated at \$388,654, appear reasonable based on two months of first year expenses and will be provided through \$194,327 equity of the proposed members and the remaining \$194,327 through an intercompany term loan from American Renal Associates at 5% over five years. A letter of interest has been submitted by American Renal Associates. Presented as BFA Attachment B is the financial statement of American Renal Associates, LLC showing sufficient equity. Presented as BFA Attachment C is the pro forma balance sheet of Massena Dialysis Center as of the first day of operation, which indicates positive equity of \$202,552.

The submitted budget projects a net profit of \$168,883 and \$216,882 during the first and third years, respectively. Medicare and Medicaid reflect prevailing reimbursement methodologies. All other revenues assume current reimbursement methodologies. The budget appears reasonable.

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.**

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## Attachments

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BFA Attachment A	Net Worth Statement of Proposed Physicians
BFA Attachment B	Financial Summary of American Renal Associates, LLC
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Schedule of Capital Contributions
HSP Attachment A	Massena Center, LLC - "Dialysis Facility Compare"



# Public Health and Health Planning Council

Project # 132128-E

DOJ Operations Associates, LLC d/b/a Triboro Center for Rehabilitation and Specialty Healthcare

**County:** Bronx

**Purpose:** Establishment and Construction

**Program:** Residential Health Care Facility

**Acknowledged:** September 9, 2013

## Executive Summary

### Description

DOJ Operations Associates, LLC d/b/a Triboro Center for Rehabilitation and Specialty Healthcare is the current receiver of Daughters of Jacob Nursing Home, a voluntary not-for-profit Corporation and 405-bed Residential Health Care Facility (RHCF) located in the Bronx. DOJ Operations Associates LLC is seeking approval to become the permanent operator of the facility.

The proposed ownership is as follows:

#### DOJ Operations Associates LLC:

Kenneth Rozenberg	56.0%
Deborah Lerner	10.0%
Shelly Lerner	10.0%
Suzanne Lerner	10.0%
Debbie Mermelstein	10.0%
Jeffrey Sicklick	2.0%
David Gamzeh	2.0%

The real property owner is DOJ Land Associates, LLC, which is solely owned by Daryl Hagler, who has submitted an affidavit disclosing his relationship between landlord and tenant since he has other business relationships with the proposed operator.

### OPCHSM Recommendation

Contingent Approval

### Need Summary

The new operator will rename the facility upon approval of this application, but there will be no change in total capacity. In 2010 - 2012, Daughters of Jacob Nursing Home's utilization rate was 96.5%, 94.4%, and

96.4% respectively. As of October 18, 2014, utilization was at 93.8%. Since the applicant became receiver of this facility, Daughters of Jacob Nursing Home has begun admitting higher acuity residents, thereby increasing their CMI.

### 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 purchase price for the operations is \$25,500,000. \$6,375,000 will be paid from proposed members' equity and \$19,125,000 will be from a bank loan.

There are no project costs associated with this application.

Budget:	Revenues:	\$41,432,163
	Expenses:	<u>\$39,760,968</u>
	Gain:	\$1,671,195

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 Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed loan commitment for working capital acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the purchase price acceptable to the Department of Health. [BFA]
3. Submission of an executed payment agreement for amounts owed the Department, acceptable to the Department. [BFA]
4. 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]
5. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy.
5. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent. [RNR]
6. Submission and approval of a programmatically acceptable name for the nursing home. [LTC]
7. Submission of the executed revised Certificate of Amendment of the Articles of Organization of DOJ Operations Associates LLC, acceptable to the Department. [CSL]
8. Submission of the executed amended Operating Agreement of DOJ Operations Associates LLC, acceptable to the Department. [CSL]
9. Submission of an executed Certificate of Assumed name of DOJ Operations Associates LLC, acceptable to the Department. [CSL]
10. Submission of an executed certificate of dissolution or certificate of amendment of the certificate of incorporation of Daughters of Jacob Nursing Home Company, 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

**December 4, 2014**

# Need Analysis

## Project Description

DOJ Operations Associates, LLC, seeks approval to become the permanent operator of Daughters of Jacob Nursing Home, a 405-bed Article 28 residential health care facility located at 1160 Teller Avenue, Bronx, 10456, in Bronx County. Upon approval, Daughters of Jacob Nursing Home will be renamed Triboro Center for Rehabilitation and Specialty Healthcare.

## Analysis

There is currently a need for 8,680 beds in the New York City Region as indicated in Table 1 below. However, the overall occupancy for the New York City Region is 94.8% for 2012 as indicated in Table 2.

**Table 1: RHCF Need – New York City Region**

<b>2016 Projected Need</b>	51,071
<b>Current Beds</b>	42,068
<b>Beds Under Construction</b>	323
<b>Total Resources</b>	42,391
<b>Unmet Need</b>	8,680

Daughters of Jacob Nursing Home's utilization rate was 96.5% in 2010, 94.4% in 2011, and 96.4% in 2012. The facility's utilization has been near the Department's optimum level of 97% and has been above the utilization rates for both the County and Region. The applicant is the current receiver of the facility.

**Table 2: Daughters of Jacob Nursing Home/Bronx County/New York City Region Occupancy**

<b>Facility/County/Region</b>	<b>% Occupancy 2010</b>	<b>% Occupancy 2011</b>	<b>% Occupancy 2012</b>
Daughters of Jacob NH	96.5%	94.4%	96.4%
Bronx County	95.8%	94.3%	95.9%
New York City Region	95.4%	94.8%	94.8%

## Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or 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.

Daughter of Jacob Nursing Home's Medicaid admissions of 63.9% in 2011 and 59.2% in 2012 exceeded the Bronx County 75% rates of 37.5% in 2011 and 35.8% in 2012.

## Conclusion

Its high percentage of Medicaid admissions and recent near-optimum occupancy under the current applicant acting as receiver suggest that this facility is an important source of RHCF care for both the Medicaid clientele and the general population of Bronx County.

## Recommendation

**From a need perspective, contingent approval is recommended.**

## Program Analysis

### Facility Information

	<u>Existing</u>	<u>Proposed</u>
Facility Name	Daughters of Jacob Nursing Home Company Inc	Triboro Center for Rehabilitation and Specialty Healthcare
Address	1160 Teller Ave	
	Bronx, New York 10456	
	PFI: 1249	Same
RHCF Capacity	405	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Not for Profit Corporation	Limited Liability Corporation
Class of Operator	Voluntary	Proprietary
Operator	Daughters of Jacob Nursing Home Company, Inc  Effective 8/1/13 Receivership: DOJ Operations Associates LLC Kenneth Rozenberg 100%	DOJ Operations Associates LLC d/b/a Triboro Center for Rehabilitation and Specialty Healthcare Members: Kenneth Rozenberg 56.0% Deborah Lerner 10.0% Suzanne Lerner 10.0% Shelly Lerner 10.0% Debbie Mermelstein 10.0% David Gamzeh 2.0% Jeffrey Sicklick 2.0% 100.0%

### Character and Competence - Background

#### **Facilities Reviewed:**

#### Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	10/2004 to present
Brooklyn Center for Rehabilitation and Residential HC	03/2007 to present
Bushwick Center for Rehabilitation and Health Care (formerly Wartburg Lutheran Home for the Aging)	06/2008 to present
Chittenango Center for Rehabilitation and Health Care (formerly Stonehedge Health & Rehabilitation Center - Chittenango)	07/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to present
Delaware Nursing & Rehabilitation Center	06/2014 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Queens Center for Rehabilitation and Residential Health Care	10/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care (formerly Stonehedge Health & Rehabilitation Center - Rome)	07/2008 to present
Steuben Center for Rehab	07/2014 to present
University Nursing Home	10/2004 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	10/2004 to present

<u>Certified Home Health Agency</u> Alpine Home Health Care	07/2008 to present
<u>Licensed Home Care Services Agency</u> Amazing Home Care	05/2006 to present
<u>Ambulance Company</u> Senior Care Emergency Ambulance Services, Inc. (EMS)	06/2005 to present
<u>Managed Long Term Care Company</u> Center Plan for Health Living (MLTC)	01/2013 to present

**Individual Background Review:**

Kenneth Rozenberg is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He has been employed as CEO of Bronx Center for Rehabilitation & Health Care since January 1998. Mr. Rozenberg discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Corning Center for Rehab	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Essex Center for Rehab	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehab	04/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Steuben Center for Rehab	07/2014 to present
University Nursing Home	08/2001 to present
Waterfront Center for Rehabilitation	12/2012 to present
Washington Center for Rehab	02/2014 to present
Williamsbridge Manor Nursing Home	11/1996 to present
Holliswood Center for Rehabilitation (RECeivership)	11/2010 to 04/2013
Stonehedge Health & Rehabilitation Center – Rome (REC)	07/2008 to 04/2011
Stonehedge Health & Rehab Center – Chittenango (REC)	07/2008 to 04/2011
Wartburg Lutheran Home for the Aging (REC)	06/2008 to 05/2011
Waterfront Center for Rehabilitation (REC)	08/2011 to 12/2012
Delaware Nursing & Rehab Center (REC)	06/2014 to present
Daughters of Jacob Nursing Home Company Inc. (REC)	08/2013 to present
Center Plan for Health Living (MLTC)	01/2013 to present
Alpine Home Health Care (CHHA)	07/2008 to present
Amazing Home Care (LHCSA)	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS)	06/2005 to present

Jeffrey N. Sicklick is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator at Bronx Center for Rehabilitation & Health Care since October, 1997. Mr. Sicklick discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Corning Center for Rehabilitation	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2007 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Waterfront Center for Rehabilitation	01/2013 to present

Shelly Lerner discloses no employment history. Ms. Lerner discloses the following health facility interests:

Holliswood Center for Rehabilitation and Healthcare	05/2013 to present
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Deborah Lerner discloses she is a college student, with no employment history. Ms. Lerner discloses no health facility interests.

Suzanne Lerner discloses she is a college student, with no employment history. Ms. Lerner discloses no health facility interests.

Debbie (Lerner) Mermelstein reveals employment as an administrative assistant at Astor Chocolate Corporation, in Lakewood NJ, in December, 2007. No other employment is revealed. Ms. Mermelstein discloses no health facility interests.

David Gamzeh is a licensed New York State nursing home administrator in good standing. Mr. Gamzeh is currently employed as administrator of record of Daughters of Jacob Nursing Home since July, 2013. Previously Mr. Gamzeh served as administrator at Holliswood Care Center from November, 2010 to November, 2012. Mr. Gamzeh discloses no health facility interests.

#### Character and Competence - Analysis

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

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.

A review of the operations of Chittenango Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$20,000 pursuant to a Stipulation and Order issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.

A review of Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

The review of operations for Bronx Center for Rehabilitation and Health Care, Chittenango Center for Rehabilitation and Health Care, Waterfront Center for Rehabilitation and Healthcare, and Williamsbridge Manor Nursing Home for the time periods indicated above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Bushwick Center for Rehabilitation and Health Care, Dutchess Center for Rehabilitation and Healthcare, Fulton Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, Queens Center for Rehabilitation and Residential Health Care, Richmond Center for Rehabilitation and Specialty Healthcare, Rome Center for Rehabilitation and Health Care, and University Nursing Home for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no enforcements.

A review of Alpine Home Health Care, LLC and Amazing Home Care reveals that a substantially consistent high level of care has been provided since there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc. reveals that a substantially consistent high level of care has been provided since there were no enforcements.

#### Project Review

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

#### 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 agreement, the terms of which are summarized below:

Date: June 26, 2013  
Seller: Daughters of Jacob Nursing Home Company, Inc.  
Buyer : DOJ Operations Associates, LLC  
Purchased Assets: All assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents.  
Excluded Assets: Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.  
Purchase Price: \$25,500,000 for the operating interest whereas \$4,480,000 has been paid at closing and held in escrow in which \$2,250,000 can be given to receiver as a non-interest bearing loan solely for working capital purposes and \$2,230,000 can be given to receiver as a non-interest bearing loan solely to fund the pension plan.

The applicant has provided a letter of interest from Greystone stating available financing of \$19,125,000 at 5% over a twenty-five year amortization period.

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. As of October 31, 2014, the accounts receivable (AR) balance due the Department totals \$11,130,650.87. The applicant is pursuing discussions with the Office of Health Insurance Programs to establish a viable AR repayment schedule to be formalized through a legal Repayment Agreement with the Department to address the outstanding AR balance due.

### Lease Agreement

The applicant will continue to occupy the premises under an executed lease agreement, the terms of which are summarized below:

Date: August 1, 2013  
Premises: A 405-bed RHCF located at 1160 Teller Ave, Bronx, New York.  
Lessor: DOJ Land Associates, LLC  
Lessee: DOJ Operations Associates, LLC  
Term: 10 years  
Rental: \$1,500,000/year (\$125,000 per month)  
Provisions: Triple Net

The applicant intends to renew the lease after the 10 year period.

## Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the first year subsequent to change in ownership:

	<u>Year One</u>
Revenues:	
Medicaid	\$32,691,877
Medicare	5,971,103
Private Pay/Other	<u>2,769,183</u>
Total Revenues	\$41,432,163
Expenses:	
Operating	\$37,475,822
Capital	<u>2,285,146</u>
Total Expenses	\$39,760,968
Net Income	<u>\$ 1,671,195</u>
Utilization (patient days)	141,912
Occupancy	96.0%

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

- Expenses include lease rental.
- Medicaid rates are based on 2014 Medicaid pricing rates with no trend.
- Overall utilization is projected at 96.0%, while utilization by payor source is expected as follows:

Medicaid	89.0%
Medicare	7.1%
Private Pay/Other	3.9%
- Breakeven occupancy is projected at 95.26%.

## Capability and Feasibility

There are no project costs associated with this application.

The purchase price of \$25,500,000 for the operations will be financed by the proposed members' equity of \$6,375,000 and a bank loan of \$19,125,000 at 5% interest amortized over 25 years. BFA Attachment A is the net worth of the proposed members which shows sufficient equity. An affidavit from Kenneth Rozenberg has been submitted to the Department of Health which states that he is willing to contribute resources disproportionate to ownership percentages.

The proposed member, Kenneth Rozenberg, of DOJ Operations Associates, LLC has submitted an affidavit stating that he will fund the balloon payment should acceptable financing not be available at the time the loan comes due after the 10 year period. BFA Attachment E is the interest and amortization schedule for the ten year term.

Working capital requirements are estimated at \$6,626,828 based on two months of the first year expenses, of which \$3,313,414 will be satisfied from the proposed members' equity and \$3,313,414 will be financed by a bank loan at 5% over 5 years. BFA Attachment A is the net worth of the proposed members which shows sufficient equity. A bank letter of interest from Greystone has been submitted by the applicant.

The submitted budget indicates that a net income of \$1,671,195 would be maintained during the first year following the change in ownership. BFA Attachment F is the budget sensitivity analysis based on current utilization of the facility as of June 30, 2014, which shows the budgeted revenues would decrease by \$663,218 resulting in a net profit in year one of \$1,007,977. BFA Attachment C is the pro forma balance sheet of DOJ Operations Associates, LLC, which indicates positive members' equity of \$9,688,414 as of the first day of operations. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Effective June 1, 2014, eligible Medicaid beneficiaries in the following counties were required to join a managed care plan (phase 1, downstate): NYC, Nassau, Suffolk and Westchester. The rest of the State (phase 2, upstate) will transition beginning December 1, 2014. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with the NH providers. To mitigate untoward financial impact to NH providers during the transition to managed care, the 2014-15 Enacted State Budget amended Public Health Law adding §2808 2-c(e) to establish the NH Medicaid fee-for-service (FFS) rate as the benchmark rate (floor) for MCO payments to NH providers. Department Policy, noticed to Plans in March 2014, provided further guidance requiring MCOs to pay the benchmark FFS rate, or a negotiated rate acceptable to both plans and NHs, for 3 years after a county has been deemed mandatory (phased in) for NH population enrollment. As a result, the benchmark FFS rate remains a reliable basis for assessing NH Medicaid revenues through to May 31, 2017 (downstate), and November 30, 2017 (upstate), respectively.

As shown on BFA Attachment B, Daughters of Jacob experienced negative working capital, net asset position and an average net loss of \$4,741,444 from 2011-2012 and a \$622,438 net profit as of December 31, 2013, which was due to high operating costs that have been gradually reduced since the receivership took over the facility. Improvements are anticipated to continue going forward. The reduction in net operating losses is mainly due to the following:

- Elimination of prior interest and penalties paid (\$1,127,805);
- Renegotiation of purchase contracts, including pharmacy and insurance contracts (\$857,045);
- Reduction in staffing/renegotiation of benefits without disruption of patient care (\$619,800); and
- Reduction in professional fees, including legal fees (\$476,492).

BFA Attachments D, Financial Summary of the proposed members affiliated RHCs, shows the facilities have maintained positive income from operations for the periods shown with the exception of Chittenango Center for Rehabilitation which was due to a one-time audit recoupment.

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
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BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Financial Summary- Daughters of Jacob
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summary- Affiliated Residential Health Care Facilities
BFA Attachment E	Interest and Amortization schedule
BFA Attachment F	Budget Sensitivity
BNHLC Attachment A	Quality Measures and Inspection Report



# Public Health and Health Planning Council

Project # 141213-E  
Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville

**Program: Residential Health Care Facility**  
**Purpose: Establishment**

**County: Erie**  
**Acknowledged: May 15, 2014**

## Executive Summary

### Description

Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville (Comprehensive at Williamsville), a for-profit entity, proposes to be established as the new operator of St. Francis Home of Williamsville, a 142-bed voluntary not-for-profit residential health care facility (RHCF) located at 147 Reist Street Williamsville, (Erie County). A separate realty entity, Reist Street Realty, LLC will acquire the facility's real property.

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

#### Current Operator & Real Property

St. Francis Home of Williamsville	
<u>Membership</u>	<u>Ownership</u>
Catholic Health System, Inc and Diocese of Buffalo	100%

#### Proposed Operator

Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville	
<u>Membership</u>	<u>Ownership</u>
Ephram Lahasky	37%
Joshua Farkovits	37%
David Gast	16%
Sam Halper	10%

#### Proposed Realty Owner

Reist Street Realty, LLC	
<u>Membership</u>	<u>Ownership</u>
Ephram Lahasky	37%
Joshua Farkovits	37%
David Gast	16%
Sam Halper	10%

The owners of Reist Street Realty, LLC and Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville are the same and have the exact same ownership interest in both entities.

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

OPCHSM Recommendation  
Contingent Approval

#### Need Summary

St. Francis Home of Williamsville's utilization was 91.4% in 2010, 90.5% in 2011, and 87.5% in 2012. Current utilization, as of October 8, 2014 is 97.2%. According to the applicant, the new owners plan to increase utilization through the development of new programmatic initiatives to meet the needs of the residents and the community.

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

Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville will acquire the RHCF operating assets for \$1,800,000 which will be funded as follows: \$360,000 from members' equity and a 10-year term loan of \$1,440,000 with a 25-year amortization schedule at a 5.5% interest rate. Reist Street Realty, LLC, the applicant's landlord, is purchasing the real property for \$4,200,000. Its members will contribute \$840,000 in equity along with entering into a

\$3,360,000 loan with a 10-year terms amortized over 25 years at 5.5% interest rate. There are no project costs associated with this application

Budget:	Revenues:	\$13,984,000
	Expenses:	<u>\$13,513,000</u>
	Gain:	\$471,000

Subject to the above 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 Primary Care and 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 a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - 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 executed loan commitment for the facility's operations acceptable to the Department. [BFA]
5. Submission of an executed working capital loan commitment acceptable to the Department. [BFA]
6. Submission of an executed building lease acceptable to the Department. [BFA]
7. Submission of an executed loan commitment for the real property acceptable to the Department. [BFA]
8. Submission of an attestation from the co-applicant and active parent, Catholic Health System, Inc., that they are an agreeable party to the Asset Purchase Agreement. [BFA]
9. Submission of an attestation from the co-applicant and active parent, Catholic Health System, Inc., that they are an agreeable party to the Asset Purchase Agreement. [LTC]
10. Submission of a copy of an executed certificate of amendment of the certificate of incorporation of the seller and a copy of the present certificate of incorporation of the seller, acceptable to the Department. [CSL]
11. Submission of a copy of an executed asset purchase agreement between the current owner(s)/operator(s) and Comprehensive of Williamsville, LLC. [CSL]

12. Submission of a copy of Reist Street Realty LLC's Articles of Organization and Operating Agreement. [CSL]
13. Submission of a copy of an executed real property purchase agreement between the legally authorized seller and Reist Street Realty, LLC. [CSL]
14. Submission of a copy of an executed lease between Reist Street Realty LLC and Comprehensive of Williamsville, LLC, acceptable to the Department. [CSL]
15. Submission of a copy of a legally acceptable Bill of Sale and a legally acceptable Assignment and Assumption Agreement between the current owner(s)/operator(s) of the facility and applicant. [CSL]
16. Submission of a copy of the applicant's executed certificate of assumed name, acceptable to the Department. [CSL]
17. Submission of a copy of the applicant's executed Amended and Restated Articles of Organization, acceptable to the Department. [CSL]
18. Submission of the applicant's finalized and executed Operating 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

**December 4, 2014**

# Need Analysis

## Project Description

Comprehensive at Williamsville, LLC seeks approval to become the established operator of St. Francis Home of Williamsville, a 142-bed residential health care facility, located at 147 Reist Street, Williamsville, 14221, 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

*Table 2: St. Francis Home of Williamsville/Erie County*

<u>Facility/County</u>	<u>% Occupancy</u> <u>2010</u>	<u>% Occupancy</u> <u>2011</u>	<u>% Occupancy</u> <u>2012</u>
St. Francis Home of Williamsville	91.4%	90.5%	87.5%
Erie County	93.9%	92.1%	91.2%

St. Francis Home of Williamsville's utilization was 91.4% in 2010, 90.5% in 2011, and 87.5% in 2012. According to the applicant, the reason for the decline was due to several factors: the facility needed updating, and a decision was made to make modest facility improvements in 2011 and 2012, and significant upgrades in 2013; organization and staffing issues needed to be addressed which resulted in an occupancy decline; and a regional decline (approximately 20%) was noted in sub-acute discharges to nursing facilities, resulting in beds remaining vacant as the facility sought short-term rehabilitation residents.

According to the applicant, the new owners plan to increase utilization through the development of new programmatic initiatives to meet the needs of the residents and the community which include:

- Bariatric services;
- Wound care program;
- Enhanced cardio-rehab program; and
- Enhanced diabetic services

It is expected that these new initiatives will also attract more referrals from hospitals and medical practices, thereby increasing utilization at this facility. Also, the applicant noted that St. Francis provides care to a high acuity population in need of institutional care and has among the highest CMI in the county (1.16). The facility will continue to serve these higher acuity residents in a cost-efficient setting.

## 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.



**Individual Background Review:**

Samuel Harper holds a New York State nursing home administrator's license and is considered to be in good standing. Mr. Harper lists his employment as the Chief Executive Officer at Friendship Ridge Nursing Home located in Beaver, Pennsylvania since March 2014. Previously, he was the Administrator of Record of River Manor Care Center in Brooklyn, New York and Dutchess Center for Rehabilitation in Pawling, New York. Mr. Harper discloses the following ownership interest:

Friendship Ridge Nursing Home	03/2014 to present
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Ephram Lahasky is a New York State licensed emergency medical technician and is considered to be in good standing. Mr. Lahasky lists his employment as the President of Transportation Services Unlimited, an ambulance and mobility assisted vehicle company located in Paterson, New Jersey. He is also the chief executive officer of Richmond County Ambulance, Inc. located in Staten Island, New York and Emergency Ambulance Service, Inc. in Bohemia, New York. Mr. Lahasky also lists his employment as a consultant at Microcomputer Customized Services, a consulting firm located in Lawrence, New York. Mr. Lahasky discloses the following ownership interests:

Friendship Ridge Nursing Home	03/2014 to present
The Health Center at Galloway	01/2013 to present
Superior Medical Transportation LTD	10/2004 to present
Richmond County Ambulance Inc.	03/2012 to present
Transportation Services Unlimited a/k/a Guardian EMS	01/2008 to present

Joshua Farkovits lists his employment as the Vice President of Business Development of Richmond County Ambulance, Inc., an emergency medical transportation company located in Staten Island, New York. Mr. Farkovits discloses the following ownership interests:

Friendship Ridge Nursing Home	03/2014 to present
Richmond County Ambulance Inc.	09/2011 to present

David Gast lists his employment as the owner of AG Group Associates LLC, a real estate company located in Uniondale, New York. He is also the manager of Morris Towers, a real estate management company. Mr. Gast discloses the following ownership interest in health care facilities:

Friendship Ridge Nursing Home	03/2014 to present
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**Character and Competence - Analysis**

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

A review of operations for Friendship Ridge Nursing Home located in Beaver, Pennsylvania 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 operations for The Health Center at Galloway located in Paterson, New Jersey 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 operations for Superior Medical Transportation LTD and Richmond County Ambulance Inc. for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Transportation Services Unlimited a/k/a Guardian EMS in the state of New Jersey 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. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Conclusion

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

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

**Financial Analysis**

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the purchase of the operating interest, the terms of which are summarized as follows:

Date:	January 29, 2014
Seller:	St. Francis Home of Williamsville
Purchaser:	Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville
Purchased Assets:	Transfer, assign, and convey all title and interest in purchased assets free and clear of all liens, claims, assessments, security interests, mortgages, collateral assignments, leases, attachments, levies and other defects in title and other encumbrances.
Excluded Assets:	Cash and equivalents, marketable securities, retroactive rate increases, refunds, insurance policies, accounts receivable prior to closing, employment benefit plan, pension and savings plans, and computer applications.
Assumed Liabilities-Operations:	Obligations on assumed contracts arising after closing date.
Purchase Price:	\$1,800,000
Payment of Purchase Price:	\$ 126,000 escrow deposit at sign of agreement \$1,674,000 due at closing

The purchase price is proposed to be satisfied as follows:

Equity	\$ 360,000
Loan (5.5%, 10-year term (25 year amortization))	<u>1,440,000</u>
Total	\$1,800,000

A letter of interest has been provided by HHC Finance in regards to the above noted loan. BFA Attachment A is the proposed members' net worth summary, which reveals sufficient resources to meet the equity requirement. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Ephram Lahasky has provided an affidavit stating that he is willing to contribute resources disproportionate to his membership interest.

The members' have furnished affidavits making a commitment to personally fund the balloon payment on the proposed loan should terms acceptable to the Department of Health be unavailable at the time of refinancing.

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 Estate Purchase Agreement

The applicant has submitted an executed agreement to purchase the RHCf real property, the terms of which are summarized below:

Date: January 29, 2014  
Seller Realty: St. Francis Home of Williamsville  
Purchaser Realty: Reist Street Realty, LLC  
Assets Transferred Realty: All rights, title and interest in parcel of land, building/s, improvements, fixtures, easements and appurtenances, located at 147 and 149 Reist Street, Village of Williamsville, Town of Amherst and known as SBL#68.20-3-1.1 and SBL#68.04-1-15.21  
Purchase Price: \$4,200,000  
Payment of Purchase: \$ 294,000 escrow  
Price: \$3,906,000 due at closing

The purchase price is proposed to be satisfied as follows:

Equity – Reist Street Realty, LLC members	\$840,000
Loan – 5.5% interest, 10-year terms with 25 year amortization	<u>\$3,360,000</u>
Total	\$4,200,000

The letter of interest for the loan has been provided by HHC Finance. The members have provided affidavits to personally fund the balloon payment, should terms acceptable to the Department of Health be unavailable at the time of refinancing. Review of BFA Attachment A, the proposed members' net worth summary, reveals sufficient resources to meet the equity requirement. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Ephram Lahasky has provided an affidavit stating that he is willing to contribute resources disproportionate to his membership interest.

#### Lease Agreement

The applicant has submitted a draft lease agreement, the terms of which are summarized below:

Premises: 142 Bed RHCf located at 147-149 Reist Street, Williamsville, NY 14221  
Owner/Landlord: Reist Street Realty, LLC  
Lessee: Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville  
Term: Twenty-six (26) years – with one 10-year renewal option  
Rent: \$348,000 per year (includes landlords debt service)  
Provisions: Taxes, utilities, insurance, and maintenance

The lease is a non-arm's length agreement. Medicaid capital reimbursement for the proposed applicant will change from the existing not-for-profit Article 28A methodology to the proprietary reimbursement methodology of return on/of equity.

## Operating Budget

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

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid	\$200.65	\$6,073,000
Medicare	453.40	5,497,000
Private Pay & Other	346.14	2,370,000
Other Operating Revenue*		<u>44,000</u>
Total Revenues:		\$13,984,000
Expenses:		
Operating		\$12,822,000
Capital		<u>691,000</u>
Total Expenses:		\$13,513,000
Net Income:		<u>\$471,000</u>

\*Vending Machines, Hair Care, Discounts, & Transportation

RHCF Utilization (patient days)	49,238
RHCF Occupancy	95.00%

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

- RHCF expenses include lease rental;
- RHCF Medicaid revenues are based on current rates;
- RHCF Medicare revenues were based on current rates;
- RHCF private pay revenues are based on current rates;
- RHCF projected utilization is 95.00%. Average utilization for the period 2006 through 2009 was 88.6%, from 2010 through 2013, it increased to 90.0%, and according to the DOH website, as of April 30, 2014, occupancy increased to 92.3%. The applicant will work with the operator to expand outreach and enhance programs in order to increase occupancy.
- Breakeven utilization is projected at 92.0%.
- RHCF utilization by payor source is anticipated as follows:

Medicaid	61.47%
Medicare	24.62%
Private/Other	13.91%

## Capability and Feasibility

Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville will acquire the RHCF operations for \$1,800,000, will be funded with \$360,000 in members' equity and a \$1,440,000 loan at the above stated terms. Concurrently, Reist Street Realty, LLC will purchase the real property for \$4,200,000, which will be funded with \$840,000 in members' equity and a \$3,360,000 loan at the above stated terms. A letter of interest for the operation loan and the real property loan has been provided by HHC Finance. BFA Attachment A is Comprehensive at Williamsville, LLC and Reist Street Realty, LLC members' net worth statements, which shows there are sufficient assets to complete the transaction. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Ephram Lahasky has provided an affidavit stating he is willing to contribute resources disproportionate to his membership interest for the real property. There are no project costs associated with this application.

The working capital requirement is estimated at \$2,252,167 and is based on two months of the first year expenses, which will be satisfied from the members' equity. Review of BFA Attachment A, summary of net worth, indicates sufficient resources to satisfy the projects' equity requirements. It is also noted that liquid resources may not be available in proportion to ownership interest; therefore Ephram Lahasky and David Gast have provided an affidavits stating they are willing to contribute resources disproportionate to their membership interest.

BFA Attachments B is the pro-forma balance sheet for Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville, which shows that the entity will start off with \$2,617,000 in equity. Total assets include \$1,800,000 in goodwill, which is not a liquid resource, nor is it recognized for Medicaid reimbursement. If goodwill was eliminated from the equation, then the total net assets would become a positive \$817,000.

The submitted budget indicates that net income of \$471,000 would be generated in the first year after change in ownership. The following is a comparison of 2012 historical and projected revenue and expense:

Projected Income	\$13,984,000
Projected Expense	<u>13,513,000</u>
Projected Net Income	\$471,000
Annual 2012 Income	\$11,750,000
Annual 2011 Expense	<u>13,905,000</u>
Annual 2011 Net Income (Loss)	(\$2,155,000)
Incremental Net Income (Loss)	<u>\$2,626,000</u>

It is estimated incremental net revenue for all payers will increase approximately \$2,234,000, as the result of the following: Medicaid revenues are expected to increase by \$1,346,000 as the result of 2,320 added inpatient days, with the average daily rate going from \$169.14 to \$201.65; Medicare revenues are expected to increase by \$524,000 as the result of 929 added inpatient days, with the average daily rate going from \$444.22 to \$453.40; private pay and all other revenues are expected to increase by \$364,000 as the result of 525 added inpatient days, with the average daily rate going from \$317.30 to \$346.14.

Expenses are expected to decline by a net of \$392,000 primarily from a reduction in the following: decline in salaries and wages of \$778,000, decline in fringe benefits of \$505,000, going from 36.1% of wages to 33.0%. The \$1,283,000 reduction in expenses was offset by increase in other direct expenses of \$464,000 and increase in capital expenses of \$427,000 bringing the net reduction to \$392,000. The budget appears to be reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with cost-based capital component payment methodology to a negotiated reimbursement methodology.

Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

As shown on BFA Attachment C, Financial Summary for St. Francis Home of Williamsville for the years 2011 through 2013, the RHCF had an average negative net asset position and an average negative working capital position, and generated an average loss of \$839,808. The operating losses during 2011 and 2012 were due to staffing costs and occupancy levels. The facility is currently operating at a loss due to excess staffing costs. The proposed members will implement staffing reductions where overages exists and are in the process of renegotiating the labor contract; it is expected this will save approximately \$1,283,000.

Based on the preceding it appears that the applicant has demonstrated the capability to precede 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, Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville and Reist Street Realty, LLC
BFA Attachment B	Pro-forma Balance Sheet, Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville
BFA Attachment C	Financial Summary, St. Francis Home of Williamsville
BNHLC Attachment A	Quality Measures and Inspection Report



# Public Health and Health Planning Council

Project # 142056-E  
Hope Center Operations, LLC d/b/a Hope Center for HIV and Nursing Care

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Bronx  
**Acknowledged:** August 18, 2014

## Executive Summary

### Description

Hope Center Operations, LLC d/b/a Hope Center for HIV and Nursing Care, an existing New York limited liability company, requests approval to be established as the operator of HELP/PSI, a 66-bed AIDS specialty residential health care facility (RHCF) located at 1401 University Avenue, Bronx, New York. The current operator, HELP/PSI, Inc., provides services only to people with a diagnosis of AIDS, most of whom are Medicaid recipients. The RHCF services and programs currently provided to these AIDS patients will be maintained under the new operator.

Hope Center Operations, LLC entered into an Operational Transfer Agreement on October 21, 2014, for the sale and acquisition of the operating interests of HELP/PSI. The applicant will lease the premises from HELP/PSI, Inc.

The current operator and proposed operator are as follows:

<u>CURRENT</u>	
HELP/PSI, Inc. (NFP)	100%
<u>PROPOSED</u>	
Hope Center Operations, LLC	
Members:	
Kenneth Rozenberg	95%
Beth Rozenberg	5%

OPCHSMDOH Recommendation  
Contingent Approval

### Need Summary

Due to the designated AIDS beds that this facility has certified, HELP/PSI is exempt from the nursing home methodology. However, since this is an RHCF, a review of utilization was completed. The annual occupancy averages for 2010 - 2012 were 98.9%, 97.24%, and 98.05%, respectively. In 2013, the occupancy dropped to 89.1% due to the facility's referral sources, which has since been corrected utilizing community outreach efforts and working with hospital discharge planners. In 2014, average occupancy has been 96.1%.

### 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 cost associated with this application. The purchase price for the operating interest of HELP/PSI, Inc. is \$4,620,000. The purchase price will be met as follows: equity of \$1,501,500 from the proposed members' personal resources, and a bank loan of \$3,118,500 at 5% interest for a term of ten years with a payout period for the principal of twenty five years. The applicants have indicated that they will refinance the loan when the balloon payment becomes due. Kenneth Rozenberg has submitted an affidavit indicating that he will fund

the balloon payment from his personal resources if financing is not available when the loan becomes due.

<u>Budget:</u>	
Revenues	\$9,693,409
Expenses	<u>\$7,421,377</u>
Net Income	<u>\$2,272,032</u>

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed loan commitment for the operating portion, acceptable to the Department. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
3. Submission of an executed amendment to the lease agreement between HELP/PSI, Inc. and the applicant, acceptable to the Department. [CSL]
4. Submission of an executed certificate of amendment of the certificate of incorporation of HELP/PSI, 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

**December 4, 2014**

## Need Analysis

### Background

Hope Center Operations, LLC d/b/a Hope Center for HIV and Nursing Care seeks approval to become the established operator of Help/PSI, a 66-bed Article 28 residential health care facility (RHCF) located at 1401 University Avenue, Bronx, 10452, in Bronx County. This RHCF has 66 designated AIDS beds.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Help/PSI, Inc.	Hope Center for HIV and Nursing Care
Address	1401 University Avenue Bronx, New York 10452	Same
RHCF Capacity	66 RHCF AIDS	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Not-for-profit corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Help/PSI, Inc.	Hope Center Operations LLC d/b/a Hope Center for HIV and Nursing Care  Members: Kenneth Rozenberg      95% Beth Rozenberg          5%

### Character and Competence - Background

#### Facilities Reviewed:

#### Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	10/2004 to present
Brooklyn Center for Rehabilitation and Residential HC	03/2007 to present
Bushwick Center for Rehabilitation and Health Care (formerly Wartburg Lutheran Home for the Aging)	06/2008 to present
Chittenango Center for Rehabilitation and Health Care (formerly Stonehedge Health & Rehabilitation Center - Chittenango)	07/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to present
Delaware Nursing & Rehabilitation Center	06/2014 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Queens Center for Rehabilitation and Residential Health Care	10/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care (formerly Stonehedge Health & Rehabilitation Center - Rome)	07/2008 to present
Steuben Center for Rehab	07/2014 to present

University Nursing Home	10/2004 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	10/2004 to present

Certified Home Health Agency

Alpine Home Health Care	07/2008 to present
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Licensed Home Care Services Agency

Amazing Home Care	05/2006 to present
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Ambulance Company

Senior Care Emergency Ambulance Services, Inc. (EMS)	06/2005 to present
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Managed Long Term Care Company

Center Plan for Health Living (MLTC)	01/2013 to present
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Individual Background Review:

Kenneth Rozenberg is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He has been employed as CEO of Bronx Center for Rehabilitation & Health Care since January 1998. Mr. Rozenberg discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Corning Center for Rehab	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Essex Center for Rehab	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehab	04/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Steuben Center for Rehab	07/2014 to present
University Nursing Home	08/2001 to present
Waterfront Center for Rehabilitation	12/2012 to present
Washington Center for Rehab	02/2014 to present
Williamsbridge Manor Nursing Home	11/1996 to present
Holliswood Center for Rehabilitation (RECeivership)	11/2010 to 04/2013
Stonehedge Health & Rehabilitation Center – Rome (REC)	07/2008 to 04/2011
Stonehedge Health & Rehab Center – Chittenango (REC)	07/2008 to 04/2011
Wartburg Lutheran Home for the Aging (REC)	06/2008 to 05/2011
Waterfront Center for Rehabilitation (REC)	08/2011 to 12/2012
Delaware Nursing & Rehab Center (REC)	06/2014 to present
Daughters of Jacob Nursing Home Company Inc. (REC)	08/2013 to present
Center Plan for Health Living (MLTC)	01/2013 to present
Alpine Home Health Care (CHHA)	07/2008 to present
Amazing Home Care (LHCSA)	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS)	06/2005 to present

Beth (Kosowsky) Rozenberg retired in 1995 as a teacher from Park East Day School in New York, NY. Ms. Rozenberg discloses the following health facility interests:

University Nursing Home	11/2002 to present
Williamsbridge Manor	12/2004 to present
Bronx Center for Rehab	09/2013 to present

#### Character and Competence - Analysis

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

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.

A review of the operations of Chittenango Center for Rehabilitation and Health Care (formerly Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals the following:

- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-053 issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.

A review of Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order NH-08- issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

The review of operations for Williamsbridge Manor Nursing Home, Bronx Center for Rehabilitation and Health Care, Chittenango Center for Rehabilitation and Health Care, and Waterfront Center for Rehabilitation and Healthcare for the time periods indicated above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

The review of operations of Queens Center for Rehabilitation and Residential Health Care, Dutchess Center for Rehabilitation and Healthcare, Essex Center for Rehabilitation, Fulton Center for Rehabilitation and Health Care, Rome Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Washington Center for Rehabilitation, Brooklyn Center for Rehabilitation and Residential Health Care, Richmond Center for Rehabilitation and Specialty Health Care, Steuben Center for Rehabilitation, Suffolk Center for Rehabilitation, University Nursing Home, Daughters of Jacob Nursing Home, Holliswood Center for Rehabilitation and Health Care, and Delaware Nursing and Rehabilitation Center for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no enforcements.

A review of Alpine Home Health Care, LLC and Amazing Home Care reveals that a substantially consistent high level of care has been provided since there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc. reveals that a substantially consistent high level of care has been provided since there were no enforcements.

A review of operations for Center Plan for Health Living, for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the purchase of the operating interests; summarized below:

Date:	October 21, 2014
Seller:	HELP/PSI, Inc.
Buyer:	Hope Center, Operations, LLC
Asset Acquired:	All of Seller's right, title and Operational Interest in the Facility.
Excluded Assets:	All of Seller's rights, properties, assets and interests other than the Basic Assets, including, without limitation, the name "HELP/PSI" and all real property associated with the Facility.
Assumption of Liabilities:	Buyer shall not assume any obligations or liabilities of Seller with respect to the Basic Assets or the Facility of its operations arising at any time prior to the Closing Date.
Purchase Price:	\$4,620,000
Payment of Purchase Price:	\$462,000 paid by Seller prior to the execution of this agreement. \$4,158,000 shall be due and payable by Buyer to Seller at the Closing.

The applicant's financing plan appears as follows:

Equity	\$1,501,500
Bank Loan (5% interest for a ten year term with a twenty five year principal payout)	3,118,500

The applicant has indicated that they will refinance the loan when the balloon payment becomes due. Kenneth Rozenberg has submitted an affidavit indicating that he will fund the balloon payment from his personal resources if financing is not available when the loan becomes due.

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

### Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site that the nursing home will occupy, which is summarized below:

Date: July 8, 2014  
Premises: Leasing of the premises located at 1401 University Avenue, Bronx, New York.  
Landlord: HELP/PSI, Inc.  
Tenant: Hope Center Operations, LLC  
Term: Ten years  
Rental: The annual base rent shall be \$288,000  
Provisions: The lessee shall be responsible for maintenance, real estate taxes and utilities.

### Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, during the first year subsequent to the change in operator; summarized below:

Revenues:	
Medicaid Managed Care	\$9,693,409
Expenses:	
Operating	\$6,468,155
Capital	<u>953,222</u>
Total Expenses	\$7,421,377
Net Income	\$2,272,032
Utilization (patient days)	23,608
Occupancy	98.0%

Utilization will be 100% Medicaid Managed Care.

The applicant increased utilization from historical levels due to the high HIV/AIDS population in the facility's primary service area. Moreover, with the closure of Robert Mapplethorpe Residential Treatment Facility, which also serves AIDS patients, the need for nursing home placement for these residents is evident. The applicants have indicated that they are committed to actively conducting community outreach to hospitals and other area programs to maintain their occupancy levels.

The applicant projected the following expense reductions:

- Salary and Wages – The applicant will be reducing FTEs in the following areas: Management & Supervision (5.4 FTEs); Technician & Specialist (1.8 FTEs); Licensed Practical Nurses (1.1 FTEs); Social Workers and Psychologist (0.7 FTEs); Other Therapist and Assistants - Substance Abuse (8.4 FTEs); Infection Control, Environment and Food Service (12.2 FTEs); Clerical & Other Administrative (6.3 FTEs); and Other-Transportation (6.4 FTEs). The staff reductions will result in total salary and wage savings of \$2,155,284 compared to 2012 historical. The reductions are based on an analysis of the current operator's staffing schedule, as reported in the 2012 RHCF cost report, and the applicant's previous experience as a successful nursing home operator. To maintain needed RHCF services and programs, the applicant will be increasing FTEs in other areas as follows: Registered Nurses (2.4 FTEs); Aides, Orderlies & Attendants (2.4 FTEs) and Other-Activities Program (0.9 FTEs). As a result, the net reduction in staffing will be a total of 36.6 FTE's.
- Employee Health Benefits – Reduction of employee health benefits (\$581,469) due to reduction of FTE's.
- Professional Fees – reduced by \$234,233.
- Medical & Surgical Supplies – reduced by \$22,584.
- Non-medical, non- surgical supplies – reduced by \$138,708.
- Utilities – reduced by \$77,673.
- Purchased services – reduced by \$131,500.

## Capability and Feasibility

The purchase price for the operating interests is \$4,620,000. The purchase price will be met as follows: equity of \$1,501,500 from the proposed members' personal resources, and a bank loan of \$3,118,500 at an interest rate of 5% for a term of ten years with a payout period of twenty-five years. The applicant has indicated that they will refinance the loan when the balloon payment becomes due. Kenneth Rozenberg has submitted an affidavit indicating that he will fund the balloon payment from his personal resources if financing is not available when the loan becomes due.

Working capital requirements are estimated at \$1,236,896, which is equivalent to two months of first year expenses. The applicant will finance \$618,448 at an interest rate of 5% for a term of five years. The remainder, \$618,448, will be provided as equity from the proposed members of Hope Center Operations, LLC. BFA Attachment A is the personal net worth statements of the proposed members of Hope Center Operations, LLC, which indicates the availability of sufficient funds for the equity contribution for the purchase price portion and for the working capital requirement portion. BFA Attachment C is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$2,119,948. Assets includes \$4,620,000 in goodwill which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated from the equation, the total net assets would become a negative \$2,500,052.

The submitted budget indicates a net income of \$2,272,032 during the first year subsequent to the change in operator. The submitted budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Effective June 1, 2014, eligible Medicaid beneficiaries in the following counties were required to join a managed care plan (phase 1, downstate): NYC, Nassau, Suffolk and Westchester. The rest of the State (phase 2, upstate) will transition beginning December 1, 2014. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with the NH providers. To mitigate untoward financial impact to NH providers during the transition to managed care, the 2014-15 Enacted State Budget amended Public Health Law adding §2808 2-c(e) to establish the NH Medicaid fee-for-service (FFS) rate as the benchmark rate (floor) for MCO payments to NH providers. Department Policy, noticed to Plans in March 2014, provided further guidance requiring MCOs to pay the benchmark FFS rate, or a negotiated rate acceptable to both plans and NHs, for 3 years after a county has been deemed mandatory (phased in) for NH population enrollment. As a result, the benchmark FFS rate remains a reliable basis for assessing NH Medicaid revenues through to May 31, 2017 (downstate), and November 30, 2017 (upstate), respectively.

BFA Attachment B is a financial summary of HELP/PSI for the period 2011 through 2013. As shown, the entity had an average positive working capital position and an average positive net asset position from 2011 through 2013. Also, the entity achieved an average excess of revenues over expenses of \$1,676,026 from 2011 through 2013.

BFA Attachment E is the March 31, 2014 internal financial statements of HELP/PSI. As shown, the entity had a positive working capital position and a positive net asset position through March 31, 2014. Also, the entity achieved an excess of revenues over expenses of \$82,754 through March 31, 2014.

BFA Attachment D is the financial summaries of the other RHCs in which Kenneth Rozenberg has ownership interests. The following is noted:

- Bronx Center for Rehab had an average negative working capital position and an average positive net asset position from 2010 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of an \$800,000 Medicare Part B receivable owed to the facility. Also, the facility achieved an average operating net income of \$905,495 from 2010 through 2013.
- Dutchess Center had an average negative working capital position and an average positive net asset position from 2010 through 2013. The applicant has indicated that the reason for the negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an average operating net income of \$684,086 from 2010 through 2013.

- Bushwick Center had an average negative working capital position and an average positive net asset position from 2012 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of pending CMI and capital reimbursement from the State, vacation and sick time accruals and pending HUD reimbursement. Also, the entity achieved an average operating net income of \$491,025 from 2012 through 2013.
- Rome Center had an average negative working capital position and an average positive net asset position from 2012 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an average operating net income of \$701,374 from 2012 through 2013.
- Chittenango Center for Rehab had an average negative working capital position and an average positive net asset position from 2012 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an average net income of \$383,205 from 2012 through 2013. The applicant has indicated that the reason for the 2012 losses were the result of a \$400,000 capital audit take back. The applicant further indicated that they implemented the following steps to improve operations: renegotiating vendor contracts, analyzing overtime utilization and making adjustments necessary to reduce the overtime expense, and enhanced efforts on collections on accounts receivable.
- Boro Park Center had an average negative working capital position and an average positive net asset position from 2012 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an operating net income of \$3,725,321 from 2012 through 2013.
- Fulton Center had a negative working capital position and a positive net asset position in 2013. The applicant has indicated that the reason for the negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an operating net income of \$568,318 in 2013.
- Richmond Center had a negative working capital position and a positive net asset position in 2013. The applicant has indicated that the reason for the negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an operating net income of \$2,576,814 in 2013.
- Queens Center had an average negative working capital position and an average positive net asset position from 2010 through 2013. The applicant has indicated that the reason for the negative working capital position is the result of a third party payor liability, as well as vacation and sick time accrual. Also, the entity achieved an average operating net income of \$625,327 from 2010 through 2013.
- University Nursing Home had an average negative working capital position and an average positive net asset position from 2010 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of vacation and sick time accrual. Also, the applicant achieved an average operating net income of \$295,821 from 2010 through 2013.
- Williamsbridge Manor had an average positive working capital position and an average positive net asset position from 2010 through 2013. The applicant has indicated that the reason for the 2011 negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an operating net income of \$345,289 from 2010 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	Personal Net Worth Statements of Proposed Members
BFA Attachment B	Financial Summary- HELP/PSI
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summaries of other owned facilities
BFA Attachment E	March 31, 2014 Internal Financial Statements of Help/PSI
BNHLC Attachment A	Quality Measures and Inspection Report



# Public Health and Health Planning Council

Project # 142090-E  
 L&A Operations LLC d/b/a Adira at Riverside Rehabilitation and Nursing

**Program:** Residential Health Care Facility      **County:** Westchester  
**Purpose:** Establishment      **Acknowledged:** September 2, 2014

## Executive Summary

### Description

L&A Operations, LLC d/b/a Adira at Riverside Rehabilitation and Nursing (L&A Operations), a Delaware limited liability company, is seeking approval to be established as the new operator of Michael N. Malotz Skilled Nursing Pavilion, an existing not-for-profit 120-bed residential health care facility (RHCF) located at 120 Odell Avenue, Yonkers, New York (Westchester County). The 120 certified beds consists of 112 geriatric beds and 8 ventilator dependent beds. Simultaneously, a separate realty entity, L&A RE Acquisitions, LLC, will acquire the facility's real property.

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.

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

<u>Current Operator</u>	<u>Ownership</u>
Riverside Health Care System, Inc.	100%

<u>Proposed Operator</u>	<u>Ownership</u>
L&A Operations, LLC d/b/a Adira at Riverside Rehabilitation and Healthcare	
Allen Stein	43.0%
Lazer Strulovitch	43.0%
Leopold Schwimmer	14.0%

### Financial Summary

L&A Operations will acquire the RHCF operating assets for \$1,700,000 which will be funded as follows: \$340,000 from members' equity, and a 10-year term loan of \$1,360,000 with a 25-year amortization schedule at 5% interest rate. L&A RE Acquisitions, LLC, the applicant's landlord, is purchasing the real property for \$21,000,000 and its members will contribute \$4,200,000 in equity along with entering into a \$16,800,000 loan with 10-year terms amortized over 25 years at 5% interest rate. There are no project costs associated with this application.

OPCHSM Recommendation  
 Contingent Approval

Budget:	Revenues:	\$15,465,185
	Expenses:	<u>\$12,940,541</u>
	Gain:	\$2,524,644

### Need Summary

Michael N. Malotz Skilled Nursing Pavilion's utilization was 95.7% in 2010, 97.6% in 2011, and 96.4% in 2012. Current utilization, as of October 8, 2014 is 92.9%.

Subject to the above 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 Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed operations loan commitment, acceptable to the Department. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
3. Submission of an executed real property loan commitment, acceptable to the Department. [BFA]
4. Submission of an executed building lease, acceptable to the Department. [BFA]
5. Submission of authorization to operate in New York State acceptable to the Department. [BFA]
6. 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]
7. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
8. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent. [RNR]
9. Submission of a photocopy of the applicants finalized and executed Amended and Restated Certificate of Formation, acceptable to the Department. [CSL]
10. Submission of a photocopy of a finalized and executed amendment to the applicants Operating Agreement, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicants finalized and executed Application for Authority, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicants finalized and executed Lease, acceptable to the Department. [CSL]

Council Action Date

**December 4, 2014**

# Need Analysis

## Project Description

L&A Operations LLC, d/b/a Adira at Riverside Rehabilitation and Nursing, seeks approval to become the established operator of Michael N. Malotz Skilled Nursing Pavilion, a 120-bed Article 28 residential health care facility, located at 120 Odell Avenue, Yonkers, 10701, in Westchester County.

## Analysis

There is currently a need for 138 beds in Westchester County as indicated in Table 1 below. However, the overall occupancy for Westchester County is 92.6% for 2012 as indicated in Table 2.

*Table 1: RHCF Need – Westchester County*

2016 Projected Need	6,716
Current Beds	6,625
Beds Under Construction	-47
Total Resources	6,578
Unmet Need	138

Michael N. Malotz Skilled Nursing Pavilion's utilization was 95.7% in 2010, 97.6% in 2011, and 96.4% in 2012. Current utilization, as of October 8, 2014, is 92.9%. The facility is currently operated by Riverside Health Care System, Inc., which also operates St. John's Riverside Hospital, a 225-bed acute care facility and a 12-bed "hybrid" facility. From 2010-2013, the current operator relied almost exclusively upon discharges from the Riverside Health Care System facilities for its nursing home admissions, which resulted in a limited pool of potential residents and declining occupancy for the nursing home.

*Table 2: Michael N. Malotz Skilled Nursing Pavilion/Westchester County*

<u>Facility/County</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>	<u>% Occupancy 2012</u>
Michael N. Malotz SNP	95.7%	97.6%	96.4%
Westchester County	92.9%	92.4%	92.6%

According to the applicant, utilization will increase to the Department's optimum level of 97% as a result of the following plans:

- Collaboration with St. John's Riverside Hospital, which has very high acuity patients in need of RHCF services;
- Collaboration with local health care and social services providers, including other hospitals, ACFs, ALPs, senior citizen centers, religious organizations, community centers, and the Westchester County Department of Social Services, to lay out plans to operate a well-utilized RHCF in a friendly, home-like, and enjoyable environment for elderly residents; and
- Renovation of the facility (with the Department's approval) once becoming the established operator.

The applicant also noted that St. John's Riverside will be part of the Montefiore DSRIP initiative in the Hudson Valley. It will be important for the hospital to work closely with the RHCF to prevent readmissions, and the applicant will be a reliable resource for the hospital in this regard.

## 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.



Lazer Strulovich is the owner of Park Avenue Door and Hardware Inc., a door and hardware distributor located in Brooklyn, New York. Mr. Strulovich is also the owner of Park Avenue Management of Berry LLC, a real estate management company. Lazer Strulovich discloses the following ownership interests in health facilities:

Nursing Home

Sprain Brook Manor Rehab 09/2012 to present

Adult Care Facility

Long Beach Assisted Living 04/2014 to present

Island Assisted Living 06/2004 to present

Leopold Schwimmer lists his employment as the President and owner of United Commercial Group, a real estate financing company located in Brooklyn, New York. Leopold Schwimmer discloses the following ownership interests:

Sprain Brook Manor Rehab 09/2012 to present

Character and Competence – Analysis

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

A review of operations for Sprain Brook Manor Rehab for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Long Beach Assisted Living and Island Assisted Living 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. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Conclusion

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

Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed purchase agreement to acquire the RHCF's operating interest. The terms are summarized below:

Date:	July 16, 2014
Seller:	Michael N. Malotz Skilled Nursing Pavilion
Purchaser:	L&A Operations, LLC d/b/a Adira at Riverside Rehabilitation and Nursing
Assets Transferred:	All rights, title and interest in the assets including: tangible assets used in the operations; applicable warranties, contracts and agreements; along with managed care and third party reimbursement contracts. Also included are: trade names and logos; books and records relating to business operations; assignable licenses and permits including Medicare and Medicaid provider numbers; resident trust funds; goodwill and going concern value.

Excluded Assets: Cash and cash equivalents, pre-closing accounts receivables; security deposits; refunds and settlements prior to closing, any websites and e-mail addresses; charitable gift, grant, bequest or legacy; and handbooks.

Assumed Liabilities: Those occurring after the Closing date.

Purchase Price: \$1,700,000

Payment: \$170,000 escrow deposit (paid at the time of signing)  
\$1,530,000 due at closing.

The purchase price is proposed to be satisfied as follows:

Equity - L&A Operations, LLC Members	\$340,000
Loan -10 year terms, 25-year amortization, 5%	<u>\$1,360,000</u>
Total	\$1,700,000.00

The members' have provided affidavits to personally fund the balloon payment, should acceptable refinancing not be available.

BFA Attachment B is the proposed members' net worth summaries for both L&A Operations, LLC and L&A RE Acquisitions, LLC. Only one net worth schedule is being presented as the members and their membership interest are the same for both entities. A review of the net worth statement 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. Lazer Strulovitch has provided an affidavit stating that he is willing to contribute resources disproportionate to his membership interest in the operating entity. A letter of interest has been provided by Greystone Funding Corporation.

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 is a one outstanding Medicaid liability (small amount) and no Assessment liability as of October 3, 2014.

#### Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed agreement to purchase the RHCF's real property. The terms are summarized below:

Date: July 16, 2014

Seller Realty: Michael N. Malotz Skilled Nursing Pavilion

Purchaser Realty: L&A RE Acquisitions, LLC

Asset Transferred Realty: All rights, title and interest in the premises including: the land, buildings, structures and improvements, fixtures, easements and appurtenances known by the address 120 Odell Avenue, Yonkers, New York 10701 and designated on the tax map of Westchester County as Section 3, Block 3535, Lot 84.

Purchase Price: \$21,000,000

Payment of Purchase Price: \$2,100,000 escrow deposit (paid at the time of signing)  
\$18,900,000 due at closing.

The purchase price is proposed to be satisfied as follows:

Equity - L&A RE Acquisitions, LLC Members	\$4,200,000
Loan -10 year terms, 25-year amortization, 5%	<u>\$16,800,000</u>
Total	\$21,000,000

The members' have provided affidavits to personally fund the balloon payment, should acceptable refinancing not be available.

A review of BFA Attachment B, the proposed L&A RE Acquisitions, LLC members' net worth summary, 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. Leopold Schwimmer has provided an affidavit stating that he is willing to contribute resources disproportionate to his membership interest in the realty entity. A letter of interest has been provided by Greystone Funding Corporation.

#### Lease Agreement

A draft lease has been submitted to lease the real property. The terms are summarized below:

Premises: 120-bed RHCF located at 120 Odell Avenue, Yonkers, NY 10701  
 Owner/Landlord: L&A RE Acquisitions, LLC  
 Lessee: L&A Operations, LLC  
 Term: Ten years with three 5-year renewal option  
 Rent: \$1,200,000 per year (\$100,000 per month)  
 Provisions: Triple Net

The lease arrangement is a non-arm's length agreement.

Medicaid capital reimbursement for the proposed applicant will change from the existing not-for-profit Article 28 methodology to the proprietary reimbursement methodology of return on/of equity.

#### Operating Budget

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

	<u>PER DIEM</u>	<u>TOTAL</u>
Revenues (RHCF - 112 Beds):		
Medicaid	\$252.64	\$5,438,334
Medicare	537.20	5,556,276
Private Pay	434.50	1,542,483
Other	331.36	997,070
Assessment Revenue		268,136
Revenues (Ventilator - 8 Beds):		
Medicaid	\$463.32	\$996,132
Medicare	810.64	298,317
Private Pay	786.26	310,571
Assessment Revenue		57,866
Total Revenues:		\$15,465,185
Expenses:		
Operating		\$10,735,847
Capital		2,204,694
Total Expenses:		\$12,940,541
Net Income:		\$2,524,644
RHFC Utilization (patient days)		38,428
RHFC Occupancy		94.00%
Ventilator Utilization		2,913
Ventilator Occupancy		99.76%

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

- RHCF expenses include lease rental.
- RHCF Medicaid revenues are based on 2014 rates adjusted for proprietary capital.
- RHCF Medicare revenues were based on historical experience.
- RHCF private pay revenues are based historical experience;
- The applicant plans on increasing utilization through working very closely with local health care and social providers, including the nursing home's current sole member St. John's Riverside Hospital. The applicant believes that its relationship with St. John's Riverside Hospital and the Hospital's participation in Montefiore Hudson Valley DSRIP initiative will enable the facility to be well-utilized.
- Vent bed occupancy increase from 2012 to 2013 as the result of Medicaid rate increase that made it financially feasible to offer the service to more patients.
- Breakeven utilization is projected at 78.98%.
- RHCF utilization by payor source is anticipated as follows:

	<u>RHCF</u>	<u>Ventilator</u>
Medicaid	56.02%	73.81%
Medicare	26.92%	12.63%
Private and All Other	17.06%	13.56%

#### Capability and Feasibility

L&A Operations will acquire the RHCF operations for \$1,700,000 which will be funded with \$340,000 in members' equity plus a \$1,360,000 loan at the above stated terms. Concurrently, L&A RE Acquisitions, LLC will purchase the real property for \$21,000,000 which will be funded as follows: \$4,200,000 in members' equity along with a \$16,800,000 loan at the above stated terms. Greystone Funding Corporation has provided letters of interest for both the operation and the real property loans. Review of BFA Attachment B, members net worth summaries, shows there are sufficient assets to complete the transactions. It is noted that liquid resources may not be available in proportion to the proposed ownership interest; therefore, Lazer Strulovitch and Leopold Schwimmer have provided affidavits stating they are willing to contribute resources disproportionate to their membership interest. There are no project costs associated with this application.

The working capital requirement is estimated at \$2,156,757 based on two months of the first year expenses. Half or \$1,078,379 will be satisfied from the members' equity. The remaining \$1,078,378 will be satisfied through a five-year term loan at 5% interest rate. As stated above, there are sufficient resources to satisfy the projects' equity requirements.

The submitted budget indicates net income of \$2,524,644 would be generated in the first year after the change in ownership. Revenues are expected to decline by approximately \$965,326 primarily from a Medicaid rate reduction in both ventilator dependent and geriatric beds. Expenses are projected to decline by \$4,340,992, primarily from the following: \$2,348,067 decrease in fringe benefit cost, bringing the percentage from 44.8% to 22.6% of salary and wages; \$964,835 decrease in administrative fees, with the net balance coming primarily from a reduction of 26.96 FTE's as the result of outsourcing some services including: inhalation, physical and occupational therapies, dietary, and laundry and linen services. The budget was created taking into consideration the proposed new owners' experience in operating similar size facility. BFA Attachment C is L&A Operations, LLC's pro forma balance sheet, which shows the entity will start off with \$1,418,379 in equity. Equity includes \$1,700,000 in goodwill which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill was eliminated from the equation, then the total net assets would become a negative \$281,621. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Effective June 1, 2014, eligible Medicaid beneficiaries in the following counties were required to join a managed care plan (phase 1, downstate): NYC, Nassau, Suffolk and Westchester. The rest of the State (phase 2, upstate) will transition beginning December 1, 2014. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with the NH providers. To mitigate untoward financial impact to NH providers during the transition to managed care, the 2014-15 Enacted State Budget amended Public Health Law adding §2808 2-c(e) to establish the NH Medicaid fee-for-service (FFS) rate as the benchmark rate (floor) for MCO payments to NH providers. Department Policy, noticed to Plans in March 2014, provided further guidance requiring MCOs to pay the benchmark FFS rate, or a negotiated rate acceptable to both plans and NHs, for 3 years after a county has been deemed mandatory (phased in) for NH population enrollment. As a result, the benchmark FFS rate remains a reliable basis for assessing NH Medicaid revenues through to May 31, 2017 (downstate), and November 30, 2017 (upstate), respectively.

As shown on BFA Attachment D, Financial Summary of Michael N. Malotz Skilled Nursing Pavilion for the period 2011 through 2013, the RHCF had an average positive working capital position of \$290,398. For 2013 the facility generated an \$851,022 operating loss as the result of accruing a \$1,360,000 bad debt expense which was \$998,168 higher than the average bad debt expense in the prior two years of \$180,916. The proposed sale of the nursing home is expected to satisfy the liabilities with no impairment of the assets, thus curing the negative total net asset position. The average occupancy for geriatric and ventilator beds was 95.78% and 90.12%, respectively.

As shown on BFA Attachment E, Sprain Brook Manor Rehab, LLC for the period of 2013, the facility had a positive working capital position of \$1,916,407, positive net asset position of \$5,268,177, and generated an operating surplus of \$1,129,178. Occupancy was 86.89% for 2013, and 94.2% through June 2014.

Recommendation

**From a financial perspective, contingent approval is recommended.**

Attachments
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BFA Attachment A	Proposed Members of L&A RE Acquisitions, LLC
BFA Attachment B	Net Worth of Proposed Members, L&A Operations, LLC d/b/a Adira at Riverside Rehabilitation and Nursing and L&A RE Acquisitions, LLC
BFA Attachment C	Pro Forma Balance Sheet L&A Operations, LLC d/b/a Adira at Riverside Rehabilitation and Nursing
BFA Attachment D	Financial Summary, Michael N. Malotz Skilled Nursing Pavilion
BFA Attachment E	Financial Summary, Sprain Brook Manor Rehab, LLC
BNHLC Attachment A	Quality Measures and Inspection Report



# Public Health and Health Planning Council

Project # 142060-E  
Dominican Sisters Family Health Service, Inc.

**Program:** Certified Home Health Agency  
**Purpose:** Establishment

**County:** Nassau  
**Acknowledged:** August 19, 2014

## Executive Summary

### Description

Dominican Sisters Family Health Service, Inc. (DSFHS), a New York not-for-profit corporation with its principal office located at 299 North Highland Avenue, Ossining, New York, is seeking approval to become the operator of Visiting Nurse Association of Long Island, Inc. (VNALI) through a merger. DSFHS operates a Certified Home Health Agency (CHHA), a Long Term Home Health Care Program (LTHHCP), a Licensed Home Care Services Agency (LHCSA), and an AIDS Home Care Program (AHCP). VNALI operates a CHHA, LTHHCP and Meals on Wheels program which will operate as a branch of DSFHS post-merger, but will maintain its local brand recognition by using the assumed name of "Visiting Nurse Association of Long Island." DSFHS will be the surviving corporation after the merger is completed.

The roots of both organizations as providers of home health care services go back over 100 years. Currently, DSFHS is authorized to provide CHHA services in 11 counties and LTHHCP services in 6 counties as follows:

- CHHA Counties: Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk and Westchester.
- LTHHCP Counties: Bronx, Kings, New York, Queens, Suffolk and Westchester.

VNALI is authorized to provide CHHA services in 4 counties and LTHHCP services in 3 counties as follows:

- CHHA Counties: Kings, Nassau, Queens and Suffolk.
- LTHHCP Counties: Nassau, Queens, Suffolk.

There will be no change to the service area nor any programmatic changes as a result of this merger. The merger is expected to enhance organizational stability, strengthen vendor relationships to achieve greater operating efficiencies, and reduce costs through integration and centralization of administrative and information technology functions.

DSFHS is accredited by the Joint Commission on Accreditation of Health Care Organizations and VNALI is accredited by the Community Health Accreditation Program.

OPCHSM Recommendation  
Contingent Approval.

Need Summary  
There will be no change in service. There is no Need recommendation necessary for this review.

Program Summary  
Dominican Sisters Family Health Service, Inc., a not-for-profit Article 36 certified home health agency (CHHA) and long term home health care program (LTHHCP), proposes to acquire and merge Visiting Nurse Association of Long Island, Inc. CHHA and LTHHCP into the existing Dominican Sisters Family Health Service, Inc. CHHA and LTHHCP.

Financial Summary

There are no project costs associated with this application.

Subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financial manner.

Incremental Budget:

Revenues	\$10,754,356
Expenses	<u>9,778,250</u>
Gain/(Loss)	\$ 976,106

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a copy of a dated and executed Certificate of Merger of the Visiting Nurse Association of Long Island, Inc. ("VNALI) into the Dominican Sisters Family Health Services, Inc. ("DSFHS") acceptable to the Department. [CSL]
2. Submission of a copy of an executed Agreement of Merger between VNALI and DSFHS acceptable to the Department. [CSL]
3. Submission of a copy of a dated and executed Plan of Merger of VNALI into DSFHS 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 an executed Vital Access Provider (VAP) award agreement documenting approval of the VAP funding for the merger of Visiting Nurse Association of Long Island, Inc. into Dominican Sisters Family Health Service, Inc., acceptable to the Department of Health. [BFA]

Council Action Date

**December 4, 2014**

## Program Analysis

### Review Summary

Dominican Sisters Family Health Service, Inc., a not-for-profit Article 36 certified home health agency (CHHA) and long term home health care program (LTHHCP), proposes to acquire and merge Visiting Nurse Association of Long Island, Inc., also a not-for-profit Article 36 CHHA and LTHHCP, into the existing Dominican Sisters Family Health Service, Inc. CHHA and LTHHCP. Dominican Sisters Family Health Service, Inc. CHHA is currently approved to serve Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Orange, Putnam, Rockland, and Westchester Counties, and its LTHHCP is currently approved to serve Bronx, Kings, New York, Queens, Suffolk, and Westchester Counties. Visiting Nurse Association of Long Island, Inc. CHHA is currently approved to serve Kings, Queens, Nassau, and Suffolk Counties, and its LTHHCP is currently approved to serve Queens, Nassau, and Suffolk Counties. As a result of the proposed acquisition and merger of the Visiting Nurse Association of Long Island, Inc. CHHA, the Dominican Sisters Family Health Service, Inc. CHHA will not be adding any additional county service areas to its approval. However, as a result of the proposed acquisition and merger of the Visiting Nurse Association of Long Island, Inc. LTHHCP, the Dominican Sisters Family Health Service, Inc. LTHHCP will be adding Nassau County as an additional county service area with its 150 patient capacity, and will be adding 25 additional patient capacity to each of its approvals for Queens and Suffolk Counties. Accordingly, upon acquisition and merger, Visiting Nurse Association of Long Island, Inc., CHHA and LTHHCP will officially close.

Dominican Sisters Family Health Service, Inc. CHHA and LTHHCP currently has its main parent office practice location in Ossining (Westchester County), and five (5) additional branch office practice locations in Bronx (Bronx County), Hampton Bays (Suffolk County), Medford (Suffolk County), Spring Valley (Rockland County), and Manhattan (New York County). Dominican Sisters Family Health Service, Inc. CHHA and LTHHCP plans to open a sixth additional branch office practice location in Garden City (Nassau County), by acquiring the current sole practice location of Visiting Nurse Association of Long Island, Inc. CHHA and LTHHCP in Garden City.

Dominican Sisters Family Health Service, Inc. CHHA plans to continue providing the following home health care services: home health aide; medical social services; medical supplies, equipment and appliances; nursing; nutritional; occupational therapy; physical therapy; and speech language pathology. Dominican Sisters Family Health Service, Inc. LTHHCP plans to continue providing the following home health care services: AIDS home care program; audiology; homemaker; housekeeper; home health aide; medical social services; medical supplies, equipment and appliances; nursing; nutritional; personal care; occupational therapy; physical therapy; respiratory therapy; and speech language pathology.

Dominican Sisters Family Health Service, Inc. is a not-for-profit corporation. According to the corporation's by-laws, the corporation's members (parents) are The Major Superiors, or their delegates, of the following religious institutes: Dominican Sisters of Blauvelt, Dominican Sisters of Hope, Dominican Sisters of Sparkill, and Franciscan Sisters of Allegany. Dominican Sisters Family Health Service, Inc. is in turn the member (parent) corporation of Family Home Health Care, Inc., a not-for-profit corporation which operates a Licensed Home Care Services Agency (LHCSA) in Tarrytown (Westchester County), serving Bronx, Westchester, Rockland, and Putnam Counties, and in Medford (Suffolk County), serving Queens, Nassau, and Suffolk Counties.

The members of the Board of Directors of Dominican Sisters Family Health Service, Inc., are as follows:

<p><b>William T. Smith</b>, PhD, LNHA, LMSW, Chairperson President / CEO, Aging in America, Inc. (Aging Services Consulting) Affiliations: Morningside House Nursing Home Company, Inc. (RHCF and LTHHCP); Morningside at Home, Inc. (ALP and LHCSA)</p>	<p><b>Max Van Gilder</b>, MD, Vice Chairperson Senior Partner, West Care Pediatrics (Physician Practice)</p>
<p><b>Mary Alice Higgins Donius</b>, EdD, RN (NY and CT), Secretary Director, School of Nursing, Sacred Heart University (CT)</p>	<p><b>Michael Martinucci</b>, CPA (NY and WI), Treasurer Manager, Healthcare Services Group, McGladrey, LLP (Assurance, Tax, and Consulting Services)</p>
<p><b>Mary J. Zagajeski</b>, RN President / CEO, Dominican Sisters Family Health Service, Inc. (CHHA and LTHHCP) Affiliations: Dominican Sisters Family Health Service, Inc. (CHHA and LTHHCP); Family Home Health Care, Inc. (LHCSA)</p>	<p><b>Robert Slingsby</b>, Esq. CEO, All Med of New York (Diagnostic &amp; Treatment Center) Affiliations: All Med of New York (Diagnostic &amp; Treatment Center)</p>
<p><b>Raymond Sacher</b> Vice President / Relationship Manager, CMS Bank</p>	<p><b>Mary Eileen Randolph</b>, RN Retired School Nurse Teacher</p>
<p><b>William Mooney, Jr.</b> CEO, The Westchester County Association (Public Policy / Business Membership Organization)</p>	<p><b>Ronald Krawczyk</b> Self-Employed Financial Consultant</p>
<p><b>Dorothea Ferguson-Bell</b> VP Human Resource Development, Aging in America, Inc. / Morningside House Nursing Home Company, Inc. Affiliations: Morningside House Nursing Home Company, Inc. (RHCF and LTHHCP); Morningside at Home, Inc. (ALP and LHCSA)</p>	<p><b>James P. Drew</b> Retired Debt Resolution Specialist, US Treasury Department, IRS Compliance Division</p>
<p><b>Joseph DeAngelis, Jr.</b> Retired Portfolio Manager and Bond/Stock Trader, Inverness Counsel (Money Management)</p>	<p><b>Thomas Condron</b> Managing Director / Investment Advisor / Broker, Benjamin F. Edwards and Company, Inc. (Investments, Wealth Management)</p>
<p><b>Thomas K. Bourke</b> Financial Consultant / Broker, Morgan Stanley (Investments, Wealth Management)</p>	

The Major Superiors, or their delegates, of the Dominican Sisters of Blauvelt in Blauvelt, New York (Rockland County) are as follows:

<p><b>Sister Michaela Connolly</b> VP for Administration and Pastoral Care Sisters of St. Dominic of Blauvelt</p>	<p><b>Sister Catherine A. Howard, PhD</b> President Sisters of St. Dominic of Blauvelt</p>
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The Major Superior, or her delegate, of the Dominican Sisters of Hope in Ossining, New York (Westchester County) is as follows:

<p><b>Sister Lorelle E. Elcock, PhD</b> President, Administration and Planning Dominican Sisters of Hope</p>	
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The Major Superiors, or their delegates, of the Dominican Sisters of Sparkill in Sparkill, New York (Rockland County) are as follows:

<p><b>Sister Irene J. Ellis</b> Executive Leadership Team Leader of Dominican Convent Dominican Sisters of Sparkill</p>	<p><b>Sister Mary Murray</b> President of Dominican Convent Dominican Sisters of Sparkill</p>
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The Major Superiors, or their delegates, of the Franciscan Sisters of Allegany in Allegany, New York (Cattaraugus County) are as follows:

<p><b>Sister Margaret Mary Kimmins</b> Congregational Minister Franciscan Sisters of Allegany</p>	<p><b>Sister Margaret M. McManus</b> Retired Franciscan Sisters of Allegany</p>
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In addition to Dominican Sisters Family Health Service, Inc. CHHA and LTHHCP, all individuals listed above would also be affiliated with Family Home Health Care, Inc., the LHCSA for which Dominican Sisters Family Health Service, Inc. is the member (parent) corporation, as explained above.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

A search of all of the above named board members, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List.

The Office of Teaching Certifications of the New York State Education Department, the Office of the Professions of the New York State Education Department, the New York State Physician Profile, the NYSDOH Office of Professional Medical Conduct, the NYS Unified Court System, the NYSDOH Bureau of Professional Credentialing, the Security and Exchange Commission (SEC) Investment Advisors Directory, the Financial Industry Regulatory Authority (FINRA) Securities Broker Central Registration, the State of Connecticut Department of Public Health, and the Wisconsin Department of Safety and Professional Services, indicate no issues with the licensure of the health professionals and other licensed professionals associated with this application. In addition, the attorney has submitted a current Certificate of Good Standing.

A seven year review of the operations of the following agencies/facilities was performed as part of this review:

Dominican Sisters Family Health Service, Inc. (CHHA and LTHHCP)  
Family Home Health Care, Inc. (LHCSA)  
Morningside House Nursing Home Company, Inc. (RHCF and LTHHCP)  
Morningside at Home, Inc. (ALP and LHCSA)  
All Med of New York (Diagnostic & Treatment Center)

The Division of Hospitals and Diagnostic and Treatment Centers reviewed the compliance history of the affiliated diagnostic and treatment center for the time period 2007 through 2014. It has been determined that the affiliated diagnostic and treatment center has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The Division of Assisted Living reviewed the compliance history of the affiliated assisted living program for the time period 2007 through 2014. It has been determined that the affiliated assisted living program has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The Division of Residential Services reviewed the compliance history of the affiliated residential health care facility for the time period 2007 through 2014.

An enforcement action was taken against Morningside House Nursing Home Company, Inc., in 2008 based on an August, 2007 survey citing violations in Quality of Care, Quality of Care: Accidents, and Quality of Care: Pressure Sores. This enforcement was resolved with a \$6000 civil penalty.

Another enforcement action was taken against Morningside House Nursing Home Company, Inc., in 2011 based on an October, 2009 survey citing violations in Quality of Care: Accidents and Supervision, Administration, and Emergencies: Staff Trained and Drilled. This enforcement was also resolved with a \$6000 civil penalty.

It has been determined that the residential health care facility have been in substantial compliance with all applicable codes, rules, and regulations.

The Division of Home and Community Based Services reviewed the compliance history of the affiliated certified home health agency, long term home health care programs, and licensed home care service agencies, for the time period 2007 to 2014. It has been determined that the certified home health agency, long term home health care programs, and licensed home care service agencies have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations. The agencies have been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

A review of all personal qualifying information indicates there is nothing in the background of the board members of Dominican Sisters Family Health Service, Inc., or of the Major Superiors of Dominican Sisters of Blauvelt, Dominican Sisters of Hope, Dominican Sisters of Sparkill, and Franciscan Sisters of Allegany, to adversely affect their positions in their respective organizations. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Background

In October 2012, VNALI submitted a VAP application to the New York State Department of Health (DOH), in collaboration with Catholic Health Services of Long Island (CHSLI), requesting funding assistance for the merger of VNALI into CHSLI's healthcare system. In December 2013, VNALI was awarded a total of \$4,281,840 in VAP funding to transition into CHSLI, with funds to be disbursed over two years (\$3,204,920 in 2014 and \$1,076,920 in 2015). On August 13, 2014, New York State disbursed \$1,602,460 to VNALI, which represented 50% (the State's share) of the 2014 VAP award payment. Since VAP awards are Medicaid payments, they are subject to CMS approval for the federal match (50%). CMS approval of the State Plan Amendment (SPA) enabling this federal match is still pending.

Under CON 132236-E, VNALI and Nursing Sisters Home Care, Inc., d/b/a Catholic Home Care (CHC), submitted a request to bring VNALI within the governance of CHC, a member of CHSLI. CON 132236-E was contingently approved on April 10, 2014, by the Public Health and Health Planning Council, but on July 9, 2014, CHSLI notified the DOH that they would not be proceeding with the proposed VNALI affiliation and was withdrawing from the project submitted under CON 132236-E.

On July 17, 2014, representatives from both VNALI and DSFHS met with staff from the DOH Office of Health Insurance Programs (OHIP) to discuss the substitution of DSFHS in place of CHC. It is noted that there is a condition to this application for documentation of approval from the DOH OHIP verifying the substitution of DSFHS as it relates to VAP award funding.

The applicant states that the Chief Executive Officers of both VNALI and DSFHS have a current working relationship and both recognize the synergies and benefits that can be achieved through the proposed merger. The Board of Directors of VNALI and DSFHS have concluded that the merger will enhance the quality, efficiency and services available to their patient populations and the communities that they both serve.

BFA Attachments C and D are DSFHS's current and proposed organizational charts.

### Operating Budget

The applicant has submitted first and third years incremental operating budgets, in 2014 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues		
Medicaid	\$2,453,970	\$2,800,364
Medicare	6,598,987	7,499,378
Commercial	303,353	451,846
All Other*	<u>1,078,778</u>	<u>2,768</u>
Total Revenues	\$10,435,088	\$10,754,356
Expenses		
Operating	\$9,637,793	\$9,055,345
Capital	<u>755,839</u>	<u>722,905</u>
Total Expenses	\$10,393,632	\$9,778,250
Net Income or (Loss)	<u>\$41,456</u>	<u>\$976,106</u>
Utilization (RN, Therapies, MSS visits)	45,703	47,943
Utilization (Home Health Aide hours)	35,890	35,890
Utilization (Home Health Aide visits)	8,340	8,340

\* All Other for year one includes the total 2015 VAP award for \$1,076,920 (inclusive of federal share).

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

Medicaid Fee-For-Service	23%
Medicaid Managed Care	3%
Medicare Fee-For-Service	48%
Medicare Manage Care	5%
Commercial Fee-For-Service	6%
Commercial Manage Care	13%
Charity	2%

Charity care is expected to be 2%. The applicant's policy is to assess individual based on income, expenses and unusual care needs to determine eligibility for reduced fees and/or charity care. Their goal is to provide compassionate, comprehensive and family focused home care to persons in need, regardless of their ability to pay.

VNALI expects to significantly reduce its LTHHPC contract service expenses as the patients are enrolled into MLTCPs. In addition, during the first and third years the applicant anticipates elimination of \$580,000 and \$740,000 in salary and benefits, respectively, due to redundant positions between the merged organizations. As offset there will be added costs associated with providing services to the patients, such as nurses, specialists, and aids. Revenues are based on prevailing reimbursement methodologies while commercial payers are based on experience.

#### Capability and Feasibility

There are no project costs associated with this application. Feasibility rests upon the applicant receiving CMS approval for the VAP award along with the balance (federal match) of VAP funding.

BFA Attachment A is DSFHS's certified financial summary for 2012 and 2013 which shows negative net income of \$913,616 in 2012. However, in 2013 DSFHS generated positive net income of \$207,890 as total revenue increase by \$4,052,240 while expenses increased by \$2,930,734. The loss in 2012 was impacted by two one-time costs: \$300,000 in super storm Sandy costs and a 2% retroactive Medicaid rate adjustment. In late 2012 DSFHS management developed a strategic plan to increase referrals which included: development of a new care management team to partner with the new managed care long-term insurers, hiring business development staff, and adding additional community liaison staff. As a result of implementing this strategic plan, referrals to the provider increased by 21%, which allowed for an overall 18% increase in admissions and accounted for the overall revenue increase between 2012 and 2013.

During the period 2012-2013, DSFHS had a negative working capital position and ended with a positive net asset position of \$1,929,642. DSFHS has put in place the following to address its negative working capital position:

- Developing a strategic plan focusing on agency growth including developing hospital partnerships via the use of documented readmissions metrics on shared patients.
- Expansion of the Center for Medicare and Innovation grant in Suffolk County.
- Expansion into new communities resulting in incremental revenues to related costs.
- Increased reimbursement through renegotiation of managed long term care rates.
- Improved cash management based on historical trends, and
- Establishing vendor payment plans that efficiently manage cash flow and decrease accounts payable.

BFA Attachment B is VNALI's certified financial summary for 2012 and 2013 which shows negative net income of \$1,090,486 in 2012 and positive net income of \$1,798,123 in 2013. According to VNALI, \$3,204,920 of the VAP awarded was recorded on the 2013 balance sheet under the line item (Contracts and Grants Receivable). As an offset, VNALI recognized \$1,999,027 of revenue from this award as a result of costs incurred prior to December 31, 2013. The remaining balance of \$1,205,893 was recorded as a current liability under the line item (Deferred Revenue). For the period 2012-2013 VNALI had a negative working capital position and ended with a positive net asset position of \$119,820. As noted above, on August 13, 2014, New York State issued a \$1,602,460 VAP payment to VNALI.

VNALI projects that the first and third years after the merger will show a surplus of \$41,456 and \$976,106, respectively. BFA Attachment E is the consolidated pro forma balance sheet which shows operations will start off with \$1,323,694 in positive equity. The budget appears to be reasonable.

VNALI stated that their legal counsel discussed the merger and potential alternatives to the merger, including closure, with the Board of Directors. The Board of Directors concluded that it was in the best interest of all parties (including the company, the patients, and the served communities) to merge with DSFHS and continue its corporation mission in the most effective and economic manner.

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

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	Financial Summary for 2012 and 2013, Dominican Sisters Family Health Service, Inc.
BFA Attachment B	Financial Summary for 2012 and 2013, Visiting Nurse Association of Long Island, Inc.
BFA Attachment C	Current Organizational Chart for Dominican Sisters Family Health Service, Inc.
BFA Attachment D	Proposed Organizational Chart for Dominican Sisters Family Health Service, Inc.
BFA Attachment E	Pro Forma Balance Sheet.



# Public Health and Health Planning Council

Project # 142068-E  
Royal Care Certified Home Health Care, LLC

**Program:** Certified Home Health Agency  
**Purpose:** Establishment

**County:** Queens  
**Acknowledged:** August 20, 2014

## Executive Summary

### Description

Royal Care Certified Home Health Care, LLC, an existing limited liability company, requests approval to become the operator of the Certified Home Health Agency (CHHA) currently operated by Franklin Medical Center. The CHHA is licensed to operate in Queens and Nassau counties, and the proposed new operator will maintain and continue all currently certified services. The applicant will lease space located at 146-14 35<sup>th</sup> Ave, Flushing, New York (Queens County). There are no construction or equipment costs associated with the project.

The current and proposed operator of the CHHA is as follows:

<u>CURRENT</u>	<u>PROPOSED</u>
Franklin Medical Center (Not-for-profit)	Royal Care Certified Home Health Care, LLC.
	<u>Members:</u>
	Chaim Klein 60%
	Faye Klein 30%
	Bernath Yankel 10%

Royal Care, Inc. is a licensed home care services agency primarily serving Queens, Brooklyn, the Bronx and Manhattan as well as Nassau and Richmond Counties. The applicant and Royal Care, Inc, have a common ownership interest in that Faye Klein is in the ownership of both entities.

OPCHSM Recommendation  
Contingent Approval

### Need Summary

There will be no Need recommendation for this project.

### Program Summary

Royal Care Certified Home Health Care, LLC, a proprietary LLC, proposes to purchase and become the new owner / operator of the Certified Home Health Agency (CHHA) currently owned and operated by Franklin Hospital Medical Center, an Article 28 hospital and member of the North Shore / Long Island Jewish family of health care providers.

### Financial Summary

There are no project costs associated with this application.

The purchase price for the operation is \$1,000,000. The proposed members have already paid \$500,000 in escrow and the remaining \$500,000 will be provided as equity derived from the financial statements of Royal Care, Inc.

### Budget:

Revenues	\$11,514,608
Expenses	<u>11,445,209</u>
Net Income	\$ 69,399

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed building lease, acceptable to the Department. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
3. Submission of a photocopy of an executed amendment to the applicants Articles of Organization, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed amendment to the applicants Operating Agreement, 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

**December 4, 2014**

## Program Analysis

### Review Summary

Royal Care Certified Home Health Care, LLC, a proprietary LLC, proposes to purchase and become the new owner / operator of the Certified Home Health Agency (CHHA) currently owned and operated by Franklin Hospital Medical Center, an Article 28 hospital and member of the North Shore-Long Island Jewish family of health care providers. The Franklin Hospital Medical Center CHHA is currently approved to serve Queens and Nassau Counties, and its practice location is currently located in Nassau County. Royal Care Certified Home Health Care, LLC, will continue to be approved to serve Queens and Nassau County. However, its sole CHHA practice location will be in Queens County at 146-14 35<sup>th</sup> Avenue Flushing, New York 11354, whereas the LLC's corporate office will be in Kings County at 6323 14<sup>th</sup> Avenue, Brooklyn, New York 11219.

Royal Care Certified Home Health Care, LLC, plans to have its CHHA provide the following home health care services: audiology; home health aide; homemaker; housekeeper; medical social services; medical supplies, equipment and appliances; nursing; nutritional; personal care; occupational therapy; physical therapy; respiratory therapy; and speech language pathology.

Royal Care Certified Home Health Care, LLC, has no parent, sibling, or child entities or organizations in its corporate structure. As disclosed below, the 30% member of Royal Care Certified Home Health Care, LLC, is also the sole 100% stockholder of The Royal Care, Inc., a Licensed Home Care Services Agency (LHCSA) that is also located at 6323 14<sup>th</sup> Avenue, Brooklyn, New York 11219 (the address of the corporate offices of Royal Care Certified Home Health Care, LLC). However, The Royal Care, Inc. LHCSA is not a member of the corporate structure of Royal Care Certified Home Health Care, LLC, nor is Royal Care Certified Home Health Care, LLC, a member of the corporate structure of The Royal Care, Inc. LHCSA. Other than sharing one common stockholder / LLC member (Faye Klein), the two legal entities have no corporate relationship.

The members and managers of Royal Care Certified Home Health Care, LLC, and the percentage of LLC membership / ownership for each, are as follows:

<p><b>Chaim (Josh) Klein</b>, EMT, Manager 60% LLC Membership / Ownership</p> <p>Chief Executive Officer, Royal Care Certified Home Health Care, LLC Chief Executive Officer, The Royal Care, Inc. (LHCSA)</p> <p>Affiliations: Better Care Home Health Services, LLC, d/b/a Aspire Home Health Care, South Plainfield, New Jersey (Health Care Service Firm)</p>	<p><b>Yankel (Jack) Bernath</b>, Manager 10% LLC Membership / Ownership</p> <p>Chief Operating Officer, Royal Care Certified Home Health Care, LLC Chief Operating Officer, The Royal Care, Inc. (LHCSA)</p> <p>Affiliations: Better Care Home Health Services, LLC, d/b/a Aspire Home Health Care, South Plainfield, New Jersey (Health Care Service Firm)</p>
<p><b>Faye Klein</b> 30% LLC Membership / Ownership</p> <p>President, The Royal Care, Inc. (LHCSA)</p> <p>Affiliations: The Royal Care, Inc. (LHCSA) – 100% sole stockholder</p>	

A search of all of the above named board members, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List. In addition, the NYSDOH Bureau of Emergency Medical Services indicates no issues with the EMT licensure of Chaim (Josh) Klein.

Better Care Home Health Services, LLC d/b/a Aspire Home Health Care, in South Plainfield, New Jersey, which is affiliated with two of the LLC members listed above, is licensed by the New Jersey Department of Law and Public Safety, Office of the Attorney General, Division of Consumer Affairs. A copy of their license issued by New Jersey Office of the Attorney General, Division of Consumer Affairs, indicates they are licensed as a Health Care Service Firm with an expiration date of June 30, 2015. According to the license search on the above state agency's website, Better Care Home Health Services, LLC d/b/a Aspire Home Health Care, is a Nursing and Home Health Aide Employer whose license was issued April 22, 2014, and whose record of disciplinary action indicates No Board Action Taken.

The Division of Home and Community Based Services reviewed the compliance history of The Royal Care, Inc., the licensed home care services agency affiliated with one of the LLC members listed above, for the time period 2007 to 2014. It has been determined that the licensed home care services agency has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations. The agency has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

A review of all personal qualifying information indicates there is nothing in the background of the LLC members and managers of Royal Care Certified Home Health Care, LLC to adversely affect their positions with the organization. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

#### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the purchase of the operation of Franklin Medical Center CHHA, which is summarized below:

Date	August 15, 2014
Seller	Franklin Hospital
Purchaser	Royal Care Certified Home Health Care, LLC.
Assets Acquired	Purchaser will acquire the Seller's existing Medicare and Medicaid provider number and elected provider agreements.
Assumed Liabilities	The purchaser will not assume any liabilities of the Seller.
Purchase Price	\$1,000,000
Payment of Purchase Price	\$500,000 provided in escrow and the remaining \$500,000 provided at closing.

The \$500,000 owed will be provided as equity derived from the financial statements of Royal Care, Inc.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and 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 liabilities.

Lease Rental Agreement

The applicant will occupy two adjacent sites (units) located within the same building. The applicant has submitted draft lease agreements with Chaim Shea, LLC, as lessor of one of the units, and Chatham Real Estate, Inc., as lessor of the second unit, summarized as follows:

Premises:	1,500 square feet of a medical office in a condominium building located on the ground floor designated as MD-2 in the building known as 146-14 35 <sup>th</sup> Ave, Flushing, New York.
Lessor:	Chaim Shea, LLC
Lessee:	Royal Care Certified Home Health Care, LLC
Term:	Five years
Rental:	Annual rental of \$37,200 (\$24.80 per sq.ft.)
Provisions:	The lessee shall be responsible for maintenance.

The applicant has indicated that this lease arrangement will be a non-arms length lease arrangement.

Premises:	1,500 square feet of a medical office in a condominium building located on the ground floor designated as MD-1 plus three parking spaces in the basement building known as 146-14 35 <sup>th</sup> Avenue, Flushing, New York
Lessor:	Chatham Real Estate, Inc.
Lessee:	Royal Care Certified Home Health Care, LLC
Term:	Five years
Rental:	Annual rental of \$37,200 (\$24.80 per sq.ft.)
Provisions:	The lessee shall be responsible for maintenance.

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

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, during the first year of operation, as summarized below:

Revenues:	
Medicaid Managed Care	\$8,216,636
Medicare Managed Care	561,290
Medicare Fee For Service	2,697,862
Private Pay	<u>38,820</u>
Total Revenues	\$11,514,608
Expenses:	
Operating	\$11,324,469
Capital	<u>120,740</u>
Total Expenses	\$11,445,209
Net Income	\$69,399
Utilization:	
Visits	25,066
Hours	400,317

Utilization broken down by payor source during the first year is as follows:

Medicaid Managed Care	89.33%
Medicare Fee For Service	6.07%
Medicare Managed Care	2.02%
Private Pay	.08%
Charity Care	2.50%

Expense and utilization assumptions are based on the normal experience of Certified Home Health Care Agencies. Revenues are reflective of the current payment rates including the Medicaid Episodic Payment System.

#### Capability and Feasibility

The purchase price for the operations is \$1,000,000. The proposed members have already paid \$500,000 in escrow and the remaining \$500,000 will be provided as equity derived from the financial statements of Royal Care, Inc.

Working capital requirements are estimated at \$1,907,534, which is equivalent to two months of first year expenses. The applicant will finance \$900,000 with a 5 year term loan at an interest rate of 1 month LIBOR + 3.8% (approximately 3.95% as of 9/29/2014). The remainder, \$1,007,534, will be provided as equity to be derived from the proposed members' personal resources and from the operations of Royal Care, Inc. BFA Attachment A and BFA Attachment B are the personal net worth statements and the June 30, 2014, internal financial statements of The Royal Care, Inc., which indicates the availability of sufficient funds to meet the purchase price and the working capital equity requirements. As mentioned in a previous section, there is common ownership between the applicant and Royal Care, Inc in that Faye Klein has ownership interest in both facilities. BFA Attachment D is the pro forma balance sheet of Royal Care Certified Home Health Care, LLC, which indicates a positive members' equity position of \$2,007,534.

The submitted budget indicates a net income of \$69,399 during the first year after the change in operator. Revenues are based on current CHHA payment rates, including Medicaid Episodic Payment System.

As shown on Attachment B, the entity had a positive working capital position and a positive stockholders equity position through June 30, 2014. Also, the entity achieved a net income of \$851,281 through June 30, 2014.

BFA Attachment C is the 2013 certified financial statements of The Royal Care, Inc. As shown, the entity had a positive working capital position and a positive stockholders equity position in 2013. Also, the entity achieved a net income of \$1,166,838 in 2013.

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	Personal Net Worth Statement
BFA Attachment B	Financial Summary- June 30, 2014 internal financial statements of The Royal Care, Inc.
BFA Attachment C	Financial Summary- 2013 certified financial statements of The Royal Care, Inc.
BFA Attachment D	Pro Forma Balance Sheet



# Public Health and Health Planning Council

Project # 142100-E  
A & T Certified Home Care, LLC

**Program:** Certified Home Health Agency  
**Purpose:** Establishment

**County:** Rockland  
**Acknowledged:** September 17, 2014

## Executive Summary

### Description

A & T Certified Home Care, LLC, an existing limited liability company, requests approval for a 100% change in membership of the certified home health agency (CHHA). This application is required as a result of the passing of Toni Babington, the sole member of A & T Certified Home Care, LLC. The CHHA is licensed to operate in Rockland County and will maintain and continue all currently certified services. The applicant currently leases space at 339 N. Main Street, Unit 9, New City, New York, and will continue to lease the space going forward. There will be no change in the day to day operation of the CHHA as a result of the membership change.

The current and proposed ownership of A & T Certified Home Care is as follows:

<u>Current</u>	<u>Proposed</u>
Toni Babington 100%	Marital Trust of Toni Babington 100%

The trustees of the Marital Trust of Toni Babington are Margaret Onody and Lowell Babington, the daughter and husband respectively of the current member.

OPCHSM Recommendation  
Contingent Approval

### Need Summary

The Bureau of Public Need Review has no recommendation regarding this proposal.

### Program Summary

This proposal seeks approval of the change of membership interest of A & T Certified Home Care, LLC. In accordance with the Last Will and Testament of Toni Babington, A & T Certified Home Care, LLC submitted an application to change the membership interest of A & T Certified Home Care, LLC to the Marital Trust of Toni Babington. The new proposed member will maintain and continue all currently certified services. The CHHA will continue to operate out of 337 North Main Street, New City, in Rockland County.

### Financial Summary

There is no purchase price for the change in membership interest.

Budget:		
	Revenues	\$1,000,000
	Expenses	<u>\$956,000</u>
	Net Income	\$44,000

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 Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of the applicants executed Operating Agreement, and any amendments thereto, acceptable to the Department. [CSL]
2. Submission of a photocopy of an executed transfer agreement for the membership interest being transferred and any additional transfer documents, which are acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicants executed Articles of Organization, 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

**December 4, 2014**

## Program Analysis

### Review Summary

This proposal seeks approval of the change of membership of A & T Certified Home Care, LLC. In accordance with the Last Will and Testament of Toni Babington, A & T Certified Home Care, LLC submitted an application to change the member of A & T Certified Home Care, LLC to the Marital Trust of Toni Babington.

The applicant submitted an identical change in membership of the Licensed Home Care Services Agency operated by A&T Healthcare, LLC which was contingently approved at the October 2, 2014 Public Health and Health Planning Council meeting.

The applicant proposes to continue to serve the residents of Rockland County from an office located at 337 North Main Street, New City, New York 10956.

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Medical Supplies, Equipment and Appliances
Occupational Therapy	Physical Therapy	Speech Language Pathology
Medical Social Services		

The Board of Directors of A & T Certified Home Care, LLC comprises the following individuals:

Margaret A. Onody – President	Tom T. Babington – Vice President
Vice President, A & T Healthcare, LLC	VP Sales and Marketing, A & T Healthcare, LLC
Vice President, A & T Healthcare of N.J., Inc.	VP Sales and Marketing, A & T Healthcare of N.J., Inc.
Vice President, A & T Certified Home Care, LLC	VP Sales and Marketing, A & T Certified Home Care, LLC

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
---	--

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.

A review of all personal qualifying information indicates there is nothing in the background of the proposed members and managers to adversely affect their positions in the organization. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Last Will and Testament

The applicant has submitted an executed Last Will and Testament which is summarized below:

Assignor:	Lowell Babington, Executor of the Estate of Toni Babington
Assignee:	Marital Trust of Toni Babington
Purpose:	The transfer of 100% membership interest in A&T Certified Home Care, LLC
Purchase Price:	\$0

The applicant has submitted an affidavit, which is acceptable to the Assignee, 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 Seller 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 Assignor of its liability and responsibility. Currently, the facility has no outstanding audit liabilities and assessments.

### Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, during the first year after the change in membership ownership as summarized below:

	<u>Year One</u>
Revenues:	
Medicaid	\$200,000
Medicare	700,000
Third Party	<u>100,000</u>
Total Revenues	\$1,000,000
Expenses:	
Operating	\$845,300
Capital	<u>110,700</u>
Total Expenses	\$956,000
Net Income	<u>\$44,000</u>
Utilization:	
Visits	5,134
Hours	1,194

Expense and utilization assumptions are based on the historical experience of the CHHA. Revenues are reflective of the current payment rates, including Medicaid reimbursement per the Medicaid Episodic Payment System.

Utilization, broken down by payor source, during the first year after the change in operator is summarized below:

Medicaid	3.60%
Medicare	80.90%
Private Pay	13.50%
Charity Care	2.00%

#### Capability and Feasibility

There is no purchase price for the change in membership interest.

Working capital requirements are estimated at \$159,333, based on two months of first year expenses, and will be satisfied from the entity's existing cash and receivables, and additional Trustees' equity. Net cash and receivables (minus accounts payable) were \$123,350 at December 31, 2013, resulting in a need for additional equity of \$35,983. The Trustees have submitted an affidavit indicating that the Trust has sufficient funds to cover the \$35,983 additional working capital needs.

The submitted budget indicates a net income of \$44,000 during the first year after the change in operator. Revenues are based on current payment rates, including Medicaid Episodic Payment System rates of payment.

BFA Attachment A is the 2012 and 2013 internal financial statements of A&T Certified Home Care, LLC. The applicant has indicated that there are no certified financial statements for this CHHA; however, the applicant's accountant has attested to the reasonableness of the internal financial statements and provided a letter stating that the internal financial statements are accurate. As shown, the entity had an average positive working capital position and an average positive net asset position. Also, the entity achieved an average net income of \$12,434 from 2012 through 2013.

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

#### Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

BFA Attachment A Financial Summary - Internal Financial Statements of A&T Certified Home Care, LLC.



**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**M E M O R A N D U M**

**TO:** Public Health and Health Planning Council  
**FROM:** James E. Dering, General Counsel *JED*  
**DATE:** October 9, 2014  
**SUBJECT:** Proposed Name Change of Fletcher Allen Partners, Inc.

---

Fletcher Allen Partners, Inc. ("FAP") requests Public Health and Health Planning Council approval to change its name as stated on its Application for Authority, in accordance with Not-for-Profit Law § 804 and 10 NYCRR 600.1. The new name would be "The University of Vermont Health Network, Inc."

Attached are copies of the proposed Certificate of Amendment to FAP's Application for Authority, a letter from FAP's attorney explaining the need for the proposed name change, a copy of FAP's current Application for Authority, the Certificate of Amendment to FAP's Vermont Article of Incorporation, and a letter from the University of Vermont acknowledging permission to use the proposed name.

The Certificate of Amendment is in legally acceptable form.

Attachments

**CERTIFICATE OF AMENDMENT  
OF THE  
APPLICATION FOR AUTHORITY  
OF  
FLETCHER ALLEN PARTNERS, INC.**

(Under Section 1309 of the Not-for-Profit Corporation Law of the State of New York)

The undersigned hereby certifies on behalf of Fletcher Allen Partners, Inc., a Vermont not-for-profit corporation (the "Company"), that:

FIRST: The name of the Company as it appears on the index of names in the department of state is Fletcher Allen Partners, Inc.

SECOND: The jurisdiction of incorporation of the Company is the State of Vermont.

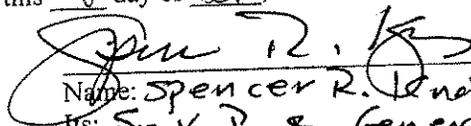
THIRD: The date on which the Company's application for authority to do business in this state was filed with the Department of State is May 28, 2013.

FOURTH: The application for authority is amended to change the name of the Company as it appears on the index of names in the department of state. The change of the Company's name has been effected under the laws of the jurisdiction of the Company's incorporation on November 12, 2014. Paragraph FIRST of the Application for Authority is amended to read as follows:

"FIRST: The name of the foreign corporation is: The University of Vermont Health Network, Inc."

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned affirms under the penalties of perjury that the statements contained herein are true on this 8 day of Sept, 2014.

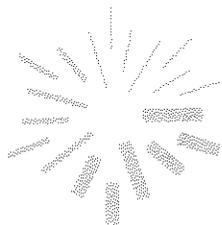
  
Name: Spencer R. Knapp  
Its: Sr. V. P & General Counsel

**CERTIFICATE OF AMENDMENT  
OF THE  
APPLICATION FOR AUTHORITY  
OF  
FLETCHER ALLEN PARTNERS, INC.**

Under Section 1309 of the Not-for-Profit Corporation Law of the State of New York

Filed by:

Nixon Peabody LLP  
677 Broadway, 10<sup>th</sup> Floor  
Albany, NY 12207  
(518) 427-2650



# NIXON PEABODY

NIXON PEABODY LLP  
ATTORNEYS AT LAW

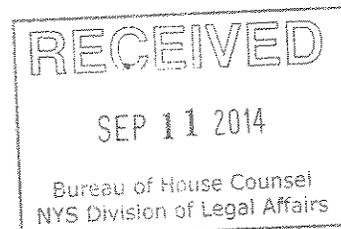
NIXONPEABODY.COM  
@NIXONPEABODYLLP

**Laurie T. Cohen**  
*Partner*  
T 518-427-2708  
lauriecohen@nixonpeabody.com

677 Broadway, 10th Floor  
Albany, NY 12207-2996  
518-427-2650

September 10, 2014

Mr. Jason Pfeiffer  
Office of House Counsel  
NYS Department of Health  
Corning Tower, ESP, 24th Floor  
Albany, New York 12237



**RE: Fletcher Allen Partners, Inc.**

Dear Mr. Pfeiffer:

We are seeking approval of the NYS Department of Health to change the name of Fletcher Allen Partners, Inc., a Vermont not-for-profit corporation, to the University of Vermont Health Network, Inc.

Enclosed please find the following documents for your review:

1. A copy of the Certificate of Amendment of the Application for Authority of Fletcher Allen Partners, Inc. changing its name to "The University of Vermont Health Network, Inc."
2. A copy of the original Application for Authority of Fletcher Allen Partners, Inc.
3. A copy of the Amended and Restated Certificate of Incorporation for Fletcher Allen Partners, Inc. which was filed in the State of Vermont on August 22, 2014 with an effective date of November 12, 2014.
4. A letter from the University of Vermont which acknowledges permission for the use of the "University of Vermont Health Network, Inc."

By way of background, in December 2012, Fletcher Allen Partners, Inc. was approved by the NYS Public Health and Health Planning Council as the active parent of Community Providers, Inc. (CPI) and Fletcher Allen Partners, Inc. and CPI were established as the active parents of Champlain Valley Physicians Medical Center and Elizabethtown Community Hospital. Fletcher Allen Partners, Inc. was established to develop a more coordinated system of care and includes four hospitals, Fletcher Allen Health Care in Burlington, Vermont, Central Vermont Medical Center in Barre, Vermont, CVPH Medical Center in Plattsburgh, New York and Elizabethtown Community Hospital in Elizabethtown, New York.

Earlier this year, Fletcher Allen Partners, Inc. announced plans to change its name to The University of Vermont Health Network, Inc. The hospitals in the system will also be changing their names or using assumed names to include reference to the University of Vermont in their respective names. Fletcher Allen Health Care, a Vermont not-for-profit hospital, will change its name to The University of Vermont Medical Center. Champlain Valley Physicians Hospital Medical Center in Plattsburgh, New York will be filing a Certificate of Assumed Name to use the name University of Vermont Health Network - Champlain Valley Physicians Hospital and Elizabethtown Community Hospital in Elizabethtown, New York will be filing a Certificate of Assumed Name to use the name University of Vermont Health Network - Elizabethtown Community Hospital.

If there are any questions regarding the enclosed form or the information set forth in this letter, please contact me at 518 427-2708.

Sincerely,



Laurie T. Cohen  
Partner

LTC/db  
Enclosures

**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy for FLETCHER ALLEN PARTNERS, INC., File Number 130528000359 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
September 05, 2014.

*Daniel E. Shapiro*

Daniel E. Shapiro  
First Deputy Secretary of State

130528000 359

APPLICATION FOR AUTHORITY OF FLETCHER ALLEN PARTNERS, INC.

Under Section 1304 of the Not-for-Profit Corporation Law

FIRST:

The name of the foreign corporation is: Fletcher Allen Partners, Inc.

SECOND:

The jurisdiction in which the corporation was organized is: Vermont

The date of its incorporation is: June 16, 2011.

THIRD:

The corporation is a foreign corporation as defined in section 102(a)(7) of the Not-for-Profit Corporation Law.

FOURTH:

The corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

FIFTH:

The purpose or purposes to be pursued in this state and the activities which it proposes to conduct in this state include the following purposes:

- a) To establish an integrated regional health care system that aligns the missions of Fletcher Allen Health Care Inc., Community Providers, Inc., Champlain Valley Physicians Hospital Medical Center and Elizabethtown Community Hospital and other nonprofit, tax exempt health care providers that are or become members of the system;
- b) To engage in collaborative regional planning to develop a highly coordinated health care network that will improve the quality, increase the efficiencies, and lower the costs of health care delivery in the communities served by the system; and
- c) To engage in such other charitable, educational, and/or scientific activities as are consistent with the corporation's status as an exempt organization under Section 501(c) of the Internal Revenue Code. Subject to the foregoing, the corporation shall be permitted to engage in any lawful act or activity for which corporations may be organized under the New York Not-for-Profit Corporation Law.

130528000359

The corporation is authorized to conduct the above activities in its jurisdiction of incorporation.

SIXTH:

The county within this state in which the office of the corporation is to be located is: Albany

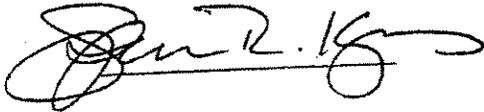
SEVENTH:

The Secretary of State is designated as agent of the corporation upon whom process against the corporation may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is:

Spencer Knapp  
Fletcher Allen Health Care  
111 Colchester Avenue  
Burlington, Vermont 05401

EIGHTH:

The corporation has not since its incorporation or since the date its authority to do business in New York was last surrendered, engaged in any activity in this state except as set forth in paragraph (b) of Section 1301 of the Not-for-Profit Corporation Law.



SPENCER R. KNAPP  
Print Name of Officer

SENIOR VICE PRESIDENT AND GENERAL COUNSEL  
Title

STATE OF VERMONT  
OFFICE OF SECRETARY OF STATE

Certificate of Good Standing

I, James C. Condos, Vermont Secretary of State, do hereby certify that according to the records of this office

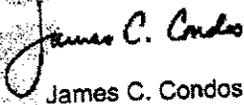
FLETCHER ALLEN PARTNERS, INC.

a domestic non-profit corporation formed under the laws of the State of Vermont, was filed for record in this office on June 16, 2011.

I further certify that the company has perpetual duration, that its most recent biennial report is on file, and that as of this date, articles of dissolution / withdrawal have not been filed.

March 22, 2013

Given under my hand and the seal of the State of Vermont, at Montpelier, the State Capital.

  
James C. Condos  
Vermont Secretary of State



Business ID: 0091003  
Certificate Number: 2013019272001

# PHHPC

***PUBLIC HEALTH AND HEALTH PLANNING COUNCIL***

---

433 River Street, 6<sup>th</sup> Floor  
Troy, New York 12180

(518) 402-0964  
PHHPC@health.state.ny.us

April 17, 2013

Mr. Frank M Cicero  
Consultant  
Cicero Consulting Associates VCC, Inc.  
701 Westchester Avenue  
White Plains, New York 10604

Re: Application for Authority of Fletcher Allen Partners, Inc.

Dear Mr. Cicero:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 11th day of October, 2012, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Application for Authority of Fletcher Allen Partners, Inc., dated April 3, 2013.

Sincerely,



Colleen M. Frost  
Executive Secretary

130528000 359

APPLICATION FOR AUTHORITY  
OF  
FLETCHER ALLEN PARTNERS, INC.

Under Section 1304 of the Not-for-Profit Corporation Law

Filed by: Laurie T. Cohen  
Nixon Peabody  
677 Broadway, 10<sup>th</sup> Floor  
Albany, NY 12207

RECEIVED  
2013 MAY 16 AM 10:09

RECEIVED  
2013 MAY 28 AM 10:01

2013 MAY 28 PM 12:13

FILED

Imk

4/14

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED MAY 28 2013  
BY: Imk  
Albany

STATE OF VERMONT  
OFFICE OF SECRETARY OF STATE

**Certificate of Amendment**

I, James C. Condos, Vermont Secretary of State, do hereby certify that  
attached is a true copy of the  
ARTICLES OF AMENDMENT

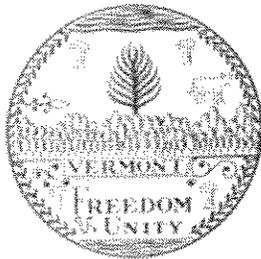
For

**THE UNIVERSITY OF VERMONT HEALTH  
NETWORK INC.**

Formerly Known as

**FLETCHER ALLEN PARTNERS, INC.**

As filed in this department effective November 12, 2014



August 21, 2014

Given under my hand and the seal  
of the State of Vermont, at  
Montpelier, the State Capital

A handwritten signature in cursive script that reads "James C. Condos".

James C. Condos  
Secretary of State



**VERMONT SECRETARY OF STATE**

**Corporations Division**

MAILING ADDRESS: Vermont Secretary of State, 128 State Street, Montpelier, VT 05633-1104  
DELIVERY ADDRESS: Vermont Secretary of State, 128 State Street, Montpelier, VT 05633-1104  
PHONE: 802-828-2386 WEBSITE: www.sec.state.vt.us

**BUSINESS AMENDMENT**

**\*\*ELECTRONICALLY FILED\*\***

FILING NUMBER: 0001976022

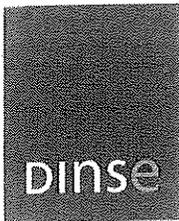
FILING DATE/TIME: 8/21/2014 3:11:00 PM

EFFECTIVE DATE: 11/12/2014

<b>BUSINESS INFORMATION</b>	
BUSINESS ID	0091003
BUSINESS TYPE	Domestic Non-profit Corporation
BUSINESS DESCRIPTION	Any Legal Purpose
BUSINESS EMAIL	kkittredge@dinse.com

The following items were amended :

<b>BUSINESS INFORMATION</b>	
BUSINESS NAME	THE UNIVERSITY OF VERMONT HEALTH NETWORK INC.



Burlington, Vermont Plattsburgh, New York

Jeffrey J. McMahan  
*E-mail:* [jmcmahan@dinse.com](mailto:jmcmahan@dinse.com)

August 20, 2014

**VIA ELECTRONIC FILING**

Vermont Secretary of State  
Corporations Division  
128 State Street  
Montpelier, VT 05633-1104

Dear Sir or Madam:

Please find enclosed for filing with the Vermont Secretary of State's Office Amended and Restated Articles of Incorporation for the following entities:

Fletcher Allen Partners, Inc.  
Fletcher Allen Health Care, Inc.  
Fletcher Allen Health Care Foundation, Inc.  
Fletcher Allen Health Ventures, Inc.

Also included for filing with your office are Amended and Restated Articles of Organization for the following entities:

Fletcher Allen Coordinated Transport, LLC  
Fletcher Allen Executive Services, LLC  
Fletcher Allen Skilled Nursing, LLC

We have obtained a letter from the President of the University of Vermont (also included) confirming the use of its name by the above-referenced entities. *Please be aware that the effective date of these amendments is November 12, 2014.* Our recent trade name reservation under my name filed on May 20, 2014 for "The University of Vermont Health Network" as well as "The University of Vermont Medical Center" can be withdrawn upon the filing of these Amendments.

Should you require additional information from us in regard to these filings please do not hesitate to contact our office at any time. Thank you.

Very truly yours,

DINSE, KNAPP & McANDREW, P.C.

Jeffrey J. McMahan

JJM/kak  
Enclosure



The University of Vermont

E. Thomas Sullivan  
*President*

John R. Brumsted, M.D.  
President and Chief Executive Officer  
Fletcher Allen Partners, Inc.  
111 Colchester Avenue  
Burlington, VT 05401

Re: **Use of "The University of Vermont" in Corporate Names**

Dear John:

This letter confirms that The University of Vermont and State Agricultural College (the "University") has entered into an agreement with Fletcher Allen Partners authorizing Fletcher Allen Partners and its affiliated organizations to use the phrase "The University of Vermont" in the following names:

The University of Vermont Health Network, Inc.  
The University of Vermont Medical Center, Inc.  
The University of Vermont Medical Center Foundation, Inc.  
The University of Vermont Health Network Specialty Care Transport LLC  
The University of Vermont Medical Center Health Ventures, Inc.  
The University of Vermont Medical Center Executive Services LLC  
The University of Vermont Medical Center Skilled Nursing LLC  
The University of Vermont Medical Center Auxiliary, Inc.

The University has also authorized the same organizations to file and use tradenames consisting of the names listed above without their corporate or company modifiers.

We understand that you will present this letter to the Vermont Secretary of State in connection with your filing of amended and restated articles or incorporation and organization to make these name changes and any related tradename registrations.

Very truly yours,

E. Thomas Sullivan  
President

AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
FLETCHER ALLEN PARTNERS, INC.

(A Public Benefit Nonprofit Corporation organized under the provisions  
Of the Vermont Non-Profit Corporation Act, 11B V.S.A. §§ 1.01 *et seq.*)

1. Corporate Name. The current name of the corporation is FLETCHER ALLEN PARTNERS, INC.

2. Text and Date of Amendments. The Articles of Incorporation of the corporation are amended to: (i) change the corporation's name to: THE UNIVERSITY OF VERMONT HEALTH NETWORK INC. and (ii) delete the name and address of the original registered agent and incorporator. The effective date of the amendments set forth in these Amended and Restated Articles of Incorporation shall be at 12:00 a.m. on November 12, 2014.

3. Approval by Directors. The amendments reflected in paragraph 4 of this instrument were approved by the directors of the corporation.

4. Text of Amended and Restated Articles of Incorporation. The articles of incorporation of the corporation are hereby amended and restated to read in full as follows:

(See following pages)

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION

OF

THE UNIVERSITY OF VERMONT HEALTH NETWORK INC.

(A Public Benefit Nonprofit Corporation organized under the provisions  
of the Vermont Non-Profit Corporation Act, 11B V.S.A. §§ 1.01 *et seq.*)

**FIRST:** The name of the corporation shall be The University of Vermont Health Network Inc.

**SECOND:** This Corporation is a public benefit corporation.

**THIRD:** The corporation will not have members.

**FOURTH:** In addition to having all of the powers accorded to a nonprofit corporation under the laws of the State of Vermont, and without limiting the generality thereof, this Corporation shall have the powers set forth in (A) below with respect to each corporation of which this Corporation is the sole member as defined in 11B V.S.A. § 17.05 or the New York Not-For-Profit Corporation Law and Champlain Valley Physicians Hospital Medical Center ("CVPH") and Elizabethtown Community Hospital ("ECH") (each such corporation being a "Subsidiary"), and none of the actions set forth in (B) through (K) below on the part of a Subsidiary shall be effective without the affirmative approval of this Corporation:

- (A) election of the Trustees of the Subsidiary, apart from those Trustees serving *ex officio*, from nominees submitted to this Corporation by the Board of Trustees of the Subsidiary;
- (B) adoption of annual operating and capital budgets of the Subsidiary and any change to a budget previously approved by this Corporation;
- (C) adoption of strategic plans;
- (D) sale, lease, disposition, mortgage, or encumbrance of all or substantially all of the assets of the Subsidiary;
- (E) any merger, consolidation, business combination or joint venture, or the creation or acquisition of any subsidiary organization, other than as included in a strategic or financial plan previously approved by this Corporation;
- (F) the filing of a voluntary petition or application under federal or state bankruptcy laws;
- (G) the commencement of any project or the making of any expenditure requiring issuance of a certificate of need;
- (H) amendment of these Articles of Incorporation or the Bylaws of the Subsidiary;
- (I) the incurrence of any long-term indebtedness;

- (J) developing or terminating programs and services, other than those included within a strategic or financial plan previously approved by this Corporation; and
- (K) election or appointment of the President/CEO of the Subsidiary.

Additionally, this Corporation may initiate any of the above actions on behalf of a Subsidiary, provided, however, that such action of this Corporation has been adopted by a Super-Majority Vote of the Board of Trustees. For purposes of this right of initiation, a "Super-Majority Vote" shall mean the affirmative vote of at least three-quarters (3/4) of the Trustees.

**FIFTH:** The corporation is organized and shall be operated exclusively for the benefit of, to perform the functions of, and to carry out the exclusively charitable, educational, and/or scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, of The University of Vermont Medical Center Inc. ("the Medical Center"), Central Vermont Medical Center, Inc. ("CVMC") and Community Providers, Inc. ("CPI"), CVPH, ECH and any other nonprofit, tax exempt health care providers that become members of an integrated regional health care system established by the corporation, the Medical Center, CVMC, CPI, CVPH and ECH including the following purposes:

(A) To establish an integrated regional health care system that aligns the missions and economic interests of the Medical Center, CVMC, CPI, CVPH, ECH and other nonprofit, tax exempt health care providers that are or become members of the system;

(B) To engage in collaborative regional planning to develop a highly coordinated health care network that will improve the quality, increase the efficiencies, and lower the costs of health care delivery in the communities served by the system;

(C) to engage in such other charitable, educational, and/or scientific activities as are consistent with the corporation's status as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, and including for such purposes the making of distributions of property or cash to organizations that qualify as exempt organizations under Section 501(c) of the Internal Revenue Code. All section references in these Articles of Incorporation refer to the Internal Revenue Code of 1986, Title 26 of the United States Code, and comparable provisions of later law. Subject to the foregoing, the corporation shall be permitted to engage in any lawful act or activity for which corporations may be organized under the Vermont Nonprofit Corporation Act.

**SIXTH:** No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its directors, officers, or other private persons except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered (excepting directors, who may not be compensated for services as directors) and to make payments and distributions in furtherance of the purposes set forth in Article FIFTH hereof.

**SEVENTH:** No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (it being acknowledged, however, that the corporation may make, as well as revoke, a section 501(h) election), and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of (or in opposition to) any candidate for public office. Notwithstanding any other provision of these Articles of Incorporation, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code (or corresponding section of any future federal tax code) or (b) by a corporation contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code (or corresponding section of any future federal tax code).

**EIGHTH:** Upon the dissolution and liquidation of the corporation, the net assets of the corporation shall be distributed to the Medical Center, CVMC, CPI, CVPH, ECH and other nonprofit, tax exempt health care providers that may become affiliated with the integrated regional health care system established by the corporation that are exempt from federal income tax by reason of being described in section 501(c)(3) and that best promote the purposes of the corporation, subject to the restriction that no distribution will be made that would subject the corporation to any termination tax. Any assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, as are described in section 501(c)(3) and are organized and operated exclusively for purposes which best promote the purposes of this corporation.

**NINTH:** (A) Subject to the restrictions imposed by section 8.51(d) of the Vermont Nonprofit Corporation Act (enumerating proceedings for which indemnification may not be made), the corporation shall indemnify any individual made a party to a proceeding because the individual is or was a director of the corporation against liability incurred in the proceeding if the individual meets the requirements of section 8.51 of the Vermont Nonprofit Corporation Act (or the corresponding section of any future Vermont statute).

(B) The corporation shall pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if the director meets the requirements of section 8.53 of the Vermont Nonprofit Corporation Act (or the corresponding section of any future Vermont statute).

(C) The right of indemnification and reimbursement provided by this Article NINTH shall continue as to a person who has ceased to be a director and shall inure to the benefit of the heirs, executors and administrators of such person.

(D) The right of indemnification provided by this Article NINTH shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any law (including, but not limited to, section 8.52 of the Vermont Nonprofit Corporation Act), bylaw, agreement, vote of disinterested directors or otherwise, as to action in his or her

official capacity, and shall continue as to a person who has ceased to be such director and shall inure to the benefit of the heirs, executors and administrators of such person.

(E) The right of indemnification provided by this Article NINTH shall be deemed to be a contract between this corporation and each director of this corporation who serves in such capacity, as to action in his or her official capacity, at any time while this Article NINTH and the relevant provisions of the Vermont Nonprofit Corporation Act and other applicable law, if any, are in effect, and any repeal or modification thereof shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

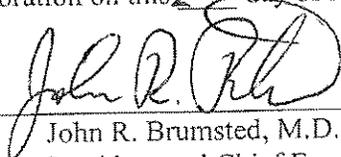
(F) The corporation shall indemnify and advance expenses to any officer or employee of the corporation who is not a director to the same extent as a director.

*TENTH:* (A) In the event that the corporation should be determined to be a private foundation as defined in section 509(a) of the Internal Revenue Code, the corporation will act or refrain from acting so as not to subject itself to the taxes under section 4941 on self-dealing, to the taxes under section 4943 on excess business holdings, to the taxes under section 4944 on investments that jeopardize charitable purpose, and to the taxes under section 4945 on taxable expenditures.

(B) In the event that the corporation should be determined to be a private foundation but not to be an operating foundation as defined in section 4942(j)(3), the corporation will also act or refrain from acting so as not to subject itself to the taxes under section 4942 on failure to distribute income.

*ELEVENTH:* The Corporation reserves the right to restate these Articles of Incorporation and to amend, alter, change or repeal any provision contained in these Articles of Incorporation in the manner now or hereafter prescribed by law, and all rights and powers conferred herein are subject to this reserved power.

IN WITNESS WHEREOF, these Amended and Restated Articles of Incorporation have been signed by an authorized officer of the Corporation on this 20<sup>th</sup> day of August, 2014.

By: 

John R. Brumsted, M.D.  
President and Chief Executive Officer  
111 Colchester Avenue  
Burlington, VT 05401



The University of Vermont

**E. Thomas Sullivan**  
*President*

John R. Brumsted, M.D.  
President and Chief Executive Officer  
Fletcher Allen Partners, Inc.  
111 Colchester Avenue  
Burlington, VT 05401

**Re: Use of "The University of Vermont" in Corporate Names**

Dear John:

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Very truly yours,

E. Thomas Sullivan  
President





Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Agincare Homecare Services, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2191-L

Description of Project:

Agincare Homecare Services, 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: Lan Chen owns 20 Shares and Yong Hong Xie owns 20 Shares. The remaining 160 shares are unissued.

The Board of Directors of Agincare Homecare Services, Inc. comprises the following individuals:

Lan Chen – President  
Operation Director, Confucius Social Day Care Center

Yong Hong Xie, RN, Acupuncturist – Vice President  
Nursing Director, JS Homecare Agency of NY

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 professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 844 50<sup>th</sup> Street, Apt. 1A, Brooklyn, New York 11220:

Bronx	Kings	Queens
New York	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	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: October 21, 2014



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 12, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Anderson Care, LLC d/b/a Home Helpers/Direct Link  
Address: Albany  
County: Albany  
Structure: Limited Liability Company  
Application Number: 2236-L

Description of Project:

Anderson Care, LLC d/b/a Home Helpers/Direct Link, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Anderson Care, LLC has proposed to operate as a Franchisee of H. H. Franchising Systems, Inc.

The sole member of Anderson Care, LLC d/b/a Home Helpers/Direct Link comprises the following individual:

James Anderson, 100%  
CEO/Administrator, Anderson Care, LLC d/b/a Home Helpers/Direct Link (Companion Care)

The individual named above completed the Home Helpers Franchise Management Training Program in August of 2012 and was given Franchise #58674.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant disclosed that he was convicted of Criminal Sale of a Controlled Substance, 3<sup>rd</sup> Degree, a Class B Felony, in October 1988 in Bronx, New York before Justice L. Safer-Espinoza. Pursuant to Correction Law § 753, the Department's recommendation takes into account:

- The public policy of this state to encourage the licensure and employment of persons previously convicted of one or more criminal offenses, as expressed in Correction Law Article 23-A
- The specific duties and responsibilities necessarily related to the license sought by the applicant and the bearing this criminal conviction will have on his fitness or ability to perform such duties or responsibilities.
- The fact that the criminal offense for which the applicant was convicted took place 16 years ago, when the applicant was 17 years of age.
- The seriousness of the offense, Class B Felony.
- Any information produced by the person, or produced on his behalf, in regards to his rehabilitation and good conduct.
- The Department's interest in protecting property, and the safety and welfare of patients.

The applicant proposes to serve the residents of the following counties from an office located at 110 Wellington Avenue, Albany, New York 12203:

Albany                      Schenectady

The applicant proposes to provide the following health care services:

Nursing                      Personal Care                      Housekeeper                      Homemaker

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: October 9, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Angel Home Care Agency, Inc.  
Address: Staten Island  
County: Richmond  
Structure: For-Profit Corporation  
Application Number: 2187-L

Description of Project:

Angel 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: Alla Gayan owns 100 Shares. The remaining 100 shares are unissued.

The Board of Directors of Angel Home Care Agency, Inc. comprises the following individuals:

Alla Gayan, RN, President/Secretary/CEO  
Phlebotomy Technician  
Administrative RN, S & A Unified Home Care, Inc.

Yuliya Gayan, Treasurer/COO  
Business Analyst, Healthfirst, 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 licenses of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 42 Strawberry Lane, Staten Island, New York 10312:

Kings	New York	Bronx
Richmond	Queens	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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: October 30, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Angel's Touch Home Care, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2174-L

Description of Project:

Angel's Touch Home Care, 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 Angel's Touch Home Care, LLC is:

Elena Fishman – 100%  
NYS Licensed Real Estate Broker  
Human Resources Manager/HPN Coordinator/Compliance Officer, All American Homecare Agency

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Department of State, Division of Licensing Services indicates no issues with the license of the professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 950 East 14<sup>th</sup> Street, #3C, Brooklyn, New York 11230:

Kings	Queens	New York
Richmond	Bronx	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	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: October 2, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Axzons Health System Corporation  
Address: Garden City  
County: Nassau  
Structure: For-Profit Corporation  
Application Number: 2252-L

Description of Project:

Axzons Health System Corporation, 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 Sandeep Kalra.

The Board of Directors of Axzons Health System Corporation is comprised of the following individual:

Sandeep Kalra, MD, Director  
Axzons Health System Corporation  
Medical Doctor, licensed in India

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 38 Grove Street, Garden City, NY 11530:

Nassau                      Westchester                      Suffolk                      Queens

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: October 30, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Beech Development Corp.  
d/b/a ComForcare Senior Services – Rochester East  
Address: Rochester  
County: Monroe  
Structure: For-Profit Corporation  
Application Number: 2226-L

Description of Project:

Beech Development Corp. d/b/a ComForcare Senior Services – Rochester East, a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Beech Development Corp. has proposed to operate as a Franchisee of ComForcare Senior Services. The managing member of Beech Development Corp. will be Mark S. Judd.

The applicant has authorized 1,000,000 shares of stock, which are owned as follows: Mark S. Judd owns 960,000 shares and Lynn K. Judd owns 40,000 shares.

The Board of Directors of Beech Development Corp. d/b/a ComForcare Senior Services – Rochester East comprises the following individuals:

Mark S. Judd, President/Secretary  
Beech Development Corp. d/b/a ComForcare Senior Services – Rochester East (Companion Care)

Lynn K. Judd, Vice President/Treasurer  
Beech Development Corp. d/b/a ComForcare Senior Services – Rochester East (Companion Care)

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 3380 Monroe Avenue, Suite 112, Rochester, New York 14618:

Monroe	Livingston	Ontario	Wayne
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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: October 22, 2014



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Compassionate Home Health Care, LLC  
Address: Bronx  
County: Bronx  
Structure: Limited Liability Company  
Application Number: 2060-L

Description of Project:

Compassionate Home Health Care, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Compassionate Home Health Care, LLC is comprised of the following members:

Thanh Nguyen, RN, Manager, 70%  
Dialysis Position, Davita (Boston Post Road Dialysis Center)

Alejandrei Siron, RN, 30%  
RN, Absolute Home Health Care

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 to be located in Bronx County.

New York	Kings	Queens
Bronx	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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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: October 24, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Customize Care, LLC  
Address: Bronx  
County: Bronx  
Structure: Limited Liability Company  
Application Number: 2257-L

Description of Project:

Customize Care, 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 Customize Care, LLC is:

Jeffrey A. Morris -100%  
President, Customize Care, LLC (companion care)  
Attorney, retired

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 600 West 239<sup>th</sup> Street, Suite 2M, Bronx, New York 10463:

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	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.

A Certificate of Good Standing has been received for the attorney.

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: October 30, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Eva Homecare Agency, Inc.  
Address: Forest Hills  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2164-L

Description of Project:

Eva Homecare Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned solely by Yijia (Eva) Zhang.

The Board of Directors of Eva Homecare Agency, Inc. comprises the following individual:

Yijia (Eva) Zhang, RDMS, RVT  
Sonographer, Vascular Tech, Sinai North Shore Medical Center

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 104-70 Queens Boulevard, Suite 503, Forest Hills, New York 11375:

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	Respiratory Therapy
Speech-Language Pathology	Medical Social Services	Nutrition
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: September 23, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: First Baana Corp.  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 2230-L

Description of Project:

First Baana Corp., 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, which are owned solely by Sue Monroe.

The Board of Directors of First Baana Corp. comprises the following individuals:

Sue Monroe, MA  
Health Care Consultant, AZA Group, Inc. (2011 – Present)  
Instructor of Science and Allied Health Care, Hunter High School (2001 – Present)

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 185 Avenue C, #6F, New York, New York 10009:

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

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: October 28, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Fun & Fit, LLC d/b/a Home Instead Senior Care  
Address: White Plains  
County: Westchester  
Structure: Limited Liability Company  
Application Number: 2232-L

Description of Project:

Fun & Fit, LLC d/b/a Home Instead Senior Care, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Fun & Fit, LLC has proposed to operate as a Franchisee of Home Instead Senior Care.

The managing members of Fit & Fun, LLC are:

Brian Trainor – 50%  
President, Home Instead Senior Care (Companion Care Agency)

Tina Trainor – 50%  
Educator, Yorktown Central Schools  
Member, Home Instead Senior Care (Companion Care Agency)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The New York State Education Department indicates no issues with the teaching professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 77 Tarrytown Road, White Plains, New York 10607:

Westchester	Putnam	Dutchess	Bronx
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational 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: October 21, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Janette Homecare of NY, Inc.  
Address: Kew Gardens  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2189-L

Description of Project:

Janette Homecare 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 solely owned by Kaveh Askari.

The Board of Directors of Janette Homecare of NY, Inc., comprises the following individual:

Kaveh Askari, RPh, President  
Pharmacist, Manhasset Park Drug

Affiliations:

Manhasset Park Drug (1997-present)  
Sina Drug Corp d/b/a Onco360 (2002 - 2014)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Kaveh Askari is currently licensed as a Pharmacist in the States of New York, Louisiana, Tennessee, Maryland, Massachusetts, Nebraska and Mississippi.

The Office of the Professions of the State of New York Education Department entered a violation against Kaveh Askari's professional license. A settlement in the amount of five hundred dollars (\$500.00) was issued in March of 2009, for violations of NYS Education Law Section 6509(9) – Definitions of Professional Misconduct and 8 NYCRR 29.7(a)(17)(i) – Holding for sale, offering for sale or selling any drug after the expiration date.

The State of Nebraska issued an Assurance of Compliance regarding the license of the health care professional associated with this application for not promptly reporting the New York State settlement. It is indicated that this Assurance of Compliance is not considered disciplinary action against the health care professional's license to practice pharmacy.

The States of Louisiana, Tennessee, Maryland, Massachusetts and Mississippi indicated no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 119-40 Metropolitan Avenue, Suite 108, Kew Gardens, New York 11415:

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
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper
Medical Supplies and Equipment		

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: October 24, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Long Beach Home Care Services, Inc.  
Address: Queens  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2087-L

Description of Project:

Long Beach Home Care Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Long Beach Home Care Services, Inc. has authorized 200 shares of stock which are owned as follows:

Adinah Rubin, RN – 200 Shares

The proposed sole Board Member of Long Beach Home Care Services, Inc., comprises the following individual:

Adinah Rubin, RN – CEO  
Nurse Care Manager, Centerlight Healthcare

A search of the individual 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 licensure of the health professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located in Queens County:

Bronx	New York	Kings	Queens
Richmond	Nassau		

The applicant proposes 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	Housekeeper	Homemaker	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: October 24, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: New York Congregational Licensed Home Care Services Agency, Inc.  
Address: Brooklyn  
County: Kings  
Structure: Not-For-Profit Corporation  
Application Number: 2241-L

Description of Project:

New York Congregational Licensed Home Care Services Agency, 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.

New York Congregational Community Services will be the sole member of New York Congregational Licensed Home Care Services Agency, Inc.

The Board of Directors of New York Congregational Licensed Home Care Services Agency, Inc. and New York Congregational Community Services are comprised of the following individuals:

Cecelia C. Zuckerman, RN, LNHA – President/CEO  
President/CEO/Administrator, New York Congregational Nursing Center, Inc.

Affiliations: New York Congregational Nursing Center (1999 – 2012)

Florence Katz, LCSW, LNHA – Senior Vice President/COO  
Senior Vice President/COO, New York Congregational Nursing Center, Inc.

Affiliations: New York Congregational Nursing Center (2004 – 2012)

Frank Cianciotto, LNHA – Senior Vice President, Finance/CFO  
CFO, New York Congregational Nursing Center, Inc.

Affiliations: New York Congregational Nursing Center (2010 – 2012)

Thomas Bettridge – Secretary/Treasurer  
Retired, Director of Risk Management, NYC Office of the Comptroller

Kendall Christiansen – Chairperson  
Owner, Gaia Strategies, LLC

Affiliations: New York Congregational Nursing Center (1992 – 2012)

James Waechter – Vice Chairperson  
Crew Member, Trader Joe's

Affiliations: New York Congregational Nursing Center (1989 - Present)

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 Cecelia Zuckerman NHA license #03699 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 her license.

The Bureau of Professional Credentialing has indicated that Florence Katz NHA license #05565 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 her license.

The Bureau of Professional Credentialing has indicated that Frank Cianciotto NHA license #04931 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 her license.

The applicant proposes to serve the residents of the following counties from an office located at 123 Linden Boulevard, Brooklyn, New York 11226:

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	Respiratory Therapy
Speech-Language Pathology	Medical Social Services	Nutrition
Homemaker	Housekeeper	

A seven year review of the operations of the agencies/facilities listed below was conducted as part of this review (unless otherwise noted):

- New York Congregational Nursing Center d/b/a New York Congregational Certified Home Health Agency (2/27/14 – Present)
- New York Congregational Nursing Center d/b/a New York Congregational Long-Term Home Health Care Program
- New York Congregational Nursing Center (RHCF)

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 Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facility reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

#### Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: October 28, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Safe and Prudent, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2182-L

Description of Project:

Safe and Prudent, 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 Safe and Prudent, LLC is:

Dr. Thomas Steinmetz – 100%  
Optometrist – Private Practice

A search of the individual 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 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 the proceeding with the proposal is appropriate.

The applicant proposes to serve the residents of the following counties from an office located at 1320 52<sup>nd</sup> Street, Brooklyn, New York 11219:

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
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: September 23, 2014



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: SHARE of New Square, Inc.  
Address: Spring Valley  
County: Rockland  
Structure: Not-For-Profit Corporation  
Application Number: 2208-L

Description of Project:

SHARE of New Square, 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 SHARE of New Square, Inc. is comprised of the following individuals:

Jacob Goldmunzer, EMT, President  
Self Employed, Residential Real Estate Appraiser

Aaron Grunwald, Treasurer  
Bakery Manager, Ostreicher's Bakery

Samson Gluck, Secretary  
Insurance Broker, Gluck Insurance Agency

Pinchas Braun, Member  
Real Estate Investment/Management, Green View Estates, Inc.

Isaac Breuer, Member  
Owner, Fax Unlimited

Yitzchok Fischer, Member  
Student Advisor, Avir Yaakov School

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 Emergency Medical Services indicates no issues with the licensure of the EMT associated with this application. Certified Paramedic (EMT) 250347 with the expiration date of 8/31/2016. Has been a Certified Paramedic (EMT) since 1999.

The applicant proposes to serve the residents of the following counties from an office located at 286 North Main Street, Spring Valley, New York 10977:

Rockland	Westchester	Orange
Sullivan	Dutchess	Ulster
Putnam	Bronx	

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: October 28, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Skilled Home Care Services of New York, LLC d/b/a Skilled Home Care Services of New York  
Address: Rego Park  
County: Queens  
Structure: Limited Liability Company  
Application Number: 2159-L

Description of Project:

Skilled Home Care Services of New York, LLC d/b/a Skilled Home Care Services of New York, 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 Skilled Home Care Services of New York, LLC is:

Omofolarin Kasumu, 100%  
Interim Administrator/Assistant Administrator, Marathon Healthcare

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 92-29 Queens Boulevard, Suite 18D, Rego Park, New York 11374:

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	Respiratory 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: October 21, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Supreme Generation, Inc  
Address: Flushing  
County: Queens  
Structure: For-Profit  
Application Number: 1727-L

Description of Project:

Supreme Generation, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Supreme Generation, Inc. has authorized 200 shares of stock which are owned as follows:

Boris P. Gulkarov – 180 Shares Lyudmila Gulkarova, RN – 20 Shares

The proposed Board Members of Supreme Generation, Inc. is comprised of the following individuals:

Boris P. Gulkarov – President/Director Lyudmila Gulkarova, RN - Director  
President/Wholesaler Jewelry, Aqua Techno, Inc. Registered Nurse – Nursing Supervisor, Hillside  
Manor Rehabilitation and Extended Care Center

The Office of the Professions of the State Education Department indicate no issues with the licensure of Lyudmila Gulkarova as a Registered Nurse.

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 147-66 77th Avenue, Flushing, New York 11367:

Bronx Kings New York Richmond  
Queens

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Housekeeper

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: October 9, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: The Heinlein Group, Inc. d/b/a Synergy HomeCare of Westchester  
Address: Hastings on Hudson  
County: Westchester  
Structure: Proprietary Corporation  
Application Number: 2183-L

Description of Project:

The Heinlein Group, Inc. d/b/a Synergy HomeCare of Westchester, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The Heinlein Group, Inc. d/b/a Synergy HomeCare of Westchester has proposed to operate as a Franchisee of SYNERGY Home Care. The proposed operator and managing member of Synergy HomeCare of Westchester will be Joseph Heinlein III.

The Heinlein Group, Inc. has authorized 200 shares of stock which are owned as follows:

Joseph Heinlein III - 180 Shares Owner/The Heinlein Group, Inc. Sales-Director of Global Foreign Exchange/Bank of America Merrill Lynch	Stacey Levine-Silverman, RN - 20 Shares RN-Director of Nursing/Synergy Home Care of Westchester RN/Synergy Home Care of Manhattan Management/Greenwich Woods Health Care Center
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The Board of Directors of The Heinlein Group, Inc. is comprised of the following individual:

Joseph Heinlein III - President  
(Previously Disclosed)

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 and the Office of Professional Medical Conduct, where appropriate, indicates no issue with the license of the medical professional associated with this application.

The applicant proposes to serve the residents in the following counties from an office located at 52 Main Street, Hastings on Hudson, NY 10706

Westchester

Bronx

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational 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: September 24, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Visiting Nurse Service Care at Home, Inc.  
 Address: Schenectady  
 County: Schenectady  
 Structure: Not-For-Profit Corporation  
 Application Number: 2197-L

Description of Project:

Visiting Nurse Service Care at Home, 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 sole corporate member of Visiting Nurse Service Care at Home, Inc. is Visiting Nurse Service Association of Schenectady County, Inc. d/b/a Visiting Nurse Service of Northeastern New York, a not-for-profit corporation that currently operates a certified home health agency and a long term home health care program.

The Board of Directors of Visiting Nurse Service Care at Home, Inc. and Visiting Nurse Service of Schenectady County, Inc. d/b/a Visiting Nurse Service of Northeastern New York comprise the following individuals:

Paul A. Milton, Chairman COO/Executive VP, Ellis Hospital	Marc D. Mesick, CPA, Treasurer VP Finance/CFO, Ellis Hospital
Stephanie L. Scuderi, RN, Secretary Grant Specialist, Schenectady County Public Health Service	Joanne R. Cocozzoli, RN Interim Director of Prevention & Pt. Services, Schenectady County Public Health Service
James R. Barnes, Esq. Attorney, Burke & Casserly, PC	Joseph Gambino CEO, Home Town Health Center
James W. Connolly President/CEO, Ellis Hospital	David S. Pratt, MD Medical Director, Visiting Nurse Service of Northeastern New York
William J. Mather, Sr. CFO, HMS Agency, Inc.	Michael F. Saccocio Executive Director/CEO, City Mission of Schenectady
Wendy Rosher VP Service Lines & Physician Relations, Ellis Hospital	Joseph D. Twardy, Ex Officio Member President/CEO, Visiting Nurse Service of Northeastern New York
Debra L. Schimpf Executive Director, Schenectady Community Action Program, Inc.	

Ellis Hospital, Inc. d/b/a Ellis Medicine is the sole corporate member of Visiting Nurse Service Association of Schenectady County, Inc. d/b/a Visiting Nurse Service of Northeastern New York. The members of the Board of Trustees of Ellis Hospital, Inc. d/b/a Ellis Medicine comprise the following individuals:

Deborah G. Mullaney, Chair Retired	Stephen Pagano, Vice Chair Retired
Laura Schweitzer, Ph.D., Secretary President, Union Graduate College	William B. Faubion, Treasurer VP, NBT Bank
Linda S. Breault Payroll & Accounts Payable, Breault & McGovern, DDS, PC	Cristine Cioffi, Esq. President, Cioffi, Slezak & Wildgrube, PC
Michael W. Cocca, CPA Assistant Treasurer, Stewart's Shops Corp.	Janet Colon Sapio-Mayta, LMSW Director of Bureau of Interagency Coordination, NYS Council on Children & Families
James W. Connolly Disclosed above	Thomas W. Donovan, CPA Director of Tax Services, Marvin & Co.
D. Joseph Gersuk Retired	Michael S. Idelchik VP Advanced Technology, GE Global Research
Carolyn M. Jones Publisher, The Business Review	Robert A. Joy, MD Physician, Cardiology Associates of Schenectady
Patrick L. Kehoe, Esq. Partner, Allen & Desnoyers, LLP	Robert J. Kennedy, MD Kennedy Ophthalmology Association, PLLC
Brian A. McDonald, MD Physician, Schenectady Pulmonary and Critical Care Associates	Judith B. McIlduff Retired
Sarah J. Schermerhorn Retired	Raymond D. Sweeney Retired
John K. Tobison COO, Chequed.com	Richard Toll, MD Partner, Capital Care Medical Group
Barbara Zittel, RN, Ph.D. Retired	

The applicant proposes to serve the residents of the following counties from an office located at 108 Erie Boulevard, Schenectady, New York 12305

Albany	Clinton	Essex	Franklin	Fulton
Montgomery	Rensselaer	Saratoga	Schenectady	Schoharie
Warren	Washington			

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	Nutrition	Medical Social Services
Homemaker	Housekeeper	Medical Supplies/Equipment & Appliances

The applicant assessed the proposed financial/referral structure in light of anti-kickback and self-referral laws and with the consultation of legal counsel concluded that proceeding with the proposal is appropriate.

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 licenses of the medical professionals associated with this application.

A Certificate of Good Standing has been received for all attorneys.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

Visiting Nurse Service of Northeastern New York (CHHA and LTHHCP)  
Ellis Hospital (Hospital)  
Ellis Residential and Rehabilitation Center (RHCF)

The Bureau of Quality Assurance for Nursing Homes has provided the following enforcement information on Ellis Residential and Rehabilitation Center:

Ellis Residential and Rehabilitation Center was fined fourteen thousand dollars (\$14,000.00) pursuant to a stipulation and order dated December 4, 2009 for surveillance findings of October 24, 2008. Deficiencies were found under 10 NYCRR 415.12 Quality of Care, 415.12(m)(2) Quality of Care: Medication Errors and 415.27 Quality Assessment and Assurance.

The Information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facility reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the home care agency 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 Hospitals and Diagnostic & Treatment Centers has indicated that the hospital has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

#### Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: October 27, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Rebekah Rehab Licensed Home Care Services Agency, Inc.  
Address: Bronx  
County: Bronx  
Structure: Not-For-Profit  
Application Number: 2316-L

Description of Project:

Rebekah Rehab Licensed Home Care Services Agency, 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.

This LHCSA will be associated with Rebekah Rehab Assisted Living Program, Inc.

The Board of Directors of Rebekah Rehab Licensed Home Care Services Agency, Inc. is comprised by the following individuals:

Martin Elson, Esq. – President  
Retired

D. Joseph Bradley, Jr., First Vice President  
Retired

Carmine Manzolillo, Second Vice President and Treasurer  
Retired

Anita Stern – Secretary  
Retired

Jeffrey Young – Director  
Retired

Reed Elson – Director  
Retired

Anne D. Fisher – Director  
Retired

Kenneth T. Gelb, NHA – Director  
CEO, Rebekah Rehab & Extended Care Center

All members of Rebekah Rehab Licensed Home Care Services Agency, Inc. sit on the Board of Directors of Rebekah Rehab Assisted Living Program, Inc.

The Bureau of Professional Credentialing has indicated that Kenneth T. Gelb NHA license # 04273 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.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of Bronx County from an office located at 1118 Havemeyer Avenue, Bronx, New York 10462.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Occupational Therapy
Respiratory Therapy	Physical Therapy	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper	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: October 1, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: The Gardens by Morningstar, LLC  
Address: Oswego  
County: Oswego  
Structure: Limited Liability Company  
Application Number: 2449-L

Description of Project:

The Gardens by Morningstar, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated the Assisted Living Program to be operated by The Gardens by Morningstar, LLC.

The membership of The Gardens by Morningstar, LLC comprises the following individuals:

Joseph Murabito, MHA, LNHA – 50%  
President/Owner/Operator/Administrator, Morningstar Residential Care Center (RHCF)  
Vice President of Operations, Wingate Healthcare

Affiliations:

Morningstar Residential Care Center (2010 – present)

Atom Avery – 50%  
Owner, Avery Rental Properties

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 132 Ellen Street, Oswego, New York 13126

Oswego	Onondaga	Cayuga
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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
Medical Supplies and Equipment		

The Bureau of Professional Credentialing has indicated that Joseph Murabito, NHA license #04708, 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.

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Morningstar Residential Care Center (2010 – present)  
The Gardens by Morningstar

The information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facility reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Adult Care Facility 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.

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: October 24, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Golden Eagle Homecare Agency, Inc.  
Address: Flushing  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2055-L

Description of Project:

Golden Eagle Homecare Agency, 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.

Advocare, Inc. was previously approved as a home care services agency by the Public Health Council at its October 22, 1999 meeting and subsequently licensed as 0769L001. At that time, Jeanne Towers was the sole stockholder of the corporation.

The applicant has authorized 200 shares of stock, which are owned as follows:

Yacun Huang – 100 Shares

Jian Yuan Yang – 100 Shares

The Board of Directors of Golden Eagle Homecare Agency, Inc. comprises the following individuals:

Yacun Huang – President  
Owner/Operator, New York Senior Care In the Valley, LLC

Jian Yuan Yang – Vice President  
Owner/Operator, New York Senior Care In the Valley, LLC

Affiliations:

- New York Seniorcare in the Valley, LLC d/b/a Valley Vista Adult Home and Assisted Living Program (2007 – Present)
- New York SeniorCare in the Valley, LLC Valley d/b/a Vista Home Care Agency (2007 – Present)

Affiliations:

- New York Seniorcare in the Valley, LLC d/b/a Valley Vista Adult Home and Assisted Living Program (2007 – Present)
- New York SeniorCare in the Valley, LLC Valley d/b/a Vista Home Care Agency (2007 – Present)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Advocare, Inc. proposed to enter into a management agreement with Golden Eagle Homecare Agency, Inc. which is currently under review by the Department of Health.

The applicant proposes to serve the residents of the following counties from an office located 37-12 Prince Street, 1<sup>st</sup> Floor, Flushing, New York 11354:

Bronx  
Queens

Kings  
Nassau

New York

Richmond

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Supplies, Equipment & Appliances
Physical Therapy	Occupational Therapy	Respiratory Therapy	Speech-Language Pathology
Nutrition	Medical Social Services		

A review of the operations of the following facilities was performed as part of this review:

- New York Senior Care in the Valley, LLC dba Valley Vista Adult Home and Assisted Living Program: 2007 – Present
- New York SeniorCare in the Valley, LLC dba Valley Vista Home Care Agency (LHCSA): 2007 – Present

**Valley Vista Adult Home & Assisted Living Program** was fined three thousand dollars (\$3,000.00) pursuant to a stipulation and order dated May 30, 2012 for surveillance findings of January 15, 2009, May 5, 2009, October 28, 2009, March 19, 2010, October 6, 2010 and March 8, 2011. Deficiencies were found under 18 NYCRR Part 487.11(k)(1-3): Environmental Standards.

The information provided by the Division of Adult Care Facility 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 applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: October 24, 2014



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: October 28, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: UCSL, LLC d/b/a Focus Home Care of Central New York  
Address: Utica  
County: Oneida  
Structure: Limited Liability Company  
Application Number: 2211-L

Description of Project:

UCSL, LLC d/b/a Focus Home Care of Central New York, 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.

This LHCSA is associated with Loretto-Utica Center Enriched Housing Program and their Assisted Living Program (ALP).

Loretto Properties Corporation d/b/a Loretto-Utica Home Care was previously approved as a home care services agency by the Public Health Council at its November 18, 1994 meeting and subsequently licensed as 9471L001.

The purpose of this proposal is to replace the current operator of the LHCSA. The LHCSA will continue to serve the patients of Loretto-Utica Center Enriched Housing Program which is currently undergoing an identical change of ownership and will be called Focus Senior Living at Utica.

Joseph Zupnik is the managing member of UCSL, LLC, which was appointed the voluntary Receiver of the Loretto Utica Center Enriched Housing Program, pursuant to a Receivership Agreement dated September 20, 2011. As set forth in the agreement, UCSL, LLC is applying to become the approved operator of Loretto-Utica Center Enriched Housing Program. The acquisition is a resultant and consistent with the Receivership Agreement and the Asset Purchase Agreement.

The members of the UCSL, LLC d/b/a Focus Senior Living of Central New York comprise the following individuals:

Joseph Zupnik -99%  
Owner/Managing Member, Sterling Management  
Group, LLC

Elisa Zupnik – 1%  
Unemployed

Affiliations:

- Managing Member, UCRN, LLC – which was appointed the receiver of Loretto Utica Residential Health Care Facility (NH)
- Owner/Managing Member, Stonehedge Nursing Homes (Rome and Chittenango) 1/2006 – 4/2011

Affiliations:

- Member, FHCS, LLC d/b/a Focus Home Care Services (PA Certified Home Health Agency) 5/2010 – Present

A search of the individual named above 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):

- Loretto Properties Corporation d/b/a Loretto-Utica Home Care
- Loretto-Utica Center Enriched Housing Program
- FHCS, LLC d/b/a Focus Home Care Services (5/2010 – Present)
- Loretto Utica Residential Health Care Facility
- Stonehedge Nursing Homes (Rome and Chittenango) 1/2006 – 4/2011

**Loretto Utica Center A/K/A Focus Senior Living Center at Utica** was fined four thousand dollars (\$4,000.00) pursuant to a stipulation and order dated March 18, 2014 for surveillance findings of October 30, 2012, November 9, 2012, and February 1, 2013. Deficiencies were found under 18 NYCRR 488.7(g)(1) – Resident Services; 488.11(d)(1) – Environmental Standards; 488(e)(13) – Environmental Standards; 488.11(g)(3) – Environmental Standards; 488.7(d)(3) – Resident Services; 488.7(d)(6) – Resident Services; 488.7(d)(3) – Resident Services; 488.7(d)(6) – Resident Services.

The information provided by the Adult Care Facility Policy and Surveillance unit 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.

**Stonehedge Health and Rehabilitation Center - Chittenango** was fined four thousand dollars (\$4,000.00) pursuant to a stipulation and order dated November 15, 2010 for surveillance findings of October 22, 2009. Deficiencies were found under for violations 10 NYCRR Section 415.12(h)(1, 2) – Quality of Care: Accidents and Supervision and 415.12(b)(3)(4) – Governing Body.

**Chittenango Center for Rehabilitation and Health Care** (fka Stonehedge Health and Rehabilitation Center - Chittenango) was fined twenty thousand dollars (\$20,000.00) pursuant to a stipulation and order dated February 17, 2012 for surveillance findings of January 20, 2011. Deficiencies were found under for violations 10 NYCRR Section 415.12(c)(1)(2) – Quality of Care: Pressure Sores and 415.12(d)(1) – Quality of Care: Catheters.

The Information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Pennsylvania Department of Health submitted compliance reports through 2013 that indicated that FHCS, LLC d/b/a Focus Home Care Services has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients.

The applicant proposes to continue to serve the residents of the following counties from an office located at 1445 Kemble Street, Utica, New York 13501.

Herkimer	Lewis	Madison	Onondaga
Oswego	Oneida		

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: October 21, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Premier Home Health Care Services, Inc.  
Address: White Plains  
County: Westchester  
Structure: For Profit Corporation  
Application Number: 2127-L

Description of Project:

Premier Home Health Care Services, Inc., a business corporation, requests approval to acquire Girling Health Care Services, Inc., a licensed home care services agency, under Article 36 of the Public Health Law.

Girling Health Care Services, Inc. was previously approved as a home care services agency by the Public Health Council at its September 18, 1987 meeting and subsequently licensed as 0134L001.

Premier Home Health Care Services, Inc. has out-of-state home health care subsidiaries in the following states: North Carolina, New Jersey, Florida, Massachusetts, Connecticut, Ohio and Illinois.

The proposed shareholders and members of the Board of Directors of Premier Home Health Care Services, Inc. are the following:

Arthur Schwabe, 100 shares President & Chief Executive Officer Premier Home Health Care Services, Inc.	Paul Schwabe, 100 shares Vice President, Secretary & Treasurer Premier Home Health Care Services, Inc.
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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.

The applicant proposes to serve the residents of the following counties from an office located at 9802 Fifth Avenue, Brooklyn, New York 11209:

Kings New York	Queens Richmond	Bronx
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	Speech Language Pathology
Physical Therapy	Occupational Therapy	

A seven (7) year review of the operations of the following agencies was performed as part of this review (unless otherwise noted):

Premier Home Health Care Services, Inc. (NY)  
Priority Home Care, Inc. (NY)  
Barele, Inc. d/b/a Omega Home Health Services (NY) (2011 – present)  
At Home, Ltd. (NY) (2011 – present)  
Premier Home Health Care Services, Inc. (CT)  
Premier Home Health Care Services, Inc. (IL) (2011 – present)  
Premier Home Care of Florida, Inc. d/b/a A Better Health Care (FL)

Premier Home Health Care Services, Inc. (MA)  
Premier Home Health Care Services, Inc. (NC) (2008 – present)  
Premier Home Health Care Services, Inc. (NJ)  
Premier Home Health Care of Ohio (OH)

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 patients and to prevent recurrent code violations.

The information provided by the States of North Carolina, Connecticut, Illinois, New Jersey, Massachusetts, and Florida indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The State of Ohio did not respond to requests for a compliance history of the homecare agency located in that state.

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: October 29, 2014

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Premier Home Health Care Services, Inc.  
Address: White Plains  
County: Westchester  
Structure: For Profit Corporation  
Application Number: 2256-L

Description of Project:

Premier Home Health Care Services, Inc., a business corporation, requests approval to acquire PHC Services, Ltd., a licensed home care services agency, under Article 36 of the Public Health Law.

PHC Services, Ltd. was previously approved as a home care services agency by the Public Health Council at its February 26, 1993 meeting and subsequently licensed as 9350L001 at the Yonkers location, 9350L003 at the Hempstead location, 9350L004 at the Bronx location and 9350L005 at the Brooklyn location. Premier Home Health Care Services, Inc. proposes to operate out of the current PHC Services, Ltd. office located in Yonkers, but will consolidate the offices in located in Hempstead, Bronx and Brooklyn into existing Premier offices in the service region.

Premier Home Health Care Services, Inc. has out-of-state home health care subsidiaries in the following states: North Carolina, New Jersey, Florida, Massachusetts, Connecticut, Ohio and Illinois.

The proposed shareholders and members of the Board of Directors of Premier Home Health Care Services, Inc. are the following:

Arthur Schwabe, 100 shares President & Chief Executive Officer Premier Home Health Care Services, Inc.	Paul Schwabe, 100 shares Vice President, Secretary & Treasurer Premier Home Health Care Services, Inc.
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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.

The applicant proposes to serve the residents of the following counties from an office located at One Executive Boulevard, Yonkers, New York 10701:

Westchester	Putnam	Rockland	Bronx
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech Language Pathology
Respiratory Therapy	Medical Social Services	Nutrition
Homemaker	Housekeeper	

A seven (7) year review of the operations of the following agencies was performed as part of this review (unless otherwise noted):

Premier Home Health Care Services, Inc. (NY)  
Priority Home Care, Inc. (NY)  
Barele, Inc. d/b/a Omega Home Health Services (NY) (2011 – present)

At Home, Ltd. (NY) (2011 – present)  
Premier Home Health Care Services, Inc. (CT)  
Premier Home Health Care Services, Inc. (IL) (2011 – present)  
Premier Home Care of Florida, Inc. d/b/a A Better Health Care (FL)  
Premier Home Health Care Services, Inc. (MA)  
Premier Home Health Care Services, Inc. (NC) (2008 – present)  
Premier Home Health Care Services, Inc. (NJ)  
Premier Home Health Care of Ohio (OH)

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 patients and to prevent recurrent code violations.

The information provided by the States of North Carolina, Connecticut, Illinois, New Jersey, Massachusetts, and Florida indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The State of Ohio did not respond to requests for a compliance history of the homecare agency located in that state.

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: October 29, 2014