

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

**COMMITTEE DAY**

**AGENDA**

*May 21, 2015*

*10:00 a.m.*

*90 Church Street 4<sup>th</sup> Floor, Room 4A & 4B, New York City*

*New York State Department of Health Offices at 584 Delaware Avenue,  
2<sup>nd</sup> Floor Training Video Conference Room, Buffalo, NY 14202*

*\*New York State Department of Health Offices, Triangle Building,  
335 East Main Street, 2<sup>nd</sup> Floor Conference Room, Rochester, NY 14604*

**I. COMMITTEE ON CODES, REGULATIONS AND LEGISLATION**

Angel Gutiérrez, M.D., Chair

**Exhibit # 1**

**For Information**

Section 16.25 and Addition of Section 16.59 of Title 10 NYCRR – Computed Tomography (CT) Quality Assurance

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

Peter Robinson, Chair

**Residential Health Care Facilities – Construction**

**Exhibit # 2**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1. 142231 C	Charles T Sitrin Health Care Center Inc (Oneida County)

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

**\*Dialysis Services- Establish/Construct**

**Exhibit # 3**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1. 151005 E	Vestal Healthcare II, LLC (Broome County)

**Ambulatory Surgery Centers - Establish/Construct**

**Exhibit # 4**

<u>Number</u>	<u>Applicant/Facility</u>
1. 151008 B	Pittsford Pain Center LLC (Monroe County)

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

**Exhibit # 5**

<u>Number</u>	<u>Applicant/Facility</u>
1. 142102 E	NHRC Acquisition, LLC d/b/a Humboldt House Rehabilitation and Nursing Center (Erie County)
2. 142221 E	Newfane Rehab & Health Care Center (Niagara County)
3. 151026 E	Kaaterskil Operating, LLC d/b/a Greene Meadows Nursing and Rehabilitation Center (Greene County)
4. 151083 E	Allure SJA, LLC d/b/a Saints Joachim & Anne Nursing (Kings County)

**B. Home Health Agency Licensures**

**Home Health Agency Licensures**

**Exhibit # 6**

<u>Number</u>	<u>Applicant/Facility</u>
2228 L	Above All Home Health Care Services, Inc. (Bronx, Kings, New York, Queens, Richmond and Westchester Counties)
2336 L	Albacare HHC, Inc. (Kings, New York, Queens, Bronx, Richmond and Nassau Counties)
2400 L	ANR Homecare Services, LLC (Queens, Kings, Richmond, New York, Bronx and Nassau Counties)
2160 L	Assisted Home Care, LLC d/b/a Prime Assisted Home Care (Kings, Queens, New York, Bronx, Richmond and Nassau Counties)

- 2302 L Bridges to Home Care, Inc.  
(Dutchess, Westchester, Rockland, Orange, Putnam,  
Sullivan and Ulster Counties)
- 2270 L Caring Hearts of Rochester, LLC  
(Monroe, Ontario and Wayne Counties)
- 1724 L CHAS Home Care, LLC  
(Kings, New York, Queens, Bronx and Richmond  
Counties)
- 2333 L Comfort Home Care Services, Inc.  
(Queens, Kings, Richmond, Bronx, New York and Nassau  
Counties)
- 2454 L Complete Companion Care, LLC  
(Oneida, Herkimer, Madison, Chenango, Lewis, Jefferson,  
Cortland and Onondaga Counties)
- 2210 L Devotion Home Care, LLC  
(New York, Kings, Queens, Bronx, Richmond and Nassau  
Counties)
- 2282 L Dominican Village, Inc.  
(Suffolk and Nassau Counties)
- 2418 L Efficient Health Careers, Inc. d/b/a Efficient Home Care  
and Consulting Agency  
(Queens, Kings, Bronx, New York, Richmond and  
Nassau Counties)
- 2344 L Elim Home Care Agency, LLC  
(Queens, Bronx, Kings and Nassau Counties)
- 2384 L Harvey & Phelps, LLC d/b/a FirstLight HomeCare  
Hudson Valley  
(Orange, Ulster, Sullivan, Rockland, Dutchess and  
Putnam Counties)
- 2454 L Complete Companion Care, LLC  
(Oneida, Herkimer, Madison, Chenango, Lewis, Jefferson,  
Cortland and Onondaga Counties)
- 2361 L Helping Hands Home Care Solutions, LLC  
(Suffolk County)
- 2305 L Hickok Center for Brain Injury, Inc.  
(Monroe County)

- 2307 L Hi-Tech Charities  
(Bronx, New York, Kings, Queens, Richmond and Nassau Counties)
- 2396 L Karing Hearts Agency Corp  
(Suffolk, Nassau and Westchester Counties)
- 2394 L Long Life Home Care, Inc.  
(Richmond, New York, Kings, Queens, Bronx and Nassau Counties)
- 2450 L Manhattan Home Care Ltd.  
(New York, Kings, Queens, Bronx and Richmond Counties)
- 2192 L Mercy's H&C Service, Inc.  
(Suffolk and Nassau Counties)
- 2177 L NYC Home Health Care, LLC  
(Kings, Queens, New York, Bronx and Richmond Counties)
- 2594 L Oswego County Department of Health  
(Oswego County)
- 2388 L Paraklete H.H.C., d/b/a A Better Care Option  
(New York, Queens, Kings, Bronx, Richmond and Westchester Counties)
- 2374 L Philippians Staffing Services, Inc. d/b/a PSS Home Care  
(Queens, Kings, New York, Bronx, Richmond and Nassau Counties)
- 2306 L Red Sun Home Care, Inc.  
(Queens, New York, Bronx, Richmond, Kings and Nassau Counties)
- 2434 L Rehoboth Care, Inc.  
(New York, Kings Queens, Bronx, Richmond and Nassau Counties )
- 2445 L Shasia LLC  
(Suffolk County)
- 2203 L Silver Lining Homecare Agency, Inc.  
(Kings, Queens, New York, Bronx and Westchester Counties)

- 2126 L SS Elder In-Home Care, Inc.  
(Queens, Kings, Bronx, New York, Richmond and Westchester Counties)
- 2329 L St. Auburn Corporation d/b/a Visiting Angels Living Assistance  
(Dutchess and Putnam Counties)
- 2399 L SSMC Services Corporation d/b/a Home Instead Senior Care  
(Kings, Queens, New York, Bronx, Richmond and Nassau Counties)
- 2430 L ICC Management & Consulting, Inc. d/b/a Cambridge Guest Home Licensed Home Care Service Agency (LHCSA)  
(Washington County)
- 2595 L Garden of Eden Home, LLC d/b/a Garden of Eden Home Care  
(Kings County)
- 2597 L Leroy Manor Home Care, LLC d/b/a Leroy Manor Home Care  
(Genesee, Allegany, Cattaraugus, Chautauqua, Erie, Niagara, Orleans and Wyoming Counties)
- 2601 L Mariners Home Care, Inc. d/b/a Mariners Home Care  
(Richmond, Bronx, Kings, Queens, New York and Westchester Counties)
- 2607 L Sullivan Manor, LLC d/b/a Sullivan Manor Home Care Agency  
(Sullivan, Orange, Ulster, Rockland and Westchester Counties)
- 2615 L Kings Adult Care Center, LLC d/b/a Kings Licensed Home Care Services Agency  
(Kings, Bronx, New York, Queens and Richmond Counties)
- 2568 L All American Homecare Agency, Inc.  
(Bronx, Kings, New York, Queens, Richmond and Westchester Counties)
- 2552 L Sterling Home Care, Inc. d/b/a Osborn Home Care  
(See exhibit for Counties served)

2190 L

Wondercare, Inc.  
(Bronx, Kings, New York, Queens, Richmond and  
Westchester Counties)

**C. Certificates**

**Exhibit # 7**

**Certificate of Incorporation**

Applicant

1. Cuba Memorial Hospital Foundation, Inc.
2. The Osborn Foundation
3. Brookdale Health System Foundation

**Restated Certificate of Incorporation**

Applicant

1. The Mount Sinai Medical Center, Inc.

**Certificate of Amendment of the Certificate of Incorporation**

Applicant

1. ECMC Lifeline Foundation, Inc.

**Certificate of Dissolution**

Applicant

1. Threshold Center for Alternative Youth Service, Inc.

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

Peter Robinson, Chair

## **Summary of Express Terms**

The regulatory proposal would revise Part 16 of 10 NYCRR as described in more detail below. Section 16.59 is added to cover radiation safety and quality assurance on Computed Tomography (CT) equipment. Section 16.59 (a) of the proposed regulation specifies a number of definitions used to describe CT systems and their operations. The next four sections, respectively, describe: physical and system requirements (16.59(b)); patient communication and viewing requirements (16.59(c)); CT system calibration requirements (16.59(d)); and quality assurance testing requirements (16.59(e)). Part 16.59(f) contains requirements for operations including a requirement for accreditation. One of the requirements is accreditation by a nationally recognized accrediting body that is acceptable to the Department. Currently the American College of Radiology (ACR), the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) or the Intersocietal Accreditation Commission (IAC) are considered acceptable to the Department. This is consistent with the accrediting bodies that CMS accepts. This accreditation requires the registered facility to have one of these three organizations perform a review that includes the physical layout of the facility, policy and procedures, quality assurance and image assessment. The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) required the Center for Medicare and Medicaid Services (CMS) to designate accrediting bodies for imaging centers that perform CT (as well as certain other imaging studies). Accreditation is now a requirement under CMS regulation for all non-hospital providers to receive the technical component payment, and these three organizations (ACR, JCAHO, and IAC) are approved by CMS.

Section 16.25 is that subsection of Part 16 that requires the recording or reporting of medical misadministrations. This part is amended to include an additional reporting requirement for CT misadministrations when the wrong patient is scanned, when the wrong part of the body is scanned or when there is damage to an organ or organ system including erythema and/or hair loss.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 225 of the Public Health Law, Section 16.25 of Part 16 is amended and Section 16.59 is added to Part 16 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 16.25(a) is amended to add the following to the existing section:

16.25 Misadministrations.

(a) A medical misadministration shall be the administration of:

\* \* \*

(9) A CT scan in which any of the following occur:

(a) A CT scan is performed on the wrong person;

(b) A CT scan is performed on the wrong body part.

(10) a CT scan that results in damage to an organ, organ system or results in hair loss or erythema as determined by a physician.

16.25 (b) Records and Reports of Misadministrations.

(3) A misadministration described in 16.25 (a) (9) or (10) shall be reported to the Department in writing within 15 days of occurrence.

A new section 16.59 is added to read as follows:

## 16. 59 USE OF COMPUTED TOMOGRAPHY EQUIPMENT

### (a) Definitions

(1) “Computed tomography (CT)” scan and “computerized axial tomography (CAT)” scan refer to an imaging procedure that uses x-rays to create cross-sectional images of the human body.

(2) “Computed tomography dose index” (CTDI) means the integral of the dose profile along a line perpendicular to the tomographic plane divided by the product of the nominal tomographic section thickness and the number of tomograms produced in a single scan where the dose profile is centered around  $z = 0$  and for a multiple tomogram system, the scan increment between adjacent scans is  $nT$ ;

$$CTDI = 1/nT \int_{-T}^{+T} D(z) dz$$

$z$  = position along a line perpendicular to the tomographic plane;

$D(z)$  = Dose at position  $z$ ;

$T$  = Nominal tomographic section thickness;

$n$  = Number of tomograms produced in a single scan

(3) “CT x-ray system” is technology that is used to perform CT scans and includes but is not limited to, a control panel, image display device, gantry, x-ray tube, collimating device with filters, high voltage transformer and a data acquisition system.

(4) “CT scanner” refers to technology used to perform and interpret CT scans and includes, but is not limited to, a control panel, gantry, high voltage generator, x-ray tube, table and display devices that are used for image interpretation.

(5) “CTDI<sub>100</sub>” is the dose measurement made with a 16cm diameter (head/pediatric body) or a 32cm diameter (body) acrylic phantom. The measurements are made utilizing a 100mm long pencil ionization chamber. Readings are made with the ion chamber in both the center (axial or central dose) position and near surface slots of the phantom (the peripheral dose).

(6) “CTDI<sub>w</sub>”, the weighted or blended dose, is calculated by adding together two-thirds of the CTDI<sub>100</sub> peripheral dose with one-third of the CTDI<sub>100</sub> axial or center dose. ( $CTDI_w = 2/3 CTDI_{100} \text{ peripheral} + 1/3 CTDI_{100} \text{ axial or center}$ ). CTDI<sub>w</sub> represents an average dose in the x and y planes.

(7) “CTDI<sub>VOL</sub>” represents the integrated dose over the total volume that is irradiated,  $CTDI_{VOL} = (1/PITCH) \times (CTDI_w)$ , where “Pitch” is defined as the table travel per rotation divided by the collimation of the x-ray beam. CTDI<sub>VOL</sub> represents the average dose in the x, y and z planes.

(8) "CT conditions of operation" means all selectable parameters governing the operation of a CT x-ray system including nominal tomographic section thickness, filtration, and the technique factors.

(9) "CT dosimetry phantom" means the phantom used for determination of the dose delivered by a CT x-ray system. The phantom shall be a right circular cylinder of polymethyl-methacrylate of density  $1.19 \pm 0.01$  grams per cubic centimeter. The phantom shall be at least 14 centimeters in length and shall have diameters of 32.0 centimeters for testing any CT system designed to image any section of the body (whole body scanners) and 16.0 centimeters for any system designed to image the head (head scanners) or for any whole body scanner operated in the head scanning mode. The phantom shall provide means for the placement of a dosimeter(s) along its axis of rotation and along a line parallel to the axis of rotation 1.0 centimeter from the outer surface and within the phantom.

(10) "Dose length product" (DLP) is defined as the  $CTDI_{vol}$  times the irradiated length of the body for the whole series of images that are taken during a CT scan.

(11) "Picture Archiving and Communication System (PACS)" is a medical imaging technology that provides access to and storage for medical images from multiple modalities. It is comprised of an image acquisition system, display, network and data storage or archiving system.

(12) "Reference plane" means a plane which is displaced from and parallel to the tomographic plane.

(13) "Scan" means the complete process of collecting x-ray transmission data for the production of a tomogram or a series of tomograms.

(14) "Scan increment" means the amount of relative displacement of the patient with respect to the CT x-ray system between successive scans measured along the direction of such displacement.

(15) "Technique" means the settings selected on the control panel of the equipment and may include the position of the x-ray tube, image intensifier and patient.

(16) "Technique chart" means a chart that lists the standard settings and positions for a given technique.

(17) "Tomogram" is an image of a tissue plane or section of tissue.

(18) "Tomographic plane" means that geometric plane which the manufacturer identified as corresponding to the output tomogram.

(19) "Tomographic section" means the volume of an object whose x-ray attenuation properties are imaged in a tomogram.

(b) CT X-Ray System Equipment Requirements.

- (1) Each control panel and gantry of a CT x-ray system shall include visual signals that indicate to the operator of the CT x-ray system whenever x-rays are being produced and when x-ray production is terminated, and, if applicable, whether the shutter is open or closed.
- (2) Each CT x-ray system shall be equipped with a control that allows the operator of the CT x-ray system to terminate the x-ray exposure at any time during a scan, or series of scans, when the exposure time is greater than one-half second duration.
- (3) Each CT x-ray system shall be designed such that the CT conditions of operation to be used during a scan or a scan sequence are indicated prior to the initiation of a scan or a scan sequence.
- (4) Each CT x-ray system shall include a clearly and conspicuously labeled emergency shutoff button or switch.
- (5) Premature termination of the x-ray exposure by the operator shall necessitate resetting of the CT conditions of operation by the operator prior to the initiation of another scan.

(c) Patient communication and viewing requirements.

- (1) Each CT x-ray system shall be equipped to allow two-way aural communication between the patient and the operator at the control panel.
- (2) Each CT x-ray system shall be equipped with windows, mirrors, closed-circuit television, or an equivalent to permit continuous visual observation of the patient during CT scanning by the CT operator from the control panel.
- (3) When the primary viewing system is by electronic means, an alternate viewing system (which may be electronic) shall be available for use in the event of failure of the primary viewing system.

(d) Calibration.

- (1) Each registrant shall ensure that the calibration of the radiation output of each CT x-ray system that it operates is performed by, or under the direction of, a licensed medical physicist.
- (2) Each registrant shall maintain and make available for review by the Department, on the premises of its radiation installation where a CT x-ray system is located written procedures for the appropriate calibration of the CT x-ray system.

(3) After initial installation, the CT x-ray system shall be calibrated prior to its use on human beings and recalibrated at least within every 14 months thereafter. Any change or replacement of components of a CT x-ray system which could cause a change in the radiation output will require a recalibration within 30 days of component installation by a licensed medical physicist operating within their scope of practice.

(4) The calibration of the radiation output of a CT x-ray system shall be performed with a calibrated dosimetry system. This system shall have been calibrated either by the National Institute of Standards and Technology (NIST) or by an American Association of Physicists in Medicine (AAPM) Accredited Dosimetry Calibration Laboratory (ADCL) and traceable to NIST. The calibration shall have been performed within the previous 24 months and after any servicing that might have affected system calibration.

(5) CT dosimetry phantom(s) shall be used in determining the radiation output of each CT x-ray system. Such phantom(s) shall meet the following specifications and conditions of use:

(i) Any effects on the doses measured because of the removal of phantom material to accommodate dosimeters shall be accounted for through appropriate corrections to the reported data or included in the statement of maximum deviation for the values obtained using the phantom; and

(ii) All dose measurements shall be performed with the CT dosimetry phantom placed on the patient couch or support device without additional attenuation materials present.

(iii) The requirements of subparagraphs (i) and (ii) of this paragraph can also be met by using an alternative method of radiation measurement and calculation published in the peer-reviewed scientific literature and acceptable to the Department.

(6) Records of calibrations performed shall be maintained for a period of three (3) years at the radiation installation where the CT is located.

(e) Quality Assurance Testing

(1) Each registrant shall maintain a Quality Assurance (QA) manual that shall contain written procedures for all testing and shall meet the requirements specified in this section and section 16.23(a)(1). The CT Quality Assurance procedures shall have been developed under the direction of a licensed medical physicist or radiologist.

(2) The QA procedures shall incorporate the use of one or more image quality dosimetry phantoms or the phantom supplied by the original equipment manufacturer which have the capability of providing an indication of contrast scale, noise, nominal tomographic section thickness, the resolution capability of the system for low and

high contrast objects, and measuring the mean CT Number for water or other reference material. All of these image quality parameters shall be evaluated at least annually by a licensed medical physicist.

(3) Written records of the QA checks performed by the registrant shall be maintained for review by the Department for a period of at least three (3) years.

(4) QA checks shall include the following:

(a) Images obtained with the CT dosimetry phantom(s) using the same processing mode and CT conditions of operation as are used to perform calibrations. The images shall be retained as photographic copies or as electronic copies stored within the CT x-ray system or stored on the PACS.

(b) Dose assessment for the most common CT examinations that are performed on the system for which reference levels have been published by the American College of Radiology (ACR), the American Association of Physicists in Medicine (AAPM) or the National Council on Radiation Protection and Measurements (NCRP) for pediatric heads, pediatric abdomens, adult heads and adult abdomens.

(c) An evaluation of image quality.

(f) Operating Procedures and Policies

- (1) The CT x-ray system shall not be operated on a human being except by a physician or by a radiologic technologist licensed pursuant to Article 35 of the Public Health Law who has been specifically trained in its operation.
  
- (2) The registrant shall ensure that each CT x-ray system has a radiation protection survey or other measurement and assessment of exposure to persons in controlled and non-controlled areas made at the time of installation. Additional radiation protection surveys shall be done after any change in the radiation installation or equipment which might cause a significant increase in radiation hazard.
  
- (3) Each CT x-ray system shall have available at the control panel written information regarding the operation and calibration of the CT x-ray system. Such information shall include:
  - (i) Dates of the latest calibration and QC checks and the location within the facility where the results of those tests may be obtained;
  
  - (ii) Instructions on the use of the CT dosimetry phantom(s) including a schedule of QC tests that are appropriate for the system as determined by the manufacturer, allowable variations for the indicated parameters, and the results of at least the most recent spot checks conducted on the system;

- (iii) A current set of default protocols are available at the control panel (either electronically or as a document) which specifies for each routine examination the CT conditions of operation and the slice thickness, spacing between slices and/or pitch;
- (iv) A list of techniques optimized for the body part being imaged to obtain a quality image and to ensure that the lowest amount of radiation is used as consistent with good medical practice.

(4) If the QC testing on the CT x-ray system identifies that a system operating parameter has exceeded a tolerance as specified in the Quality Assurance manual, use of the CT x-ray system on patients shall be limited to those exceptions permitted by established written instructions of the licensed medical physicist or radiologist. Upon completion of corrective action, the QC testing shall be repeated to verify that the system is back within tolerance.

(5) Commencing one (1) year after the effective date of these regulations, each registrant performing CT scans on human beings shall ensure that for each scan, the radiation dose delivered by the scanner to a reference phantom or the dose received by the patient is saved and recorded. The dose delivered shall be recorded as Computed Tomography Dose Index volume (CTDI<sub>vol</sub>), dose length product (DLP) or other dosimetry metric published in the peer reviewed scientific literature and acceptable to the Department. The dose received by a patient shall be

recorded as organ dose or other dosimetry metric published in the peer reviewed scientific literature and acceptable to the Department.

(6) The displayed dose shall be verified on an annual basis by or under the supervision of a licensed medical physicist to ensure that the equipment manufacturer's displayed dose is within 20% of the measured dose.

(7) Eighteen months after the effective date of these regulations, each current registrant that performs diagnostic CT scans on human beings shall be accredited by a nationally recognized accreditation program that is acceptable to the Department. A facility performing CT that loses their existing accreditation or a registrant or licensee that fails to obtain accreditation must report this fact within 30 days to the Department. After the effective date of these regulations new licensees or registrants will have 18 months to become accredited, but must demonstrate that they have initiated the accreditation process within 90 days of the start of operations.

(8) Each registrant that performs CT scans on human beings shall establish and implement a policy and a procedure to ensure that:

(i) a request for a CT scan originates from a physician or other authorized health care practitioner familiar with the patient's clinical condition; and

(ii) the request includes sufficient information to demonstrate the medical indication for the CT examination and allow for the proper performance and interpretation of the CT scan.

## **Regulatory Impact Statement**

### **Statutory Authority:**

The Public Health and Health Planning Council is authorized by § 225(4) of the Public Health Law (PHL) to establish, amend and repeal provisions of the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. PHL §§ 225(5)(p) & (q) and 201(1)(r) authorize SSC regulations to protect the public from the adverse effects of ionizing radiation. These statutory provisions authorize the Department, pursuant to 10 NYCRR Part 16, to license or register health care providers to use radioactive materials or ionizing radiation emitting equipment on patients.

The federal Atomic Energy Act of 1954, (the Act), (codified at 42 USC §§ 2021 et. seq.) authorizes the U.S. Nuclear Regulatory Commission (NRC) to regulate the use of radioactive materials. The Act also authorizes "Agreement States" to regulate the use of radioactive materials in lieu of the NRC, provided that the "Agreement State" promulgates regulations that are comparable to or exceed NRC's regulatory standards. New York State is an "Agreement State" within the meaning of the Act. New York's regulatory standards for the use of radioactive materials in 10 NYCRR Part 16 must therefore meet or exceed comparable NRC regulatory standards. The Act governs only the use of radioactive materials: it does not apply to x-rays or radiation therapy equipment that emit only x-rays.

### **Legislative Objectives:**

The legislative intent of PHL Sections 225(5)(p) & (q) and 201(1)(r) is to protect the public from the adverse effects of ionizing radiation. Establishing regulations to ensure safe and effective clinical uses of radiation producing equipment is consistent with this legislative objective.

**Needs and Benefits:**

DOH's regulations are designed to require the delivery of quality care while protecting people and the environment from the harmful effects of radiation. In recent years, technology and equipment used for diagnostic medical imaging has become significantly more complex. Computed Tomography delivers high quality imaging that is of significant benefit to patients and for this reason it represents the dominant imaging modality. However, it also represents the largest contributor to an increase in population radiation exposure based on reports from the National Council on Radiation Protection and Measurements. The usage of CT scans has more than tripled in the past decade and currently there are about 80 million CT scans in the US each year.

The problems that have been documented with CT scans in the past several years reflect a lack of quality assurance and/or a lack of administrative controls which these regulations seek to implement. These regulations seek to ensure high quality CT imaging that is appropriate with respect to professional bodies such as the American College of Radiology's (ACR) recommendations on appropriateness criteria. These regulations will implement Quality Assurance (QA) requirements that are already being voluntarily implemented by a majority of facilities in New York State.

Currently the only provisions in the State Sanitary Code that apply are general quality assurance regulations that do not adequately describe the operations or quality assurance requirements for the use of CT equipment.

**Costs:**

The Department estimates that many regulated parties that use Computed Tomography will not incur any additional costs to comply with the proposed addition of 10 NYCRR § 16.59. There are approximately 440 facilities that are registered with the DOH that operate one or more CT scanners for diagnostic purposes on human beings. Approximately 75% of these sites already have been accredited by bodies currently accepted by Centers for Medicare and Medicaid Services (CMS), (American College of Radiology, Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and IAC). The initial costs of this accreditation vary based on which of the three organizations are used, however the ACR is the most popular and in general the least expensive for a facility that only has a single CT scanner. The costs of a three year accreditation from the ACR will average \$7550, which includes: (i) the typical fees for a consulting physicist (average of \$1750); (ii) a \$2500 accreditation fee from the ACR; and (iii) \$3300 for the purchase of an ACR phantom if the facility does not already have one. Facilities that already have the ACR phantom (or for reaccreditation) will not need to purchase another phantom.

The other proposed additions in 10 NYCRR §16.59 will impose little or no cost to regulated parties because existing facility staff can comply with the new quality assurance requirements.

**Local Government Mandates:**

There are fourteen hospitals that fall under this category, including three State University hospitals, a Department operated hospital and ten hospitals operated by public benefit corporations. Of these fourteen hospitals, ten are already accredited in CT scanning. The remaining four hospitals would incur additional costs to comply with the new regulatory

requirement to be certified in CT (approximately \$9,500 for each three year period). No other additional costs are associated with implementation of these requirements. Registrants and licensees, including the hospitals operated by state and local governments, are currently required to retain all quality assurance documents for review by the Department. The additional records and filing is estimated to be a small incremental amount. Affected parties will need to complete an application for accreditation initially and every three years thereafter.

**Paperwork:**

DOH regulations (10 NYCRR Part 16) require registrants and licensees to maintain a variety of records relating to the use of ionizing radiation for review by the Department. The Department estimates that licensees and registrants may have a small amount of additional documentation to create, maintain or file. Affected parties will have to complete an application for CT accreditation. The accrediting bodies are transitioning to an online application process to minimize time and effort for regulated parties seeking accreditation.

The proposed regulations will not affect registration documents issued by the Department to current registrants. The Department plans to provide updated QA guidance when these regulations are adopted.

**Duplication:**

There is no duplication of the proposed regulatory requirements by any federal, state or local agency for licensees, registrants or authorized users subject to 10 NYCRR Part 16. New York State entered into an agreement with the federal government on October 15, 1962 by which the federal government discontinued its regulatory authority over the use of radioactive materials and New York assumed such authority. The Atomic Energy Act does not govern use of x-ray emitting equipment.

**Alternatives:**

One alternative to adopting these regulations is to take no action and maintain the existing structure that relies on DOH guidance and voluntary compliance. However, while rapid advances in CT technology have produced better healthcare outcomes in many cases, there has been a downside to this increased use – particularly, patients experiencing radiation burns as a result of the improper use of CT scans. The New York Times and the Los Angeles Times have both reported on CT-related medical problems that were caused by the failures of both regulators and medical personnel. The scientific press also has numerous articles documenting overutilization of CT and quality assurance failures. The general population and the scientific community are aware that New York State currently lacks adequate quality assurance regulations and monitoring. The development of these proposed regulations, after consultation with radiologists, physicists and several professional organizations including the Hospital Association of New York State and the New York State Radiological Society, is intended to minimize future CT-related medical events in New York State. New York is not the only state to strengthen its regulation of this area: Texas and California have adopted regulations governing CT quality assurance (California) and reporting of events and monitoring of patient dose (Texas).

As a result, there are no suitable alternatives to the proposed addition of 10 NYCRR §16.59. There are no alternative requirements that would meet the objectives of implementing appropriate Quality Assurance on CT scanners.

**Federal Standards:**

These proposed revisions to 10 NYCRR §16.59 do not conflict with any federal regulations. Existing federal regulations relate only to the manufacture and distribution of radiation producing equipment and not to its operations.

**Compliance Schedule:**

The proposed regulatory amendments will be effective upon publication of the Notice of Adoption in the State Register, except for the requirements in proposed 10 NYCRR §16.59(f)(5) relating to accreditation in computed tomography. Proposed 10 NYCRR §16.59(f)(5) requires that registrants apply for accreditation by one of the previously mentioned organizations and that such accreditation becomes effective within one year of the effective date of the proposed regulation.

**Contact Person:**

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

## **Regulatory Flexibility Analysis for Small Businesses and Local Governments**

### **Effect on Small Business:**

The Department has issued registrations to approximately 440 facilities for the use of Computed Tomography equipment of which an estimated 230 are small business. Specifically these are private practice or group practice physicians who own and operate their own CT scanner. Some of these registrants would be affected by the proposed revisions to 10 NYCRR §16.59, in particular the requirement for accreditation may affect some businesses. However, as of January 1, 2012, the Centers for Medicare and Medicaid Services (CMS) required that all non-hospital providers of the technical component of CT imaging must meet the accreditation requirements in Section 135 (a) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). Therefore the majority of small business, private practice physicians have or are in the process of obtaining accreditation for CT.

### **Compliance Requirements:**

Licenses and applicants will need to become familiar with the new requirements and modify their quality assurance policies and procedures accordingly. Those who are not currently accredited will need to do so within 12 months of the effective date of the rule.

### **Professional Services:**

The majority of large facilities have in-house staff who will conduct the required QA and small facilities either contract with the manufacturer of the equipment or professional medical physicists that perform quality assurance testing for CT. The average cost for professional service for the accreditation component of these regulations ranges from \$1550 to \$1950 per CT, depending on location. This service would be required every three years.

**Capital Costs and Annual Costs of Compliance:**

The amortized annual cost is estimated to be approximately \$2500 per year for accreditation (based on a three-year accreditation cost of \$7550). However, approximately 75% of the facilities are currently accredited; therefore this regulation will not impose an additional cost. There are no capital costs mandated by this regulation directly, however, one of the three accrediting bodies requires the use of their own phantom at a cost of \$3300.

**Economic and Technology Feasibility:**

There are no capital costs or new technology required to comply with the proposed rule. Facilities that use the ACR as the accrediting body must have or purchase an ACR CT phantom. The use of some type of phantom is the industry standard for CT testing and evaluation.

**Minimizing Adverse Impact:**

Facilities will have 12 months to become accredited. This will allow a facility adequate time to select the accreditation body of their choice, complete an application and budget funds for the accreditation fee.

**Small Business Input:**

A copy of the draft proposed rule was sent via email to individuals representing the Healthcare Association of New York State (HANYYS), the New York state chapter of the ACR, physicists throughout the state, the NYS Society of Radiological Sciences and other interested parties including private practice physicians. The majority of the comments were technical clarifications that have been incorporated in the currently proposed regulations. The Department is developing guidance to assist the affected facilities in implementing and complying with the new requirements.

## **Rural Area Flexibility Analysis**

### **Types and Estimated Numbers of Rural Areas:**

There are 106 affected facilities with approximately 120 CT units located in 40 of the 43 rural counties in New York State. Including the total from 11 other counties that have a population of 200,000 or greater, and towns with population densities of 150 persons or fewer per square mile, brings the total to 309 registrants and 426 CT scanners. The statewide totals were 436 registrants and 596 CT scanners for facilities outside of New York City.

### **Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:**

A misadministration involving a CT-scan must be reported to the Department in writing within 15 days of occurrence. CT misadministrations are distinguished from events involving other diagnostic imaging modalities because of the greater risk associated with the radiation dose and contrast agents used in CTs. No additional professional service costs are anticipated for already accredited facilities. Facilities will be required to maintain records of quality assurance test results and accreditation documents for review by the Department's inspectors. Compliance with the recordkeeping requirements will require only a minor incremental amount of time and effort for affected facilities.

### **Cost:**

The cost to comply with the accreditation requirement will be an initial \$7550 every three years. This will be a new cost to approximately 25% of the facilities that will be subject to the proposed 10 NYCRR §16.59, because 75% of the facilities are either currently accredited or have an application for accreditation pending. Facilities that are currently accredited or have an application pending have done so for a number of reasons. However the main reason facilities have pursued accreditation is to meet the 2012 CMS requirements for Medicare Part B payments.

**Minimizing Adverse Impact:**

Facilities will have 12 months to become accredited. This will allow a facility adequate time to select the accreditation body of their choice, complete an application and budget funds for the accreditation fee.

**Rural Area Participation:**

A copy of the proposed regulations was sent via e-mail to members of the New York State chapter of the American College of Radiology and to members of the American Association of Physicists in Medicine for review. The only comments received back were of a technical nature requiring clarification of the proposal. No comments were received objecting to the cost of accreditation.

## **Job Impact Statement**

### **Nature of Impact:**

It is anticipated that no jobs will be adversely affected by this rule. Diagnostic imaging providers in New York will need to become familiar with, and implement the new regulatory requirements set forth in the proposed 10 NYCRR §16.59. The Department does not expect that the new regulatory requirements would significantly change the training or experience requirements of radiological technologists or physicians. The Department anticipates that few if any persons will be adversely affected. Facility staff, specifically those designated as the radiation safety officer, medical physicist, radiological technologist especially CT technologists will need to become familiar with the new requirements.

### **Categories and Numbers Affected:**

There are approximately 440 facilities with a total of about 600 CT units that would be subject to the rule. The registered facilities include 150 hospitals or their satellite facilities with approximately 300 of the CT units. The other 300 registrants (typically with only 1 CT at each site) represent individual or group practice physicians.

### **Regions of Adverse Impact:**

No areas will be adversely affected.

### **Minimizing Adverse Impact:**

There are no alternatives to the proposed regulations. The Department will revise guidance to assist all licensees, including those in rural areas, with implementation of the proposed regulations.

**Self-Employment Opportunities:**

The rule is expected to have minimal impact on self-employment opportunities since the majority of providers that will be affected by the rule are not sole proprietorships.

142231 C  
Charles T. Sitrin Health Care Center, Inc.  
(Oneida County)

To be distributed under separate cover



**Project # 151005-E  
Vestal Healthcare II, LLC**

**Program:** Diagnostic and Treatment Center    **County:** Broome  
**Purpose:** Establishment    **Acknowledged:** February 5, 2015

**Executive Summary**

**Description**

Vestal Healthcare II, LLC (Vestal II), a New York limited liability company, requests approval to become the new operator of an Article 28 chronic renal dialysis diagnostic and treatment center and two dialysis extension clinics currently operated by Vestal Healthcare, LLC (Vestal I). The dialysis clinics are located in Broome County at the following locations: Vestal Healthcare, LLC (24 stations) at 116 North Jensen Road, Vestal, NY; Vestal Healthcare-UHS Dialysis-Park Avenue (24 stations) at 27 Park Avenue, Binghamton, NY; and Vestal Healthcare-UHS Dialysis-Pennsylvania (15 stations) at 64 Pennsylvania Avenue, Binghamton, NY.

Vestal I will transfer all of the assets, liabilities and leases associated with the clinics to Vestal II for a 75% ownership interest in Vestal II. The operations will be transferred through an Asset Transfer Agreement, and the leases will be transferred through site specific Assignment and Assumption of Lease Agreements. There will be no disruption in services. Vestal II's remaining 25% ownership interest will be purchased by four minority members whereby each will receive 6.25% ownership interest in the facility.

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

Current Operator	
Vestal Healthcare, LLC	
Member:	%
Mark Caputo	100%
Proposed Operator	
Vestal Healthcare II, LLC	
Members:	%
Vestal Healthcare, LLC	75.00%
Dr. Venkatesh P. Jayaraman	6.25%
Debra L. Martinez	6.25%
Dr. Mohammad A. Quasem	6.25%
Robert Santelli	6.25%

OPCHSM Recommendation  
Contingent Approval

Need Summary  
The retention of these facilities will help maintain access to dialysis services in the area.

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 project.

Per the draft Asset Transfer Agreement, Vestal I will contribute all assets and liabilities associated with the three clinics to Vestal II for a 75% ownership interest in Vestal II. The remaining 25% ownership interest will be effectuated by a capital contribution of \$258,000 from each of the four minority members (for a total cash equity of \$1,032,000) for a 6.25% ownership interest per minority member in Vestal II.

## Budget:

Revenues	\$20,660,050
Expenses	<u>\$18,929,186</u>
Net Income/(Loss)	\$1,730,864

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 an executed Assignment and Assumption Agreement associated with the lease rental agreement for 116 North Jensen Road, Vestal, NY, acceptable to the Department of Health. [BFA]
2. Submission of an executed Assignment and Assumption Agreement associated with the lease rental agreement for 27 Park Avenue, Binghamton, NY, acceptable to the Department of Health. [BFA]
3. Submission of an executed Assignment and Assumption Agreement associated with the lease rental agreement for 64 Pennsylvania Avenue, Binghamton, NY, acceptable to the Department of Health. [BFA]
4. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed Asset Transfer Agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed Operating Agreement, acceptable to the Department. [HSP]
8. Submission of a photocopy of the resolution authorizing the project. [CSL]
9. Submission of site control that is acceptable to the Department. [CSL]
10. Submission of a fully executed Certificate of Amendment Articles of Organization for the applicant that is acceptable to the Department. [CSL]
11. Submission of a fully executed Amended and Restated Operating Agreement for the applicant that is acceptable to the Department. [CSL]
12. Submission of a fully executed Administrative Services Agreement that is 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

**June 11, 2015**

# Need Analysis

## Analysis

The primary service area for the three facilities is Broome County, which had a population estimate of 197,534 in 2013. The percentage of the population aged 65 and over was 17.3%, which was above the state average of 14.4%. The nonwhite population percentage was 12.1%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Broome County and New York State are listed below.

	<u>Broome County</u>	<u>State Average</u>
Ages 65 and Over:	17.3%	14.4%
Nonwhite:	12.1%	29.1%

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 projected 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 is 15 patients per week, per station  $[(2.5 \times 6) \times 52 \text{ weeks}] = 780$  treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the projected number of annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free standing station per year is 156.
- One hospital based station represents 499 projected treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station  $[(2 \times 6) \times 52 \text{ weeks}] = 624$  treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the projected number of annual treatments per hospital station is 499. 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 71 free standing chronic dialysis stations operating in Broome County and zero in pipeline.
- Based upon DOH methodology, the 71 existing free standing stations in Broome County could treat a total of 320 patients annually.

## Projected Need

	2013		2017	
	Total Patients Treated	Total Residents Treated	*Projected Total Patients Treated	*Projected Residents Treated
	266	211	300	238
Free Standing Stations Needed	60	47	67	53
Existing Stations	71	71	71	71
Total Stations (Including Pipeline)	71	71	71	71
Total stations w/Approval of this CON	71	71	71	71
Unmet Need With Approval	-11	-24	-4	-18

\*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 total stations w/approval of this CON & pipeline from free standing stations needed. "Total Patients Treated" is from IPRO data for 2013.

**Conclusion**

The 71 stations in Broome County serve a population of 197,534 residents. These facilities help provide dialysis resources for the community. Approval of this transaction will help preserve these resources and maintain access to dialysis services for the area's population.

**Recommendation**

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

<h2>Program Analysis</h2>
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**Project Proposal**

Establish Vestal Healthcare II, LLC (Vestal II) as the new operator of three dialysis clinics located in Broome County which are currently operated by Vestal Healthcare, LLC (Vestal I).

<p><b>Vestal Healthcare LLC</b> 116 North Jensen Rd. Vestal, NY 13850 24 Stations</p>	<p><b>Vestal Healthcare UHS Dialysis – Park Ave.</b> 27 Park Ave. Binghamton, NY 13903 24 Stations</p>	<p><b>Vestal Healthcare UHS Dialysis – Pennsylvania</b> 65 Pennsylvania Ave. Binghamton, NY 13903 15 Stations</p>
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Upon approval, the facilities will be renamed to FMS – Vestal Dialysis Center, FMS – Park Avenue Dialysis Center and FMS – Pennsylvania Avenue Dialysis Center, respectively.

Vestal Healthcare, LLC (Vestal I) has requested that the Freedom Center of Buffalo extension clinic site located at 52 South Union Road, Williamsville, be redesignated as its main site.

**Character and Competence**

The proposed members of Vestal II are:

<u>Name</u>	<u>Percentage</u>
Vestal Healthcare, LLC Mark Caputo (100%)	75.00%
Venkatesh P. Jayaraman, MD	6.25%
Debra L. Martinez	6.25%
Mohammad A. Quasem, MD	6.25%
Robert Santelli	6.25%

Mr. Caputo holds an MBA from Harvard and is co-founder and CEO/Managing Partner of Liberty Dialysis. He is also the sole member and manager of Vestal Healthcare. Dr. Jayaraman is board-certified in internal medicine and nephrology and is an attending Nephrologist employed by United Health Services Hospitals for nearly ten years. Ms. Martinez has dual master's degrees (in Social Administration and Reading Education) and is employed as an Academic Intervention Teacher by the Union-Endicott School District. Dr. Quasem is board-certified in internal medicine and nephrology and has over 15 years of experience in the field. He is an attending nephrologist in a four physician nephrology practice and will serve as the Medical Director for all three sites. Mr. Santelli also holds an MBA from Harvard and is a co-founder of Liberty Dialysis.

Disclosure information was similarly submitted and reviewed for Mr. Michael S. Weiner, who will also serve as a manager of Vestal II. Mr. Weiner has been employed as a Senior Director of Business Development for Fresenius Medical Care since March of 2012. Prior to that, he was a Senior Regional Sales Manager for Stiefel Laboratories (a GlaxoSmithKline company).

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

*Mr. Weiner disclosed an affiliation with Fresenius Medical Care. Fresenius is currently involved in three active lawsuits and investigations. One relates to possible improper laboratory tests. A second involves an investigation into the relationship between retail pharmacies and outpatient dialysis facilities and the reimbursement of medications provided to ESRD patients. The third involves labeling and warnings for dialysate concentrate products. Each disclosure involves multiple parties with overlapping authority. There are no findings at this time.*

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.

#### Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare (DFC) website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It only indicates that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on 9 measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

To calculate the star rating for a facility, each domain score between 0 and 100 by averaging the normalized scores for measures within that domain. A final score between 0 and 100 is obtained by averaging the three domain scores (or two domain scores for peritoneal dialysis-only facilities). Finally, to recognize high and low performances, facilities receive stars in the following way:

- Facilities with the top 10% final scores were given a star rating of 5.
- Facilities with the next 20% highest final scores were given 4 stars.
- Facilities within the middle 40% of final scores were given 3 stars.
- Facilities with the next 20% lowest final scores were given 2 stars.
- Facilities with the bottom 10% final scores were given 1 star.

Vestal I operates eight dialysis centers (three of which are subject of this application and are to be transferred to Vestal Healthcare II). As Mr. Caputo, the sole member and manager of Vestal Healthcare (Vestal I) will have a 75% membership interest in Vestal Healthcare II, Star Ratings are being provided for the dialysis centers currently operated by Vestal Healthcare. **(Please refer to HSP Attachment A.)**

Recommendation

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

**Financial Analysis**

Asset Transfer Agreement

The applicant has submitted a draft Asset Transfer Agreement, which is summarized as follows:

- Transferor: Vestal Healthcare, LLC (Vestal I)
- Transferee: Vestal Healthcare II, LLC (Vestal II)
- Acquired Assets: Seller's right, title and interest in all of the following assets owned and used by the seller in the business: All inventories and other materials, supplies, equipment, vehicles, machinery, furniture, fixtures, leasehold improvements and other tangible personal property, proprietary knowledge, trade secrets, patient, physician, customer, vendor and referral lists, technical information, quality control data, processes, methods or rights. The business as a going concern, insurance policies, telephone numbers, assigned contracts, personal property leases, advertising material and data, obligations owing to CDC, all physical and electronic data relating to the business; All other tangible and intangible property, other than the excluded assets.
- Excluded Assets: N/A
- Assumed Liabilities: All liabilities associated with Vestal I except for the excluded liabilities
- Excluded Liabilities: \$16,000,000 in liabilities associated with the acquisition of 2 clinics operated by Good Samaritan Hospital Medical Center
- Terms of Purchase: Vestal I will contribute all assets and liabilities associated with the 3 Article 28 dialysis clinics for 75% ownership interest in Vestal II; Each minority members will contribute \$258,000 for 6.25% ownership interest in Vestal II for a total capital contribution of \$1,032,000.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding, any agreement, arrangement or understanding between the applicant and transferor to the contrary, to be liable and 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 Seller of its liability and responsibility. Vestal Healthcare, LLC has no significant outstanding Medicaid liabilities.

Administrative Services Agreement

The applicant has submitted a draft Administrative Services Agreement, which is summarized as follows:

- Provider: New York Dialysis Services, Inc.
- Facility: Vestal Healthcare II, LLC
- Services Provided: Billing and collection services; selection, purchase and maintenance of equipment; all full and part-time staff necessary to manage and operate the non-physician aspects of the business (these employees will be employed by the provider); all financial statement and budget creation services; coordination of credentialing services for all physicians and other licensed personnel; negotiation, execution and maintenance of service contracts; maintaining all insurance coverages for the business; and providing quality and utilization control services.
- Term: 20 years
- Compensation: \$823,512 (\$68,626 per month)

While New York Dialysis Services, Inc. will be providing all of the above services, the Facility retains ultimate authority, responsibility, and control in all of the final decisions associated with the services.

#### Assignment and Assumption of Lease Agreements

The applicant has submitted draft Assignment and Assumption of Lease Agreements for the assignment of the leases associated with this project, as shown below:

Assignor:	Vestal Healthcare, LLC
Assignee:	Vestal Healthcare II, LLC
Lease Assigned:	Leases associated with premises located at: 116 North Jensen Road, Vestal, NY; 27 Park Avenue, Binghamton, NY; and 64 Pennsylvania Avenue, Binghamton, NY.
Lease Terms/Payments and Provisions:	No change

#### Lease/Sublease Rental Agreements

The applicant has submitted an executed lease for the facility located at 116 North Jensen Road, Vestal, NY. The terms of the lease are summarized below:

Date:	August 2, 2005
Premise:	116 North Jensen Road, Vestal, NY
Lessor:	DiFrancesco Development Group-Jensen Road, LLC
Lessee:	Vestal Healthcare, LLC (Vestal I)
Rental (2015 & forward periods):	\$184,275 per yr. for yrs. 6-10; \$193,488 per yr. for yrs. 11-15; \$203,163 per yr. for option period 1 for yrs. 16-20; and \$213,321 per yr. for option period 2 yrs. 21-25.
Term:	15 yrs. with 2 (5) year renewal options
Provision:	Tenant pays for all utilities and maintenance
Type:	Arms-Length

The applicant has submitted an executed lease for the extension clinic site located at 27 Park Avenue, Binghamton, NY. The terms of the lease are summarized below:

Date:	May 18, 2010
Premise:	27 Park Avenue, Binghamton, NY
Lessor:	United Health Services Hospitals, Inc.
Lessee:	Vestal Healthcare, LLC (Vestal I)
Rental:	\$170,788.75 per yr. for yrs. 1-5; \$196,407.06 per yr. for yrs. 6-10, \$225,868.12 per yr. for option period 1 for yrs. 11-15; and \$259,748.34 per yr. for option period 2 for yrs. 16-20.
Term:	10 yrs. with 2 (5) yr. renewal options
Provision:	Tenant pays for all utilities and maintenance
Type:	Arms-Length

The applicant has submitted an executed lease and sublease for the extension clinic site located at 64 Pennsylvania Avenue, Binghamton, NY. The terms of the lease and sublease are summarized below:

Date:	March 22, 2010
Premise:	64 Pennsylvania Avenue, Binghamton, NY
Lessor:	Park Creek
Lessee/Sublessor:	United Health Services Hospitals, Inc.
Subleasee:	Vestal Healthcare, LLC (Vestal I)
Rental:	\$216,650 per yr. for yrs. 1-5, \$249,147.50 per yr. for yrs. 6-10, \$286,519.63 per yr. for option period 1 for yrs. 11-15, \$329,497.57 per yr. for option period 2 for yrs. 16-20.
Term:	10 yrs. with 2 (5) yr. renewal options
Provision:	Tenant pays for all utilities and maintenance
Type:	Arms-Length

## Operating Budget

The applicant has submitted the current year and Years 1 and 3 operating budgets for the facility, in 2015 dollars, as shown below:

	<u>Current Year</u>	<u>Year 1</u>	<u>Year 3</u>
<b>Revenues:</b>			
Medicaid Managed Care	\$1,492,339	\$1,618,813	\$1,779,746
Medicare Fee-For-Service	\$2,988,407	\$3,243,511	\$3,571,379
Medicare Managed Care	\$4,482,611	\$4,865,267	\$5,357,069
Commercial Fee-For-Service	\$8,329,287	\$8,983,119	\$9,694,716
Commercial Managed Care	<u>\$169,985</u>	<u>\$197,228</u>	<u>\$257,140</u>
Total Revenues	\$17,462,629	\$18,907,938	\$20,660,050
<b>Expenses:</b>			
Operating	\$15,684,124	\$17,462,799	\$18,056,055
Capital	<u>\$761,505</u>	<u>\$798,166</u>	<u>\$873,130</u>
Total Expenses	\$16,445,629	\$18,260,965	\$18,929,185
Net Income	\$1,017,000	\$646,974	\$1,730,865
Utilization (Treatments)	40,441	43,825	47,173
Cost Per Treatment	\$431.81	\$431.44	\$437.96

Utilization by payor source for the current year and Years 1 and 3 subsequent to the change in ownership is summarized below:

<u>Payor:</u>	<u>Utilization</u>
Medicaid Managed Care	18.92%
Medicare Fee-For Service	22.34%
Medicare Managed Care	52.13%
Commercial Fee-For-Service	6.24%
Commercial Managed Care	.37%
Total	100.00%

Expense and utilization assumptions are based on the historical experience of the current operator.

## Capability and Feasibility

The majority member will contribute all assets and liabilities associated with the 3 Article 28 dialysis clinics to Vestal II for a 75% ownership interest in the facility. The remaining 25% will be apportioned equally among the 4 minority members at 6.25%. Each minority member will pay a capital contribution of \$258,000, for a total cash equity of \$1,032,000, for their respective ownership interest in Vestal II. BFA Attachment A is the net worth statements for the four minority members, which shows sufficient equity to cover the purchase price. There are no project costs associated with this CON.

Working capital requirements are estimated at \$3,043,494, based upon two months of Year 1 expenses. The applicant will provide the full amount of the working capital requirement from the existing cash reserves and temporary investments of Vestal I. BFA Attachment B is the 2013 certified and the 2014 internal financial statements of Vestal I, which shows that the facility has sufficient equity available to funds the working capital requirements.

The 2013 certified statement shows that the facility generated an operating income of \$1,459,692 and had both positive working capital and net asset positions for the period shown. The 1/1/2014-12/31/2014 internal financial statements show that the facility generated a net loss of \$358,715 and had both positive working capital and net asset positions for the period shown. The 2014 loss was caused by the death of one of the facility's physicians during 2014, which reduced the amount of procedures that the facility was able to perform. To rectify the situation going forward, the applicant is actively searching for a replacement physician to increase both the number of procedures and operating revenue in order to bring the entity back to at least a breakeven operating position.

BFA Attachment C is the Pro Forma Balance Sheet for Vestal II, which shows that the operations will start with \$9,660,556 in equity. It is noted that assets include \$7,455,094 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, the net asset position would be a positive members' equity position of \$2,205,462.

Recommendation

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

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## Attachments

BFA Attachment A	Net Worth of the Proposed members of Vestal II
BFA Attachment B	2013 Certified and 2014 internal financial statements of Vestal I
BFA Attachment C	Pro-Forma Balance Sheet of Vestal II.
HSP Attachment A	Dialysis Facility Compare Statistics for Vestal Healthcare



## MEMORANDUM

**To:** Members of the Public Health and Health Planning Council

**From:** Charles P. Abel <sup>CFA</sup>  
Acting Director  
Center for Health Care Facility Planning, Licensure and Finance

**Date:** May 12, 2015

**Subject:** CON #151008 Pittsford Pain Center, LLC

The Finger Lakes Health Systems Agency (HSA) has recommended disapproval of the proposed Pittsford Pain Center, LLC, an ambulatory surgery center (ASC) specializing in pain management. The HSA's recommendation for disapproval is based principally on three considerations:

- the availability of pain management services from four hospitals in the Rochester area (at main campus and off-campus sites);
- the higher cost of delivering services that can be effectively delivered in office-based settings;
- a lack of well-established evidence in the medical literature on the clinical efficacy and utility of certain of the procedures to be performed at the proposed ASC.

Although the Department finds the HSA's comments thoughtful and well-considered, the three cited factors do not fall within the elements listed in 10 NYCRR Section 709.5, the need methodology for ambulatory surgery centers. Specifically:

- **Hospital Services:** Section 709.5 does not list the availability of services from hospitals as a factor for consideration in the evaluation of public need for a proposed ASC. Public need for a new ASC rests principally on the applicant's demonstration that the proposed facility will be utilized sufficiently to be financially feasible, as demonstrated by a three-year analysis of costs and revenues from the volume of procedures to be performed. There is no provision for consideration of existing services, whether from hospital-based or independent ASCs, in the evaluation of this factor.

It is also the case that when section 709.5 was amended in 1998 to allow the establishment of more ASCs (which had hitherto been limited to one ASC per

500,000 population), the changes were intended to expand access to ambulatory surgical care and allow greater consumer choice. The HSA's recommendation would leave Article 28 surgical pain management services solely in the hands of hospitals, which would be at odds with regulatory intent.

Although the Department routinely seeks comments from hospitals in the service areas of proposed ASCs, these invitations to comment are not to aid in determining public need. Rather, their purpose is to help ascertain whether the proposed ASC would have an adverse impact on hospital surgical revenues, and in particular on the hospitals' community oriented services that may be subsidized by income from ambulatory surgical cases. We note that in this case no hospitals in the Rochester area responded to the Department's standard request for comments, nor does the HSA's recommendation for disapproval refer to any potential loss of hospital revenues to the proposed facility. (This is likely because virtually all the projected procedures for the ASC are currently performed in the applicant physicians' private offices).

- **Costs:** The Department agrees with the HSA that the delivery of the proposed pain management services in an ASC setting would be more expensive than if these procedures remained in the applicant physicians' office-based practices. However, the Department has for years accepted such higher costs as a tradeoff for the greater safety that comes from Article 28 monitoring and oversight. It would be inconsistent with many past approvals for conversions of office-based practices to Article 28 ASCs if we were to give special weight to the cost factor in this instance. Additionally, there are some procedures appropriate for the ASC setting that would not be appropriate for the office-based setting.
- **Procedures:** Although the HSA refers to a lack of medical consensus regarding the utility and efficacy of certain spinal procedures to be performed by the proposed ASC, the majority of the procedures to be performed at the facility are listed under the Medicaid Products of Ambulatory Surgery and are reimbursed accordingly.

In summary, we respectfully conclude that the HSA's comments provide no basis for reversal or modification of the Department's recommendation for approval of this ASC based on public need, financial feasibility and owner/operator character and competence.



**Project # 151008-B  
Pittsford Pain Center LLC**

**Program:** Diagnostic and Treatment Center    **County:** Monroe  
**Purpose:** Establishment and Construction    **Acknowledged:** January 14, 2015

**Executive Summary**

**Description**

Pittsford Pain Center, LLC, a to-be-formed New York limited liability company, requests approval to develop a single-specialty Article 28 freestanding ambulatory surgery center (FASC) to provide pain management services. The Center will be located in leased space at 727 Linden Avenue, Pittsford (Monroe County), and will consist of four operating rooms.

The proposed members of Pittsford Pain Center, LLC and their ownership percentages are as follows:

Ajai Nemani, M.D.	47.50%
Roser Ng, M.D.	47.50%
Heritage Ambulatory Surgery Center Alliance	5.00%

The members of Heritage Ambulatory Surgery Center Alliance, LLC are as follows:

Robert Tiso, M.D.	37.50%
Eric Tallarico, M.D.	5.00%
Joseph Catania, M.D.	37.50%
Nameer Haider	20.00%

The two physician owners, Ajai Nemani, M.D. and Roger Ng, M.D., currently provide pain management services in their individual offices located in Rochester. The Heritage Ambulatory Surgery Center Alliance (HASCA) provides administrative and consulting services to ambulatory surgery centers.

**OPCHSM Recommendation**

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

**Need Summary**

The vast majority of procedures to be performed at Pittsford Pain Center, LLC are presently being performed in physicians' private offices. (Fewer than 50 per year are performed elsewhere, mostly in freestanding ASCs.)

The number of projected procedures is 6,001 in Year 1, with Medicaid at 3.5% and charity care at 2.0%.

**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 \$404,698 will be met as follows: Equity of \$44,698 and a bank loan of \$360,000 at an interest rate of 5% for a five year term.

**Budget:**

Revenues	\$6,231,234
Expenses	<u>4,827,355</u>
Net Income	\$1,403,879

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

The Finger Lakes HSA recommends Disapproval of 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 DOH beginning in the second year of operation. These reports should include:
  - a. Data showing actual utilization including procedures;
  - b. Data showing breakdown of visits by payer source;
  - c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data showing number of emergency transfers to a hospital;
  - e. Data showing percentage of charity care provided; and
  - f. 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 administrative service agreement, acceptable to the Department. [BFA]
8. Submission of an executed building lease, acceptable to the Department. [BFA]
9. Submission of an executed loan commitment, acceptable to the Department. [BFA]
10. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
11. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03 (See Attached). [AER]
12. Submission of a photocopy of the executed Operating Agreement of Pittsford Pain Center, LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of the executed Lease Agreement between N & N Real Estate Holding Rochester LLC and the applicant, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and the Department's granting approval for the start of construction (See Attached). [AER]
7. The applicant shall start construction on or before 09/15/2015 and complete construction by 05/15/2016 upon the filing of Final Construction Documents in accordance with 10NYCRR 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]

Council Action Date

**June 11, 2015**

## Need Analysis

### Project Description

Pittsford Pain Center, LLC, a to-be-formed New York limited liability company, is seeking approval to establish and construct a freestanding ambulatory surgery center to provide single specialty pain management surgery services at 727 Linden Avenue, Pittsford, 14534, in Monroe County.

### Analysis

The primary service area consists of Monroe County. Monroe County has a total of five freestanding multi-specialty ASCs. The table below shows the number of patients utilizing Ambulatory Surgery Centers in Monroe County for 2012 & 2013 (Source: SPARCS).

Specialty Type	Name of Facility	Patients-2012	Patients-2013
Multi	Brighton Surgery Center ,LLC	4,745	6,778
Multi	Lindsay House Surgery Center, LLC	599	674
Multi	Rochester Ambulatory Surgery Center	3,614	4,411
Multi	Unity Linden Oaks Surgery Center	4,923	5,689
Multi	Westfall Surgery Center, LLP	14,224	13,639
Total		28,105	31,191

For Monroe County, the total number of patient visits for ASC's was 28,105 in 2012 and 31,191 in 2013. This represents a 9.9% increase in the number of patients served by Ambulatory Surgery Centers in Monroe County from 2012 to 2013.

The applicant projects 6,001 procedures in Year 1 and 7,260 in Year 3. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Pittsford Pain Center.

Projections	Year 1 Procedures	Year 1 Percentage	Year 3 Procedures	Year 3 Percentage
Commercial Ins	2,064	34.4%	2,498	34.4%
Medicare	2,184	36.4%	2,642	36.4%
Medicaid	212	3.5%	256	3.5%
Private Pay	230	3.8%	278	3.8%
Charity Care	120	2.0%	145	2.0%
Other	1,191	19.8%	1,441	19.8%
Total	6,001	100.0%	7,260	100.0%

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

### Conclusion

Approval of this project will bring office-based pain management surgical procedures into an Article 28 Ambulatory Surgery Center serving the communities of Monroe County.

### Recommendation

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

## Program Analysis

### Project Proposal

Pittsford Pain Center, LLC seeks approval to establish and construct a single specialty ambulatory surgery center at 727 Linden Avenue, Pittsford (Monroe County) which will provide pain management services.

<b>Proposed Operator</b>	Pittsford Pain Center, LLC
<b>Site Address</b>	727 Linden Avenue, Pittsford (Monroe County)
<b>Surgical Specialties</b>	Pain Management
<b>Operating Rooms</b>	4 (Class B)
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 7:30 am to 4:00 pm
<b>Staffing (1<sup>st</sup> / 3<sup>rd</sup> Year)</b>	14.6 FTEs / 17.4 FTEs
<b>Medical Director</b>	Ajai K. Nemani, MD
<b>Emergency, In-Patient &amp; Backup Support Services Agreement and Distance</b>	Expected to be provided by Rochester General Hospital 12 miles / 16 minutes
<b>On-call service</b>	24/7 on-call service to connect patients to the facility's on-call physician during hours when the facility is closed.

### Character and Competence

The members of Pittsford Pain Center, LLC are:

<b>Name</b>	<b>Membership</b>
<b>Individual Physicians</b>	<b>95%</b>
Ajai Nemani, MD (47.50%)	
Roger R. Ng, MD (47.50%)	
<b>Heritage Ambulatory Surgery Center Alliance, LLC</b>	<b>5%</b>
Robert L. Tiso, MD (37.50%)	
Joseph A. Catania, MD (37.50%)	
Eric Tallarico, MD (5.00%)	
Nameer Haider, MD (20.00%)	

The proposed Center's ownership is comprised of two physicians, Drs. Nemani and Ng—both practicing physicians (Board Certified in Anesthesiology and Pain Medicine) who will perform procedures at the Center, and Heritage Ambulatory Surgery Center Alliance, which is comprised of four physicians who will provide administrative and consulting services to the Center.

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. Tallarico and Tiso each disclosed one open malpractice case. Dr. Catania disclosed one settled and three (3) open 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.

### Integration with Community Resources

The proposed ASC will establish and maintain a list of physicians in and around the facility's location who are accepting new patients. The list will be available to any patient who does not have a primary care physician. Pain management services will be provided to all who are referred to the physicians credentialed by the ASC, without regard to their ability to pay.

The center intends on utilizing an electronic medical record. Another goal of the ASC is to integrate into a Regional Health Information Organization (RHIO) and/or Health Information Exchange (HIE). Additionally, the applicant is open to becoming a part of an Accountable Care Organization or Medical Home, based on regulatory and market demands.

### Recommendation

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

## Financial Analysis

### Administrative Services Agreement

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

Facility:	Pittsford Pain Center, LLC
Contractor:	Heritage Ambulatory Surgery Center Alliance, LLC
Term:	Two years with automatic renewal of successive terms of one year.
Services Provided:	The Contractor shall provide the following services: billing and collection services, detailed revenue analysis on monthly and annual collections, manage the EMR /Billing system software and vendor relationship, provide decision support reporting out of the EMR and Billing system, provide facility level financial statements in format consistent with all HASCA facilities, complete and file the NYS ACHF Cost Report required for all Article 28 facilities in NYS, attend member meetings to monitor compliance with Medicare and NYS DOH requirements, provide information systems consulting services as needed to ensure interface of systems is maintained and provide guidance on Center policies related to HIPAA compliance, HITECH Security and a Corporate Compliance Plan.
Fee:	Year One - \$190,000
	Year Two - \$250,000
	Year Three - \$250,000
	Year Four - \$257,500
	Year Five - \$265,225

While HASCA will be providing the above noted services, the applicant retains ultimate control in all of the final decisions associated with the services and has full control over the management of the Center. The applicant shall retain, in its sole discretion, the following powers:

- Direct independent authority over the appointment and/or dismissal of the Center's management level employees and all licensed or certified health care staff;
- The right to adopt and approve the Center's operating and capital budgets;
- Independent control over, and physical possession of, the Center's books and records;
- The right to independently adopt, approve and enforce the Center's operating policies and procedures;
- Authority over the disposition of assets and authority to incur debt;
- The right to approve settlements of administrative proceedings or litigation to which the Center is a party;
- The Center or a person directly employed by and salaried by Center shall manage and personally direct the Center's day to day operations; and

- The individual responsible for the Center's financial oversight shall be employed or contracted directly by Center and shall be independent of HASCA.

#### Lease Rental Agreement

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

Premises:	9,594 square feet located at 727 Linden Avenue, Pittsford, New York
Lessor:	N & N Real Estate Holding Rochester, LLC
Lessee:	Pittsford Pain Center, LLC
Term:	10 years
Rental:	Year One - \$316,602 (\$33.00 per sq. ft.) with a 2% annual increase thereafter.
Provisions	The lessor shall be responsible for maintenance, real estate taxes and utilities.

The applicant has submitted an affidavit indicating that the lease agreement will be an arms-length lease agreement. The applicant has submitted letters from two NYS licensed real estate agents attesting to the reasonableness of the per square foot rental.

#### Total Project Cost and Financing

Total project cost of \$404,698, which is for moveable equipment and CON fees, is further broken down as follows:

Moveable Equipment	\$400,495
CON Fee	2,000
Additional Processing Fee	<u>2,203</u>
Total Project Cost	\$404,698

The applicant's financing plan appears as follows:

Equity	\$44,698
Bank Loan (5% interest rate, 5 year term)	\$360,000

Equity will be provided by the proposed members proportionate to their ownership interest. A letter of interest has been provided by M&T Bank attesting to the loan terms noted above for the purchase of moveable equipment.

#### Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first and third years; summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$5,149,780	\$6,231,234
Expenses:		
Operating	\$3,628,574	\$4,397,380
Capital	<u>431,585</u>	<u>429,975</u>
Total Expenses	\$4,060,159	\$4,827,355
Net Income	\$1,089,621	\$1,403,879
Utilization (Procedures)	6,000	7,260
Cost Per Procedure	\$676.70	\$664.92

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	3.53%	3.53%
Medicare Fee For Service	10.03%	10.03%
Medicare Managed Care	26.37%	26.37%
Commercial Managed Care	34.40%	34.40%
Private Pay	3.83%	3.83%
Workers Compensation	19.78%	19.78%
Charity Care	2.00%	2.00%
Other	.06%	.06%
Total	100.00%	100.00%

The payor mix reflects the historical experience of the physicians in their private practice. Both physicians participate with Medicaid and Medicaid Managed Care plans in their area. Medicare enrollees (including managed care) constitute 36% of patient visits, commercial/managed care accounts for 34%, and workers compensation for 20% of current patient volume. The FASC intends to contract with all Medicaid managed care plans in its service area as well as develop agreements with Community Health Centers and Federally Qualified Health Centers located nearby, which may lead to a higher percentage of Medicaid enrollees being served.

Utilization assumptions are based on current physician procedure volumes. Expense assumptions are based on historical experience of the physicians. The applicant has submitted physician referral letters in support of utilization projections.

#### Capability and Feasibility

Project costs of \$404,698 will be met as follows: Equity of \$44,698 and a bank loan of \$360,000 at an interest rate of 5% for a five year term. M&T Bank has provided a letter of interest for the loan to finance the project cost.

Working capital requirements are estimated at \$804,560, which is equivalent to two months of third year expenses. The applicant will finance \$360,000 at an interest rate of 5% for a five year term. A letter of interest has been provided by M&T Bank for the working capital financing. The remaining \$444,560 will be provided as equity by the proposed members of Pittsford Pain Center, LLC proportionate to their ownership interest. BFA Attachment A is the personal net worth statements of the proposed members of Pittsford Pain Management, LLC, which indicates the availability of sufficient funds for the equity contribution. BFA Attachment B is the pro forma balance sheet of Pittsford Pain Management, LLC as of the first day of operation, which indicates a positive net asset position of \$485,055.

The submitted budget indicates a net income of \$1,089,621 and \$1,403,879 during the first and third years, respectively. Revenues are based on current reimbursement rates for pain management 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.

#### 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.

**Facility:** Strong Memorial Hospital -- **No Response**  
601 Elmwood Avenue  
Rochester, New York 14642

**Facility:** Highland Hospital -- **No Response**  
1000 South Avenue  
Rochester, New York 14620

**Facility:** Rochester General Hospital -- **No Response**  
1425 Portland Avenue  
Rochester, New York 14621

### Supplemental Information from Applicant

**Need and Source of Cases:** The applicant states that patients of the proposed facility would receive care from staff focused only on the provision of pain management procedures and that the better organized and more efficient nature of a new state-of-the-art ASC would result in reduced wait times, increased patient satisfaction and an overall better patient experience. Oversight by DOH will also help ensure that quality care is provided.

**Staff Recruitment and Retention:** Staff will be drawn from among the current staff of the office practices of the applicant physicians.

**Office-Based Cases:** The applicant states that virtually all of the projected cases for the proposed ASC are currently performed in the office practices of the applicant physicians. Of those that are not (fewer than 50 per year), most are performed in freestanding ASCs.

### DOH Comment

The absence of comments from area hospitals provides no basis for reconsideration of the recommendation for approval of the proposed ASC based on public need, financial feasibility and owner/operator character and competence.

# Finger Lakes HSA Review & Recommendation

## MEMO

**TO:** CON Project File

**RE:** CON Project 151008 – Pain Management ASC

**DATE:** March 20, 2015

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### *Service Location:*

727 Linden Avenue  
Pittsford, NY 14534

### *Description:*

Interventional Pain Management of Rochester, LLC proposes to develop a single-specialty ambulatory surgery center (ASC) to provide pain management services.

### *Projected Changes to Community Capacity:*

#### **Community Capacity**

There are four pain management centers currently operating in Monroe County:

1. Center for Pain Management at RGH
2. University of Rochester Pain Treatment Center at Sawgrass
3. University of Rochester Neuromedicine Pain Management Center at Strong
4. Highland Hospital Pain Management Center

FLHSA has access to a multi-payer claims database consisting of claims data from two major commercial insurers in the region. Because many of the proposed procedures are performed outside of the hospital setting, staff utilized this database as the primary source of information for this review. This database contains commercial, Medicare Advantage, and Managed Medicaid claims for Excellus Blue Cross Blue Shield and MVP for patients living in the twelve counties that make up the Finger Lakes region<sup>1</sup>. In reviewing the proposed services to be provided at the new facility, we reviewed claims data for January 2010- June 2014 for the region and the two physicians proposing to utilize the new facility.

The applicant has provided the top five (5) projected procedures at the new facility by CPT code, those procedures are located in Table 1. These procedures are expected to account for 85% of ASC's total projected procedure volume.

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<sup>1</sup> Chemung, Genesee, Livingston, Monroe, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne Wyoming, and Yates Counties

Table 1. Projected Procedures by Volume, Year 1 and Year 3

CPT	Description	Projected Volume Y1	Projected Volume Y3
64483	Injection(s), anesthetic agent and/or steroid transforaminal epidural, with imaging guidance (fluoro or CT); lumbar or sacral, single level	2,449	2,964
62311	Injection(s) of diagnostic or therapeutic substance(s), not including neurolytic substances, including needle or catheter placement, includes contrast for localization when performed, epidural or subarachnoid; lumbar or sacral (caudal)	928	1,123
64493	Injection(s), diagnostic or therapeutic agent, paravertebral facet joint with image guidance, lumbar or sacral; single level	891	1,078
64635	Destruction by neurolytic agent, paravertebral facet joint nerve(s), with imaging guidance; lumbar or sacral, single facet joint	450	544
62310	Injection(s), of diagnostic or therapeutic substance(s) not including neurolytic substances, including needle or catheter placement, includes contrast for localization when performed, epidural or subarachnoid; lumbar or sacral	944	1,142

Even with this source of information, total community capacity is difficult to determine. The procedures being proposed at the new facility are often performed in the office setting and can be performed by physicians of numerous specialties. Claims data indicate that of the top 5 projected procedures at the new facility 35% are performed in the office. 57% of procedures are performed in an outpatient surgery setting while only 4% are performed in an ambulatory surgery center or as inpatient procedures. It is unlikely that additional outpatient surgical capacity would result in a shift from inpatient to outpatient for these procedures.

The proposing physicians are currently performing nearly all of the proposed procedures in the office setting. ½ of 1% of the applicant's top five procedures proposed at the new facility have been performed in an outpatient surgery or ambulatory surgical center setting.

### Community Need

The applicant cites that 195,000 persons in the five county region the ASC proposes to serve will be affected by chronic pain. Staff estimates that there are approximately 117,000 individuals in Monroe County (proposed site's primary service area) over the age of 18 with chronic pain using an estimate of 30.7% of the population.<sup>2</sup> However, this number does not reflect the number of individuals that will seek treatment or that will meet criteria for the interventions to be provided at the proposed center

The applicant indicates that wait times for patients at offices of both physicians proposing to utilize the new facility are between four and six weeks. It is unknown if there are other practices in the region experiencing similar wait times. The issues apparent with determining community capacity are mirrored regarding community need. Our estimation of need will rely on the evidence apparent in the literature and the applicant's estimated wait times.

<sup>2</sup> Johannes, C; Le, T; Zhou X. The Prevalence of Chronic Pain in United States Adults: Results of an Internet-Based Survey. The Journal of Pain. 2010;11(11):1230-1239

There are no national guidelines for wait times for patients with chronic pain. The most current literature found<sup>3</sup> indicates that patient wait times of 6 months or longer are medically unacceptable. This study also found that only one country had any benchmarks for wait times (United Kingdom, 13 weeks). It should be noted that in many countries wait times for cancer patients are dramatically reduced / eliminated. Wait times in the United States are estimated in one study to be three to four weeks with the local example of Strong Memorial Hospital having a policy of trying to keep wait times to less than two weeks<sup>4</sup>.

Although no national guidelines exist, The Centers for Medicare and Medicaid Services has developed local coverage determinations (LCD's) regarding the facet joint (spinal) injections which are proposed to account for 28% of the practice at the new ASC. The LCD which covers our area prescribes very specific timelines and limits for the application of this treatment modality. The LCD does not require that procedures are completed in an outpatient or ambulatory surgery setting, but does require fluoroscopic guidance. Additionally the LCD notes that "... the evidence of clinical efficacy and utility has not been well-established in the medical literature, which is replete with non-comparable and inadequately designed studies. Further, there is a singular dearth of long-term outcomes reports."<sup>5</sup> There is some national concern about the abuse of these procedures.

National data indicate that the wait times at Dr. Ng and Dr. Nemani's practices are typical of pain management practices across the United States. The wait times listed for United States practices are the shortest of the countries surveyed in the previously noted study. There is no definitive evidence that these wait times result in poorer patient outcomes.

### **Need Conclusion**

It is unclear how the conversion to Article 28 status will improve patient wait times, other than by improving patient flow and efficiency, which could be achieved without the costs associated Article 28 status.

It is not apparent that there is community need for a single specialty Ambulatory Surgical Center for the purposes of pain management.

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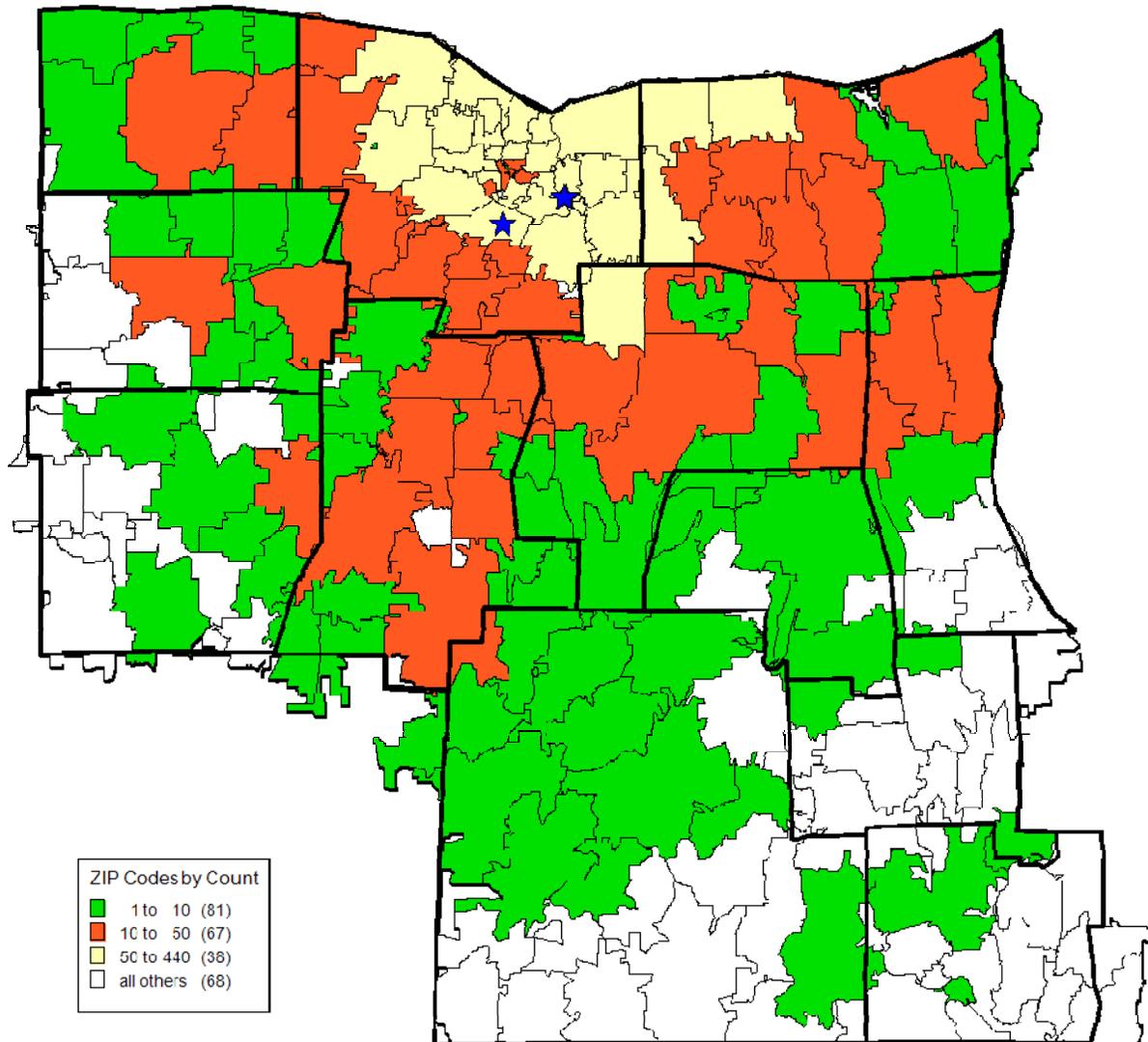
<sup>3</sup> Lynch, ME; Campbell, F; Clark, A; et al. A systematic review of the effect of waiting for treatment for chronic pain. *Pain*. 2008;136:97-116.

<sup>4</sup> L Lynch, ME; Campbell, F; Clark, A; et al. Waiting for treatment for chronic pain – a survey of existing benchmarks: Toward establishing evidence-based benchmarks for medically acceptable waiting times. *Pain Research and Management*. 2007;112(4):245-248

<sup>5</sup> National Government Services LCD L35336. Facet Joint Injections, Medial Branch Blocks, and Facet Joint Radiofrequency Neurotomy 12/16/2014

### *Projected Changes to Community Access:*

The ASC does not appear to significantly alter geographic access for the practices' respective patient population. The proposed center is 1.2 miles from Dr. Nemani's office and 10.0 miles from Dr. Ng's current office location. Below is a map of the physician's current patient population by ZIP code (from claims data).



The applicant projects 3.5% of patient volume to be from Medicaid Managed care and projects no utilization from Medicaid FFS patients. The relatively low volume of Medicaid patients is concerning in that access may be limited by ability to pay at the new ASC.

**Project Cost & Revenue:**

Pittsford Pain Center, LLC proposes to establish a new 9,594 square foot single-specialty Ambulatory Surgical Center to provide pain management services. The new facility is to contain four operating rooms with eight (8) pre-operative and ten (10) post-operative recovery beds. The floor plan also contains a central supply, consult room, decontamination and separate clean and soiled linen space.

Capital costs are expected to be \$400,495. The entirety of the cost is for moveable equipment, suggesting that other renovation costs are being covered by the building developer and are included in the lease expense. \$175,000 is allotted for two C-Arm imaging devices. \$50,000 will be used to install an EMR system in two rooms. The remainder of the costs are for various surgical and / or office infrastructure.

Incremental operating costs are anticipated to be \$4,827,355 by year three, with an incremental operating revenue of \$6,231,234. Table 2 outlines total project costs. Staffing is anticipated to increase by 17.4 FTE's by year three. New staffing will include 8 RNs 3 LPNs as well as management, technician, clerical and medical assistants. The applicants indicate that it is unlikely that current office staff will be re-allocated or repurposed for the new facility.

*Table 2. Project Costs*

	<b>Current Year</b>	<b>Year 1 Incremental</b>	<b>Year 3 Incremental</b>
Project Capital Cost	\$400,495	N/A	N/A
Operating Cost	\$0	\$4,060,159	\$4,827,355
Operating Revenue	\$0	\$5,149,780	\$6,231,234

Project financing will be accomplished with a \$360,000 bank loan at an interest rate of 5% with a five (5) year term and the remainder paid for in cash (\$44,698). The space for the facility will be rented with a lease term of ten (10) years.

There are significant incremental operating costs associated with this project. Staff have submitted questions to the applicant asking to identify the amount of incremental operating revenue that is expected due to the shift from office to ASC based procedures. While unable to provide this information, the applicant has made laudable efforts to identify the cost increases associated with the shift and has provided Medicare proposed reimbursements and anticipated revenues for the five (5) procedures noted previously. Utilizing this information we are able to estimate that incremental revenue for these procedures is anticipated to be \$2.26M per year.

*Table 3. Medicare Proposed Payments by Setting*  
**2015 Medicare Proposed Total  
 Payment Per Procedure**

CPT Code	Office	ASC
64483	\$222.46	\$485.53
62311	\$225.32	\$461.88
64493	\$175.17	\$464.03
64635	\$424.86	\$1,055.34
62310	\$244.67	\$481.95

Table 4. Estimated Revenue Increase due to Change in Place of Service

CPT Code	Expected Office Reimbursement	Expected ASC Reimbursement	Difference	Proposed Number of Procedures	Estimated Difference in Total Revenue
64483	\$202	\$566	\$364	2,449	\$891,436
62311	\$231	\$728	\$497	928	\$461,216
64493	\$181	\$566	\$385	891	\$343,035
64635	\$399	\$943	\$544	450	\$244,800
62310	\$214	\$561	\$347	944	\$327,568
<b>TOTAL DIFFERENCE IN REVENUE</b>					<b>\$2,268,055</b>

*Comments:*

The applicant had the opportunity to present the same proposal to the Community Technology Assessment Advisory Board (CTAAB). CTAAB consists of employers, consumers, clinicians, health systems and health insurance representatives and has a 20 year history of making recommendations to the payer community regarding issues of health technology and community capacity. This board considered the needs analysis conducted by Finger Lakes Health Systems Agency (FLHSA), the CON application materials, and the applicant’s presentation to the Board.

Based on the information available, CTAAB concluded there is not a need for the proposed capacity and cited the following reasons:

- There is no demonstrated community need for additional Pain Management Capacity
  - Wait times at the physician offices do not appear to be atypical for that specialty
  - While defining total capacity is difficult, there is no evidence that current capacity is not meeting patient needs
- There are significant incremental costs associated with the project and no evidence of improved outcomes for patients
- Increases in efficiency and quality could be achieved without article 28 status.
- There is no demonstrated improvement in access
  - Geographic access is not significantly altered
  - There is limited access projected for the Managed Medicaid population, with no access indicated for the Medicaid FFS population.

This recommendation was communicated to the Rochester payer community.

*Recommendation - Disapproval*

**Contingencies:** N/A

**Conditions:** N/A

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## Attachments

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BFA Attachment A    Personal Net Worth Statement  
BFA Attachment B    Pro Forma Balance Sheet



Project # 142102-E  
NHRC Acquisition, LLC d/b/a Humboldt House  
Rehabilitation and Nursing Center

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

**County:** Erie  
**Acknowledged:** September 8, 2014

**Executive Summary**

**Description**

NHRC Acquisition, LLC d/b/a Humboldt House Rehabilitation and Nursing Center, a recently formed New York limited liability company, requests approval to be established as the operator of Niagara Lutheran Home & Rehabilitation Center, a 173-bed residential health care facility (RHCF) located at 64 Hager Street, Buffalo (Erie County), New York.

On May 13, 2014, Niagara Lutheran Home & Rehabilitation Center, Inc., NHRC Acquisition, LLC and NHRC Realty Acquisition, LLC entered into an Asset Purchase Agreement whereby NHRC Acquisition, LLC and NHRC Realty Acquisition, LLC agreed to purchase the operations of the RHCF and certain other assets from Niagara Lutheran Home & Rehabilitation Center, Inc. The applicant will lease the premises from NHRC Realty Acquisition, LLC.

The current operator of the RHCF and the proposed operator are as follows:

CURRENT

Niagara Lutheran Home & Rehabilitation Center, Inc. (Not-For-Profit) (100%)

PROPOSED

NHRC Acquisition, LLC

Members:

Jeffrey Goldstein	24.00%
Lea Sherman	24.00%
Alexander Sherman	17.18%
Esther Mendlowitz	10.94%
Yehuda Sherman	10.94%
Tzvi Sherman	10.94%
Hindy Amsel	2.00%

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

Niagara Lutheran Home & Rehabilitation Center, Inc.'s utilization was 96.3% in 2011, 95.1% in 2012, and 91.2% in 2013. Current utilization as of April 8, 2015 is 94.2%, with 10 vacant beds. Despite the soft utilization, Niagara Lutheran remains an important facility to the east side of Buffalo for the following reasons:

- The facility has served an overwhelmingly underprivileged community since 1956;
- According to 2011 data, the facility is located in a zip code comprised largely of minorities;
- One-half of the facility's residents are minorities and 85% of those residents cannot afford to pay for their care and rely on the Medicaid reimbursement;
- The facility is one of the largest employers on the east side of Buffalo;
- A majority of staff live in the neighborhood immediately surrounding the facility; and
- A large percentage of referrals are from the community and the employees.

### Program Summary

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

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 acquisition of the operating interest and the real estate interest for Niagara Lutheran & Rehabilitation Center, Inc. is \$10,800,000. The portion allocated to the operation is \$3,240,000 and the real estate is \$7,560,000. The purchase price will be met as follows: Equity of \$2,160,000 (from the proposed members, and Israel Sherman and Samuel Sherman who are relatives of the proposed members), and a bank loan of \$8,640,000 at an interest rate of 6.25% for a five year term.

#### Budget:

Revenues	\$10,322,829
Expenses	<u>\$10,010,528</u>
Net Income	\$312,301

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 commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR)
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a) Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b) Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; 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)
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:
  - 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.The DOH reserves the right to require continued reporting beyond the two year period.  
[RNR]
4. Submission of an executed bank loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Applicant must submit Articles of Organization acceptable to the Department. [CSL]
8. Applicant must submit an Operating Agreement acceptable to the Department. [CSL]
9. Applicant must submit evidence of site control acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.  
[PMU]

Council Action Date

**June 11, 2015**

# Need Analysis

## Project Description

NHRC Acquisition, LLC seeks approval to become the established operator of Niagara Lutheran Home & Rehabilitation Center, Inc., a 173-bed Article 28 residential health care facility, located at 64 Hager Street, Buffalo, 14208, in Erie County. Upon approval of this application, Niagara Lutheran Home & Rehabilitation Center, Inc. will be renamed Humboldt House Rehabilitation and Nursing Center.

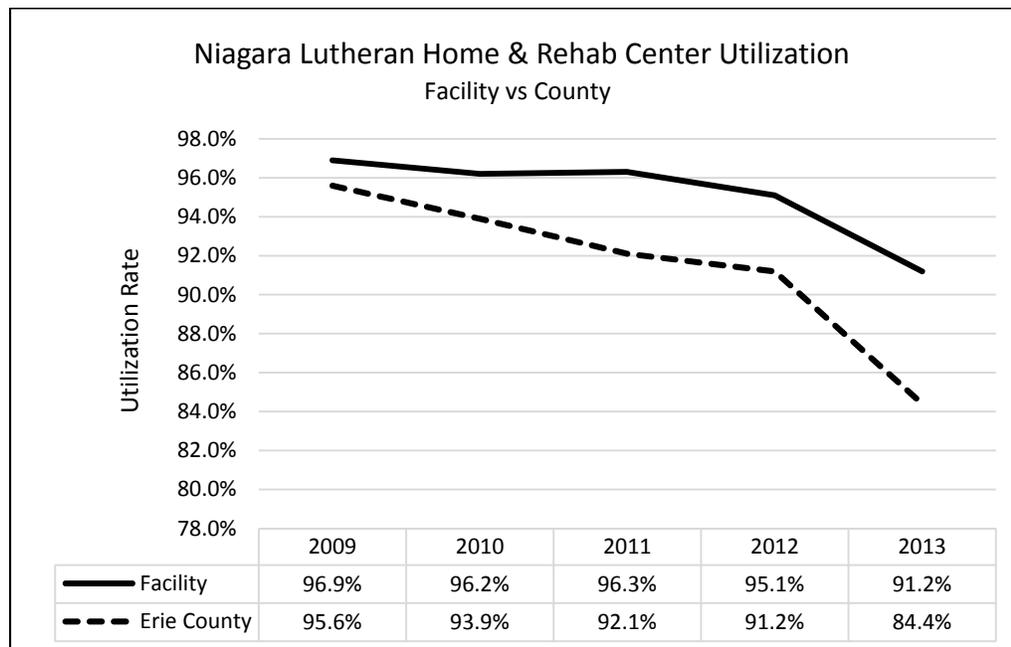
## Analysis

There is currently a surplus of 407 beds in Erie County as indicated in the following table:

### RHCF Need – Erie County

<b>2016 Projected Need</b>	5,291
<b>Current Beds</b>	5,698
<b>Beds Under Construction</b>	0
<b>Total Resources</b>	5,698
<b>Unmet Need</b>	-407

The overall occupancy for Erie County is 84.4% for 2013 as indicated in the following chart:



Niagara Lutheran Home & Rehabilitation Center, Inc.'s utilization was 96.3% in 2011, 95.1% in 2012, and 91.2% in 2013. According to the applicant, the current operator also operates a continuing care retirement community (CCRC), The GreenFields, which includes independent living apartments, assisted living apartments, and a residential health care facility. As a result of the multiple options offered, the operator invested its resources in that community rather than at Niagara Lutheran Home & Rehabilitation Center. The facility then experienced soft utilization during 2010-2012 because the CCRC was much more attractive to potential residents in need of long-term care services.

Despite the soft utilization, Niagara Lutheran remains an important facility to the east side of Buffalo for the following reasons:

- The facility has served an overwhelmingly underprivileged community since 1956;
- According to 2011 data, the facility is located in a zip code comprised largely of minorities;
- One-half of the facility's residents are minorities and 85% of those residents cannot afford to pay for their care and rely on the Medicaid reimbursement;
- The facility is one of the largest employers on the east side of Buffalo;
- A majority of staff live in the neighborhood immediately surrounding the facility; and
- A large percentage of referrals are from the community and the employees.

The new operators plan to invest in the facility and make it more attractive to residents in need of sub-acute rehabilitation as well as traditional long-term care services by working closely with local health care and social services providers, including hospitals, adult care facilities, assisted living programs, senior citizen centers, religious organizations, community centers, and the Erie County Department of Social Services, in order to publicize the new ownership of the facility. The applicant anticipates that these aggressive outreach efforts will lead to a return to the higher utilization levels of the past by serving a more acute resident population. The applicant will also put in place programs for residents with bariatric, wound care, cardio-pulmonary and diabetic conditions, which will assist with preventing hospital readmissions and earlier discharges for patients.

#### 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.

Niagara Lutheran Home & Rehabilitation Center, Inc.'s Medicaid admissions of 53.7% in 2012 and 57.1% in 2013 exceeded the Erie County 75% rates of 22.1% in 2012 and 28.5% in 2013.

#### Conclusion

The facility's location in, and service to, an underprivileged community, and the applicant's plans for aggressive outreach and development of programs to serve higher acuity residents, together with the nursing home's high proportion of Medicaid residents, warrant maintenance of the facility's current complement of beds. The proposed transaction will help preserve a needed source of RHCFC care for the Medicaid and general populations in the community.

#### Recommendation

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

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Niagara Lutheran Home & Rehabilitation Center Inc.	Humboldt House Rehabilitation and Nursing Center
Address	64 Hager Street Buffalo, NY 14208	Same
RHCF Capacity	173	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Not-for-profit corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Niagara Lutheran Home & Rehabilitation Center Inc.	NHRC Acquisition, LLC d/b/a Humboldt House Rehabilitation and Nursing Center  Managing Members: Jeffrey Goldstein      24.00% Lea Sherman              24.00%  Members Alexander Sherman      17.18% Esther Mendlowitz      10.94% Yuhada Sherman        10.94% Tzvi Sherman            10.94% Hindy Amsel              2.00%

### Character and Competence - Background

#### Facilities Reviewed

##### Nursing Homes

Niagara Rehabilitation and Nursing Center      06/2012 to present  
 The Hamptons Center for Rehab and Nursing      11/2007 to present

##### Massachusetts Nursing Home

Sweet Brook of Williamstown Rehabilitation & Nursing Center      06/2014 to present

##### Ohio Nursing Home

Washington Square Healthcare Center      01/2014 to present

#### Individual Background Review

Jeffrey Goldstein is a New York licensed nursing home administrator in good standing. Mr. Goldstein is employed as the Operations Manager for the following skilled nursing facilities: Bay Park Center for Nursing and Rehabilitation, LLC since July 2007; Townhouse Center for Rehabilitation and Nursing since July 2004; White Plains Center for Nursing Care, LLC since November 2004; Nassau Extended Care Facility since July 2004, and Park Avenue Extended Care Facility since July 2004. Mr. Goldstein discloses the following health facility interests:

Niagara Rehabilitation and Nursing Center      06/2012 to present  
 The Hamptons Center for Rehab and Nursing      11/2007 to present  
 Washington Square Healthcare Center (OH)      01/2014 to present  
 Sweet Brook of Williamstown Rehabilitation & Nursing Center (MA)      06/2014 to present

Lea (Willinger) Sherman is a licensed Speech Language Pathologist, since 2006, in good standing in New York, and is self-employed. She discloses no health facility interests.

Alexander Sherman is a licensed attorney in good standing in New York and New Jersey. Mr. Sherman is dually employed as the assistant administrator at Sunharbor Manor Skilled Nursing & Rehabilitation Center since February 2009 and is a legal consultant for Absolut Care Facilities Management since January 2009. Mr. Alexander Sherman discloses the following health facility interests:

Niagara Rehabilitation and Nursing Center	06/2012 to present
Washington Square Healthcare Center (OH)	01/2014 to present
Sweet Brook of Williamstown Rehabilitation & Nursing Center (MA)	06/2014 to present

Esther (Sherman) Mendlowitz is a licensed Occupational Therapist in good standing in New York. Esther Mendlowitz discloses the following health facility interests:

Niagara Rehabilitation and Nursing Center	06/2012 to present
Washington Square Healthcare Center (OH)	01/2014 to present
Sweet Brook of Williamstown Rehabilitation & Nursing Center (MA)	06/2014 to present

Yehuda Sherman is a licensed attorney in good standing in New York. He currently is a practicing attorney with the law firm of Novack, Burnbaum, Crystal LLP since March 2014. Prior to 2014 he was a student. Yehuda Sherman discloses the following health facility interests:

Niagara Rehabilitation and Nursing Center	06/2012 to present
Washington Square Healthcare Center (OH)	01/2014 to present
Sweet Brook of Williamstown Rehabilitation & Nursing Center (MA)	06/2014 to present

Tzvi Sherman attended college until 2010. He provides no work or volunteer experience. Tzvi Sherman discloses the following health facility interests:

Sweet Brook of Williamstown Rehabilitation & Nursing Center (MA)	06/2014 to present
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Hindy (Sherman) Amsel is a licensed occupational therapist in good standing in New York, and is self-employed. Ms. Amsel discloses no health facility interests.

#### Character and Competence - Analysis

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

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

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-11-031 issued May 24, 2011 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.2 Provide Care/Services for Highest Well Being.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH-10-065 issued December 6, 2010 for surveillance findings on September 16, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents & Supervision; and 415.26 Administration.
- The facility was fined \$8,000 pursuant to Stipulation and Order NH-09-018 issued April 26, 2009 for surveillance findings on April 21, 2008. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) Resident Behavior and Facility Practices: Staff Treatment of Residents; 415.12 Quality of Care; 415.12(h)(2) Quality of Care: Accidents; and 415.26 Organization and Administration.

A review of operations of The Hamptons Center for Rehabilitation and Nursing for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no repeat enforcements.

A review of operations for Niagara Rehabilitation and Nursing Center for the time periods indicated above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the Massachusetts Department of Public Health website as well as affidavits submitted by the applicant for Sweet Brook of Williamstown Rehabilitation and Nursing Center in the state of Massachusetts for the time periods indicated above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Washington Square Healthcare Center in the state of Ohio for the time periods indicated above results in a conclusion of substantially consistent high level of care since there were no enforcements.

**Project Review**

No changes in the program or physical environment are proposed in this application. 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. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

**Recommendation**

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

<h2>Financial Analysis</h2>
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**Asset Purchase Agreement**

The applicant has submitted an executed asset purchase agreement for the purchase of the operations and the real estate of Niagara Lutheran Home & Rehabilitation Center, Inc., which is summarized below:

Date:	May 13, 2014
Seller:	Niagara Lutheran Home & Rehabilitation Center, Inc.
Purchaser:	NHRC Acquisition, LLC and NHRC Realty Acquisition, LLC
Assets Acquired:	Real Property; the business and operations of the Facility; trademarks; copyrights or any other marketing materials or reports; inventory and supplies; the Medicare and Medicaid provider numbers; all security deposits and prepayments held by Seller; books and records of Seller; including patient files, medical records, personnel records and other business records of current residents; resident trust funds; complete copies of all personnel and payment records of Transitioned Employees; the Assumed Contracts; all telephone numbers and facsimile numbers used by the Facility and all goodwill associated the Nursing Home.
Excluded Assets:	The excluded assets include: Any of Seller's cash, cash equivalents, investments or deposits in banks; all of Seller's accounts receivable for services performed or goods provided by Seller before Closing; any of Seller's claims, credits, refunds, causes of action, rights of recovery, related to services performed or goods provided before the Closing; Seller's original financial books, records and ledgers and Seller's corporate minute book and the name of the Facility "Niagara Lutheran Home & Rehabilitation Center."
Assumed Liabilities:	Liabilities and obligations related to the operation of the Facility and the Nursing Home on or after the Closing Date and all of the liabilities and obligations of Seller arising under the Assumed Contracts, to the extent such liabilities and obligations relate to any period on or after the Closing Date.
Purchase Price:	\$10,800,000 apportioned as follows: <ul style="list-style-type: none"> <li>• \$3,240,000 (Operation Portion)</li> <li>• \$7,560,000 (Real Estate Portion)</li> </ul>

The applicant's financing plan appears as follows:

Equity (proposed members, and relatives Israel Sherman and Samuel Sherman)	\$2,160,000
Bank Loan (6.25% interest rate for a five year term)	\$8,640,000

The applicant has submitted affidavits from Israel Sherman and Samuel Sherman (individuals related to the proposed owners), which are acceptable to the Department, indicating that they will contribute \$261,993 and \$100,000 respectively, with the potential for contributing more of their personal resources, as needed, towards the equity portion of this application. The respective affidavits from Israel Sherman and Samuel Sherman each provide that their equity contribution will be interest free, have no repayment terms, that they will have no initial or ongoing interest whatsoever in the operation of NHRC Acquisition, LLC, and that their proposed equity contribution will not change the fact that they have no ownership interest in the operation.

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 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 Seller of its liability and responsibility. Currently, the facility has no outstanding audit liabilities and assessments.

#### Lease Rental Agreement

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

Premises:	The site located at 64 Hager Street, Buffalo, New York
Lessor:	NHRC Acquisition Realty, LLC
Lessee:	NHRC Acquisition, LLC
Term:	20 years
Rental:	Lessor's Debt Service on its mortgage plus \$150,000. The annual rental payments is \$606,000.
Provisions:	The lessee shall be responsible for insurance and maintenance.

The lease arrangement is a non-arm's lease agreement. The applicant has submitted an affidavit attesting that there is a relationship between the landlord and tenant in that there is common ownership between the entities.

#### Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first year after the change in ownership, summarized below:

	<u>PER DIEM</u>	<u>TOTAL</u>
Revenues:		
Medicaid Managed Care	\$158,63	\$8,084,641
Medicare	\$342.53	1,067,653
Commercial	\$184.29	551,017
Private Pay	\$184.29	<u>619,518</u>
Total Revenues		\$10,322,829

Expenses:		
Operating	\$150.24	\$8,975,587
Capital	<u>17.78</u>	<u>1,034,941</u>
Total Expenses	\$168.02	\$10,010,528
Net Income		<u>\$312,301</u>
Utilization (patient days)		60,435
Occupancy		95.71%

Utilization broken down by payor source during the first year after the change in operator is as follows:

Medicaid Managed Care	84.33%
Medicare	5.16%
Private Pay	5.56%
Commercial	<u>4.95%</u>
Total	100.00%

Expense assumptions are based on the facility's prior year expenses, adjusted for projected expense reductions. Utilization is projected to increase from 91.19% in 2013 to 95.71% during the first year after the change in operator. The applicant has indicated that the projected increase in utilization from 2013 is due to refining operations, including potential additional new programs and services, along with capital improvements to the facility contemplated for the future, and the experience of the applicant members operating other similarly sized facilities in New York State.

The applicant has projected the following expense reductions:

- Salaries and Wages: The applicant intends to reduce overall staffing by approximately 35.46 FTEs, which will result in \$868,297 in savings. Staff reductions include: Management and Supervision (7.66 FTEs), LPN (4.45 FTEs), Aides/Orderlies (7.66 FTEs), Food Service (4.90 FTEs), and the remainder in clerical and other administration categories. No reduction to RN and Technician and Specialist staff is anticipated.
- Employee Benefits: Employee Benefit expense will be reduced by \$311,504 due to FTE reductions.
- Utilities: Utilities expense is decreasing by \$190,963 due to the lessee not being responsible for utilities expense.
- Purchased Services: Purchased Services have been reduced by \$533,469.

#### Capability and Feasibility

The purchase price for the acquisition of the operating interest and real estate interest for Niagara Lutheran & Rehabilitation Center, Inc. is \$10,800,000. The portion allocated to the operation is \$3,240,000 and the real estate portion is \$7,560,000. The purchase price will be met as follows: Equity of \$2,160,000 (proposed members, and relatives Samuel Sherman and Israel Sherman) and a bank loan of \$8,640,000 at an interest rate of 6.25% for a five year term. The applicant submitted a letter of interest from Meridian Capital Group, LLC pertaining to the financing.

Working capital requirements are estimated at \$1,668,421, which appears reasonable based on two months of first year expenses. The applicant will finance \$834,210 via a loan at an interest rate of 5.5% for a five year term. The applicant submitted a letter of interest from HHC Finance pertaining to the working capital financing. The remaining \$834,211 will be provided via equity to be derived from the proposed members' personal resources and from Israel Sherman and Samuel Sherman who have committed to assist related members with equity shortfalls. The applicant submitted an affidavit from each applicant member, which states that he or she is willing to contribute resources disproportionate to ownership percentages.

BFA Attachments A and B are the personal net worth statements of the proposed members of NHRC Acquisition, LLC, and the personal net worth statements of Israel Sherman and Samuel Sherman, respectively, which indicates the availability of sufficient funds to meet the equity portion for both the purchase price and the working capital requirements.

BFA Attachment E is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$834,211.

The submitted budget indicates a net income of \$312,301 during the first year subsequent to the change in operator. The applicant has indicated that Medicaid and Private Pay utilization are projected to increase and Medicare utilization is projected to decrease due to utilization trends. The submitted budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Effective February 1, 2015, all eligible beneficiaries in NYC age 21 and over, in need of long term placement in a nursing facility, were required to join a Medicaid Managed Care Plan (MMCP) or a Managed Long Term Care Plan (MLTCP). On April 1, 2015, the counties of Nassau, Suffolk, and Westchester were phased in, and the rest of the State is scheduled to transition beginning July 1, 2015, for both dual and non-dual eligible populations. Under the managed care construct, Managed Care Organizations (MCOs) negotiate payment rates directly with the NH providers. In order to mitigate the financial impact to NH providers during the transition to managed care, a department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided further guidance requiring MCOs to pay the benchmark Medicaid 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 January 31, 2018 (NYC), March 31, 2018 (Nassau, Suffolk and Westchester), and June 30, 2018 (upstate), respectively.

BFA Attachment C is the financial summary of Niagara Lutheran Home & Rehabilitation Center for the years 2011 thru 2013. As shown, the entity had an average positive working capital position and an average positive net asset position. Also, the facility incurred average losses of \$868,797. The applicant indicated that the reason for the losses were the result of an overall lower than expected census experienced by the facility during the period, as well as excess management and supervisory staff expenses. In particular, the applicant believes that the operating losses were the result of the current operator's focus on the other campus in the Niagara Lutheran Health System called The Green Fields, which is a continuing care retirement community. Because of the multiple options offered at the Green Fields, the current operator committed its resources to that campus rather than the Niagara Lutheran Home & Rehabilitation Center, making The Green Fields much more attractive to potential residents in need of long term care services. Since there have been ongoing losses at the nursing home, the current operator has decided to sell the RHCF facility operation.

BFA Attachment D shows the internal financial statements of Niagara Lutheran Home & Rehabilitation Center as of December 31, 2014. As shown, the entity had a positive working capital position and a positive net asset position through December 31, 2014. The entity incurred a loss of \$822,917 through December 31, 2014. The applicant indicated that the reason for the loss is due to overall lower than expected census experienced by the facility, as well as excess management and supervisory staff expenses.

BFA Attachment F is the financial summary of The Hampton Center for Rehabilitation and Nursing. As shown, the entity maintained an average negative working capital position and an average negative net asset position from 2011 through 2013. The reason for the average negative working capital position and the average negative net asset position is due to disputed balances with a few vendors in 2011, which resulted in an outstanding accounts payable. The facility reached settlement with the vendors in 2012, resulting in a reduction in the balance owed and a one-time gain of \$4,976,928 recorded as other revenue. The negative working capital in 2013 was primarily due to the timing of collections of outstanding accounts receivable and payment of outstanding accounts payable. The facility achieved an average net income of \$2,199,971 from 2011 through 2013. The facility experienced a net loss of \$2,428,087 in 2013. The loss was attributed to the write off of \$3,054,634 in mortgage related escrows erroneously recorded as escrows on the 2012 balance sheet, when it should have been recorded as rent paid.

BFA Attachment G is the financial summary of Niagara Rehabilitation for 2013. As shown, the entity had a positive working capital position and a positive net asset position in 2013. Also, the entity achieved a net income of \$589,177 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 statements- Proposed members
BFA Attachment B	Personal net worth statements- Israel Sherman and Samuel Sherman
BFA Attachment C	Financial Summary- Niagara Lutheran Home & Rehabilitation Center
BFA Attachment D	Financial Summary- December 31, 2014 internal financial statements
BFA Attachment E	Pro Forma Balance Sheet
BFA Attachment F	Financial Summary- The Hampton Center for Rehabilitation and Nursing
BFA Attachment G	Financial Summary- Niagara Rehabilitation
BNHLC Attachment A	Quality Measures and Inspection Report



**Project # 142221-E  
Newfane Operations, LLC d/b/a  
Newfane Rehab & Health Care Center**

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

**County:** Niagara  
**Acknowledged:** December 2, 2014

**Executive Summary**

Description

Newfane Operations, LLC d/b/a Newfane Rehab and Health Care Center, an existing New York limited liability company, requests approval to be established as the operator of Newfane Rehab & Health Care Center, a 175-bed Article 28 residential health care facility (RHCF) located at 2709 Transit Road, Newfane (Niagara County). The proposed operator will be decertifying ten beds, bringing the new certified bed capacity to 165 beds. Integrated Care Systems, LLC, the current operator of the facility, entered into an Asset Purchase Agreement (APA) with Newfane Operations, LLC on September 3, 2014, for the sale and acquisition of the operating interests of the RHCF upon approval by the Public Health and Health Planning Council (PHHPC). Concurrent with entering into the APA for the operating interest, Eastern Niagara Hospital, the real property owner of the RHCF, entered into a Purchase and Sale Agreement with Newfane Realty, LLC, for the sale and acquisition of the real property interest in the facility. There is common ownership between Newfane Operations, LLC and Newfane Realty, LLC in that Maximus Newfane, LLC is the sole member of both. The applicant will lease the premises from Newfane Realty, LLC.

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

Current Operator

Integrated Care Systems LLC (100%)

Proposed Operator

Newfane Operations, LLC

Members:

- Maximus Newfane, LLC (100%)
- Jonah Jay Lobell (20.7%)
- Yisroel A., Bornstein (22.4%)
- Henry Steinmetz (22.4%)
- Yaakov Weitman (22.4%)
- Nisson Hirsch (12.8%)

OPCHSM Recommendation

Contingent Approval

Need Summary

Newfane Rehab & Health Care Center's utilization was 93.4% in 2011, 91.9% in 2012, and 85.7% in 2013. Current utilization, as of April 22, 2015 is 83.4%, with 29 vacant beds. Upon the change in ownership, Newfane Rehab & Health Care Center (Newfane) will decertify ten RHCF beds, for a total of 165 beds.

Program Summary

This application proposes to establish Newfane Operating, LLC as the operator of Newfane Rehabilitation and Health Care Center.

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

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

Financial Summary

Newfane Operations, LLC will acquire the RHCF operating assets for \$1,980,000 which will be funded as follows: \$198,000 from members' equity and a 30-year term loan of \$1,782,000 at 6% interest rate. Newfane Realty, LLC, the applicant's landlord, is purchasing the real property for \$4,620,000 to be funded as follows: \$462,000 from members' equity and a 30-year term loan of \$4,158,000 at 6% interest rate.

There are no project costs associated with this application.

Budget:

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$12,098,206	\$13,269,345
Expenses	<u>11,993,611</u>	<u>12,392,151</u>
Net Income	\$104,595	\$877,194

Subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financially 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 commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; 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]
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. The report 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 community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and inform them 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.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission and programmatic review of the plan for the ten bed reduction; the plan must specify the actual beds to be decertified and show the affected nursing units. [LTC]
5. Submission of a fully executed and programmatic acceptable Operating Agreement for Maximus Newfane LLC. [LTC]
6. Submission of a loan commitment for the Asset Purchase Agreement that is acceptable to the Department of Health. [BFA]
7. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
8. Submission of an executed building lease acceptable to the Department of Health. [BFA]
9. Applicant must submit Articles of Organization for Newfane Operations, LLC acceptable to the Department. [CSL]
10. Applicant must submit an Operating Agreement for Newfane Operations, LLC acceptable to the Department. [CSL]
11. Applicant must submit Articles of Organization for Maximus Newfane, LLC acceptable to the Department. [CSL]

12. Applicant must submit an Operating Agreement for Maximus Newfane, LLC acceptable to the Department. [CSL]
13. Applicant must submit evidence of site control acceptable to the Department. [CSL]
14. Applicant must state whether it intends to enter into any agreement(s) involving the management, administrative, billing and/or consulting services for the facility including, but not limited to, operational policies. [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

**June 11, 2015**

# Need Analysis

## Project Description

Newfane Operations, LLC d/b/a Newfane Rehab & Health Care Center seeks approval to become the established operator of Newfane Rehab & Health Care Center, an existing 175-bed Article 28 residential health care facility (RHCF) located at 2709 Transit Road, Newfane, 14108, in Niagara County. Upon approval of this application, Newfane Rehab & Health Care Center will decertify ten RHCF beds, for a revised total bed capacity of 165.

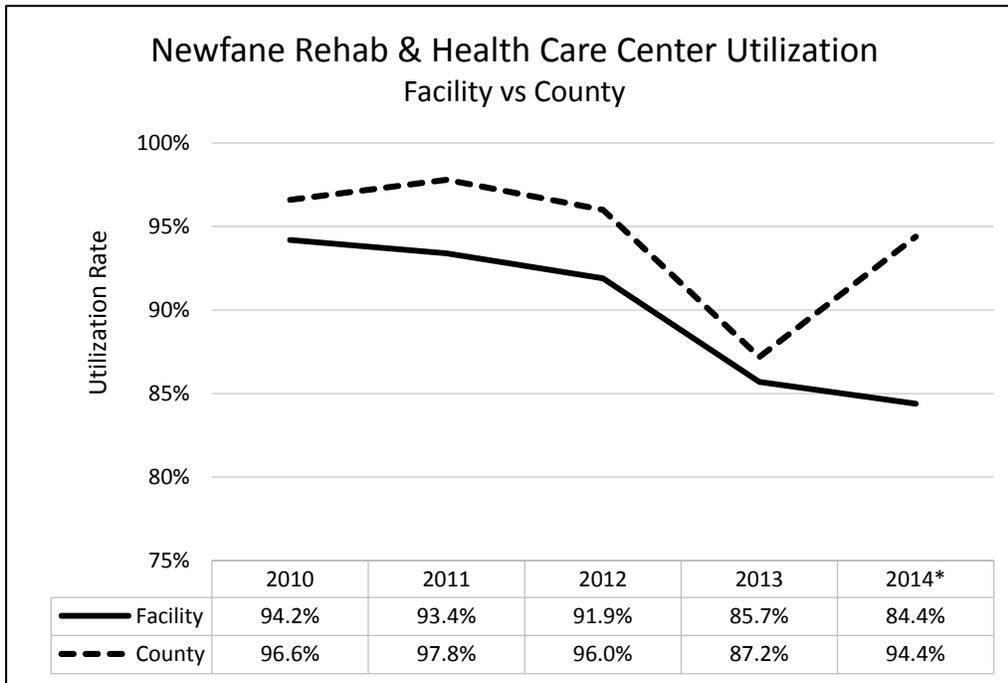
## Analysis

There is currently a surplus of 22 beds in Niagara County as indicated in the table below.

### RHCF Need – Niagara County

<b>2016 Projected Need</b>	1,377
<b>Current Beds</b>	1,399
<b>Beds Under Construction</b>	0
<b>Total Resources</b>	1,399
<b>Unmet Need</b>	-22

The overall occupancy rates for the facility and Niagara County for 2010 - 2014 are shown in the following chart:



\*unaudited; based on weekly census

Newfane Rehab & Health Care Center's utilization was 91.9% in 2012, 85.7% in 2013 and 84.4% in 2014\*. According to the applicant, utilization has declined because the core business of the current operator is not directed to operating the skilled nursing facility. Current operations are not reaching out to the community and working with other area resources.

The applicant will decertify ten RHCF beds upon approval. The beds to be decertified are not occupied, so there will be no disruption in care to the current residents at the facility. The proposed operator intends to increase utilization in the following ways:

- Forging strategic partnerships with local managed long-term care and DSRIP plans to improve the quality of care and reduce costs to the Medicare and Medicaid programs;
- Institute an operating model that has the flexibility to transition into a value-based purchasing reimbursement model;
- Implement a short-term rehabilitation program focused on quality patient outcomes; and
- Conduct a needs analysis upon assumption of ownership and implement additional services such as trachea care, dialysis units, wound care, and respite care.

#### 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.

Newfane Rehab & Health Care Center's Medicaid admissions for 2012 and 2013 was 16.2% and 15.1%, respectively. The facility did not exceed Niagara County 75% rates in 2012 and 2013 of 17.1% and 16.3%, respectively, and will be required to follow the contingency plan as noted below.

#### Conclusion

Approval of this application will result in more efficient utilization of the facility through a lower bed complement, and preserve a needed resource of RHCF care for the community.

#### Recommendation

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

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Newfane Rehab & Health Care Center	Newfane Rehab & Health Care Center
Address	2709 Transit Road Newfane, NY 14108	Same
RHCF Capacity	175	165
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Integrated Care Systems, LLC	Newfane Operations, LLC  <u>Members:</u> Maximus Newfane, LLC (100%)  Yisroel A. Bornstein      22.4% Henry Steinmetz          22.4% Yaakov Weitman          22.4% Jonah Lobell              20.0% Nisson Hirsch             12.8%

### Character and Competence - Background

#### Facilities Reviewed

##### Massachusetts Nursing Homes

Colony Center for Health and Rehabilitation	06/2012 to present
Country Center for Health and Rehabilitation	06/2012 to present
Eliot Center for Health and Rehabilitation	06/2012 to present
Newton Wellesley Center for Alzheimer's Care	06/2012 to present
Sachem Center for Health and Rehabilitation	06/2012 to present
The Reservoir Center for Health and Rehabilitation	06/2012 to present

##### Maine Nursing Homes

Augusta Center for Health and Rehabilitation	06/2012 to present
Brentwood Nursing Center for Health and Rehabilitation	06/2012 to present
Brewer Center for Health and Rehabilitation	06/2012 to present
Eastside Center for Health and Rehabilitation	06/2012 to present
Kennebunk Center for Health and Rehabilitation	06/2012 to present
Norway Center for Health and Rehabilitation	06/2012 to present
Winship Green Center for Health and Rehabilitation	06/2012 to present

##### New Hampshire Nursing Homes

Dover Center for Health and Rehabilitation	06/2012 to present
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#### Individual Background Review

Yisroel A. Bornstein lists his employment as the Principal / Executive Director of Therapeutics Unlimited, an outpatient physical, occupational therapy and sports rehab agency located in East Brunswick, New Jersey. From September, 2007 until January, 2011 Mr. Bornstein was principal managing member of SCB & Associates, LLC, a consulting services company which invests in small cap public companies. Mr. Bornstein discloses ownership in the following health care facility:

Therapeutics Unlimited Rehab, LLC (ME)	06/2009 to present
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Henry Steinmetz lists his employment as Executive Director of Therapeutics Unlimited Rehab. Mr. Steinmetz discloses the following health facility ownership:

Therapeutics Unlimited Rehab, LLC (ME) 06/2009 to present

Yaakov Weitman lists his employment as the Chief Operating Officer of Therapeutics Unlimited, From December, 2008 to March, 2010 Mr. Weitman was employed at Meridian Capital Group, LLC, a mortgage company located in New York, New York. Mr. Weitman discloses ownership in the following health care facility:

Therapeutics Unlimited Rehab, LLC (ME) 04/2010 to present

Jonah Lobell lists his employment as the President of Meridian Capital Group, LLC, a mortgage company located in New York, New York. He was previously a licensed stockbroker (Series 7), with license expiring in 2012. Mr. Lobell also continues to consult for his previous employer, Paramount BioSciences, a venture capital and drug development firm located in New York, New York. Mr. Lobell discloses that he also is a director of SavaSeniorCare, a large national skilled nursing operating company; he does not own any equity in that company. Jonah Jay Lobell discloses the following ownership interests in health facilities:

Colony Center for Health and Rehabilitation (MA)	06/2012 to present
Country Center for Health and Rehabilitation (MA)	06/2012 to present
Eliot Center for Health and Rehabilitation (MA)	06/2012 to present
Newton Wellesley Center for Alzheimer's Care (MA)	06/2012 to present
Sachem Center for Health and Rehabilitation (MA)	06/2012 to present
The Reservoir Center for Health & Rehabilitation (MA)	06/2012 to present
Augusta Center for Health and Rehabilitation (ME)	06/2012 to present
Brentwood Nursing Center for Health and Rehabilitation (ME)	06/2012 to present
Brewer Center for Health and Rehabilitation (ME)	06/2012 to present
Eastside Center for Health and Rehabilitation (ME)	06/2012 to present
Kennebunk Center for Health and Rehabilitation (ME)	06/2012 to present
Norway Center for Health and Rehabilitation (ME)	06/2012 to present
Winship Green Center for Health and Rehabilitation (ME)	06/2012 to present
Dover Center for Health and Rehabilitation (NH)	06/2012 to present

Nisson Hirsch is the Chief Executive Officer and owner of Omnicon Healthcare Consultants, a healthcare consulting company which provides comprehensive cost control and fiscal consulting services to long term care facilities, since 2001. Mr. Hirsch discloses no health facility ownership interests.

#### Character and Competence - Analysis

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

A review of the Massachusetts Department of Public Health website as well as affidavits submitted by the applicant for The Reservoir Center for Health and Rehabilitation, Colony Center for Health and Rehabilitation, Country Center for Health and Rehabilitation, Eliot Center for Health and Rehabilitation, Newton Wellesley Center for Alzheimer's Care, and Sachem Center for Health and Rehabilitation in the state of Massachusetts for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements disclosed.

A review of Augusta Center for Health and Rehabilitation, Brentwood Nursing Center for Health and Rehabilitation, Brewer Center for Health and Rehabilitation, Eastside Center for Health and Rehabilitation, Kennebunk Center for Health and Rehabilitation, Norway Center for Health and Rehabilitation, and Winship Green Center for Health and Rehabilitation in the state of Maine for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Dover Center for Health and Rehabilitation in the State of New Hampshire for the period identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Lackawanna Health and Rehabilitation Center in the State of Pennsylvania for the period identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Chapin Hill at Red Bank Nursing and Rehabilitation Center and Forest Manor Health Care Center in the State of New Jersey for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Fountain View Care Center, Highland Heights Healthcare Center, and Wellspring of Milwaukee in the State of Wisconsin for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

#### Project Review

This application proposes to establish Newfane Operating, LLC as the operator of Newfane Rehabilitation and Health Care Center. Newfane Operations, LLC is an existing New York State limited liability company whose sole member is another New York State limited liability company, Maximus Newfane, LLC. Maximus Newfane, LLC is not known to be the operator of record on any health facility, or be the member of any health care related operating entities.

The application also proposes a reduction in the bed complement by ten SNF beds resulting in a certified capacity of 165 RHCF beds.

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. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

#### 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 interests of the RHCF. The terms of the agreement are summarized below:

Date:	September 3, 2014
Seller:	Integrated Care Systems, LLC
Buyer:	Newfane Operations, LLC
Asset Acquired:	Business and operation of the 165-bed RHCF including the license for the beds. All tangible assets including all hard assets, furniture, fixtures, equipment, leasehold improvements, instruments, vehicles, phone system, workstation computers, machinery, tools, resident deposits, permits, computer software, inventory, and all other tangible personal property except for excluded assets.
Excluded Assets:	Any accounts receivable, cash, assets associated with Eastern Niagara Health System, billing records prior to closing date, Meditech computer software, Kronos time and attendance system, insurance policies, refunds

	and claims from third party payors through the closing date, and equipment owned by third parties.
Assumption of Liabilities:	Those associated with purchased assets.
Excluded Liabilities:	Any amounts due to third party payors for services rendered prior to closing date and all cash receipts assessments.
Purchase Price:	\$1,980,000
Payment of Purchase Price:	\$198,000 cash equity \$1,782,000 due at closing.

The applicant's financing plan appears as follows:

Equity	\$198,000
Bank Loan (6% interest for a 30-year term)	\$1,782,000

A bank letter of interest for the loan has been provided by Meridian Capital Group, LLC.

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.

#### Real Estate Purchase Agreement

Newfane Realty, LLC entered into a Real Estate Purchase Agreement with Eastern Niagara Hospital for the purchase of the nursing home's real property. The closing of the transaction provided in this agreement will be effectuated with the closing of the asset purchase agreement for the operating entity upon PHHPC approval of this CON. As previously noted, there is common ownership between Newfane Operations, LLC and Newfane Realty, LLC in that Maximus Newfane, LLC is the sole member of both.

The applicant has submitted the executed realty purchase agreement, the terms of which are summarized below:

Date:	September 3, 2014
Seller:	Eastern Niagara Hospital, Inc. ("Realty") and Integrated Care Systems, LLC ("Old Operator" and together with Realty, the "Seller")
Purchaser:	Newfane Realty, LLC
Assets Transferred Realty:	Property consisting of land, all buildings, and all other structures, facilities or improvements located in or on the land located at 2709 Transit Road, Newfane, New York 14108.
Purchase Price:	\$4,620,000
Payment of Purchase: Price:	\$462,000 cash equity \$4,158,000 due at closing

The purchase price is proposed to be satisfied as follows:

Equity (Newfane Realty, LLC members)	\$462,000
Bank Loan (6% interest, 30-year term)	\$4,158,000

The letter of interest for the loan has been provided by Meridian Capital Group, LLC.

## Lease Rental Agreement

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

Premises:	165-bed RHCF located at 2709 Transit Road, Newfane, NY 14108
Lessor:	Newfane Realty, LLC
Lessee:	Newfane Operations, LLC d/b/a
Terms:	30 years commencing on the execution of the lease.
Rental:	Base rent shall be an equal amount to debt service obligations, including amounts due under the mortgage.
Provisions:	Electric and Taxes

The lease arrangement is a non-arm's lease agreement. The applicant has submitted an affidavit attesting to the relationship between landlord and tenant in that there is common membership interest between the landlord and proposed operator.

## Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first and third year subsequent to the change in operator, as summarized below:

	<u>Per Diem</u>	<u>Year 1</u>	<u>Per Diem</u>	<u>Year 3</u>
Revenues:				
Medicaid	\$172.50	\$6,858,540	\$172.50	\$7,089,131
Medicare	\$399.80	2,621,233	\$425.00	3,435,083
Private Pay/Other	\$337.38	<u>2,618,433</u>	\$334.82	<u>2,745,131</u>
Total Revenues		\$12,098,206		\$13,269,345
Expenses:				
Operating		\$10,851,081		\$11,272,755
Capital		<u>1,142,530</u>		<u>1,119,396</u>
Total Expenses		\$11,993,611		\$12,392,151
Net Income		\$104,595		\$877,194
Utilization (patient days)		56,008		58,721
Occupancy		93%		98%

The following is noted with respect to the submitted budget:

- The Medicaid rates (FFS and Managed Care at benchmark FFS levels) are based on the facility's actual July 2014 rates trended to 2015.
- The Medicare rates are based on the facility's actual July 2014 rates trended to 2015.
- The Private Pay rates are also based on the facility's actual July 2014 rates trended to 2015.
- Historical utilization from 2013 RHCF cost report was 86% and for the periods 2010-2013 utilization averaged 91.3%.
- Breakeven utilization is projected at 92%

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

	<u>Year 1</u>	<u>Year 3</u>
Commercial - Fee-For-Service	4.0%	4.0%
Medicare Fee-For-Service	8.0%	8.0%
Medicare Managed Care	4.0%	5.0%
Medicaid Fee-For-Service	69.0%	66.0%
Medicaid Managed Care	2.0%	4.0%
Private Pay / Other	13.0%	13.0%

Utilization projections are based on current occupancy levels, plus ongoing efforts related to the transition to Medicaid Managed Long Term Care (MLTC) aimed at increasing utilization going forward. These efforts include forging partnerships with local MLTC and DSRIP Plans to improve the quality of care and reduce costs. The proposed operators have formed a close working relationship with Eastern Niagara Hospital, Newfane's current operators, and 2 local DSRIP PPS organizations in Niagara County to increase patient census. Expense assumptions are based upon the experience of the proposed members who operate 14 similar RHCs out of state. The breakeven point is approximately 92% of the projected volumes or 55,407 patient days in the first and third years.

#### Capability and Feasibility

The purchase price for the operating interests is \$1,980,000. The purchase price will be met as follows: equity of \$198,000 from the proposed members' personal resources and a bank loan of \$1,782,000 at an interest rate of 6% for a 30-year term. The letter of interest for the loan has been provided by Meridian Capital Group, LLC.

Working capital requirements are estimated at \$1,998,936, which is equivalent to two months of first year expenses. The applicant will finance \$999,468 at an interest rate of 6% for a 5-year term. The remaining \$999,468, will be provided as equity from the proposed members of Newfane Operations, LLC. BFA Attachment A presents the personal net worth statements of the proposed members of Newfane Operations, LLC, which indicates the availability of sufficient funds for the equity contribution for the asset purchase price and the working capital requirement. BFA Attachment B is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$1,133,365. Assets includes \$1,782,000 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 \$648,635.

The submitted budget indicates a net income of \$104,595 and \$877,194 for the first and third years subsequent to the change in operator, respectively. The submitted budget appears reasonable. The following is a comparison of 2013 historical and projected revenue and expense for Year 1 and Year 3:

	<u>Annual 2013</u>	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$ 9,933,601	\$12,098,206	\$13,269,345
Expenses	<u>10,876,519</u>	<u>12,993,611</u>	<u>12,392,151</u>
Net Income	\$ (942,918)	\$104,595	\$877,194
Incremental Net Income:		<u>\$1,047,513</u>	<u>\$ 1,820,112</u>

The increase in projected income comes from patient days increasing from 54,768 (2013) to 56,008 (Year 1) and 58,721 (Year 3), and from payor rates trending to 2015 levels while maintaining the same payor mix. The total expenses are expected to increase proportionate to the projected increase in patient days, but administrative efficiencies under new management are anticipated.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Effective February 1, 2015, all eligible beneficiaries in NYC age 21 and over, in need of long term placement in a nursing facility, will be required to join a Medicaid Managed Care Plan (MMCP) or a Managed Long Term Care Plan (MLTCP). On April 1, 2015, the counties of Nassau, Suffolk, and Westchester were phased in, and the rest of the State is scheduled to transition beginning July 1, 2015, for both dual and non-dual eligible populations. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with the NH providers. In order to mitigate the financial impact to NH providers during the transition to managed care, a department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided further guidance requiring MCOs to pay the benchmark Medicaid 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 January 31, 2018 (NYC), March 31, 2018 (Nassau, Suffolk and Westchester), and June 30, 2018 (upstate), respectively.

BFA Attachment C is the internal financial statements of Newfane Rehabilitation & Health Care Center as of December 31, 2014. As shown, the entity had a negative working capital position and a negative net asset position through December 31, 2014. Also, the entity achieved a deficit of revenues over expenses of \$864,745 through December 31, 2014.

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.**

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## Attachments

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BFA Attachment A	Personal Net Worth Statements of Proposed Members
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	Financial Summary- Newfane Rehabilitation & Health Care Center
BNHLC Attachment A	Quality Measures and Inspection Report

151026 E  
Kaaterskil Operating, LLC d/b/a Greene  
Meadows Nursing and Rehabilitation  
Center  
(Greene County)

To be distributed under separate cover



**Project # 151083-E**  
**Allure SJA, LLC d/b/a Saints Joachim & Anne Nursing**

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

**County:** Kings  
**Acknowledged:** March 4, 2015

**Executive Summary**

**Description**

Allure SJA, LLC d/b/a Saints Joachim & Anne Nursing seeks approval to be established as the operator of Saints Joachim & Anne Nursing and Rehabilitation Center, an existing 200-bed Article 28 residential health care facility (RHCF) located at 2720 Surf Avenue, Brooklyn (Kings County). Surf Holdings, LLC, an affiliate of the applicant, intends to purchase the real property. There will be no change in services provided.

On February 23, 2015, Allure SJA, LLC entered into an Asset Purchase Agreement (APA) with the current operator, Saints Joachim and Anne Nursing and Rehabilitation Center, a New York not-for-profit corporation, to purchase the operating interests and certain assets of the RHCF. In February 2015, Surf Holdings LLC entered into a Real Estate Purchase Agreement (REPA) with Saints Joachim & Anne Nursing and Rehabilitation Center to purchase the RHCF building, premises and certain assets used in the operation of the nursing home. There is a relationship between Allure SJA, LLC and Surf Holdings LLC in that the entities have identical ownership.

Ownership before and after the requested change is as follows:

<b>Current Operator</b>	<b>Proposed Operator</b>	
Saints Joachim & Anne Nursing and Rehabilitation Center	Allure SJA, LLC d/b/a Saints Joachim & Anne Nursing	
NY not-for-profit corporation-100%	<b>Members:</b>	<b>%</b>
	Joel Landau	50%
	Marvin Rubin	25%
	Solomon Rubin	25%

**OPCHSM Recommendation**  
Contingent Approval

**Need Summary**

Saints Joachim & Anne Nursing and Rehabilitation Center's utilization was 96.0% in 2011, 96.1% in 2012 and 94.1% in 2013. Current utilization as of March 25, 2015 is 93.5%, with 13 vacant beds. For 2014 and thus far in 2015 utilization was 94.1% and 95.0%, respectively.

This application will not result in a change to beds or services.

**Program Summary**

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

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**

Allure SJA, LLC d/b/a Saints Joachim & Anne Nursing will acquire the RHCF operating assets for \$5,000,000, which will be funded as follows: \$500,000 from members' equity and a \$4,500,000 loan for 10 years at 5% interest. A letter of interest from Willow Capital Group has been received. Surf Holdings, LLC will purchase the real property for \$30,000,000. This will be paid with \$3,000,000 in members' equity and a loan of \$27,000,000 for 10 years, with 25 year amortization, at 4.75% interest. A letter of interest from Skyline Capital has been received. Affidavits have been provided by all members

committing to personally fund the balloon payment at 10-years if refinancing is unavailable. There are no project costs.

Budget:	<u>Year 1</u>
Revenues	\$27,547,327
Expenses	<u>27,238,118</u>
Gain	\$309,209

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 a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; 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]
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:
  - 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.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission of a programmatically acceptable name for the facility. [LTC]
5. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health.
7. Submission of an executed loan commitment for the operations of the RHCF, acceptable to the Department of Health. [BFA]
8. Submission of an executed loan commitment for the real estate purchase, acceptable to the Department of Health. [BFA]
9. Submission of a revised Certificate of Amendment of the Articles of Organization of Allure SJA, LLC, acceptable to the Department. [CSL]
10. Submission of the executed Operating Agreement of Allure SJA, LLC, acceptable to the Department. [CSL]
11. Submission of evidence of site control, acceptable to the Department. [CSL]
12. Submission of an executed Certificate of Amendment of the Certificate of Incorporation or an executed Certificate of Dissolution of Saints Joachim and Anne Nursing and Rehabilitation 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

**June 11, 2015**

# Need Analysis

## Project Description

Allure SJA, LLC d/b/a Saints Joachim & Anne Nursing seeks approval to become the established operator of Saints Joachim & Anne Nursing and Rehabilitation Center, a 200-bed Article 28 residential health care facility (RHCF), located at 2720 Surf Avenue, Brooklyn, 11224 in Kings County.

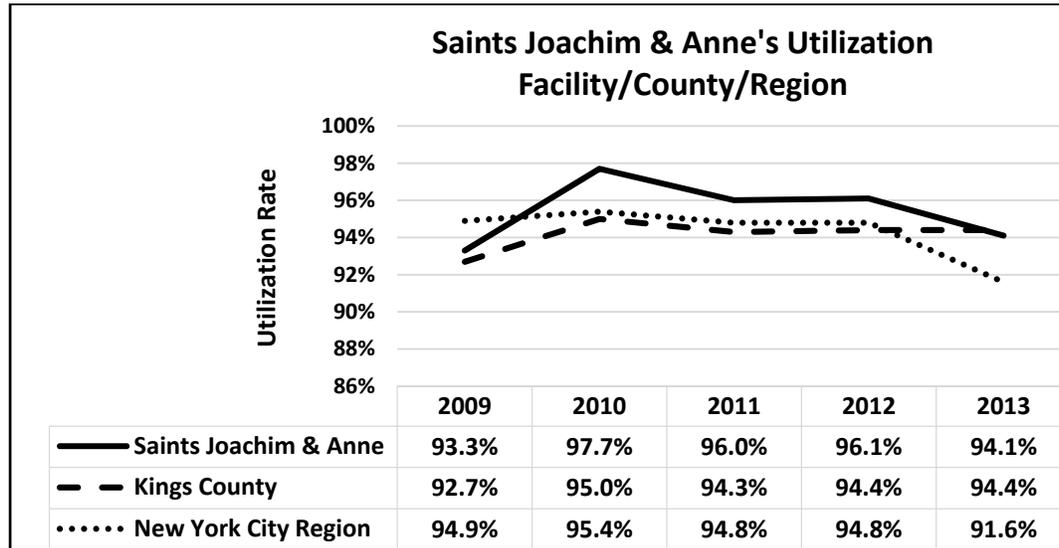
## Analysis

There is currently a need for 8,357 beds in the New York City Region as indicated in Table 1 below. The overall occupancy for Kings County and the New York City Region is 94.4% and 91.6%, respectively, as indicated in Chart 1.

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

<b>2016 Projected Need</b>	51,071
<b>Current Beds</b>	42,178
<b>Beds Under Construction</b>	536
<b>Total Resources</b>	42,714
<b>Unmet Need</b>	8,357

**Chart 1: Saints Joachim & Anne Nursing and Rehabilitation Center's Utilization**



Saints Joachim & Anne Nursing and Rehabilitation Center's utilization was 96.0% in 2011, 96.1% in 2012 and 94.1% in 2013. Historic utilization has been near the Department's planning optimum and occupancy thus far in 2015 has been 95.0%. The decline in utilization in 2013 is attributable to a lack of staff dedicated to assist the facility in reducing and preventing avoidable hospital admissions and lack of staff training to be able to accommodate higher acuity residents, resulting in lower-than expected occupancy. In 2013, the facility's overall case mix index was 1.33; the facility's case mix index for Medicaid-only patients was 1.26.

The proposed operators plan to change the model of care to one that directly supports DSRIP program goals and community need. It is anticipated that this change will increase the facility's utilization to above the Department's planning optimum by Year 3 of operations. To increase utilization, the proposed operator will:

- reduce potentially preventable hospital admissions/readmissions through the implementation of the INTERACT model;
- certify staff to provide transfusion and IV therapy services;
- provide Total Parental Nutrition services;
- contract with a Respiratory Therapist to admit patients with trachea tubes;
- institute a vestibular therapy program to reduce hospitalizations due to falls;
- integrate palliative care into the facility's care model; and
- provide onsite urology and bladder scans and FEES exams.

#### 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.

Saints Joachim & Anne Nursing and Rehabilitation Center's Medicaid admissions for 2012 and 2013 are 69.9% and 67.4%, respectively. This facility exceeded King County's 75% Medicaid admission threshold rates in 2012 and 2013 of 34.9% and 24.8%, respectively.

#### Conclusion

The recent restoration of occupancy at the facility to higher levels and the applicant's intended enhancement of programs and staff skills to serve high acuity residents more effectively, together with the facility's high proportion of Medicaid residents, warrant maintenance of the current complement of beds. The proposed transaction will help preserve a needed source of RHCF care for the Medicaid and general populations in the community.

#### Recommendation

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

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Saints Joachim & Anne Nursing and Rehabilitation Center	Saints Joachim & Anne Nursing
Address	2720 Surf Avenue Brooklyn, NY. 11224	Same
RHCF Capacity	200	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Voluntary / Not-for-profit	Proprietary
Operator	SS Joachim & Anne Residence	Allure SJA, LLC  Managing Member: Joel Landau                      50.0%  Members: Marvin Rubin                      25.0% Solomon Rubin                      25.0%

### Character and Competence - Background

#### Facilities Reviewed

##### Nursing Homes

Linden Center for Nursing and Rehabilitation	01/2013 to present
Crown Heights Center for Nursing and Rehabilitation	01/2013 to present
Hamilton Park Nursing and Rehabilitation Center	08/2009 to present
Hopkins Center for Rehabilitation and Healthcare	03/2012 to present
King David Nursing and Rehabilitation Center	01/2015 to present

##### New Jersey Nursing Home

Norwood Terrace Health Center	04/2005 to present
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##### Licensed Home Care Services Agency (LHCSA)

True Care, Inc.	03/2011 to present
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#### Individual Background Review

Joel Landau is the Director of Care to Care, LLC, a radiology benefit management company. He is also the owner of The Intelimed Group, a medical contracting and credentialing company and E-Z Bill, a medical billing company. Joel Landau is a notary public, licensed by the Department of State in New York State. Mr. Landau discloses the following ownership interests in health facilities:

Linden Center for Nursing and Rehabilitation	01/2013 to present
Crown Heights Center for Nursing and Rehabilitation	01/2013 to present
King David Nursing and Rehabilitation Center	01/2015 to present

Marvin Rubin is a manager at the Hamilton Park Nursing and Rehabilitation Center. Marvin Rubin discloses the following ownership interests in health facilities:

Linden Center for Nursing and Rehabilitation	05/2013 to present
Crown Heights Center for Nursing and Rehabilitation	04/2013 to present
Hopkins Center for Rehabilitation and Healthcare	03/2012 to present
Hamilton Park Nursing and Rehabilitation Center	12/2012 to present
King David Nursing and Rehabilitation Center	01/2015 to present
True Care, Inc.	03/2011 to present

Solomon Rubin is the controller for the Grandell Rehabilitation and Nursing Center and the Beach Terrace Care Center. He is also a manager at Hamilton Park Nursing and Rehabilitation Center. Solomon Rubin discloses the following ownership interests in health facilities:

Hamilton Park Nursing and Rehabilitation Center	08/2009 to present
Linden Center for Nursing and Rehabilitation	05/2013 to present
Crown Heights Center for Nursing and Rehabilitation	04/2013 to present
King David Nursing and Rehabilitation Center	01/2015 to present
Norwood Terrace Health Center (NJ)	2000 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 Hopkins Center for Rehabilitation and Healthcare for the period identified above reveals that the facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on February 29, 2012. Deficiencies were found under 10 NYCRR 415.3(c)(1)(ii) – Right to Refuse; Formulate Advanced Directives. A review of operations for Hopkins Center for Rehabilitation and Nursing for the time periods indicated above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for Linden Center for Nursing and Rehabilitation, Hopkins Center for Rehabilitation and Healthcare, Hamilton Park Nursing and Rehabilitation Center, Crown Heights Center for Nursing and Rehabilitation, and King David Nursing and Rehabilitation Center 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 the Norwood Terrace Health Center in Plainfield, New Jersey for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the licensed home care services agency True Care, Inc. reveals that a substantially consistent high level of care has been provided since there were no enforcements.

#### 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 the CMS 2013 sprinkler mandate.

#### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

#### Recommendation

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

## Financial Analysis

### Asset Purchase Agreement

The applicant has submitted an executed operations transfer agreement for the purchase of the operations of Saints Joachim and Anne Nursing and Rehabilitation Center, which is summarized below:

Date:	February 23, 2015
Seller:	Saints Joachim and Anne Nursing and Rehabilitation Center
Purchaser:	Allure SJA, LLC
Asset Acquired:	Business and operations of the Facility; trademarks, copyrights, marketing materials, tools or reports; accounts receivables on or before Closing; Seller's rights under any 3rd party programs, excluding amounts due/not yet paid for services rendered by Seller for periods prior to Closing; all equipment, furniture, appliances, tools, supplies, other personal property owned by Seller; all leases, contracts, other agreements, which Buyer expressly elects to assume; all rights to telephone, facsimile numbers, name "Saints Joachim and Anne Nursing and Rehabilitation Center", policy/procedure manuals, intellectual property and/or software; all residents funds held in trust; all security deposits held by Seller; all retroactive rate increases and/or lump sum payments from any source.
Excluded Assets:	All Seller's right, title, interest in the following as of Closing: Personal property; All cash, deposits (other than residents') & cash equivalents; all bank accounts in name of Seller, any investments, marketable securities and accrued interest & dividends owned by Seller; proceeds of pending Universal Settlement with NYS
Assumed Liabilities:	Liabilities and obligations related to the operation of the Facility and the Nursing Home on or after the Closing Date and all of the liabilities and obligations of Seller arising under the Assumed Contracts, to the extent such liabilities and obligations relate to any period on or after the Closing Date.
Purchase Price:	\$5,000,000 for basic assets less total amount of Assumed Payables (those not allocated under RE Contract), less aggregate amount of reimbursement from Medicaid; less any amount pursuant to Section 10.10 (bed reduction clause)
Payment of Purchase Price:	Paid in full, via wire transfer, on Closing Date

The financing of the purchase price is proposed to be satisfied as follows:

Members' Equity	\$500,000
Loan (10-year term at 5% interest rate)	<u>\$4,500,000</u>
Total	<u>\$5,000,000</u>

A letter of interest has been provided by Willow Capital Group at the terms noted above, for the purchase of the operations.

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, the facility has no material outstanding Medicaid liabilities.

### Real Estate Purchase Agreement

Surf Holdings, LLC entered into a real estate purchase agreement with Saints Joachim and Anne Nursing and Rehabilitation Center in February 2015, for the acquisition of the property as shown below. The agreement is considered draft as the document is signed but not dated.

Date:	February 2015 (signed, but day not provided)
Seller:	Saints Joachim and Anne Nursing and Rehabilitation Center
Buyer:	Surf Holdings, LLC
Purchased:	Parcel of real property and improvements constructed thereon a 200-bed RHCF located at 2720 Surf Avenue, Brooklyn, NY 11224
Purchase Price:	\$30,000,000
Payment of Purchase Price:	\$1,750,000 Deposit; \$18,250,000 paid at Closing; \$10,000,000 Promissory Note to Seller at Closing; Note Terms: 15 years at Prime+0.25% per annum to maximum of 4.0% per annum. Interest paid monthly in arrears. Principal paid semi-annual. At Purchaser's option "certain accounts payable may be assumed at Closing and the Purchaser shall receive a credit for such assumed accounts payable against the Purchase Price."
Financing:	Member equity of \$3,000,000 and \$27,000,000 financed at 4.75% with a 10-year term and 25-year amortization.

Affidavits have been received by all members committing to personally fund the balance of the loan payment at the end of the 10-year term if refinancing is unavailable.

### Lease Agreement

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

Date:	January 12, 2015
Premises:	A 200-bed RHCF located at 2720 Surf Avenue, Brooklyn, NY 11224
Landlord:	Surf Holdings, LLC of 199 Lee Avenue, Suite 182, Brooklyn, NY 11211
Tenant:	Allure SJA LLC, dba Saints Joachim & Anne Nursing
Terms:	20 years commencing on the execution of the lease, with option of 2 extensions with each extension a period of 5 years.
Rental:	Base rent of \$3,500,000 per annum, with an additional 3% increase on each anniversary date, paid monthly in advance.
Provisions:	Triple Net Lease. Tenant is responsible for taxes, general liability insurance, utilities and maintenance.

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

### Operating Budget

The applicant has provided an operating budget, in 2015 dollars, for the first year subsequent to the change in ownership, summarized as follows:

	<u>Per Diem</u>	<u>Year One</u>
<u>Revenues:</u>		
Medicaid	\$285.01	\$12,178,330
Medicare	\$606.34	10,512,725
Private/Other	\$524.27	4,856,272
Total Revenues		\$27,547,327
<u>Expenses:</u>		
Operating		\$22,185,364
Interest		572,754
Depreciation and Rent		4,480,000
Total Expenses		\$27,238,118

Net Income	\$309,209
Total Patient Days	69,350
Occupancy %	95.00%

The following is noted with respect to the submitted budget:

- Utilization is based upon the historical experience of the existing nursing facility, adjusted for the initiatives the applicant intends to implement to increase and maintain occupancy. These initiatives include: providing Total Parenteral Nutrition, IV therapy and transfusion services; providing onsite urology/bladder scans, bedside flexible endoscopic evaluation of swallowing exams, and vestibular rehabilitation therapy; and contracting with a respiratory therapist to enable admission of patients with tracheal tubes.
- Medicaid revenue is based on the facility's current Medicaid regional pricing rate, which serves as the current Medicaid Managed Care benchmark payment rate as well.
- Payment rates for all other payors are based on the actual current payment levels for the facility.
- Year 1 cost projections are based on the actual 2014 interim costs incurred by Saints Joachim & Anne Nursing and Rehabilitation Center adjusted for inflation, increased volume, acquisition costs, rent and taxes.
- Breakeven utilization is projected at approximately 93.92% or 68,563 patient days for year 1 of operations.

The utilization, revenue and expense assumptions presented above appear reasonable.

#### Capability and Feasibility

Allure SJA, LLC d/b/a Saints Joachim & Anne Nursing will acquire the RHCF operating assets for \$5,000,000, which will be funded as follows: \$500,000 from member's equity, and a \$4,500,000 loan for 10 years at 5% interest. A letter of interest from Willow Capital Group has been received. Surf Holdings, LLC, an affiliate to the applicant with identical ownership, will purchase the real property for \$30,000,000. The purchase price for the real property is proposed to be satisfied with equity of \$3,000,000 and a \$27,000,000 loan at 4.75% interest with a 10-year term and 25-year amortization. A letter of interest from Skyline Capital has been provided. Affidavits have been received from all members committing to personally fund the balance of the balloon payment at the end of the 10-year term if refinancing is unavailable. There are no project costs associated with this application.

Working capital requirements are estimated at \$1,424,527 based on two months of the first year budgeted expenses less an adjustment for accounts receivable (A/R) as per the Asset Purchase Agreement, which states the amount of accounts receivable at the time of purchase will be made available. Affidavits have been received from each member accepting financial responsibility should this adjustment be insufficient to meet working capital requirements. BFA Attachment A is a summary of the net worth of the members which indicates the availability of sufficient funds to meet member equity requirements totaling \$4,924,527, broken down as follows:

- Realty - \$3,000,000
- Operating Assets - \$500,000
- Working Capital - \$1,424,527

Affidavits from Joel Landau and Marvin Rubin have been received which state that they are willing to contribute resources disproportionate to their ownership percentages to meet any equity requirements.

The submitted budget indicates a net profit of \$309,209 for Year 1 of operations. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Effective February 1, 2015, all eligible beneficiaries in NYC age 21 and over, in need of long term placement in a nursing facility, were required to join a Medicaid Managed Care Plan (MMCP) or a Managed Long Term Care Plan (MLTCP). Saints Joachim & Anne Nursing and Rehabilitation Center is located in Kings County, and thus, is in the first phase effective February 1, 2015. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with the NH providers. In order to mitigate the financial impact to NH providers during the transition to managed care, a department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided further guidance requiring MCOs to pay the benchmark Medicaid 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 January 31, 2018 (NYC).

BFA Attachments B and C are the pro-forma balance sheets of Allure SJA, LLC d/b/a Saints Joachim & Anne Nursing and Surf Holdings, LLC, respectively, which indicates a positive members' equity of \$1,924,527 as of Day 1 of operations for the facility, and a positive members' equity of \$3,000,000 as of Day 1 for the realty entity.

BFA Attachment D is a summary of the 2012 and 2013 certified and 2014 internal financial statements of Saints Joachim & Anne Nursing and Rehabilitation Center. As shown, the entity had an average negative working capital position and an average positive net asset position. The applicant indicated that the negative working capital was due to cash flow issues. Accounts payable and accrued expenses increased from \$1,338,934 in 2012 to \$1,719,170 in 2014, and the amount due to related parties increased from \$314,857 in 2012 to \$1,662,428 in 2014. The facility made a conscious effort in 2014 to reduce its negative working capital position, which resulted in the entity going from a negative position of \$3,179,005 in 2013 to a negative \$2,693,725 in 2014. In addition, the facility went from an operating loss of \$275,291 in 2013 to an operating gain of \$411,104 in 2014. The \$1,662,428 due to related parties, which is a significant portion of the negative working capital position, will be paid by the current operator upon closing of the sale with the applicant.

All of the proposed members have current ownership interests in Crown Heights Center for Nursing and Rehabilitation, a 295-bed RHC located in Brooklyn, and Linden Center for Rehabilitation and Nursing Center, a 280-bed RHC also located in Brooklyn. Solomon Rubin and Marvin Rubin have ownership interests in Hamilton Park Nursing and Rehabilitation Center, a 200-bed RHC located in Brooklyn. Marvin Rubin also has ownership interest in Hopkins Center for Rehabilitation and Healthcare, a 288-bed RHC in Brooklyn.

All of the proposed members have pending ownership interests in the following facilities, which received Public Health and Health Planning Council approval for the transfer of ownership, but the contingency satisfaction/ownership transfer has not been finalized to date:

- Bedford Center for Nursing and Rehabilitation, a 200-bed RHC located in Brooklyn;
- Nostrand Center for Nursing and Rehabilitation, a 157-bed RHC located in Brooklyn; and
- King David Nursing and Rehabilitation Center, a 271-bed RHC located in Brooklyn.

Mr. Joel Landau was appointed Receiver of Greater Harlem Nursing Home, a 200-bed RHC located in New York City, effective in May 2014. The same members of this CON application have submitted CON # 141120, which is still pending, to become the permanent operators of Greater Harlem Nursing Home.

BFA Attachment E is a 2012 through 2014 financial summary of operations for the members' affiliated RHCs, which shows the following:

- Hopkins Center for Rehabilitation and Healthcare generated an average positive net income of \$4,927,898 and an average positive working capital of \$1,804,028 for the period 2012-2013. As of the 10-months ended October 31, 2014, the working capital position was \$4,523,779 with net operating income of \$5,444,494.
- Hamilton Park Nursing and Rehabilitation Center had a negative working capital of \$4,945,419 in 2013, an increase from negative working capital of \$691,427 in 2012. Effective January 24, 2014, the facility added 50 additional RHC beds, bringing the total RHC beds to 200. The costs related to the increase in beds is reflected in the 2013 increase in current liabilities:
  - Accounts payable and accrued expenses increased from \$2,838,324 in 2012 to \$4,368,470 in 2013 due to issues with vendors. The facility has been addressing these concerns in 2014 and 2015.
  - The facility took out a \$2,000,000 line of credit in 2013 which increased current liabilities.
  - The facility incurred a liability of \$984,623 due to Hamilton Park Realty, LLC, which is a related entity of Hamilton Park.
  - The 6-months ended June 30, 2014 interim profit and loss statement reveals a net operating income of \$272,769. The balance sheet has not been provided for any portion 2014 to date.
- Crown Heights Center for Nursing and Rehabilitation is a newly acquired facility, with ownership effective January 24, 2014. As of September 30, 2014, Crown Heights had a profit from operations of \$183,851 and a negative working capital position of \$271,650. The facility was in receivership prior to applicant members' ownership.
- Linden Center for Nursing and Rehabilitation Center is a newly acquired facility, with ownership effective May 28, 2013. In mid-2014 the facility was certified to operate an additional 40 permanent RHC beds, which had been operated only as emergency beds since Superstorm Sandy, bringing the total RHC beds to 280. This facility had a positive net income of \$1,268,248 in 2013 and a positive net income of approximately \$1.9 million as of September 30, 2014. The entity had a negative working capital position of \$1,974,310 in 2013 due primarily to a loan payable of \$3.25 million. The members paid down \$1.8 million of the loan in January 2014. The balance sheet has not been provided for any portion of 2014 to date.

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

#### Recommendation

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

## Attachments

BFA Attachment A	Net Worth Statement of the Members of Allure SJA, LLC d/b/a Saints Joachim & Anne Nursing
BFA Attachment B	Pro-Forma Balance Sheet - Allure SJA, LLC, d/b/a Saints Joachim & Anne Nursing
BFA Attachment C	Pro-Forma Balance Sheet - Surf Holdings, LLC
BFA Attachment D	Saints Joachim & Anne Nursing and Rehabilitation Center - Financials
BFA Attachment E	Financial Summary - Affiliated Residential Health Care Facilities of the Members
BNHLC Attachment A	Quality Measures and Inspection Report

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Above All Home Health Care Services, Inc.  
Address: Corona  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2228L

Description of Project:

Above All Home Health 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.

The applicant has authorized 200 shares, which are owned as follows: David Yamoah owns 70 shares, Joyce Dabiri owns 50 shares, Nathaniel Akyeampong owns 30 shares, Sylvia Aulita owns 30 shares and Francisca Longdon owns 20 shares.

The Board of Directors of Above All Home Health Care Services, Inc. comprises the following individuals:

David Yamoah, PhD, Chairman  
Dean/Associate Dean, Kean University College of Business  
Executive Director, Kean University School of Accounting and Finance  
Professor of Finance, Kean University

Nathaniel Akyeampong, Esq., Treasurer  
Compliance Officer, United Bank of Africa – New York Branch

Francisca Longdon, Secretary  
Director of Placement, TFC Service Bureau

Joyce Dabiri, RN, Board Member  
Registered Nurse, Brookdale Hospital

Sylvia Aulita, Board Member  
Consultant, Health Care Organizations

Emmanuel Osei-Tutu, Board Member  
Account Representative, Napasei Management

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

A Certificate of Good Standing was received for the Attorney associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 98-15 Horace Harding Expressway, Suite 4K, Corona, New York 11368:

Bronx  
Queens

Kings  
Richmond

New York  
Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational 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: April 2, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Albacare HHC, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2336-L

Description of Project:

Albacare HHC, 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: Igor Vanbaytel owns 134 shares and Julia Mogilevsky owns 66 shares.

The Board of Directors of Albacare HHC, Inc. is comprised of the following individuals:

Igor Vinbaytel, Esq. – President  
Attorney – Bikhman & Vinbaytel, P.C.

Affiliation

ACARE HHC, Inc.

Julia Mogilevsky, MSW – Treasurer/Secretary  
CEO – MJ-MC Home Health Care Agency, Inc.

Affiliation

MJ-MC Home Health Care Agency, Inc.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A Certificate of Good Standing has been received for the attorney.

The applicant proposes to serve the residents of the following counties from an office located at 1909 East 17<sup>th</sup> Street, Brooklyn, New York 11229:

Kings                  New York                  Queens                  Bronx                  Richmond                  Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

ACARE HHC, Inc. (2009-present)  
MJ-MC Home Health Care Agency, Inc.

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: April 10, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: ANR Homecare Services, LLC  
Address: Queens Village  
County: Queens  
Structure: Limited Liability Company  
Application Number: 2400L

Description of Project:

ANR Homecare Services, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed membership of ANR Homecare Services, LLC comprises the following individual:

Alecia Grant, RN – 100%  
Director of Patient Services, B & H Healthcare Services d/b/a Nursing Personnel Homecare

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 proposes to serve the residents of the following counties from an office located at 220-15 103<sup>rd</sup> Avenue, Queens Village, New York 11429:

Queens	Kings	Richmond
New York	Bronx	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: March 2, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Assisted Home Care, LLC d/b/a Prime Assisted Home Care  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2160-L

Description of Project:

Assisted Home Care, LLC d/b/a Prime Assisted Home Care, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The membership of Assisted Home Care, LLC d/b/a Prime Assisted Home Care comprises the following individuals:

Boris Mendel

Economic Interest: 30.000%

Voting Interest: 34.29%

Operator, Central Assisted Living, LLC (1981 – Present)

Operator, Prime Home Health Services, LLC (2007 – Present)

Affiliations:

Central Assisted Living, LLC (ALP) (1981 – Present)

Central Assisted Living d/b/a Central Home Care (LHCSA) (1981 – Present)

Prime Home Health Services, LLC (CHHA/MLTCP) (2007 – Present)

Leon Hofman

Economic Interest: 10.417%

Voting Interest: 11.91%

Administrator/Operator, Queens Adult Care Center

Affiliations:

Hedgewood Home for Adults, LLC (AH/ALP) (1989 – Present)

MZL Home Care Agency, LLC (LHCSA) (1996 – Present)

New Brookhaven Town Home for Adults (AH) (1993 – Present)

Mountainview Home Care Agency (LHCSA) (1998 – Present)

Mountainview Limited Home Care Agency (LHCSA) (2001 – Present)

Hofgur, LLC d/b/a Queens Adult Care Center, LLC (AH/ALP) (2002 – Present)

MZL Limited Home Care Services Agency (LHCSA) (2002 – Present)

Gefen ACF, LLC d/b/a Brooklyn Adult Care Center (AH) (2006 – Present)

Prime Home Health Services, LLC (CHHA/MLTCP) (2007 – Present)

QACC ALP Home Care, LLC (LHCSA) (2009 – Present)

Eric Mendel

Economic Interest: 6.250%

Voting Interest: 7.13%

Operator, Central Assisted Living, LLC (2004 – Present)

Operator, Prime Home Health Services, LLC (2007 – Present)

Affiliations:

Central Assisted Living, LLC (ALP) (2008 – Present)

Central Assisted Living d/b/a Central Home Care (LHCSA) (2008 – Present)

Prime Home Health Services, LLC (CHHA/MLTCP) (2007 – Present)

Martin Hofman  
Economic Interest: 10.417%  
Voting Interest: 11.91%  
Registered Pharmacist  
Administrator, New Brookhaven Town House for Adults (1994 – Present)

Affiliations:

MZL Home Care Agency, LLC (LHCSA) (1996 – Present)  
New Brookhaven Town House for Adults (AH) (1996 – Present)  
Hofgur, LLC d/b/a Queens Adult Care Center, LLC (AH/ALP) (2002 – Present)  
MZL Limited Home Care Services Agency (LHCSA) (2002 – Present)  
Gefen ACF, LLC d/b/a Brooklyn Adult Care Center (AH) (2006 – Present)  
Prime Home Health Services, LLC (CHHA/MLTCP) (2007 – Present)  
QACC ALP Home Care, LLC (LHCSA) (2009 – Present)

Zvi Gurevich (AKA Harry Gurevich)  
Economic Interest: 10.416%  
Voting Interest: 11.90%  
Administrator/Operator, Hedgewood Home for Adults

Affiliations:

Hedgewood Home for Adults, LLC (AH/ALP) (1989 – Present)  
MZL Home Care Agency, LLC (LHCSA) (1996 – Present)  
New Brookhaven Town Home for Adults (AH) (1993 – Present)  
Mountainview Home Care Agency (LHCSA) (1998 – Present)  
Mountainview Limited Home Care Agency (LHCSA) (2001 – Present)  
Hofgur, LLC d/b/a Queens Adult Care Center, LLC (AH/ALP) (2002 – Present)  
MZL Limited Home Care Services Agency (LHCSA) (2002 – Present)  
Gefen ACF, LLC d/b/a Brooklyn Adult Care Center (AH) (2006 – Present)  
Prime Home Health Services, LLC (CHHA/MLTCP) (2007 – Present)  
QACC ALP Home Care, LLC (LHCSA) (2009 – Present)

Azzy Reckess (FKA Azriel Reckess)  
Economic Interest: 12.500%  
Voting Interest: 0%  
President/Owner, Paz Management, Inc.

Affiliations:

Dutchess Care (AH/ALP) (1981 – Present)  
Golden Care Licensed Home Care Services Agency (LHCSA) (1995 – Present)  
The Avalon Assisted Living and Wellness Center (AH/ALP) (2001 – Present)  
Crestview Manor ALP (AH/ALP) (1994 – Present)

Alexander Rovt  
Economic Interest: 20.000%  
Voting Interest: 22.86%  
Private Investigator  
President, IBE Trade Corp.

Affiliations:

The Brookdale University Hospital and Medical Center (2001 – Present)  
Maimonides Medical Center (2010 – Present)  
Prime Home Health Services, LLC (CHHA/MLTCP) (2007 – 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 3125 Emmons Avenue, Brooklyn, New York 11235:

Kings  
Bronx

Queens  
Richmond

New York  
Nassau

The applicant proposes to provide the following health care services:

Nursing

Physical Therapy

Speech-Language Pathology

Nutrition

Home Health Aide

Occupational Therapy

Audiology

Homemaker

Personal Care

Respiratory Therapy

Medical Social Services

Housekeeper

A 7 year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

Gefen ACF d/b/a Brooklyn Adult Care Center  
Central Assisted Living, LLC  
Central Assisted Living, LLC d/b/a Central Home Care  
Crestview Manor ALP  
Dutchess Care  
Golden Care Licensed Home Care Services Agency  
Hedgewood Home for Adults  
Maimonides Medical Center  
Mountainview Home Care Agency  
Mountainview Limited Home Care Agency  
MZL Home Care Agency, LLC  
MZL Limited Home Care Services Agency  
New Brookhaven Town House for Adults  
Prime Home Health Services, LLC  
QACC ALP Home Care, LLC (2009 – Present)  
Hofgur, LLC d/b/a Queens Adult Care Center  
The Avalon Assisted Living and Wellness Center  
The Brookdale University Hospital and Medical Center

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 Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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: April 23, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Bridges to Home Care, Inc.  
 Address: New City  
 County: Rockland  
 Structure: Not-for-Profit Corporation  
 Application Number: 2302-L

Bridges to Home Care, Inc., a not-for-profit corporation, requests approval for licensure of a licensed home care services agency (LHCSA) under Article 36 of the Public Health Law.

Rockland Independent Living Center, Inc., an existing not-for-profit corporation, will be the sole member of Bridges to Home Care, Inc. Bridges to Home Care, Inc. and Rockland Independent Living Center will have mirror boards.

The Board of Directors of Bridges to Home Care, Inc. and Rockland Independent Living Center, Inc. are comprised of the following individuals:

David Aron, CPA-Treasurer Partner, Rifkin & Company LLP	Steven Breen-Member Vice President/Senior Relationship Manager, M&T Bank
Robert Zeiss-2 <sup>nd</sup> Vice President Vice President, HBO Sports	Eric Mandell, Esq.-Member Attorney, Delbello, Donnellan, Weingarten, Wise & Wiederkehr, LLP
David Goldwasser-President Insurance Sales, Met Life	Howard Hellman-Secretary Founder/Chairman, All Bright Electric
Patricia Ranieri, Esq.-Vice President Senior Advisor, Met Life	Jeffery Shannon-Member Audiologist, Hudson Valley Audiology
Evan Golar, CPA-Member Self Employed	Maud Dupuy-Member Administrator/Study Coordinator, Mt. Sinai Medical Center

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the New York State Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professionals associated with this application.

A Certificate of Good Standing has been received for all attorneys.

The applicant proposes to serve the residents of the following counties from an office located at 873 Route 45, Suite 108, New City, New York 10956:

Dutchess  
Orange  
Ulster

Westchester  
Putnam

Rockland  
Sullivan

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	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: April 29, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Caring Hearts of Rochester, LLC  
Address: Rochester  
County: Monroe  
Structure: Limited Liability Company  
Application Number: 2270-L

Description of Project:

Caring Hearts of Rochester, 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 proposed membership of Caring Hearts of Rochester, LLC comprises the following individuals:

Kevin Watkins – 90%  
Co-Founder/Director – Caring Hearts of Rochester (companion care agency)

John Hunt – 10%  
Co-Founder/Director – Caring Hearts of Rochester (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 applicant proposes to serve the residents of the following counties from an office located at 95 Allens Creek Road, Building 2, Suite 242, Rochester, NY 14618:

Monroe	Ontario	Wayne
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Speech-Language Pathology	Occupational 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: March 3, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: CHAS Home Care, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 1724L

Description of Project:

CHAS 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. CHAS Home Care, LLC is an existing home care agency located in Bayonne, New Jersey that wishes to establish a Licensed Home Care Services Agency in New York State.

CHAS Home Care, LLC is comprised of the following members:

Aileen Mesias, 50%  
CEO, CHAS Home Care, LLC

Roger R. Wilson, 50%  
Owner, CHAS Home Care, LLC

Affiliation:  
CHAS Home Care, LLC (New Jersey)

Affiliation:  
CHAS Home Care, LLC (New Jersey)

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 919 Hancock Street, Brooklyn, New York 11233:

Kings                      New York                      Queens                      Bronx                      Richmond

The applicant proposes to provide the following health care services:

Nursing                      Home Health Aide                      Personal Care                      Homemaker

A review of the operations of CHAS Home Care, LLC was performed as part of this review. The information provided by the State of New Jersey indicated that the applicant is currently registered. The State did not provide any information to indicate that they have taken any enforcement actions against CHAS Home Care, LLC.

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: April 29, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Comfort Home Care Services, Inc.  
Address: Flushing  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2333-L

Description of Project:

Comfort 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.

The applicant has authorized 200 shares of stock which are owned solely by Ling Guo.

The Board of Directors of Comfort Home Care Services, Inc. is comprised of the following individual:

Ling Guo, Esq., Nurse Aide/Assistant - President  
Attorney at Law – Private practice  
Real Estate Broker/Manager – City Advance Realty, Inc.  
Court Appointed Legal Guardian and Attorney for Alleged Incapacitated Persons

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A certificate of Good Standing has been received for the attorney.

The applicant proposes to serve the residents of the following counties from an office located at 136-40 39<sup>th</sup> Avenue, Suite 501, Flushing, New York 11354:

Queens	Kings	Richmond
Bronx	New York	Nassau

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
Medical Supplies, Equipment & 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: March 23, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Complete Companion Care, LLC  
Address: Westmoreland  
County: Oneida  
Structure: Limited Liability Company  
Application Number: 2454-L

Description of Project:

Complete Companion 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 proposed membership of Complete Companion Care, LLC comprises the following individuals:

Jacqueline K. Ferris – 66.67%  
Owner/CEO, Complete Companion Care, LLC (companion care agency)  
Administrative Assistant/Health Information Management, NY State Office of Mental Health

Brenda L. Cook – 33.33%  
Owner/Companion/Supervisor, Complete Companion Care, LLC (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 applicant proposes to serve the residents of the following counties from an office located at 5214 Route 233, PO Box 107, Westmoreland, New York 13490:

Oneida	Herkimer	Madison
Chenango	Lewis	Jefferson
Cortland	Onondaga	

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: April 24, 2015



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Dominican Village, Inc.  
Address: Amityville  
County: Suffolk  
Structure: Not-For-Profit Corporation  
Application Number: 2282-L

Description of Project:

Dominican Village, 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 owner of Dominican Village, Inc. is The Council of the Sisters of the Order of St. Dominic.

Dominican Village, Inc. currently operates an Assisted Living Residence/Enriched Housing Program, as well as an Independent Senior Housing Apartment program.

The Board of Directors of Dominican Village, Inc. comprises the following individuals:

John DiLiberto, Chairperson  
NY State Licensed Insurance Consultant  
Vice President/Executive Management, Island Drafting & Technical Institute

John Haight, MBA, Vice Chairperson  
VP of Finance, Our Lady of Consolation

Dr. Veronica Henry, RN, MSN, Secretary  
Executive Assistant to the President, SUNY Farmingdale

Anthony Morrone, CPA, Treasurer  
Vice President/Secretary, Horan, Martello & Morrone, PC

Sister Mary Patricia Neylon, O.P., Prioress  
NY State Teaching Certification  
Prioress/President, Sisters of the Order of St. Dominic

Sister Margaret Ann McVetty, O.P., LMSW, Councilor for Mission  
(AKA Peggy Ann McVetty)  
Leadership, Sisters of the Order of St. Dominic

Suzanne Breit, CPA, Director  
Partner, Horan, Martello & Morrone, PC

Robert Bruechert, Esq., Director  
Principal, Robert G. Bruechert, Attorney at Law, PC

Scott Coyne, MD, Director  
Medical Director/Chief Surgeon, Suffolk County Police Department  
Physician, Scott Coyne, MD Medical Practice

Erin Gibbons, Director  
Investment/Securities Broker, Series 9, 10, 7, 63, 65  
Senior Financial Planner, United Asset Strategies

John Henry, Director  
Bank Manager, Suffolk County National Bank

David Koehler, Director  
Executive, AK Construction Services

Jay Thomas Korth, JD, Director  
Director of Housing and Legal, Catholic Charities

Kathleen McKiernan, MA, Director  
Retired

The Council of the Sisters of the Order of St. Dominic comprises the following individuals:

Sister Mary Patricia Neylon, O.P., Prioress  
Disclosed Above

Sister Patricia Hanvey, Assistant Prioress/Councilor for Dominican Identity  
NY State Teaching Certification  
Leadership, Sisters of the Order of St. Dominic

Sister Patricia Koehler, Councilor for Stewardship  
NY State Teaching Certification  
Treasurer, Sisters of the Order of St. Dominic

Sister Margaret Ann McVetty, O.P., LMSW, Councilor for Mission  
Disclosed Above

Sister Antoinette DeAveiro, Councilor of Charism  
Disclosed Above

Sister Marguerite Warren, Councilor for Wellness  
NY State Teaching Certification – Math  
NY State School Administrator/Supervisor  
Leadership, Sisters of the Order of St. Dominic

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 Office of Teaching Initiatives of the State Education Department indicates no issues with the teaching certifications of the professionals associated with this application.

The New York State Department of Financial Services indicates no issues with the license of the insurance consultant associated with this application.

The Financial Industry Regulatory Authority indicates no issues with the license of the investment/securities broker associated with this application.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

A Certificate of Good Standing has been received for all attorneys associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 565 Albany Avenue, Amityville, New York 11701:

Suffolk

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

Homemaker

Housekeeper

A 7 year review of the following agency was performed as part of this review:

Dominican Village, Inc.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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: March 4, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Efficient Health Careers, Inc.  
d/b/a Efficient Home Care and Consulting Agency  
Address: Ozone Park  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2418-L

Description of Project:

Efficient Health Careers, Inc. d/b/a Efficient Home Care and Consulting Agency, 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 Vedyawati D. Persaud.

The Board of Directors of Efficient Health Careers, Inc. d/b/a Efficient Home Care and Consulting Agency comprises the following individuals:

Vedyawati D. Persaud, RN, FNP, President  
Administrator, New York Dialysis Services d/b/a Brooklyn Kidney Center

Rajiv Persaud, Vice President  
Technical Support Representative, Cablevision

Anita Persaud, Treasurer  
Accounts Receivable and Payable, Verity Wines, Inc.

Sanjiv Persaud, Secretary  
Director, Efficient Care Training Center, 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 76-08 Pitkin Avenue, Ozone Park, New York 11417:

Queens	Kings	Bronx
New York	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	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: March 30, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Elim Home Care Agency, LLC  
Address: Flushing  
County: Queens  
Structure: Limited Liability Company  
Application Number: 2344-L

Description of Project:

Elim Home Care Agency, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of Elim Home Care Agency, LLC is the following individual:

Seung Ryun Choi, PhD – 100%  
Licensed Acupuncturist

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 proposes to serve the residents of the following counties from an office located at 45-65 162<sup>nd</sup> Street, Flushing, New York 11358:

Queens	Bronx	Kings	Nassau
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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: March 30, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Harvey & Phelps, LLC d/b/a FirstLight HomeCare Hudson Valley  
Address: Montgomery  
County: Orange  
Structure: Limited Liability Company  
Application Number: 2384-L

Description of Project:

Harvey & Phelps, LLC d/b/a FirstLight HomeCare Hudson Valley, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Harvey & Phelps, LLC has proposed to operate as a Franchisee of FirstLight HomeCare Franchising, LLC.

The proposed membership of Harvey & Phelps, LLC d/b/a FirstLight HomeCare Hudson Valley comprises the following individuals:

Dana Harvey, 51%  
Executive Assistant, Pepsi Cola of the Hudson Valley  
Co-Owner, FirstLight HomeCare Hudson Valley (Companion Care Agency, 2013 - Present)

Craig Harvey, 48%  
Co-Owner/Operator, FirstLight HomeCare Hudson Valley (Companion Care Agency, 2013 - Present)

Lynn Hogan, RN, 1%  
Staff Nurse, Four Winds Hospital

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 2294 State Route 208, Suite #4, Montgomery, New York 12566:

Orange	Ulster	Sullivan
Rockland	Dutchess	Putnam

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Homemaker
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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: March 10, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Complete Companion Care, LLC  
Address: Westmoreland  
County: Oneida  
Structure: Limited Liability Company  
Application Number: 2454-L

Description of Project:

Complete Companion 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 proposed membership of Complete Companion Care, LLC comprises the following individuals:

Jacqueline K. Ferris – 66.67%  
Owner/CEO, Complete Companion Care, LLC (companion care agency)  
Administrative Assistant/Health Information Management, NY State Office of Mental Health

Brenda L. Cook – 33.33%  
Owner/Companion/Supervisor, Complete Companion Care, LLC (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 applicant proposes to serve the residents of the following counties from an office located at 5214 Route 233, PO Box 107, Westmoreland, New York 13490:

Oneida	Herkimer	Madison
Chenango	Lewis	Jefferson
Cortland	Onondaga	

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: April 24, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Helping Hands Home Care Solutions, LLC  
Address: Lake Ronkonkoma  
County: Suffolk  
Structure: Limited Liability Company  
Application Number: 2361-L

Description of Project:

Helping Hands Home Care Solutions, 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 proposed membership of Helping Hands Home Care Solutions, LLC comprises the following individuals:

Robert DiGiacomo – 50%  
Project Manager, Custom Computer Specialists

Ann DiGiacomo – 50%  
Speech-Language Pathologist, Gurwin Jewish Nursing and Rehabilitation Center

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 Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of Suffolk County from an office located at 60 Dorchester Road, Lake Ronkonkoma, New York 11779.

The applicant proposes to provide the following health care services:

Nursing          Home Health Aide          Personal Care          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: April 10, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Hickok Center for Brain Injury, Inc.  
Address: Rochester  
County: Monroe  
Structure: Not-For-Profit Corporation  
Application Number: 2305-L

Description of Project:

Hickok Center for Brain Injury, 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 Hickok Center for Brain Injury, Inc. is comprised of the following individuals:

Joseph Cutaia - President  
Mortgage Loan Originator, PrimeLending, A PlainsCapital Company

Bonita Seaburn – Vice-President  
School Superintendent (Retired), Spencerport Central School District

Brian Cornetta, CPA – Treasurer  
Senior Accountant, Flaherty Salmin LLP

Mary Ortolani – Secretary  
Retired

Lisa Durant-Jones, Ed. D., SLP – Board Member  
Professor & Graduate Program Director, Nazareth College

Eric Freida – Board Member  
Financial Case Manager, University of Rochester Medical Center

Jaime Campbell – Board Member  
Speech-Language Pathologist, Rehab Care/Hill Haven Rehab & Nursing

David Jacowitz – Board Member  
Managing Directory, Centra Financial Group

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 issue with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of Monroe County from an office located at 114 South Union Street, Rochester, New York 14607.

The applicant proposes to provide the following health care services:

Nursing

Home Health Aide

Housekeeper

The information provided by the Office for Developmental Disabilities has indicated that the applicant had 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: April 10, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Hi - Tech Charities  
Address: Bronx  
County: Bronx  
Structure: Not-For-Profit Corporation  
Application Number: 2307-L

Description of Project:

Hi - Tech Charities, 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 Hi - Tech Charities is comprised of the following individuals:

Francis Onukwue – President President & CEO, Hi-Tech Charities	Emmanuel Opkarauwekwe – Board Chairperson Chaplain, NYC Health and Hospitals Corporation
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Gifty Kwenin, RN – Board Member  
Charge Nurse, Bronx Lebanon Hospital Center

Hi - Tech Charities also operates in the State of Missouri. The applicant described the Missouri office as the head office of Hi - Tech Charities and the proposed New York office as a branch. The Board of Directors of Hi-Tech Charities in Missouri is comprised of the following individuals:

Francis Onukwue – Board Member  
Disclosed above

Nakita Irving-Reed – Vice President/Secretary  
Patient Accounts Manager, BJC

Barbara Brown – Board Member  
Vice President of Operations, Hi-Tech Charities

La Rhonda Thompson-Hill – Board Member  
Nursing Aide, United Care Services

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 Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1063 Tiffany Street, 1<sup>st</sup> Floor, Bronx, New York 10459:

Bronx	New York	Kings
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	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: March 23, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Karing Hearts Agency Corp  
Address: Hauppauge  
County: Suffolk  
Structure: For-Profit Corporation  
Application Number: 2396-L

Description of Project:

Karing Hearts Agency 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 of stock which are owned solely by Basira Braimah.

The Board of Directors of Karing Hearts Agency Corp is comprised of the following individuals:

Basira Braimah, RN – President/Treasurer ICU Nurse - Stony Brook University Medical Center	Kike Masi – Vice-President/Secretary Delivery Service – Ken Smith Autocare
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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 Office of Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 772 Terry Road, Suite One, Hauppauge, New York 11788:

Suffolk	Nassau	Westchester
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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: March 18, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Long Life Home Care, Inc.  
Address: Staten Island  
County: Richmond  
Structure: For-Profit Corporation  
Application Number: 2394-L

Description of Project:

Long Life Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Igor Striapko owns 100 shares and Elena Sapon owns 100 shares.

The Board of Directors of Long Life Home Care, Inc. is comprised of the following individuals:

Igor Striapko – President/Treasurer Administrator, Good Care Agency, Inc.	Elena Sapon – Vice-President/Secretary Registered Nurse, Good Care Agency, Inc.
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Affiliation

Good Care Agency, Inc. (2012 – present)

Affiliation

Good Care Agency, Inc. (2012 – present)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 322 Sand Lane, Staten Island, New York 10305:

Richmond	New York	Kings
Queens	Bronx	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Homemaker	Occupational Therapy
Speech-Language Pathology	Housekeeper	Medical Social Services
Nutrition		

A seven year review of the operations of the following facility was performed as part of this review (unless otherwise noted):

Good Care Agency, Inc. (2012 – present)

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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: April 9, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Manhattan Home Care Ltd.  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 2450-L

Description of Project:

Manhattan Home Care Ltd., 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:

Jasmin P. Espanol, RN – 200 Shares

The Board of Directors of Manhattan Home Care Ltd. comprises the following individual:

Jasmin P. Espanol, RN – President/Secretary  
Staff Nurse, New York Presbyterian Hospital Weill Cornell

The Office of the Professions of the State Education Department indicate no issues with the licensure of the health professional associated with this application.

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 127 East 69<sup>th</sup> Street, New York, New York 10021:

New York                      Kings                      Queens                      Bronx                      Richmond

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Physical Therapy	Speech-Language Pathology
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: March 31, 2015



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: NYC Home Health Care, LLC  
Address: New York  
County: New York  
Structure: Limited Liability Company  
Application Number: 2177-L

Description of Project:

NYC 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.

The membership of NYC Home Health Care, LLC comprises the following individuals:

Hazel Kudera – 70%  
Owner/President, NYC Healthcare Staffing, LLC  
Owner/President, P & K of New York Management Services, Inc.

Leopoldo Reas, Jr., RN, BSN – 20%  
MDS, Advance Care Staffing, LLC

Katrina Reas, RN, BSN – 10%  
Staff Nurse, Park Terrace Care Center

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the licenses of the health care professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 501 Fifth Avenue, Suite 1204, New York, New York 10017:

Kings	Queens	New York
Bronx	Richmond	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	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: April 28, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Oswego County Department of Health  
Address: Oswego  
County: Oswego  
Structure: Public  
Application Number: 2594L

Description of Project:

Oswego County Department of Health, a government subdivision, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant currently operates a certified home health agency, a hospice and a diagnostic and treatment center. Oswego County Department of Health intends to close its certified home health agency. Oswego County Department of Health is requesting approval to become licensed as a licensed home care services agency to enable the county to continue to provide essential public health nursing services.

The applicant proposes to serve the residents of Oswego County from an office located at: 70 Bunner Street, Oswego, New York 13126.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Medical Social Services
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The information provided by the Division of Home and Community Based Services has indicated that the certified home health care agency and hospice reviewed have 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 Division of Hospitals and Diagnostic & Treatment Centers has determined that the Article 28 diagnostic and treatment center reviewed has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

Since the applicant is a public entity, it is not subject to a character and competence review.

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: May 11, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Paraklete H.H.C., LLC d/b/a A Better Care Option  
Address: New York  
County: New York  
Structure: Limited Liability Company  
Application Number: 2388-L

Description of Project:

Paraklete H.H.C., LLC d/b/a A Better Care Option, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The members of Paraklete H.H.C., LLC d/b/a A Better Care Option comprise the following individuals:

Phillip Appel – 40.7%  
Retired

Simon Benichou – 40.7%  
Retired

James Leonard – 7.4%  
Doctor of Ministry  
Pastor of Community and Connectedness,  
Trinity Baptist Church

Jennifer Horton Benichou – 3.7%  
Adjunct Lecturer/Substitute, BMCC NY  
Adjunct Lecturer, LagCC NY

Eileen Appel – 3.7%  
Unemployed

Mary Ellen Gill, RN – 3.7%  
Registered Nurse, New York Presbyterian  
Hospital

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 235 62<sup>nd</sup> Street, Suite 4, New York, New York 10065:

New York  
Bronx

Queens  
Richmond

Kings  
Westchester

The applicant proposes to provide the following health care services:

Nursing

Personal Care

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: March 25, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Philippians Staffing Services, Inc. d/b/a PSS Home Care  
Address: Long Island City  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2374-L

Description of Project:

Philippians Staffing Services, Inc. d/b/a PSS Home Care, 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: Luisa Remponi owns 140 shares and Aaron Romero owns 60 shares.

The Board of Directors of Philippians Staffing Services, Inc. is comprised of the following individuals:

Luisa Remponi, RN – Chief Executive Officer Senior RN – Elmhurst Hospital	Aaron Romero, PTA - Secretary PTA – Mitchell & Martin, Inc. Staffing Agency PTA – Sentosa Care Staffing Agency
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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 Office of the Professions and the State Education Department indicates no issues with the licenses of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1091 Jackson Avenue, Suite 3, Long Island City, New York 11101:

Queens	Kings	New York
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy	Homemaker
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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: March 19, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Red Sun Home Care, Inc.  
Address: Bayside  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2306-L

Description of Project:

Red Sun Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned solely by Yufan Weng.

The Board of Directors of Red Sun Home Care, Inc is comprised of the following individual(s):

Yufan Weng – President  
Independent Home Care Consultant

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 4717 213<sup>th</sup> Street, New York 11361:

Queens            New York            Bronx            Richmond            Kings            Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Nutrition	Occupational Therapy
Speech-Language Pathology	Housekeeper	Medical Social Services
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: April 10, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Rehoboth Care, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2434-L

Description of Project:

Rehoboth Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Dr. Adedolapo A. Olurinde owns 100 shares and the remaining 100 shares are unissued.

The Board of Directors of Rehoboth Care, Inc. comprises the following individual:

Dr. Adedolapo A. Olurinde, Owner/CEO  
Doctor of Physical Therapy  
Owner/Operator, Rehoboth Physical Therapy PC (2006 – Present)  
Owner/Operator, Rehoboth Care, Inc. (2010 – Present)

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 healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 598 New York Avenue, Brooklyn, New York 11203:

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	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: March 16, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Shasia LLC  
Address: Wyandanch  
County: Suffolk  
Structure: Limited Liability Company  
Application Number: 2445-L

Description of Project:

Shasia 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 proposed sole member of Shasia LLC:

Shasia S. Terrell, PCA  
Personal Care Aide, All Metro Health Care  
Personal Care Aide, Interim Health Care

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the individual named above on the New York State Home Care Registry revealed that the individual is certified as a PCA, currently employed as a PCA and has no convictions or findings.

The applicant proposes to serve the residents of Suffolk County from an office located at 105 North 19<sup>th</sup> Street, Wyandanch, New York 11798.

The applicant proposes to provide the following health care services:

Nursing                      Home Health Aide                      Personal Care                      Homemaker

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: April 23, 2015





Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: St. Auburn Corporation d/b/a Visiting Angels Living Assistance  
Address: Stormville  
County: Dutchess  
Structure: For-Profit Corporation  
Application Number: 2329-L

Description of Project:

St. Auburn Corporation d/b/a Visiting Angels Living Assistance, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

St. Auburn Corporation has proposed to operate as a Franchisee of Living Assistance Services, Inc.

The applicant has authorized 1,000 shares, which are owned as follows: Carol St. Auburn owns 500 shares and Michael St. Auburn owns 500 shares.

The Board of Directors of St. Auburn Corporation d/b/a Visiting Angels Living Assistance comprises the following individuals:

Michael St. Auburn, President/Treasurer  
Bartender, Garrison Country Club

Carol St. Auburn, CEO/Secretary  
Manager of Operations, J&L Home Care Services, Inc. d/b/a Visiting Angels Living Assistance

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 69 Mountain Top Road, Stormville, New York 12582:

Dutchess                      Putnam

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: March 25, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: SSMC Services Corporation d/b/a Home Instead Senior Care  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2399L

Description of Project:

SSMC Services Corporation d/b/a Home Instead Senior Care, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

SSMC Services Corporation has proposed to operate as a Franchisee of Home Instead, Inc.

The applicant has authorized 200 shares of stock which are owned as follows: Marcia Johnson owns 100 shares and Sherwin Johnson owns 100 shares.

The Board of Directors of SSMC Services Corporation d/b/a Home Instead Senior Care comprises the following individuals:

Marcia Johnson, President  
Executive Director/Franchise Owner, Home Instead Senior Care (2003 – present, companion care)

Sherwin Johnson, Secretary  
Senior Consultant, Mindseeker Corporation

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 2350 Ocean Avenue, Lower Level, Brooklyn, New York 11229:

Kings	Queens	New York
Bronx	Richmond	Nassau

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: March 17, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: ICC Management & Consulting, Inc. d/b/a Cambridge Guest Home  
Licensed Home Care Service Agency (LHCSA)  
Address: Cambridge  
County: Washington  
Structure: For-Profit Corporation  
Application Number: 2430-L

Description of Project:

ICC Management & Consulting, Inc. d/b/a Cambridge Guest Home Licensed Home Care Service Agency (LHCSA), a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

ICC Management & Consulting, Inc. d/b/a Cambridge Guest Home Licensed Home Care Service Agency (LHCSA) will be affiliated with ICC Management & Consulting, Inc. d/b/a Cambridge Guest Home.

The applicant has authorized 200 shares of stock, which are owned as follows:

George L. Scala – 100 Shares

Kristen L. Batchelder – 100 Shares

The Board of Directors of ICC Management & Consulting, Inc. d/b/a Cambridge Guest Home Licensed Home Care Service Agency (LHCSA) comprises the following individuals:

George L. Scala, NHA – President  
President/CEO, ICC Management & Consulting, Inc.

Kristen L. Batchelder – Vice President  
COO, ICC Management & Consulting, Inc.

Affiliations:

- Cambridge Guest Home (Adult Home) 6/2009 – Present
- David & Helen Getman Memorial Home (Adult Home) 5/2011 – Present

Affiliations:

- Cambridge Guest Home (Adult Home) 6/2009 – Present
- David & Helen Getman Memorial Home (Adult Home) 5/2011 – 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 George Scala 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 was performed as part of this review (unless otherwise noted):

- Cambridge Guest Home: June 2009 – Present
- David & Helen Getman Memorial Home: May 2011 – Present

**Cambridge Guest Home** was fined eight thousand five hundred dollars (\$8,500.00) pursuant to a stipulation and order dated August 21, 2012 for inspection findings of October 20, 2009 and March 4, 2010 for violations 18 NYCRR Part 487.7(g)(1) Resident Services, Case Management; 487.9(a)(15) Personnel; 487.11(k)(15) Environmental Standards, Maintenance; and 487.12(a-b) Disaster and Emergency Planning.

**Cambridge Guest Home** was fined eight thousand five hundred dollars (\$8,500.00) pursuant to a stipulation and order dated August 21, 2012 for inspection findings of October 20, 2009, March 4, 2010 and August 27, 2010 for violations 18 NYCRR Part 487.3(d) General Provisions, Access; 487.9(a)(15) Personnel, Basic 1<sup>st</sup> Aid on Duty.

**Cambridge Guest Home** was fined one thousand dollars (\$1,000.00) pursuant to a stipulation and order dated March 3, 2014 for inspection findings of December 12, 2013 for violations 18 NYCRR Part 486.5(a)(4)(iv) Endangerment.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to serve the residents of the Assisted Living Program to be operated by Cambridge Guest Home in Washington County from an office located at 11 S. Union Street, Cambridge, New York 12816.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Speech-Language Pathology
Occupational Therapy	Physical Therapy	Housekeeper	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: May 8, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Garden of Eden Home, LLC d/b/a Garden of Eden Home Care  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2595L

Description of Project:

Garden of Eden Home, LLC d/b/a Garden of Eden Home Care, 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 Garden of Eden Home, LLC d/b/a Garden of Eden Assisted Living Program.

The membership of Garden of Eden Home, LLC d/b/a Garden of Eden Home Care comprises the following individuals:

Martin J. Amsel – 50%  
Retired

Affiliation:

Garden of Eden Home (1976 – present)

Linda Amsel – 50%  
Retired

Affiliation:

Garden of Eden Home (1976 – 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 Kings County from an office located at 1608-1620 Stillwell Avenue, Brooklyn, New York 11223:

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Garden of Eden Home

Garden of Eden Home was fined twenty-five thousand dollars (\$25,000) pursuant to a stipulation and order dated January 13, 2015 for surveillance findings of December 2009 and January 2011. Deficiencies were found under 18 NYCRR 487.5(a)(3)(ix) failing to safeguard adult home residents' rights to receive courteous and respectful care and treatment.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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: March 27, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Leroy Manor Home Care, LLC d/b/a Leroy Manor Home Care  
Address: Leroy  
County: Genesee  
Structure: Limited Liability Company  
Application Number: 2597-L

Description of Project:

Leroy Manor Home Care, LLC d/b/a Leroy Manor Home Care, 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 Leroy Manor, LLC. The LHCSA and the ALP will have identical membership.

The membership of Leroy Manor Home Care, LLC d/b/a Leroy Manor Home Care comprises the following individual:

Neil Zyskind, JD – 100%  
Managing Member/Operator, Leroy Manor, LLC  
Managing Member/Operator, Heritage Ransomville Management, LLC  
Managing Member/Operator, Mary Agnes Manor Management, LLC

Affiliations:

Mary Agnes Manor (2002 – Present)  
Leroy Manor (2005 – Present)  
Heritage Manor of Ransomville (2004 – Present)  
Kelly's Home for Adults (1998 – 2009)  
Mary Agnes Manor LHCSA (2011 – Present)  
Heritage Manor of Ransomville Home Care (2013 – Present)

Certificates of Good Standing were received from the judicial districts that licensed the attorney in the States of New York and California.

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 8678 Lake Street Road, Leroy, New York 14482:

Genesee	Allegany	Cattaraugus
Chautauqua	Erie	Niagara
Orleans	Wyoming	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

Mary Agnes Manor  
Leroy Manor  
Heritage Manor of Ransomville  
Kelly's Home for Adults (2008 - 2009)  
Mary Agnes Manor LHCSA (2011 – Present)  
Heritage Manor of Ransomville Home Care (2013 – Present)

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Leroy Manor was fined one thousand dollars (\$1,000.00) pursuant to a stipulation and order dated August 14, 2009 for surveillance findings of April 17, 2008. Deficiencies were found under 18 NYCRR 486.5(a)(4)(iii) Endangerment.

Heritage Manor of Ransomville was fined three thousand dollars (\$3,000.00) pursuant to a stipulation and order dated August 9, 2013 for surveillance findings of April 25, 2012, August 24, 2012 and December 24, 2012. Deficiencies were found under 18 NYCRR 487.7(f)(12)(iii) Electronic Medication Management and Documentation Systems.

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: April 13, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Mariners Home Care, Inc. d/b/a Mariners Home Care  
Address: Staten Island  
County: Richmond  
Structure: For-Profit Corporation  
Application Number: 2601L

Description of Project:

Mariners Home Care, Inc. d/b/a Mariners Home Care, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated the Assisted Living Program to be operated by Mariners Residence, Inc. The LHCSA and the ALP will have identical ownership.

The applicant has authorized 200 shares of stock which are owned as follows: Nachi Lustig owns 50 shares, Avi Lustig owns 50 shares and Perri Schick owns 50 shares. The remaining 50 shares are unissued.

The Board of Directors of Mariners Home Care, Inc. comprises the following individuals:

Avi Lustig, CASAC, President  
International Certified Alcohol and Drug Counselor  
Administrator/Operator, Mariners Residence, Inc.  
Administrator, West Brighton Home Care Service Agency, Inc.

Affiliations:

Mariners Residence, Inc. (2013 – Present)  
Silver Lake Support Services, Inc. (2001 – Present)

Nachi Lustig, CASAC-T, Vice President  
Administrator, Lakeside Manor Home for Adults, Inc.  
Vice President, Silver Lake Support Services, Inc.

Affiliations:

Mariners Residence, Inc. (2013 – Present)  
Silver Lake Support Services, Inc. (2001 – Present)

Perri Schick, Secretary/Treasurer  
Recreation Director/Medication Coordinator, Lakeside Manor Home for Adults, Inc.

Affiliations:

Mariners Residence, Inc. (2013 – Present)  
Silver Lake Support Services, Inc. (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 New York State Office of Alcoholism and Substance Abuse Services indicates no issues with the certifications of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 2099 Forest Avenue, Staten Island, New York 10303:

Richmond  
Queens

Bronx  
New York

Kings  
Westchester

The applicant proposes to provide the following health care services:

Nursing  
Physical Therapy  
Speech-Language Pathology  
Nutrition

Home Health Aide  
Occupational Therapy  
Audiology  
Homemaker

Personal Care  
Respiratory Therapy  
Medical Social Services  
Housekeeper

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Mariners Residence, Inc. (2013 – Present)  
Silver Lake Support Services, Inc.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the New York State Office of Alcoholism and Substance Abuse Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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: April 28, 2015

Licensed Home Care Service Agency  
Character and Competence Staff Review

Name of Agency: Sullivan Manor, LLC d/b/a Sullivan Manor Home Care Agency  
Address: Narrowsburg  
County: Sullivan  
Structure: Limited Liability Company  
Application Number: 2607-L

Sullivan Manor, LLC d/b/a Sullivan Manor Home Care Agency, 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 with an Assisted Living Program (ALP) which will be operated by Sullivan Manor, LLC.

The sole member of Sullivan Manor, LLC is:

Brian H. Rosenman  
Asset Manager/GFI Capital Resources

Affiliations:  
Sutton Gardens, LLC (Operator)  
Kelly's Home for Adults (Receiver)  
Birchwood Suite (Receiver)

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 6319 Route 97, Narrowsburg, NY:

Sullivan	Orange	Ulster
Rockland	Westchester	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeping	Physical Therapy
Occupational Therapy	Speech-Language Therapy	Medical Social Services
Nutrition		

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

Birchwood Suite (09/2014 - present)  
Sutton Gardens, LLC (01/2011 - present)  
Kelly's Home for Adults (11/2011- present)

Sutton Gardens, LLC was fined two thousand dollars (\$2,000.00) pursuant to a stipulation and order dated November 21, 2012 for surveillance findings of June 9, 2011 and August 25, 2011. Deficiencies were found under 10 NYCRR 487.8(e)(1) Food Service.

Kelly's Home for Adults was fined thirty thousand dollars (\$30,000.00) pursuant to a stipulation and order dated February 6, 2014 for surveillance findings of April 12, 2011, September 9, 2011, September 20, 2012 and January 17, 2013. The surveys conducted on September 20, 2012 and January 17, 2013 had deficiencies cited under 18 NYCRR 487.4(a) Admission Standards, 487.6(a)(1) Resident Funds and Valuables. This stipulation and order also included deficiencies that were cited on the surveys that were

conducted on April 12, 2011 and September 9, 2011. These deficiencies are not reported because the surveys took place before the applicant became the receiver.

Kelly's Home for Adults was fined one thousand five hundred dollars (\$1,500.00) pursuant to stipulation and order dated October 22, 2014 for surveillance findings of October 10, 2013 and March 4, 2014. Deficiencies were found under 18 NYCRR 487.11(f)(10) Environmental Standards, 487.11(i)(11-12) Environmental Standards and 487.11(k)(5) 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.

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: April 29, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Kings Adult Care Center, LLC d/b/a Kings Licensed Home Care Services Agency  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2615-L

Description of Project:

Kings Adult Care Center, LLC d/b/a Kings Licensed Home Care Services Agency, 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 with the Assisted Living Program to be operated by Kings Adult Care Center, LLC.

The sole member of Kings Adult Care Center, LLC d/b/a Kings Licensed Home Care Services Agency is the following individual:

Daniel Lifschutz  
Administrator, Kings Adult Care Center, LLC  
Director, Surfside Manor Home for Adults LHCSA, LLC d/b/a Extracare Home Care Agency

Affiliations:

Beacon Rehabilitation and Nursing Center, LLC (2007 – Present)  
Kings Adult Care Center, LLC (2010 – Present)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 2255 Cropsy Avenue, Brooklyn, New York 11214:

Kings	Bronx	New York
Queens	Richmond	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Beacon Rehabilitation and Nursing Center, LLC (formerly Ocean Promenade Nursing Home)  
Kings Adult Care Center, LLC (2010 – Present)

Ocean Promenade Nursing Home was fined \$4,000 pursuant to a stipulation and order dated November 19, 2012 for surveillance findings of February 24, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accidents and Supervision and 415.26 Administration.

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 Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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: April 20, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: All American Homecare Agency, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2568-L

Description of Project:

All American 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.

All American Homecare Agency, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its August 1, 2013 meeting and subsequently licensed 2064L001. At that time the sole owner of All American Homecare Agency, Inc. was Zoya Bolucher (200 Shares).

Through a Stock Transfer Agreement, Zoya Bolucher will transfer to Albert Isakov and Victoria Isakov an aggregate of 60 shares of common stock. Immediately following consummation of the share transfer Albert Isakov and Victoria Isakov will contribute all such shares to LHCSA Management LLC, a New York Limited Liability Company, jointly owned by Albert Isakov and Victoria Isakov.

The applicant has authorized 200 shares of stock, which will be owned as follows:

Zoya Bolucher – 140 Shares

LHCSA Management, LLC – 60 Shares

The Board of Directors of All American Homecare Agency, Inc. comprises the following individuals:

Albert N. Isakov – President/Treasurer  
CEO/Management, All American Homecare Agency, Inc.  
CEO/Management, Isakov Group, Inc./Isakov Planning  
Group, Inc./Isakov Insurance Agency, Inc.

Zoya Bolucher – Vice President/Secretary

Victoria I. Isakov – Board Member  
Clerical, All American Homecare Agency, Inc.

The proposed Members of LHCSA Management, LLC comprises the following individuals:

Albert N. Isakov – 50%  
(Previously Disclosed)

Victoria I. Isakov – 50%  
(Previously Disclosed)

Zoya Bolucher is exempt from character and competence review due to the fact that she was previously approved by the Public Health Council for this operator.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven (7) year review of the operations of All American Homecare Agency, Inc. was performed as part of this review. The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to continue to serve the residents of the following counties from an office located at 1113 Avenue J, 2<sup>nd</sup> Floor, Brooklyn, New York 11230.

Bronx	Kings	New York	Queens
Richmond	Westchester		

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	Nutrition	Homemaker	Medical Supply, Equipment and Appliances
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: March 27, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Sterling Home Care, Inc. d/b/a Osborn Home Care  
Address: Rye  
County: Westchester  
Structure: Not-For-Profit Corporation  
Application Number: 2552-L

Description of Project:

Sterling Home Care, Inc. d/b/a Osborn Home Care, a not-for-profit corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Sterling Home Care, Inc. d/b/a Osborn Home Care, was previously approved as a home care services agency by the Public Health Council at its January 26, 1996 meeting and subsequently licensed as 9817L001.

The applicant seeks approval to transfer membership of Sterling Home Care, Inc. from its current parent, The Osborn, to a newly formed not-for-profit corporation named The Osborn Network, Incorporated which will act as the parent corporation of Sterling Home Care, Inc. d/b/a Osborn Home Care.

The Board of Directors of Sterling Home Care, Inc. d/b/a Osborn Home Care comprises the following individuals:

Douglas W. Shanks – Chairman  
Managing Director, Vrye Advisors, LLC

John R. Miller, CPA – Secretary  
Retired

C. Ronald Mackenzie, MD – Director  
Physician, Hospital for Special Surgery

James P. Steffensen - Director  
Founder, Strategy Consultant, JSM Strategy Advisors

Brooks G. Wright - Director  
Vice President, Marine & Industrial Hydraulics, Inc.

The Board of Trustees of The Osborn Network, Incorporated comprises the following individuals:

John R. Miller, CPA – Chairman  
(Previously Disclosed)

Werner L. Polak, Esq. – Vice Chairman  
Consultant, Self-employed

Per Hellman – Secretary  
Retired

James E. Buckley – Trustee  
Retired

Lucien D. Burnett III – Trustee  
Business Development, Sagueway Strathmore  
Capital

Timothy J. Clark – Trustee  
Oversight of Investments, ESCP Management Services,  
LLC

C. Ronald Mackenzie, MD – Trustee  
(Previously Disclosed)

George G. Pawlush – Trustee  
Retired

Nathan W. Pearson – Trustee  
Member, Gallup Hill, LLC

Mason Rees – Trustee  
COO, Trident Investment Management

Douglas W. Shanks – Trustee  
(Previously Disclosed)

James P. Steffensen – Trustee  
(Previously Disclosed)

Brooks G. Wright – Trustee  
(Previously Disclosed)

All of the individuals listed above are also Voluntary Trustees of The Osborn which operates a Continuing Care Retirement Community (CCRC). The CCRC includes independent living residences, an enriched housing program which is also licensed and certified as an Assisted Living Residence/Enhanced Assisted Living and Special Needs Assisted Living Residence and a residential health care facility.

A search for individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

A Certificate of Good Standing has been received for Mr. Werner Polak.

A seven year review was conducted for the following facilities:

- Sterling Home Care, Inc. d/b/a Osborn Home Care (LHCSA)
- The Osborn (RHCF)
- The Osborn (Enriched Housing Program/ALR/SNALR)

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.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to continue to serve the residents of the following counties from an office located at 101 Theall Road, Rye, New York 10580:

Dutchess	Nassau	Orange	Putnam
Rockland	Suffolk	Sullivan	Ulster
Westchester	Bronx		

The applicant proposes to continue providing the following health care services:

Nursing	Home Health Aide	Personal Care	Speech-Language Pathology
Occupational Therapy	Physical Therapy	Respiratory Therapy	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: March 10, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Wondercare, Inc.  
Address: Astoria  
County: Queens  
Structure: For-Profit-Corporation  
Application Number: 2190-L

Description of Project:

Wondercare, 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.

NC Homecare Agency of NY, Inc. was previously approved as a home care services agency by the Public Health Council at its January 29, 2010 meeting and subsequently licensed as 1803L001. At that time, NC Homecare Agency of NY, Inc. was approved to provide only Home Infusion services with Natalya Chornaya as the sole shareholder.

In October 2012 the corporation underwent a corporate name change from NC Homecare Agency of NY, Inc. to Wondercare, Inc. The applicant proposes to purchase all the authorized shares of stock of Wondercare, Inc. through a Stock Purchase Agreement

The applicant has authorized 200 shares of stock, which are owned as follows:

Ning Chen, Ph.D – 66 2/3 Shares

Marcia Hu – 66 2/3 Shares

Hao Li – 66 2/3 Shares

The proposed Board Members of Wondercare, Inc. comprises the following individuals:

Ning Chen, Ph.D – President  
Computer Science Engineer, Google

Marcia Hu – Vice President  
Campus Brand Ambassador, Amazon  
Intern, TribeSpotted  
Admissions Ambassador, NYU Office of Undergraduate  
Admissions

Hao Li – Administrator/Secretary  
Director/Administrator, American Business  
Institute Corp.

Affiliation:  
American Business Institute Corp.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven (7) year review of the operations of American Business Institute Corp. LHCSA was performed as part of this review. The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 136-31 41<sup>st</sup> Avenue, Suite 1B, Flushing, New York 11355.

Bronx  
Richmond

Kings  
Westchester

New York

Queens

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Medical Social Services
Personal Care	Physical Therapy	Speech Language Pathology
Nutritional	Occupational Therapy	Respiratory Therapy
Audiology	Medical Equipment, Supplies 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: March 10, 2015



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

**TO:** Public Health and Health Planning Council

**FROM:** James E. Dering, General Counsel *JED*

**DATE:** April 29, 2015

**SUBJECT:** Certificate of Incorporation of the Cuba Memorial Hospital Foundation, Inc.

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The attached proposed Certificate of Incorporation of the Cuba Memorial Hospital Foundation, Inc. ("the Foundation"), dated December 2, 2014, is being submitted for Public Health and Health Planning Council approval. The Foundation's certificate includes among its purposes the solicitation of public funds for the benefit of Cuba Memorial Hospital, Inc., which operates a general hospital in Allegany County. The Foundation's ability to file the certificate and solicit funds for such purpose depends on the approval of the Public Health and Health Planning Council pursuant to Public Health Law § 2801-a (1) and (6) and Not for Profit Corporation Law § 404 (o) and (t).

In addition to the proposed Certificate of Incorporation, the following documents and information are attached in support of the Foundation's request for approval.

- 1) A letter, dated December 2, 2014 from the Foundation's attorney providing additional information about the Foundation, including a description of the Foundation's fund raising activities and disclosure information regarding the Foundation's board of directors.
- 2) The Foundation's bylaws.
- 3) A letter from the intended beneficiary acknowledging and approving of the Foundation's proposed fund raising activities on its behalf.

The proposed Certificate of Incorporation is in legally acceptable form.

Attachments

**Lauren A. Suttell**  
Associate  
Direct: 716.843.3855  
[lsuttell@jaeckle.com](mailto:lsuttell@jaeckle.com)

Avant Building | Suite 900  
200 Delaware Avenue  
Buffalo, NY 14202-2107  
Tel: 716.856.0600  
Fax: 716.856.0432

December 2, 2014

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Director, Bureau of House Counsel  
Division of Legal Affairs  
NYS Department of Health  
Corning Tower  
Room 2484  
Empire State Plaza  
Albany, NY 12237

RE: Cuba Memorial Hospital Foundation Inc. (the "Foundation")  
Department of Health Consent to Certificate of Incorporation

Dear Sir or Madam:

Enclosed please find the following materials required by the New York State Department of Health in order to consent to the filing of the Certificate of Incorporation of the Foundation:

- Copy of the proposed Certificate of Incorporation for the Foundation;
- Copy of the proposed Bylaws for the Foundation; and
- A letter from Cuba Memorial Hospital (the "Hospital"), the intended Article 28 beneficiary, acknowledging that it will accept the funds raised by the Foundation;

The Foundation is being formed to support the mission and services of the Hospital. The Foundation will not establish, operate or maintain a hospital, a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided by Articles 28, 36, 40 and 44, respectively, of the Public Health Law, to provide hospital service or health related service, to establish, operate or maintain an adult care facility, as provided for by Article 7 of the Social Services Law, or to solicit any funds, contributions or grants, from any source, for the establishment or operation of any adult care facility. The Certificate of Incorporation includes such disclaimers required by your Department.

Additionally, the Foundation submits the following information regarding its fundraising activities, initial Board of Directors, and organizational relationships, as required by your Department:

1. Fundraising Activities

As the Foundation is newly formed, no formal fundraising programs have been formulated as of yet. Nevertheless, it is anticipated that the Foundation will undertake fundraising through mail, electronic mail, social media, personal, and phone solicitations with individuals and organizations within the Western New York community. These solicitations will occur on an as needed basis, from time to time, as determined by the organization's directors. As noted, the Foundation is being formed to support the Hospital. In this regard, the Foundation may solicit funds from individuals and organizations to sponsor any programs and events that the Foundation sponsors for the benefit of the Hospital, including, for example, an annual golf outing. The Foundation may also solicit funds in person at these events and programs. Furthermore, the Foundation may, from time to time, solicit funds from individuals and organizations to support any specific capital needs or programs of the Hospital to the extent such needs or programs further the Hospital's provision of health care services.

2. Initial Board of Directors

Name & Address	Occupation	Employer Name & Address	Past & Present Nonprofit Affiliations
Cyrus J. Denmark 81 Knapps Road Port Allegany, PA 16743	Life Insurance Agent	New York Life Insurance Company 81 Knapps Road Port Allegany, PA 16743	<ul style="list-style-type: none"> <li>• Board member of the Bradford YMCA</li> <li>• President, Whispering Springs Animal Rescue and Research</li> </ul>
James & Jeanette Maxim 9 Bristol St. Cuba, NY 14727	Retired	N/A	<ul style="list-style-type: none"> <li>• Cuba Chamber of Commerce</li> <li>• Advisory Board, Family Life Ministries/Network</li> <li>• Olean YMCA</li> </ul>
R. Donald Benson 4677 Birch Run Road Allegany, NY 14706	Business Owner	<ul style="list-style-type: none"> <li>• Southern Tier Towers, LLC</li> <li>• Benson Construction &amp; Development, LLC</li> <li>• Hydrocarbon Generation, Inc.</li> <li>• Cuba Commercial Properties, LLC</li> </ul> 221 Homer Street Olean, NY 14760	<ul style="list-style-type: none"> <li>• Member and Director, Independent Oil and Gas Association of New York</li> <li>• Councilman and Town Supervisor, Town of Allegany, NY</li> </ul>

3. Organizational Relationships

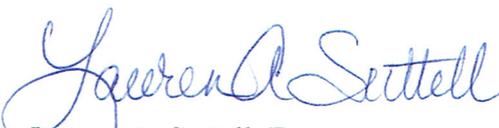
First, the Foundation and the Hospital will be separate entities, each having their own managing boards. Although the Foundation's initial Board of Directors includes members of the Hospital's Board of Trustees, this arrangement has been implemented for purposes of the initial formation and development of the Foundation. The Foundation intends to appoint additional directors who are independent from the Hospital in the future.

Second, there are no entities which the Foundation will control and the Foundation will not be controlled by any other entities. The Foundation, once formed, will have no members and the Foundation will not be a member or stakeholder in the Hospital.

As such, the Foundation respectfully requests that the consent be signed and returned to us in the envelope provided. Should you have any questions, please do not hesitate to contact me directly at the number and address above. Thank you in advance for your consideration and attention to this matter.

Very truly yours,

JAECKLE FLEISCHMANN & MUGEL, LLP

By:   
Lauren A. Suttell, Esq.

Enclosures: as stated.

**CERTIFICATE OF INCORPORATION**  
**OF THE**  
**CUBA MEMORIAL HOSPITAL FOUNDATION INC.**

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**Under Section 402 of the**  
**Not-for-Profit Corporation Law**

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The undersigned, being of the age of eighteen years or over, for the purpose of forming a corporation pursuant to Section 402 of the Not-for-Profit Corporation Law of New York, hereby certifies:

FIRST: The name of the corporation is as follows:

Cuba Memorial Hospital Foundation Inc.

SECOND: The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

THIRD: The corporation is organized for the purposes of soliciting and procuring the necessary resources and public contributions to support and advance Cuba Memorial Hospital, Inc.'s (the "Hospital") mission to provide a continuum of appropriate health related services which enhance the quality of life in the community, including the provision of support to other health-related not-for-profits and non-governmental organizations to the extent the provision of such support furthers the Hospital's mission and services.

Nothing in this Certificate of Incorporation shall authorize the corporation within the State of New York, to (1) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law ("PHL"); (2) establish operate or maintain a hospital, a home care services agency, a hospice, a managed care organization or a health maintenance organization, as provided for by Articles 28, 36, 40 and 44 respectively, of the PHL and implementing regulations; (3) establish and operate an independent practice association, (4) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law ("SSL"); (5) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL; or to solicit any funds, contributions or grants, from any source, for the establishment or operation of any adult care facility. Additionally, nothing in this Certificate of Incorporation shall authorize the corporation within the State of New York, to (a) hold itself out as providing or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

Nothing contained in this Certificate of Incorporation shall authorize the corporation to undertake or engage in any of the activities specified in Section 404 of the Not-For-Profit Corporation Law.

Notwithstanding any other provision of this Certificate of Incorporation, the corporation is organized exclusively for charitable, educational, literary, and scientific purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States internal revenue law) (hereinafter the "Internal Revenue Code"), and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under such Section. This language does not expand or alter the corporation's purposes or powers set forth above.

FOURTH: The corporation is formed to engage in an activity or for a purpose requiring consent or approval of a state official, department, board, agency or other body. Such consent or approval is attached.

FIFTH: The corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation law.

SIXTH: Concerning the regulation of the internal affairs of the corporation, and without expanding or altering the corporation's purposes or powers set forth in paragraph THIRD:

(a) No part of the net earnings of the corporation shall inure in whole or in part to the benefit of its directors, officers, or other private persons except that the corporation shall be empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in this Certificate of Incorporation.

(b) No substantial part of the corporation's activities shall be attempting to influence legislation by propaganda or otherwise, except as otherwise provided in Section 501(h) of the Internal Revenue Code. The corporation shall not directly or indirectly participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office.

(c) Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation to Cuba Memorial Hospital, Inc., a New York not-for-profit corporation exempt from taxation under § 501(c)(3) of the Internal Revenue Code, as amended (the "Code"), or, if Cuba Memorial Hospital Inc. ceases to qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, then to such organization or organizations organized and operated exclusively for charitable, educational, literary and scientific purposes as shall at the time qualify as an exempt organization or exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by the Supreme Court of the county in which the principal office of the corporation is then located,

exclusively for such purposes or to such exempt organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

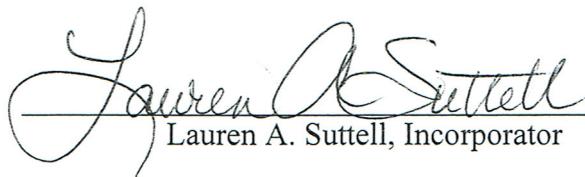
SEVENTH: The office of the corporation shall be located in the County of Allegany, State of New York.

EIGHTH: The names and addresses of the persons constituting the initial Board of Directors of the corporation are:

<u>Name</u>	<u>Address</u>
James & Jeanette Maxim	140 West Main Street, Cuba, NY 14727-1398
R. Donald Benson	140 West Main Street, Cuba, NY 14727-1398
Cyrus J. Denmark	140 West Main Street, Cuba, NY 14727-1398

NINTH: The Secretary of State of the State of New York is designated the agent of the corporation upon whom process against the corporation may be served. The post office address within this state to which the Secretary of State shall mail a copy of any process against the corporation served upon him is Cuba Memorial Hospital Foundation Inc., 140 West Main Street, Cuba, NY 14727-1398.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Incorporation this 2nd day of December 2014.

  
\_\_\_\_\_  
Lauren A. Suttell, Incorporator

Jaeckle Fleischmann & Mugel, LLP  
Avant Building, Suite 900  
200 Delaware Avenue  
Buffalo, New York 14202

**CERTIFICATE OF INCORPORATION**  
**OF THE**  
**CUBA MEMORIAL HOSPITAL FOUNDATION INC.**

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**Under Section 402 of the**  
**Not-for-Profit Corporation Law**

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Filed by: Lauren A. Suttell, Esq.  
Jaekle Fleischmann & Mugel, LLP  
200 Delaware Ave, Suite 900  
Buffalo, NY 14202

**BY-LAWS**  
**OF THE**  
**CUBA MEMORIAL HOSPITAL FOUNDATION INC.**

(ADOPTED AS OF THE \_\_\_ DAY OF \_\_\_\_\_, 2014)

**ARTICLE I**  
**Members**

The Foundation shall have no members. The Board of Directors may take any action which is permitted or required to be taken by members of a not-for-profit corporation formed under the Laws of New York State, by the affirmative vote of a majority of the Board or such greater vote as may be required by law or by these by-laws, without the necessity of any prior action by the Board which otherwise would have been required by law for such action if there were members entitled to vote on such action.

**ARTICLE II**  
**Board of Directors**

1. General. The affairs of the Foundation shall be managed by its Board of Directors.

2. Number. The number of Directors of the Foundation shall be not less than three (3) as fixed from time to time by the Board of Directors by vote of a majority of the entire Board. As used in these By-Laws, the term "entire Board" shall consist of the number of Directors as of the most recent election of Directors.

3. Qualifications. Each director shall be at least eighteen years of age.

4. Election and Term of Office. The directors named in the Certificate of Incorporation as constituting the initial Board of Directors shall at the organization meeting (or in the organization certificate executed in lieu of such meeting) elect a full Board of Directors to serve until the first annual meeting of the Board and until their successors are elected and qualified. Thereafter, the Board at each subsequent annual meeting shall elect a full Board of Directors to serve until the following annual meeting and until their successors are elected and qualified. Such directors shall be elected by a plurality of the votes cast at such meeting.

5. Resignation. Any director may resign at any time by giving written notice of such resignation to the Board of Directors.

6. Removal. Any director may be removed at any time for cause by the Board provided there is a quorum of not less than a majority present at the meeting of the Board at which such action is taken.

7. Vacancies. Any vacancy occurring in the Board of Directors by reason of death, resignation, removal, refusal to serve, or otherwise, shall be filled by a vote of the majority of the remaining directors at any regular or special meeting. If the number of remaining directors is less than a quorum, the vacancy may be filled by the vote of a majority of directors then in office.

8. Compensation. Members of the Board shall not receive any compensation for their service as directors, but the Board may, by resolution, authorize reimbursements of expenses incurred in the performance of their duties. Nothing herein shall preclude a director from serving the Foundation in any other capacity and receiving compensation for such services.

9. Committees.

(a) Committees of the Board. The Board of Directors by resolution adopted by a majority of the entire Board, may designate from among its members an Executive Committee and other Committees of the Board, each consisting of three or more directors, and each such committee, to the extent provided in such resolution and not prohibited by law, shall have all the authority of the Board.

(b) Committees of the Corporation. The Board of Directors may authorize Committees of the Corporation as may be deemed desirable, the members of which shall be appointed by the President, with the consent of the Board. All actions of a Committee of the Corporation shall be subject to the approval of the Board and no such committee shall have the power to bind the Board. Additionally, notwithstanding any contrary resolution of the Board, any committee which includes at least one non-director is a Committee of the Corporation. Each such committee shall have only the powers specifically delegated to it by the Board and shall not have powers which by law cannot be delegated to a committee.

10. Conflicts of Interest. All Directors shall abide by the Foundation's Conflict of Interest Policy adopted by the Board and as amended from time to time, which sets forth guidelines for handling perceived, potential or actual Conflicts of Interest and addresses procedures and disclosures of Related Party Transactions. The Policy shall be overseen by a committee or the Board in accordance with the New York Not for Profit Law.

### **ARTICLE III** **Meetings of the Board**

1. Regular Meetings. The Board shall hold regular meetings with such frequency as may be determined from time to time by the Board.

2. Annual Meeting. A meeting of the Board of Directors shall be held annually for the election of directors and officers and the transaction of such other business as may be appropriate. The annual meeting shall be held on such date, at such time of the day, and at such place, as the Board may determine.

3. Special Meetings. Special meetings of the Board may be called by the President and such call shall be issued whenever requested in writing by any two directors.

4. Notice of Meetings. Two days' notice shall be given of all meetings of the Board. Notices of such meetings may be either oral, written, or electronic. When notice is given by first class mail, notice shall be deemed to have been given on the date of mailing. Notwithstanding the following, any notice by electronic mail or facsimile shall not be deemed to have been given if (1) the Foundation is unable to deliver two consecutive notices to the director by electronic mail or facsimile; or (2) the Foundation otherwise becomes aware that notice cannot be delivered to the director by electronic mail or facsimile transmission. No notice need be given to any director who submits a signed waiver of notice before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her. Such waiver of notice may be written or electronic.

5. Quorum. At all meetings of the Board, a majority of entire Board shall constitute a quorum for the transaction of business, provided, however, that in no event shall less than one-third of the entire number of directors constitute a quorum. When a quorum is once present to organize the meeting, it is not broken by the subsequent absence of any of those present.

6. Adjournment If No Quorum. If less than a quorum is present for any duly noticed meeting of the Board, a majority of the directors present may adjourn the meeting from time to time not exceeding thirty days at any one time until a quorum shall be present and the business of the meeting accomplished, and of such adjourned meeting, no notice need be given.

7. Voting of Directors. The vote of the majority of the directors at a meeting at which a quorum is present shall be the act of the Board, unless the vote of a greater number is required by law or by these by-laws.

8. Action by Board Without a Meeting. Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all the members of the Board or committee consent in writing to the adoption of a resolution authorizing the action. Such consent may be written or electronic. If written, the consent must be executed by the director by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the director. The resolution and the written consent thereto by the Board or team shall be filed with the minutes of the proceedings of the Board or committee.

9. Conference by Telephone or Video. Any one or more members of the Board or any committee thereof may participate in a meeting of the Board or committee by means of a conference telephone or similar communications equipment or by electronic video screen communication, provided that all persons participating in the meeting can hear each other at the same time and each director can participate in all matters before the Board, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the

Board or committee. Participation by such means shall constitute presence in person at a meeting.

#### **ARTICLE IV** **Officers**

1. Designation. The officers of the Foundation shall be a Chairman, a President, one or more Vice Presidents, a Secretary, and a Treasurer, and such other officers as the Board of Directors may determine. Beginning January 1, 2015, an employee of the Foundation shall not be the Chairman or hold any other title with similar responsibilities.

2. Election and Term of Office. Each officer shall be elected by the Board to hold office for a term of one year, and shall hold office for such term and until his or her successor shall have been elected and qualified.

3. Compensation. The officers of the Foundation shall serve without compensation. The Board may, by resolution, authorize reimbursement of expenses incurred by the officers in the performance of their duties. Nothing herein shall preclude an officer from serving the Foundation in any other capacity and receiving compensation for such services.

4. Chairman. The Chairman will provide leadership to the Foundation and support and sustain the work of the Foundation, and provide governance leadership and strategic fundraising support. The Chairman shall preside at all meetings of the Board and perform all other duties pertaining to the office.

5. President. The President shall be the chief executive officer of the Foundation; shall be generally in charge of the affairs of the Foundation and provide leadership and direction and ensure the continued development and management of a professional and efficient organization; establish effective decision-making processes that will enable the Foundation to achieve its long- and short-term goals and objectives; and shall perform all other duties pertaining to the office.

6. Vice President. In the absence of the President, the Vice President or the Vice Presidents, in the order of their election or stated number, shall perform all of the duties pertaining to that office; and shall perform such duties as the Board and the President may from time to time prescribe.

7. Secretary. The Secretary shall keep a record of the proceedings of all meetings of the Board; shall have custody of the records and papers of the Foundation not otherwise provided for; and shall perform the other duties customarily performed by the Secretary of a corporation.

8. Treasurer. The Treasurer shall receive all monies of the Foundation and deposit the same in such bank or banks as directed by the Board of Directors; shall collect all contributions and keep an accurate account of all receipts and disbursements; shall present a

detailed report of the accounts of the Foundation when directed by the Board; shall pay out all funds by order of the Board; and shall perform the other duties customarily performed by the Treasurer of a corporation.

9. Removal. Any officer may be removed by the Board with or without cause.

10. Vacancies. If the office of any officer becomes vacant for any reason, the directors may elect any qualified person to fill such vacancy, who shall hold office for the unexpired term of his or her predecessor and until his or her successor is elected and qualified.

11. Conflicts of Interest. All Officers shall abide by the Foundation's Conflict of Interest Policy adopted by the Board and as amended from time to time, which sets forth guidelines for handling perceived, potential or actual Conflicts of Interest and addresses procedures and disclosures of Related Party Transactions.

## **ARTICLE V**

### **Grants and Contributions by the Foundation**

1. Power Vested in Board of Directors. In furtherance of its purposes, the Foundation may make grants and contributions and otherwise render financial assistance to individuals and other organizations organized and operated exclusively for charitable, educational, literary or scientific purposes. The making of such grants and contributions and otherwise rendering of financial assistance shall be within the exclusive power of the Board of Directors.

2. Grant Requests. The Board of Directors shall review all requests for funds from other organizations, shall require that such requests specify the use to which the funds will be put, and if the Board of Directors approves the request, shall authorize payment of such funds to the approved grantee. The Board of Directors shall require that the grantee furnish a report and accounting to show that the funds were expended for the purposes which were approved by the Board. The Board of Directors, in its absolute discretion, may refuse to make any grants or contributions or otherwise render financial assistance to or for any or all of the purposes for which funds are requested. After the Board of Directors has approved a grant to another organization for a specific project or purpose, the Foundation may solicit funds for the grant to the specifically approved project or purpose of the other organization.

3. Power to Withdraw Approval. At all times prior to payment of funds to a grantee, the Board of Directors shall have the authority to withdraw the approval of any grant, and to use funds committed to or solicited for such grant for such other purposes as the Board may determine in accordance with the provisions of these by-laws.

**ARTICLE VI**  
**Indemnification of Directors and Officers**

1. Indemnification. The Foundation shall indemnify to the broadest and maximum extent permitted by the New York Not-for-Profit Foundation Law, as the same exists on the date of the adoption of this Article or to the greater extent permitted by any amendment of that Law (the intent being to provide the greatest of those indemnification rights permitted by that Law at any time from the time of the act or omission through the final disposition of the action) any person ("Indemnitee") made or threatened to be made a party to any action or proceeding, whether civil, criminal, administrative or investigative, including an action by or in the right of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which any director or officer of the Foundation served in any capacity at the request of the Foundation, by reason of the fact that such person is or was a director or officer of the Foundation or is or was serving such other enterprise at the request of the Foundation; provided, however, that the Foundation shall provide indemnification in connection with any such action or proceeding initiated by an Indemnitee only if such action or proceeding was authorized by the Board of Directors.

2. Advances. Expenses incurred by an Indemnitee in defending an action or proceeding shall be paid by the Foundation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of an Indemnitee to repay the expenses so advanced by the Foundation to the extent they exceed the indemnification to which the Indemnitee is entitled. Unless otherwise required by law, such Indemnitee shall not be required as a condition of obtaining advancement of expenses hereunder to show that the Indemnitee has met the applicable standard of conduct provided by law for indemnification in connection with such action or proceeding.

3. Inurement. The rights of indemnification and advancement of expenses provided for in this Article shall inure to the benefit of the Indemnitee's legal representatives, heirs and distributees.

4. Insurance. The Board of Directors of the Foundation may, in its discretion, authorize the Foundation to purchase and maintain insurance to indemnify itself for any obligation which it incurs as a result of the indemnification of any Indemnitee or to indemnify any Indemnitee to the fullest extent permitted by law.

5. Interpretation. To the extent permitted under applicable law, the rights of indemnification and advancement of expenses provided in this Article (a) shall be available with respect to events occurring prior to the adoption of this Article, (b) shall continue to exist after any rescission or restrictive amendment of this Article with respect to events occurring prior to such rescission or amendment, (c) shall be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding or, at the sole discretion of the Indemnitee (or, if applicable, at the sole discretion of the heirs, distributees or legal representatives of such Indemnitee seeking such rights), on the basis of applicable law in effect at the time such rights are claimed and (d) shall be in the nature of contract rights that may

be enforced in any court of competent jurisdiction as if the Foundation and the Indemnitee were parties to a separate written agreement.

6. Other Rights. The rights of indemnification and advancement of expenses provided in this Article shall not be deemed exclusive of any other rights to which any Indemnitee or other person may now or hereafter be otherwise entitled, whether contained in the Certificate of Incorporation, these by-laws, a resolution of the Board of Directors or an agreement providing for such indemnification, the creation of such other rights being hereby expressly authorized. Without limiting the generality of the foregoing, the rights of indemnification and advancement of expenses provided in this Article shall not be deemed exclusive of any rights, pursuant to statute or otherwise, of any Indemnitee or other person in any action or proceeding to have assessed or allowed in his or her favor, against the Foundation or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof.

7. Severability. If this Article or any part hereof shall be held unenforceable in any respect by a court of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it enforceable, and the remainder of this Article shall remain fully enforceable.

## **ARTICLE VII** **Offices**

1. Office. The office of the Foundation shall be located in the County of Erie and State of New York.

2. Additional Offices. The Foundation may have offices at such other places within or without the State of New York as the Board of Directors may from time to time appoint or the business of the Foundation may require.

## **ARTICLE VIII** **Miscellaneous**

1. Fiscal Year. The fiscal year of the Foundation shall begin on the first day of January and terminate on the last day of December in each calendar year.

2. Seal. The seal of the Foundation shall be in the form of a circle, and shall bear the words "Corporate Seal, New York," and the name of the Foundation and the year of incorporation.

**ARTICLE IX**  
**Amendments**

These by-laws may be amended or repealed by the Board of Directors. A copy of the text of any proposed amendment shall be provided to the directors with the notice of the meeting at which the amendment shall be acted upon.

January 16, 2014

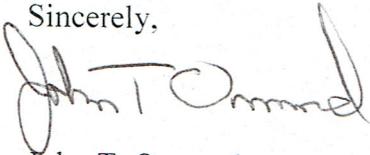
Director, Bureau of House Counsel  
Division of Legal Affairs  
NYS Department of Health  
Corning Tower  
Room 2484  
Empire State Plaza  
Albany, New York 12237

Re: Cuba Memorial Hospital Foundation Inc.  
Request for Consent

Dear Sir or Madam:

In order to facilitate the Department of Health's consent to the formation of the Cuba Memorial Hospital Foundation Inc., Cuba Memorial Hospital, Inc. acknowledges its status as the intended beneficiary of the Foundation and that it will accept funds raised by the Foundation.

Sincerely,



John T. Ormond  
Chief Financial Officer  
Cuba Memorial Hospital, Inc.  
140 W Main St  
Cuba, NY 14727



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

**TO:** Public Health and Health Planning Council  
**FROM:** James E. Dering, General Counsel *JD*  
**DATE:** April 29, 2015  
**SUBJECT:** Certificate of Incorporation of The Osborn Foundation

The attached proposed Certificate of Incorporation of The Osborn Foundation (“the Foundation”), dated June 11, 2014, is being submitted for Public Health and Health Planning Council approval. The Foundation’s certificate includes among its purposes the solicitation of public funds for the benefit of The Miriam Osborn Memorial Home Association, which operates The Osborn, a nursing home and an assisted living residence in Westchester County. The Foundation’s ability to file the certificate and solicit funds for such purpose depends on the approval of the Public Health and Health Planning Council pursuant to Public Health Law § 2801-a (1) and (6) and Not for Profit Corporation Law § 404 (o) and (t).

In addition to the proposed Certificate of Incorporation, the following documents and information are attached in support of the Foundation’s request for approval.

- 1) A letter, dated June 20, 2014 from the Foundation’s attorney providing additional information about the Foundation, including a description of the Foundation’s fund raising activities.
- 2) The Foundation’s bylaws.
- 3) A letter from the intended beneficiary acknowledging and approving of the Foundation’s proposed fund raising activities on its behalf.
- 4) Disclosure information regarding the Foundation’s board of trustees.

The proposed Certificate of Incorporation is in legally acceptable form.

Attachments

June 20, 2014

**VIA FEDERAL EXPRESS**

Director  
Bureau of House Counsel  
Division of Legal Affairs  
New York State Department of Health  
Corning Tower - Room 2484  
Empire State Plaza  
Albany, New York 12237-0031



Re: The Osborn Foundation

Dear Sir/Madam:

We are the attorneys for The Osborn Foundation, a proposed New York not-for-profit corporation (the "Foundation"). On behalf of the Foundation, we seek consent of the Public Health and Health Planning Council in order to file the Foundation's proposed Certificate of Incorporation with the Secretary of State. The Foundation will solicit contributions on behalf of (i) a skilled nursing facility that is subject to Article 28 of the New York Public Health Law, and (ii) an assisted living residence and enriched housing program pursuant to Article 46-B of the Public Health Law and Article 7 of the Social Services Law, respectively, both operated by The Miriam Osborn Memorial Home Association, a New York not-for-profit corporation ("The Osborn"); and (iii) Sterling Home Care, Inc., d/b/a Osborn Home Care, a New York not-for-profit corporation that operates a Public Health Law Article 36 licensed home care services agency ("Home Care"). In that connection, enclosed for your review pursuant to Section 404 of the New York Not-for-Profit Corporation Law, please find the attached Exhibits:

- A. A copy of the proposed Certificate of Incorporation of the Foundation, which was executed by the incorporator on June 10, 2014;
- B. A copy of the proposed by-laws of the Foundation;
- C. A letter from a duly authorized representative of each of The Osborn and Home Care acknowledging that the Foundation will be soliciting funds on their behalf and that The Osborn and Home Care will accept those funds; and
- D. A document setting forth the following information concerning the Foundation's initial Board of Trustees:

C A D W A L A D E R

Bureau of House Counsel  
June 20, 2014

- a. Name and address;
- b. Occupation;
- c. Employer name and address; and
- d. Past and present affiliations with other charitable or not-for-profit organizations.

The purposes of the Foundation set forth in the proposed Certificate of Incorporation include to provide support, advice and assistance, make grants to, and perform fundraising for The Osborn as well as Home Care. The Foundation's fundraising activities will include solicitations of the general public and the sponsorship of fundraising dinners and other events.

The intended organizational relationship between the Foundation, The Osborn, and Home Care is for these entities to share the same sole corporate member, which is a New York not-for-profit corporation and which will act as a "passive parent" with the power pursuant to each entity's respective by-laws to elect that entity's directors. The Foundation will not be controlled by, nor will it control, The Osborn or Home Care. (An application for approval to change the corporate member of Home Care is being submitted separately to the Bureau of Project Management, Division of Health Facility Planning).

Thank you in advance for your assistance. Please call me at (212) 504-6095 if you require any further information.

Sincerely,



Marsena M. Farris

Enclosures

cc: Mark Zwerger  
President and CEO  
The Osborn

Stephanie Larsen, Esq.  
General Counsel  
The Osborn

Exhibit A

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**CERTIFICATE OF INCORPORATION  
OF  
THE OSBORN FOUNDATION**

(Under Section 402 of the Not-for-Profit  
Corporation Law of the State of New York)

The undersigned, being a natural person of at least eighteen years of age and acting as the incorporator of the corporation hereby being formed under Section 402 of the Not-for-Profit Corporation Law of the State of New York ("Not-for-Profit Corporation Law"), certifies that:

FIRST: The name of the corporation is "THE OSBORN FOUNDATION" (the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and shall be a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.

THIRD: The Corporation is formed for the following purposes:

(a) To provide support, advice and assistance, make grants to, and perform fundraising for The Miriam Osborn Memorial Home Association, Sterling Home Care, Inc. and for other not-for profit organizations located in, or in the vicinity of, Westchester County or other areas where not-for-profit organizations affiliated with The Osborn Network, Inc. operate, which organizations address the needs of the elderly or the infirm and are described in and qualified as Section 509(a)(1) or 509(a)(2) of the Internal Revenue Code of 1986, as amended (or the corresponding provisions of any subsequent United States Internal Revenue Law) (the "Code").

(b) In furtherance and to the extent of the foregoing corporate purposes, the Corporation shall have all of the general powers set forth in Section 202 of the Not-for-Profit Corporation Law, including the power to solicit and receive gifts, devises, bequests, donations, and contributions in any form, and to use, apply, invest, and reinvest the principal therefrom or distribute the same.

FOURTH: The following provisions relate to the Corporation's tax exempt status and are not statements of purposes and powers. These provisions do not expand or alter the Corporation's purposes or powers set forth in Article Third.

(a) Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for one or more exempt purposes specified in Section 501(c)(3) and 509(a)(3) of the Code, and shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income taxation under Section 501(c)(3) of the Code and described in Section 509(a)(3) of the Code, or corresponding provisions of any subsequent Federal tax laws.

(b) No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation or any private individual (except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to or for the Corporation), and no member, officer or director of the Corporation or any private individual shall be entitled to share in the distribution of any of the assets of the Corporation on dissolution of the Corporation.

(c) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Code), and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(d) In any taxable year in which the Corporation is a private foundation as described in Section 509(a) of the Code, the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Code; and the Corporation shall not (a) engage in any act of self-dealing as defined in Section 4941(d) of the Code, (b) retain any excess business holdings as defined in Section 4943(c) of the Code, (c) make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code, or (d) make any taxable expenditures as defined in Section 4945(d) of the Code or corresponding provisions of any subsequent Federal tax law.

(e) The Corporation shall not engage in any excess benefit transaction as described in Section 4958 of the Code.

FIFTH: (a) Nothing contained in this Certificate of Incorporation shall authorize the Corporation to engage in or include among its purposes any of the activities described in Section 404 of the Not-for-Profit Corporation Law or in Section 460-a of the Social Services Law of the State of New York, except for fundraising activities permitted pursuant to Sections 404(d), (o) and (t) of the Not-for-Profit Corporation Law.

(b) Nothing contained in this Certificate of Incorporation shall authorize the Corporation within the State of New York to: (1) provide hospital services or health-related services, as such terms are defined in the New York State Public Health Law ("PHL"); (2) establish, operate or maintain a hospital, a home care services agency, a hospice, a managed care organization or a health maintenance organization, as provided for by Articles 28, 36, 40 and 44 respectively, of the PHL and implementing regulations; (3) establish and operate an independent practice association, (4) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law; or (5) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL. Additionally, nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York, to (a) hold itself out as providing or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

SIXTH: The office of the Corporation is to be located in Westchester County, State of New York.

SEVENTH: The Corporation shall be operated by a Board of Directors. The name and address of each of the initial directors of the Corporation until their successors are duly elected and qualified, are as follows:

<u>Name</u>	<u>Address</u>
Lucien D. Burnett III	11 Dogwood Lane, Rye, NY 10580
John R. Miller	6 Morris Court, Rye, NY 10580
George Pawlush	206 Taylor Avenue, Cheshire, CT 06410
Mason Rees	164 Grandview Avenue, Rye, NY 10580
James Peter Steffensen, Jr.	5409 El Dorado Drive, Fort Worth, TX 76107

EIGHTH: The duration of the Corporation is to be perpetual.

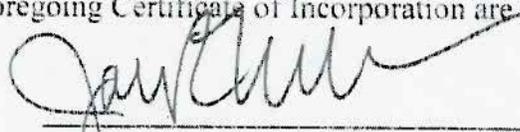
NINTH: The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon him is: The Osborn Foundation, c/o Chief Executive Officer, 101 Theall Road, Rye, New York 10580.

TENTH: In the event of the dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of necessary expenses and liabilities thereof, be distributed or transferred to The Miriam Osborn Memorial Home Association, or to such other organization or organizations exempt under Section 501(c)(3) of the Code as the Board of Directors of the Corporation may determine by unanimous vote, subject to any requisite approval and/or jurisdiction of the Supreme Court of the State of New York, to be used or administered in a manner that will best accomplish the general purposes of the Corporation.

ELEVENTH: Prior to the delivery of this Certificate of Incorporation to the Department of State for filing, all approvals or consents required will be endorsed upon the Certificate or will be annexed thereto.

IN WITNESS WHEREOF, the undersigned hereby affirms, under penalties of perjury, that the statements made in the foregoing Certificate of Incorporation are true.

Dated: **June 11, 2014**



John R. Miller  
Incorporator  
6 Morris Court  
Rye, New York 10580

**Exhibit B**

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**BY-LAWS OF**  
**THE OSBORN FOUNDATION**  
**(a New York not-for-profit corporation)**

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**BY-LAWS OF  
THE OSBORN FOUNDATION**

**(a New York Not-for-Profit Corporation)**

**ARTICLE I**

**OFFICES**

Section 1.01 Principal Office. The principal office of The Osborn Foundation (hereinafter called the "Corporation") shall be located at 101 Theall Road, Rye, New York, or at such other place as may from time to time be fixed by the Board of Trustees.

Section 1.02 Other Offices. The Corporation also may have offices at such other places, both within and without the State of New York, as the Board of Trustees may from time to time establish or the business of the Corporation may require.

**ARTICLE II**

**MEMBERS**

Section 2.01 Member. (a) The member of the Corporation shall be The Osborn Network, Incorporated (the "Member")

(b) Membership shall be terminated only by resignation or consent of the Member, by dissolution of the Corporation, or by dissolution of the Member.

Section 2.02 Authority. The Member shall have the right to exercise all rights which members of corporations organized under the New York Not-for-Profit Corporation Law are authorized to exercise pursuant to such law, as well as all rights of the Member otherwise provided for in these By-Laws.

Section 2.03 Action by the Member. The Member may act by resolution adopted by the Board of Trustees of the Member or by the written consent of any individual (or individuals) who is (or are) duly authorized or designated by the Board of Trustees of the Member to act for the Member.

Section 2.04 Meetings of the Member. (a) An annual meeting of the Member (the "Member Annual Meeting") shall be held in May of each year on such dates and at such time and place as shall be determined by resolution of the Member for the election of Trustees of the Corporation.

(b) Special meetings of the Member shall be called by the Board of Trustees of the Member, by the Board of Trustees of the Corporation, or by the Secretary upon the request of the President of the Corporation.

Section 2.05 Annual Report. As required by Section 519(a) of the New York Not-For-Profit Corporation Law, the Board of Trustees of the Corporation shall present to the Member on an annual basis a report, verified by the President and the Treasurer of the Corporation or by a majority of the Trustees or certified by an independent public or certified public accountant or a firm of such accountants selected by the Board of the Corporation, showing in appropriate detail the following: (1) the assets and liabilities including the trust funds of the Corporation as of the end of a twelve month fiscal period terminating not more than six months prior to said meeting; (2) the principal changes in assets and liabilities, including such trust funds, during said fiscal period; (3) the revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, during said fiscal period; (4) the expenses or disbursements of the Corporation, for both general and restricted purposes, during said fiscal period; and (5) the number of members of the Corporation as of the date of the report, together with a statement of increase or decrease in such number during said fiscal period and a statement of the place where the names and places of residence of the current members may be found. This report shall be filed with the records of the Corporation and either a copy or abstract thereof entered in the minutes of the proceedings of the Member Annual Meeting.

Section 2.06 Other Reporting.. The Board of Trustees of the Corporation shall furnish the Chairman of the Board of Trustees of the Member with (i) agendas of scheduled Board and committee meetings of the Corporation, (ii) minutes of the Board and committee meetings of the Corporation, and (iii) regular reports of the significant activities of the Board of the Corporation and its committees.

Section 2.07 Member Approval. The approval of the Member shall be required for all actions of the Corporation for which member approval is required under the Not-for-Profit Corporation Law of the State of New York. Without limiting the foregoing or any other provision of these By-Laws, the approval of the Member shall be required for the following actions:

- (i) the dissolution of the Corporation;
- (ii) a merger or consolidation involving the Corporation;
- (iii) disposition of all or substantially all of the assets of the Corporation; or
- (iv) the purchase, sale, mortgage, or lease of real property of the Corporation.

### ARTICLE III

#### BOARD OF TRUSTEES

Section 3.01 Powers. The business and affairs of the Corporation shall be managed by the Board of Trustees, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not prohibited by statute, the Certificate of Incorporation of the Corporation or these By-laws.

Section 3.02 Number. The number of Trustees constituting the entire Board of Trustees shall be such number, not less than three, as may be determined from time to time by the Member.

The maximum number of Trustees may be increased or decreased from time to time by resolution of the Member; provided, however, that no decrease in the number of Trustees shall have the effect of shortening the term of any incumbent Trustee.

Section 3.03 Classes, Term of Office, Election, Vacancies. (a) Trustees shall be divided into three (3) classes, each consisting of approximately one-third (1/3) of the total number of Trustees as determined by the Member. The term of office of each Trustee shall be three (3) years and shall expire in successive years at the time of the Member Annual Meeting.

(b) Trustees shall be elected by the Member at the Member Annual Meeting. Each Trustee shall hold office until the next Member Annual Meeting (or other meeting) at which the election of his or her class is in the regular order of business, and until his or her successor is elected or appointed and qualified, or until his or her earlier death, resignation, or removal. Trustees may be elected to succeed themselves.

(c) Any vacancy occurring in the Board of Trustees and any newly created Trusteeships resulting from an increase in the number of Trustees shall be filled by the Member. The new Trustee shall hold office for the remaining term of the class of Trustees to which the new Trustee is elected.

Section 3.04 Qualifications of Trustees. Candidates for election to the Board of Trustees shall be natural persons who have an interest in the activities and goals of not-for-profit health care and senior residential services and who are able to participate effectively in furthering the purposes of the Corporation and are committed to advance its mission. Trustees shall be at least eighteen years of age and need not be residents of the State of New York.

Section 3.05 Resignation and Removal of Trustees. (a) Any Trustee may resign at any time by delivering a written notice of resignation to the Chairman of the Board or the Secretary. Such resignation shall take effect at the time specified therein, or if no time is specified, at the time of its receipt by the Chairman of the Board or the Secretary. The acceptance of a resignation shall not be necessary to make it effective.

(b) Any Trustee may be removed, with or without cause, by the Member.

Section 3.06 Time, Place and Notice of Meetings. (a) Annual, regular and special meetings of the Board of Trustees may be held at such times and place (within or without the State of New York) as shall be determined by resolution of the Board of Trustees or specified in the notice of meeting. Special meetings of the Board of Trustees may be called upon the request of the Chairman of the Board and shall be called on the written request of not less than one-fifth of the entire Board of Trustees, in each case directed to the Secretary of the Corporation.

(b) Notice of the time and place of each annual, regular, or special meeting of the Board of Trustees shall be given to each Trustee. Unless otherwise specifically required by law or these By-laws, such notice may be given either (i) at least ten (10) days prior to the meeting by first class mail, postage prepaid; or (ii) at least three (3) days prior to the meeting by "next day" express mail, postage prepaid; or (iii) at least two (2) days prior to the meeting by hand delivery, facsimile or electronic mail, in each case to each Trustee at his address (and/or facsimile number or e-mail address) as it appears on the records of the Corporation. If mailed,

such notice shall be deemed to be delivered when deposited in the United States mail or delivered to the express mail delivery service. Notice sent by facsimile or electronic mail shall be deemed to be delivered when sent. In no event shall notice of a meeting be sent more than fifty (50) days prior to the meeting.

(c) Notice need not be given to any Trustee who submits a signed waiver of notice, whether before or after the meeting, or who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him or her. A waiver of notice need not state the purpose of, nor the business to be transacted at, such meeting, unless otherwise required by these By-laws or applicable law.

Section 3.07 Quorum and Vote at Meetings. (a) Unless a greater proportion is required by statute, the Certificate of Incorporation of the Corporation or these By-laws, one-third (1/3) of the entire Board of Trustees shall constitute a quorum for the transaction of business or of any specified item of business at any meeting of the Board of Trustees. The presence of a quorum shall be determined at the commencement of any meeting of the Board. Each Trustee shall have one vote. The vote of a majority of the Trustees present at the time of the vote, if a quorum is present, shall be the act of the Board of Trustees, unless the concurrence of a greater proportion is required for such action by statute, the Certificate of Incorporation of the Corporation or these By-laws.

A majority of the Trustees present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of any adjournment of the Board of Trustees to another time and place shall be given to the Trustees who were not present at the time of adjournment and, unless such time and place are announced at the meeting, to the other Trustees.

Section 3.08 Action without Meeting. Any action required or permitted to be taken by the Board of Trustees or any committee of the Board of Trustees or of the Corporation may be taken without a meeting if all members of the Board of Trustees or of the committee consent in writing to the adoption of a resolution authorizing such action, including by electronic mail. Such resolution and written consents thereto shall be filed with the minutes of the proceedings of the Board of Trustees or the committee.

Section 3.09 Telephonic Participation in Meetings. Any one or more members of the Board of Trustees or any committee of the Board of Trustees or the Corporation may participate in a meeting of such Board of Trustees or committee by means of a conference telephone or other electronic communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

Section 3.10 Compensation and Reimbursement. Members of the Board of Trustees serve without compensation. The Board of Trustees may authorize reimbursement of any reasonable expenses incurred by Trustees in the performance of their duties. Nothing herein contained shall be construed to preclude any Trustee from serving the Corporation in any other capacity and receiving compensation therefor, subject to the Conflict of Interest Policy of the Corporation.

Section 3.11 Conflicts of Interest. Trustees, officers and employees of the Corporation shall comply with the Conflicts of Interest Policy of the Corporation.

Section 3.12 Standard of Care. All Trustees, officers and employees of the Corporation shall discharge their duties in good faith, and with that degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions in accordance with Section 717 of the Not-for-Profit Corporation Law of the State of New York. In discharging their duties, Trustees and officers, when acting in good faith, may rely on information, opinions, reports or statements including financial statements and other financial data, in each case prepared or presented by: (1) one or more officers or employees of the Corporation whom the Trustee believes to be reliable and competent in the matters presented, (2) counsel, public accountants or other persons as to matters which the Trustees or officers believe to be within such person's professional or expert competence, or (3) a committee of the Board upon which they do not serve, duly designated in accordance with a provision of the Certificate of Incorporation or these By-laws, as to matters within its designated authority, which committee the Trustees or officers believe to merit confidence, so long as in so relying they shall be acting in good faith and with that degree of care specified in the first sentence of this Section 3.12.

## ARTICLE IV

### OFFICERS

Section 4.01 Positions. The officers of the Corporation shall be elected or appointed by the Board of Trustees and shall be a Chairman of the Board, a Vice-Chairman, a President and Chief Executive Officer, a Secretary, and a Chief Financial Officer and Treasurer, and such other officers as the Board of Trustees may elect or appoint, including, but not limited to, one or more Assistant Secretaries and Assistant Treasurers, who shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Trustees. Any two or more offices may be held by the same person, except the offices of President and Chief Executive Officer and Secretary. The Chairman of the Board, the Vice-Chairman and the Secretary shall be members of the Board of Trustees. All other officers may, but need not be, members of the Board of Trustees.

Section 4.02 Election and Term of Office. (a) With the exception of Vice-Presidents, each officer of the Corporation shall be elected or appointed at the annual meeting of the Board of Trustees for a term of one year, and shall serve until his or her successor shall have been elected or appointed and qualified, or until his or her earlier death, resignation or removal. Election or appointment of any such officer shall not itself create any contractual rights. Any vacancy occurring in any such office of the Corporation may be filled by the Board of Trustees in accordance with the provisions of Section 4.01. Such officers may be elected or appointed to succeed themselves.

(b) The office of Vice-President shall be reserved to employees of the Corporation. The President and Chief Executive Officer shall have the discretion to appoint Vice-Presidents of the Corporation as he shall from time to time determine, who shall have such responsibilities as are designated by the President and Chief Executive Officer. Upon their

termination or resignation as employees of the Corporation, Vice-Presidents shall no longer hold such office.

Section 4.03 Resignation and Removal. Any Officer may resign at any time by delivering a written notice of resignation to the Chairman of the Board or the Secretary. Such resignation shall take effect at the time specified therein, or if no time is specified, at the time of its receipt by the Chairman of the Board or the Secretary. The acceptance of a resignation shall not be necessary to make it effective. Any officer may be removed from office with or without cause by the Board of Trustees. Such removal shall not prejudice the contractual rights, if any, of the person so removed.

Section 4.04 Chairman of the Board. The Chairman of the Board shall, when present, preside at all meetings of the Board of Trustees and shall perform such other duties and have such other powers as may be vested in him or her by the Board of Trustees. The Chairman of the Board shall decide all points of order, subject to appeal to the Board. The Chairman shall appoint the chairs and determine the composition of all committees. The Chairman will be an ex-officio member of all committees. The Chairman will serve as spokesperson of the Board. The Chairman shall have access to all property and records and may require reports in writing of any activity from any officer of the Corporation or any officer or committee chair of the Board at any time. The Chairman shall be the principal liaison between the Board of Trustees and the President and Chief Executive Officer.

Section 4.05 Vice-Chairman. In the absence of the Chairman of the Board or in the event of the Chairman's inability or refusal to act, the Vice-Chairman shall perform the duties and exercise the powers of the Chairman and such other duties as the Board of Trustees may from time to time prescribe.

Section 4.06 President and Chief Executive Officer. The President shall be the Chief Executive Officer of the Corporation, shall have general and active management of the business of the Corporation, and shall ensure that all orders and resolutions of the Board of Trustees are carried into effect. The President shall execute bonds, mortgages, and other contracts requiring a seal under the seal of the Corporation, except where required by law to be otherwise signed and executed or where the signing and execution thereof shall be expressly delegated by the Board of Trustees to some other officer or agent of the Corporation.

Section 4.07 Secretary. The Secretary shall attend all meetings of the Board of Trustees, shall record all the proceedings of the meetings of the Board of Trustees in a book or books to be kept for that purpose, and shall perform like duties for the standing committees, when required. The Secretary shall give, or cause to be given, notice of all special meetings of the Board of Trustees, and shall perform all duties incident to the office of Secretary and such other duties as may be prescribed by the Board of Trustees or by the Chairman of the Board. The Secretary shall have charge of the corporate books and records and shall have custody of the seal of the Corporation and authority to affix the same to any instrument requiring it and to attest the same by his signature. The Secretary may also attest all instruments signed by the Chairman of the Board, the Vice Chairman or the President and Chief Executive Officer.

Section 4.08 Assistant Secretary. The Assistant Secretary, if one is elected or appointed (or if there be more than one, the Assistant Secretaries in the order designated by the Board of Trustees, or, in the absence of any designation, then in the order of their election) shall,

in the absence of the Secretary or in the event of the Secretary's inability or refusal to act, perform the duties and exercise the powers of the Secretary, and shall perform such other duties and have such other powers as the Board of Trustees may from time to time prescribe.

Section 4.09 Acting Secretary. In the absence of the Secretary or the Assistant Secretary, or in the event of the Secretary's or Assistant Secretary's inability or refusal to act, an Acting Secretary may be appointed by the Chairman to serve in such capacity at any meeting of the Board of Trustees.

Section 4.10 Chief Financial Officer and Treasurer. (a) The Chief Financial Officer and Treasurer (the "CFO/Treasurer") shall have the custody of all funds, securities, evidence of indebtedness, and other valuable documents of the Corporation. The CFO/Treasurer shall keep full and accurate accounts or receipts and disbursements in books belonging to the Corporation and shall deposit all monies and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Trustees. The CFO/Treasurer shall keep or cause to be kept such other books as will show a true record of the cash, revenues, expenses, losses, gains, assets and liabilities of the Corporation, and shall at all reasonable times exhibit such books and accounts to the Chairman of the Board of the Corporation upon application at the office of the Corporation during business hours. The CFO/Treasurer shall disburse the funds of the Corporation as ordered by the Board of Trustees, taking proper vouchers of such disbursements, and shall render to the Board of Trustees at its regular meetings or when the Board of Trustees so requires, an account of all transactions as the CFO/Treasurer and of the financial conditions of the Corporation. The CFO/Treasurer shall perform all other duties and acts incident to the office of CFO/Treasurer. Except as otherwise provided by law, the CFO/Treasurer may delegate any of the duties set forth in this Section 4.10(a) to another non-Trustee officer, employee, or other agent.

(b) If required by the Board of Trustees, the CFO/Treasurer shall give the Corporation a bond, at the expense of the Corporation, in such sum and with such surety or sureties as shall be satisfactory to the Board of Trustees for the faithful performance of the duties of the CFO/Treasurer's office and for the restoration to the Corporation, in case of the CFO/Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind, in the CFO/Treasurer's possession or under the CFO/Treasurer's control and belonging to the Corporation.

Section 4.11 Assistant Treasurer. The Assistant Treasurer, if one is elected or appointed (or if there be more than one, the Assistant Treasurers in the order designated by the Board of Trustees, or, in the absence of any designation, then in the order of their election) shall, in the absence of the CFO/Treasurer or in the event of the CFO/Treasurer's inability or refusal to act, perform the duties and exercise the powers of the CFO/Treasurer, and shall perform such other duties and have such other powers as the Board of Trustees may from time to time prescribe.

Section 4.12 Unauthorized Liabilities. The Corporation need not assume any liability on account of any individual officer, Trustee or other person who purports or attempts to contract or incur debt on behalf of the Corporation or in any way attempts to render it liable without prior authority from the Board of Trustees.

Section 4.13 Compensation. The Corporation may pay its officers, agents and employees reasonable compensation for their services and reimburse them for expenses actually and reasonably incurred in the performance of their duties.

## ARTICLE V

### INDEMNIFICATION

Section 5.01 Indemnification. (a) Except as otherwise provided by law, no Trustee or officer of the Corporation shall be liable to any person other than the Corporation based solely on such Trustee's or officer's conduct in the execution of such office unless such conduct with respect to the person asserting liability constituted gross negligence or was intended to cause the resulting harm to the person asserting liability.

(b) The Corporation shall, in the manner and to the full extent allowed by the Not-For-Profit Corporation Law of the State of New York, indemnify any person, made, or threatened to be made, a party to an action or proceeding other than one by or in the right of the Corporation to procure a judgment in its favor, including an action by or in the right of any other corporation of any type or kind, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any Trustee or officer of the Corporation served in any capacity at the request of the Corporation, by reason of the fact that such person, or his or her testator or intestate was a Trustee or officer of the Corporation, or served such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if the Trustee or officer acted in good faith for a purpose which he or she reasonably believed to be in the best interests of the Corporation (or not opposed to the best interests of the Corporation in the case of service to such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise) and in criminal actions or proceedings, in addition, had no reasonable cause to believe the conduct was unlawful.

(c) The Corporation shall, from time to time, reimburse or advance to any person referred to in Sub-Section (b) of this Section the funds necessary for payment of expenses incurred by such person in connection with any action or proceeding, or threatened action or proceeding, or appeal referred to in Sub-Section (b) of this Section upon receipt, if required by the New York Not-for-Profit Corporation Law or deemed appropriate by the Board of Trustees, of a written undertaking by or on behalf of such person to repay such amount(s) if it is ultimately determined that such person is not entitled to indemnification under this Section or otherwise.

(d) The Corporation, by resolution adopted by its Board of Trustees or the Executive Committee thereof, may indemnify and reimburse or advance expenses to any person to whom the Corporation is permitted to provide indemnification or the reimbursement or advancement of expenses to the fullest extent permitted by applicable law, as it may exist from time to time, whether pursuant to rights granted pursuant to, or provided by, the New York Not-for-Profit Corporation Law or other rights created by (1) a resolution of Trustees; or (2) an agreement approved by the Board of Trustees or such committee providing for such indemnification or reimbursement or advancement of expenses, it being expressly intended that this Section authorizes the creation of other rights in any such manner. Any such

indemnification and any such reimbursement or advancement of expenses may, in the discretion of the Board of Trustees or such committee and to the extent permitted by law, be retroactive and be available with respect to events occurring prior to the adoption hereof and prior to any such resolution or agreement.

(e) Any person entitled to be indemnified or to the reimbursement or advancement of expenses as a matter of right pursuant to this Section may elect to have the right to indemnification (or reimbursement or advancement of expenses) interpreted on the basis of the applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding, to the extent permitted by law, or on the basis of the applicable law in effect at the time indemnification (or reimbursement or advancement of expenses) is sought.

(f) The right to be indemnified or to the reimbursement or advancement of expenses pursuant to Sub-Section (b) or (c) of this Section or a resolution authorized pursuant to Sub-Section (d) of this Section (1) is a contract right pursuant to which the person entitled thereto may bring suit as if the provisions hereof (or of any such resolution) were set forth in a separate written contract between the Corporation and such person; (2) is intended to be retroactive and shall, to the extent permitted by law, be available with respect to events occurring prior to the adoption hereof (or of any such resolution); and (3) shall continue to exist after any rescission or restrictive modification hereof (or of any such resolution) with respect to events occurring prior thereto. The Corporation shall not be obligated under this Section (including any resolution or agreement authorized by Sub-Section (d) of this section) to make any payment hereunder (or under any such resolution or agreement) to the extent the person seeking indemnification hereunder (or under any such resolution or agreement) has actually received payment (under any insurance policy, resolution, agreement or otherwise) of the amount otherwise indemnifiable hereunder (or under any such resolution or agreement).

(g) If a request to be indemnified or for the reimbursement or advancement of expenses pursuant to this Section (including any resolution or agreement authorized by Sub-Section (d) of this Section) is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and, if successful in whole or in part, the claimant shall be entitled also to be paid the expenses of prosecuting such claim. Neither the failure of the Corporation (including its Board of Trustees or independent legal counsel) to have made a determination prior to the commencement of such action that indemnification of or reimbursement or advancement of expenses to the claimant is proper in the circumstances, nor an actual determination by the Corporation (including its Board of Trustees or independent legal counsel) that the claimant is not entitled to indemnification or to the reimbursement or advancement of expenses, shall be a defense to the action or create a presumption that the claimant is not so entitled.

(h) For purposes of this Section, the term "Corporation" shall include any legal successor to the Corporation, including any corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which acquires all or substantially all of the assets of the Corporation in one or more transactions.

(i) The rights granted pursuant to or provided by the foregoing provisions of this Section shall be in addition to and shall not be exclusive of any other rights to

indemnification and expenses to which such person may otherwise be entitled by law, contract or otherwise.

(j) Without limitation of any indemnification provided by Sub-Section (b) of this Section, any Trustee or officer of the Corporation serving (i) another corporation, partnership, joint venture, trust or other enterprise of which 20% or more of the voting power or economic interest is held, directly or indirectly, by the Corporation; or (ii) any employee benefit plan of the Corporation or any entity referred to in clause (i), in any capacity shall be deemed to be doing so at the request of the Corporation.

(k) The Corporation shall maintain directors and officers liability insurance insuring the Trustees and officers of the Corporation against such liabilities as may be insured consistent with the New York Not-for-Profit Corporation Law. To the extent permitted by law, such insurance may insure the Corporation for any obligation it incurs as a result of this Section or by operation of law, and it may insure directly the Trustees, officers, employees or volunteers of the Corporation for liabilities against which they are not entitled to indemnification under this Section as well as for liabilities against which they are entitled or permitted to be indemnified by the Corporation.

## ARTICLE VI

### COMMITTEES

#### Section 6.01 Standing Committees.

##### (a) Appointment.

(i) At the Annual Meeting of the Board of Trustees, the Chairman shall designate from among the members of the Board of Trustees an Executive Committee, a Finance Committee, and an Audit Committee, and the members of such other standing committees as the Board by resolution may establish from time to time. Each committee shall be comprised of three or more Trustees.

(ii) Any vacancy among the members of any committee may be filled by the Chairman of the Board of Trustees.

(iii) The chair of any committee shall be appointed by the Chairman of the Board of Trustees.

(b) Executive Committee. The Executive Committee shall have all the authority of the Board, between meetings of the Board, except that the Executive Committee shall not have authority as to the following matters:

(i) The filling of vacancies on the Board of Trustees or on any committee of the Board of Trustees.

(ii) The fixing of compensation of Trustees for serving on the Board or on any committee.

(iii) The amendment or repeal of these By-laws, or the adoption of new By-laws.

(iv) The amendment or repeal of any resolution of the Board of Trustees which by its terms shall not be so amendable or repealable.

(c) Finance Committee. The Finance Committee shall evaluate and recommend overall fiscal policies for the Board of Trustees, review and recommend to the Board an annual operating and capital budget, review capital and operational expenditures of the Corporation and report on these activities to the Board.

(d) Audit Committee. The Audit Committee shall assist the Board of Trustees in its oversight of the external audit, the performance of internal audit functions, and the performance of corporate compliance functions. The Audit Committee shall be responsible for the following functions on behalf of the Corporation:

(i) selection, compensation, retention and oversight of the accounting firm that will conduct the annual financial audit and prepare the audited financial statements for the Corporation;

(ii) review of the annual audited financial statements of the Corporation;

(iii) making recommendations to the Board of Trustees of the Corporation regarding the approval or non-approval of, or other actions relating to, the audited financial statements;

(iv) review of audit reports and oversight of internal audit duties;

(v) review of the effectiveness of the Corporation in monitoring compliance with laws and regulations and the results of management's investigations and follow-up of any instances of non-compliance; and

(vi) monitoring the Corporation's compliance with its Conflict of Interest Policy.

Section 6.02 Special Committees. The Chairman of the Board may appoint from among the members of the Board, one or more special committees, for such purposes and with such powers as the Board of Trustees may specifically delegate to them by resolution, except that no such committee or committees shall have or exercise the powers which are not authorized for standing committees under Section 6.01 hereof or the authority of any other standing or special committee in the management of the Corporation.

Section 6.03 Committees of the Corporation. The Board of Trustees may, by resolution adopted by a majority of the Trustees present at a meeting at which a quorum is present, create committees of the Corporation. Such committees shall have only the lawful powers specifically delegated to them by the Board of Trustees, but no such committee or committees shall have or exercise the authority of the Board of Trustees or any standing committee thereof in the management of the Corporation. Members of the committees of the Corporation shall be appointed by the Chairman, and the provisions of these By-laws applicable

to officers generally shall apply to members of such committees. Members of the committees of the Corporation need not be Trustees.

Section 6.04 Tenure. Subject to the provisions of Sections 3.05 and 6.07, each member of the Executive Committee or any other standing committee of the Board of Trustees shall hold office for a period of one year and until his or her successor is designated by the Chairman, or until his or her earlier death, resignation or removal. Members of special committees of the Corporation shall serve for such period as determined by the Chairman.

Section 6.05 Meetings and Notices. Regular meetings of committees may be held without notice at such times and places as such committees may determine. Special meetings of committees may be called by any member thereof or by the Chairman upon the request of any such member, upon notice to members of the committee. Unless otherwise specifically required by law or these By-laws, such notice shall state the time and place of the meeting, and may be given either (i) at least ten (10) days prior to the meeting by first class mail, postage prepaid; or (ii) at least three (3) days prior to the meeting by "next day" express mail, postage prepaid; or (iii) at least two (2) days prior to the meeting by hand delivery, facsimile or electronic mail, in each case to each committee member at his address (and/or facsimile number or e-mail address) as it appears on the records of the Corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail or delivered to the express mail delivery service. Notice sent by facsimile or electronic mail shall be deemed to be delivered when sent. In no event shall notice of a meeting be sent more than fifty (50) days prior to the meeting. The notice of a meeting or a committee need not state the business proposed to be transacted at the meeting. Any member of a committee may waive notice of any meeting thereof by signing a waiver of notice either before or after the meeting, which notice shall be filed with the records of such meeting, or by attendance at such meeting.

Section 6.06 Quorum and Vote. Unless otherwise provided in the resolution of the Board of Trustees designating a committee, a majority of the members of a committee shall constitute a quorum for the transaction of business at any meeting thereof. The vote of a majority of the members of a committee present at a meeting at which a quorum is present shall constitute action of the committee.

Section 6.07 Removal and Resignations. Any member of any committee may be removed from the committee at any time, with or without cause, by the Chairman of the Board of Trustees. Any member of a committee may resign from the committee at any time by giving a written notice of resignation to a Chairman of the Board or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof.

Section 6.08 Duty of Trustees. The designation of any standing or special committee of the Board of Trustees or any committee of the Corporation and the delegation thereto of authority shall not alone relieve any Trustee of his fiduciary duties to the Corporation under Section 717 of the Not-For-Profit Corporation Law of the State of New York or Section 3.15 of these By-laws.

Section 6.09 Minutes and Reports of Action to the Board of Trustees. All committees shall keep regular minutes of their proceedings, which shall be filed at the Corporation's principal office or such other place as the books and records of the Corporation are

kept. The chairman of each committee shall report any actions taken to the Board of Trustees at the next meeting thereof held after the committee meeting.

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## ARTICLE VII

### GENERAL PROVISIONS

Section 7.01 Execution of Instruments. All checks, drafts, notes or other obligations of the Corporation shall be signed by such officer or officers or employees as the Board of Trustees may from time to time designate.

Section 7.02 Seal. The Corporation may have a seal of such design as the Board of Trustees may adopt. If so adopted, the custody of the seal shall be held by the Secretary and the Assistant Secretary, and the Secretary and such other officers as the Board of Trustees may designate shall have authority to affix the seal to all instruments where its use is required and to attest the same by his or her signature.

Section 7.03 Fiscal Year. The fiscal year of the Corporation shall be the twelve (12) month period beginning on January 1 and ending on December 31, inclusive, or such other period of twelve (12) consecutive months as the Board of Trustees may from time to time designate.

Section 7.04 Books and Records. The Corporation shall keep, at the principal office of the Corporation, accurate and complete books and records of account and minutes of the proceedings of its Board of Trustees and all committees established by the Board of Trustees.

Section 7.05 Pronouns. All pronouns and any variations thereof in these By-laws shall be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the person or entity may require.

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## ARTICLE VIII

### AMENDMENT OF BY-LAWS

These By-laws may be amended, repealed or altered, in whole or in part, and new By-laws may be adopted only by the Member.

Exhibit C

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# The Osborn

*A tradition of gracious retirement living*

The Miriam Osborn Memorial Home Association, a New York not-for-profit corporation, hereby acknowledges that The Osborn Foundation will solicit funds on its behalf and the Miriam Osborn Memorial Home Association will accept such funds.

Miriam Osborn Memorial Home Association

By:   
Mark Zwerger  
President & Chief Executive Officer

Dated: June 11, 2014

Exhibit D

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**Description of Proposed Trustees of The Osborn Foundation**

<b><u>Name and Address</u></b>	<b><u>Occupation</u></b>	<b><u>Affiliations</u></b>
Mason Rees 164 Grandview Avenue Rye, NY 10580	Investment Manager Trident Investment Management 777 Third Ave, NYC, 10017	The Apawamis Foundation, Rye from 2004 to 2010 The Salisbury School from 1999 to 2005
Lucien D. Burnett III 11 Dogwood Lane Rye, NY 1058	Investment Advisor Saguenay Capital LLC 2 Manhattanville Rd., Purchase, NY 10577 Partner, Business Development	Rye YMCA Board member (former) Rye YMCA Trustee (Current)
John R. Miller 6 Morris Court Rye, NY 10580	Retired Vice Chairman, KPMG LLP (2005)	The Osborn Board of Trustees Wilkes University Trustee The Cathedral Church of Saint John the Divine Trinity Church, Wall Street The Rye YMCA KPMG (New York) Foundation Rye City School District Audit Committee
George Pawlush 206 Taylor Avenue Cheshire, CT 06410	Retired Administrator Greenwich Hospital (2013)	Wilkes University Yale- New Haven Hospital Danbury Hospital Greenwich Hospital Ronald McDonald House of Southern New England Kiwanis International Rotary International
James Peter Steffensen, Jr. 5409 El Dorado Drive Fort Worth, TX 76107	Management Consultant JSM Strategy Advisors Address same as home	Rye YMCA Board of Directors (past) North Manursing Owners' Association (past) Ronald McDonald House of Portland, Maine (past) Fort Worth Drowning Prevention Coalition (present)



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

**TO:** Public Health and Health Planning Council

**FROM:** James E. Dering, General Counsel *JED*

**DATE:** April 29, 2015

**SUBJECT:** Brookdale Health System Foundation

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The Brookdale Health System Foundation ("the Foundation") requests that the Public Health and Health Planning Council ("PHHPC") approve the attached proposed Certificate of Incorporation. Public Health Law § 2801-a(6) and Not-for-Profit Corporation Law §§ 404(o) require that the Certificate of Incorporation of a not-for-profit foundation that solicits contributions on behalf of an Article 28 facility must be approved by PHHPC.

The Foundation's proposed beneficiaries are Brookdale Health System, Inc., The Brookdale Medical Center, The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc., The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund, Brookdale Family Care Centers, Inc., Urban Strategies/Brookdale Family Care Center, Inc., which are Article 28 facilities. The following documents and information are attached in support of the Foundation's request for approval:

- 1) A copy of the Foundation's Certificate of Incorporation;
- 2) A copy of the Foundation's proposed bylaws;
- 3) A letter, dated October 9, 2014 from a representative of the Article 28 beneficiaries acknowledging that they will accept funds and other donations from the Foundation;
- 4) A letter dated September 3, 2014 that provided: (a) a generalized description of the fundraising activities to be undertaken by the Foundation; (b) information regarding the Foundation's proposed Board of Directors; and (c) a statement identifying the organizational relationship between the Foundation and the Article 28 beneficiary.

The proposed Certificate of Incorporation is in legally acceptable form.

Attachments

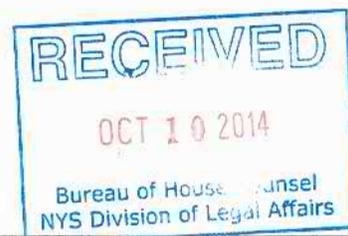


## BROOKDALE UNIVERSITY HOSPITAL AND MEDICAL CENTER

One Brookdale Plaza • Brooklyn, New York 11212 • (718) 240-5000 • FAX (718) 240-5042  
[www.brookdalehospital.org](http://www.brookdalehospital.org)

October 9, 2014

Mary T. Callahan, Esq.  
Director, Bureau of House Counsel  
Division of Legal Affairs  
New York State Department of Health  
Corning Tower, Room 2468  
Empire State Plaza  
Albany, New York 12237



Re: Brookdale Health System Foundation

Dear Ms. Callahan:

I am writing in connection with the request of Brookdale Health System Foundation (the "Foundation") for the consent of the Public Health Council of the New York State Department of Health to the filing of the Foundation's certificate of incorporation. Enclosed is a copy of the proposed Certificate of Incorporation of the Foundation and its proposed By-Laws. Also enclosed is a list of the proposed initial board of directors of the Foundation setting forth their names and addresses, occupations, employer name and address, if any, and information on their past and present affiliations with other charitable organizations.

The Foundation is being organized as a membership corporation and its sole member will be the Brookdale Health System, Inc. ("BHS"). The Brookdale Hospital Medical Center ("BHMC") is also a membership corporation and its sole member is BHS. The board members and officers of BHS and BHMC are the same. All three of the initial board members who serve on the Foundation board also serve on the BHS and BHMC boards. The beneficiaries of the Foundation will be BHMC and any other non-profit entity owned and operated by its parent corporation BHS. The initial board members of the Foundation are Irina Benfield, residing at 1055 River Road, Apt. 610, Edgewater, NJ 07020, attorney at IBE Trade Corporation, 225 East 58th Street, 3<sup>rd</sup> Floor, New York, NY 10022; Bishop Hugh Nelson, residing at 653 Park Lane, Valley Stream, NY 11581, Minister at Church of God of East Flatbush, 409 East 95th Street, Brooklyn, New York 11212; and Lowell Rubin, retired attorney, residing at 141 Argyle Road, Brooklyn, NY 11218.

The Foundation is being formed to raise charitable contributions to support various affiliated Section 501(c)(3) tax-exempt charitable organizations, including The Brookdale Hospital Medical Center, as listed below:

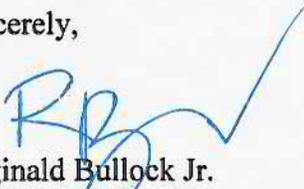
Brookdale Health System, Inc.  
The Brookdale Hospital Medical Center  
The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc.  
The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund

*A voluntary non-profit teaching hospital marking more than 90 years of progress in health care.*

Brookdale Family Care Centers, Inc.  
Urban Strategies/Brookdale Family Care Center, Inc.  
Linroc Community Service Corporation  
Rockreal Corporation  
Amboy Properties Corporation  
The Brookdale Residence Housing Development Fund Corporation

Some of these Section 501(c)(3) tax-exempt affiliates are also licensed facilities under Article 28 of the New York State Public Health Law ("PHL") or Article 7 of the New York State Social Services Law ("SSL"). I understand that in order to grant consent to the filing of certificates of incorporation of not-for-profit corporations that include among their purposes the solicitation of funds to benefit a facility that is located in New York State and licensed pursuant to PHL Article 28 or SSL Article 7, the New York State Department of Health requires a letter from a duly authorized representative of the intended supported organization, acknowledging that it will accept funds for it raised by the corporation. In compliance with such requirement, I hereby acknowledge on behalf of The Brookdale Hospital Medical Center, The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc., The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund, Brookdale Family Care Centers, Inc., Urban Strategies/Brookdale Family Care Center, Inc., that each of The Brookdale Hospital Medical Center, The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc., The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund, Brookdale Family Care Centers, Inc., Urban Strategies/Brookdale Family Care Center, Inc. will accept grant funds and other distributions raised by the Foundation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Bullock Jr.', with a large checkmark flourish extending from the end of the signature.

Reginald Bullock Jr.  
Senior Vice President and General Counsel  
and Assistant Secretary



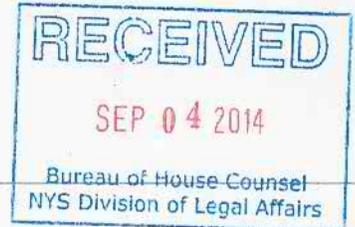
## BROOKDALE UNIVERSITY HOSPITAL AND MEDICAL CENTER

One Brookdale Plaza • Brooklyn, New York 11212 • (718) 240-5000 • FAX (718) 240-5042

[www.brookdalehospital.org](http://www.brookdalehospital.org)

September 3, 2014

Mary T. Callahan, Esq.  
Director, Bureau of House Counsel  
Division of Legal Affairs  
New York State Department of Health  
Corning Tower, Room 2468  
Empire State Plaza  
Albany, New York 12237



Re: Brookdale Health System Foundation

Dear Ms. Callahan:

I am writing in connection with the request of Brookdale Health System Foundation (the "Foundation") for the consent of the Public Health Council of the New York State Department of Health to the filing of the Foundation's certificate of incorporation. Enclosed is a copy of the proposed Certificate of Incorporation of the Foundation and its proposed By-Laws. Also enclosed is a list of the proposed initial board of directors of the Foundation setting forth their names and addresses, occupations, employer name and address, if any, and information on their past and present affiliations with other charitable organizations.

The Foundation is being organized as a membership corporation and its sole member will be the Brookdale Health System, Inc. ("BHS"). The Brookdale Hospital Medical Center ("BHMC") is also a membership corporation and its sole member is BHS. The board members and officers of BHS and BHMC are the same. All three of the initial board members who will serve on the Foundation board also serve on the BHS and BHMC boards as well as the boards of the non-profit entities owned or controlled by BHS listed below. The beneficiaries of the Foundation will be BHMC and any other non-profit entity owned or controlled by its parent corporation BHS including the entities listed below. The initial board members of the Foundation are Irina Benfield, residing at 1055 River Road, Apt. 610, Edgewater, NJ 07020, attorney at IBE Trade Corporation, 225 East 58th Street, 3<sup>rd</sup> Floor, New York, NY 10022; Bishop Hugh Nelson, residing at 653 Park Lane, Valley Stream, NY 11581, Minister at Church of God of East Flatbush, 409 East 95th Street, Brooklyn, New York 11212; and Lowell Rubin, retired attorney, residing at 141 Argyle Road, Brooklyn, NY 11218.

The Foundation is being formed to raise charitable contributions to support various affiliated Section 501(c)(3) tax-exempt charitable organizations, including The Brookdale Hospital Medical Center, as listed below:

Brookdale Health System, Inc.  
The Brookdale Hospital Medical Center  
The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. ("SSI")

Ms. Mary T. Callahan, Esquire  
Page 2  
September 3, 2014

The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund ("SBSI Fund")  
Brookdale Family Care Centers, Inc.  
Urban Strategies/Brookdale Family Care Center, Inc.  
Linroc Community Service Corporation  
Rockreal Corporation  
Amboy Properties Corporation  
The Brookdale Residence Housing Development Fund Corporation ("Schlang Pavilion")

These Section 501(c)(3) tax-exempt affiliates are licensed facilities under Article 28 of the New York State Public Health Law ("PHL") or Article 7 of the New York State Social Services Law ("SSL"). I understand that in order to grant consent to the filing of certificates of incorporation of not-for-profit corporations that include among their purposes the solicitation of funds to benefit a facility that is located in New York State and licensed pursuant to PHL Article 28 or SSL Article 7, the New York State Department of Health requires a letter from a duly authorized representative of the intended supported organization, acknowledging that it will accept funds for it raised by the corporation. In compliance with such requirement, I hereby acknowledge on behalf of The Brookdale Hospital Medical Center that The Brookdale Hospital Medical Center will accept grant funds and other distributions raised by the Foundation.

Sincerely,



Reginald Bullock Jr.  
Senior Vice President and General Counsel  
The Brookdale Hospital Medical Center

**Initial Board Members  
Brookdale Health System Foundation**

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Name	Address	Employer	Occupation	Not for Profit Affiliations other than Brookdale Entities
Irina Benfield	1055 River Road Apt 610 Edgewater, NJ 07020	IBE Trade Corporation	Attorney	-
Bishop Hugh Nelson	653 Park Lane Valley Stream, NY 11581	Church of God of East Flatbush	Minister	-
Lowell Rubin	141 Argyle Road Brooklyn, NY 11218	-	Retired Attorney	-

**BROOKDALE HEALTH SYSTEM FOUNDATION**

**BY-LAWS**

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**BYLAWS**  
**OF**  
**BROOKDALE HEALTH SYSTEM FOUNDATION**

**ARTICLE I.**

**PURPOSE**

Section 1.1 **Principal Office.** Brookdale Health System Foundation (the "**Corporation**") shall have its principal office in Brooklyn, New York or at such other place as may be determined by the Board of Trustees from time to time.

Section 1.2 **Purposes.** The Corporation shall at all times be operated exclusively for charitable, scientific, and educational purposes within the meaning of Section 170(c)(2)(B) and 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "**Code**"), as set forth in the Corporation's Certificate of Incorporation.

Section 1.3 **Powers.** The Corporation shall have all of the powers of a not-for-profit corporation provided for under the New York State Not-for-Profit Corporation Law ("**NPCL**"), subject to any limitations contained in its Certificate of Incorporation and these Bylaws, as such may be amended from time to time; provided, however, the Corporation shall exercise its powers only in furtherance of its charitable, scientific, and educational purposes as such terms are defined under Section 501(c)(3) of the Code and as further specified in the Corporation's Certificate of Incorporation.

## ARTICLE II.

### MEMBERS

Section 2.1 Sole Member. The sole member of the Corporation shall be Brookdale Health System, Inc. (the "Member"), a New York not-for-profit corporation.

Section 2.2 Powers and Duties; Reserved Powers. In addition to its other powers and responsibilities established by law, by the Certificate of Incorporation of the Corporation and by these Bylaws, the Member shall have the following reserved powers:

(a) The power to approve policies of the Corporation to assure the continued development and support of quality health services by the other organizations directly or indirectly owned or controlled by the Member;

(b) The power to elect the Trustees of the Corporation and to remove the Trustees of the Corporation subject to Section 3.3 of these Bylaws;

(c) The power to authorize (i) the amendment and restatement of the Certificate of Incorporation and Bylaws of the Corporation; (ii) the merger or consolidation of the Corporation with any other entity; (iii) the sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all the property and assets of the Corporation; and (iv) the voluntary dissolution of the Corporation, and the plan of distribution of assets upon dissolution and the revocation of voluntary dissolution proceedings;

(d) The power to approve (i) the Corporation's strategic and business plans and (ii) any proposed changes to the Corporation's mission statements;

(e) The power to approve the Corporation's (i) capital budgets, (ii) operating budgets, and (iii) non-budgeted material expenditures (classification of expenditures as "material" shall be established by the Member's Board of Trustees from time to time);

(f) The power to approve the Corporation's investment policies;

(g) The power to authorize the Corporation's organization or formation of a new subsidiary or joint venture entity, arrangement or relationship in which the Corporation's ownership interest will be equal to or in excess of fifty percent (50%) of the net income or voting interests therein;

(h) The power to authorize the Corporation's incurrence or guarantee of material indebtedness to any other person or entity (classification of an indebtedness as "material" shall be established by the Member's Board of Trustees from time to time) and a mortgage or pledge of, or grant of a security interest in, property or assets of a hospital or related entity in connection with any such indebtedness; and

(i) The power to approve accounting policies for the Corporation and approve the appointment of the Corporation's outside auditors.

Section 2.3 Meetings of the Member. The Member may hold regular or special meetings, either in or outside of the State of New York. Regular and special meetings of the Member may be held at such times and such places as determined by the Member and set forth in the notices of meeting. The Member, the Chair of the Board of Trustees, or the Board of Trustees may cause special meetings of the Member. The annual meeting of the Member shall be held at such time and place as shall be stated in the notice of meeting.

Section 2.4 Action by Member.

(a) The vote of a majority of the Members' Board of Trustees shall be deemed to constitute the vote and act of the Member, except as provided in Section 3.5 of these Bylaws for the removal of Trustees by the Member.

(b) The Annual Meeting of the Member's Board of Trustees shall be deemed to constitute the annual meeting of the Member of the Corporation required by Section 603(b) of the Not-For-Profit Corporation Law and as provided in Section 2.3 hereof.

(c) Each of the reserved powers set forth in Section 2.2 hereof, including without limitation: (i) the appointment of the Trustees of the Corporation, (ii) any amendment to the Corporation's Certification of Incorporation or these Bylaws, or (iii) the dissolution, merger, or sale of all or substantially all of the assets of the Corporation, shall require the affirmative action of the Member.

(d) Any action required or permitted to be taken at a meeting of the Member may be taken without a meeting if a duly authorized representative of the Member signs a written consent, setting forth the action.

## ARTICLE III.

### BOARD OF TRUSTEES

Section 3.1 Powers. The property, affairs, and business of the Corporation shall be managed by its Board of Trustees. The Board of Trustees shall have, and may exercise, all of the powers of the Corporation except as may be limited or conferred by law, by the Certificate of Incorporation of the Corporation, or by these Bylaws.

Section 3.2 Number and Qualification. The number of Trustees constituting the entire Board shall be fixed from time to time by the Member; provided, however, that such number of Trustees shall not be less than three (3), or such other minimum required by the NPCL. No decrease in the number of Trustees shall shorten the term of any incumbent Trustee. Trustees shall be selected on the basis of a demonstrated record of dedication to community service, an interest in the objectives of the Corporation, as well as the ability of the candidates to participate effectively in fulfilling those objectives. Each Trustee shall be at least eighteen (18) years of age.

Section 3.3 Election and Term of Office of Trustees. All Trustees of the Corporation shall be elected by the Member for a term of one (1) year at each Annual Meeting of the Member or as determined from time to time by the Member. The terms of office of all Trustees shall expire at the next Annual Meeting of the Corporation following their election and, in any event, each elected Trustee shall continue in office until his or her successor shall have been elected and qualified, or until his or her death, resignation or removal. By virtue of his or her office, the President of the Member shall be a member of the Board of Trustees

Section 3.4 Vacancies. Any vacancy or vacancies in the Board because of death, resignation, removal, disqualification, increase in the number of Trustees, or any other cause, may be filled by the Member. Each person selected to fill a vacancy shall serve as a Trustee until the next Annual Meeting of Trustees at which the vacated position is up for election in the regular order of business, and until his or her successor is duly elected, appointed and qualified.

Section 3.5 Resignation and Removal. Any Trustee may resign at any time by giving written notice of such resignation to the Board of Trustees or to the Chairman or Secretary thereof, and such resignation shall take effect at the time stated therein, or if no time is stated, upon its delivery to the Board, the Chairman or Secretary. Any Trustee may be removed at any time for cause by the Member or by a majority vote of the entire Board of Trustees and without cause by the Member or a two-thirds (2/3) vote of the entire Board of Trustees, in a case excluding the vote of the Trustee whose removal is at issue.

Section 3.6 Attendance. Trustees shall be expected to attend all meetings of the Board unless excused therefrom by the Chairman. Failure by any Trustee, without good cause as determined by the Chairman, to attend at least fifty percent (50%) of all such meetings in any calendar year shall be grounds for cause for removal from the Board.

Section 3.7 Annual and Regular Meetings. As soon as practical after each annual election of Trustees by the Member, the annual meeting of the Board of Trustees shall be held on such date, and at such time and at such place as the Board of Trustees shall determine for the purpose of election of Officers of the Corporation and the transaction of such other business as may be properly brought before such meeting. The Board of Trustees shall hold such number of other regular meetings at such times and at such places as may from time to time be determined by the Board of Trustees. At the annual meeting of the Board, the Board may fix the dates for its regular meetings during the upcoming year.

Section 3.8 Special Meetings. Special meetings of the Board of Trustees may be called at any time by the President or Chairman of the Board, by the Member, or by the Secretary upon written demand of a majority of the Board of Trustees, and shall be held at such time and place as shall be designated in the notice thereof.

Section 3.9 Notice of Meetings. Notice of the time and location of the annual meeting shall be given either personally, sent by certified or overnight mail, electronic mail, or facsimile to each Trustee at least five (5) days before the date of such meeting. Regular meetings of the Board of Trustees may be held without notice at such time and place as shall from time to time be determined as regular meeting dates and places by the Board. Notice of the time, place and purpose of each special meeting of the Board shall be given either personally, sent by certified or overnight mail, electronic mail or facsimile to each Trustee at least forty-eight (48) hours before the scheduled time of the meeting, or such shorter notice as the person or persons calling such meeting may deem necessary or appropriate under the existing circumstances. No business other than that specified in the notice of a special meeting shall be transacted thereat. At any meeting at which every member of the Board of Trustees shall be present, though held without notice, any business may be transacted which might have been transacted as if the meeting had been duly called.

Section 3.10 Waiver of Notice. Notice of the time, place and purpose of any meeting of the Board shall not be required to be given to any Trustee who submits a waiver of notice either before or after the meeting, or who attends the meeting without protesting the lack of notice to him prior thereto or at its commencement.

Section 3.11 Quorum. Except as may be otherwise specifically provided by the NPCL, the Certificate of Incorporation of the Corporation or these Bylaws, at all meetings of the Board of Trustees, the presence of one-third (1/3) of the entire Board Trustees then in office at any one meeting of the Board of Trustees shall constitute a quorum for the transaction of business.][A majority of the number of

Trustees then in office who are entitled to vote shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees. If a quorum shall not be present at any meeting of the Board of Trustees, the Trustees who are present may adjourn the meeting from time to time, until a quorum shall be present. A Trustee who is deemed to have a conflict of interest with respect to the approval of a contract, transaction or other arrangement pursuant to the Corporation's Conflict of Interest Policy, although not entitled to participate in the discussion nor vote on any matters with respect to which such Trustee has a conflict, may be counted in determining the presence of a quorum at a meeting of the Board of Trustees or committee that authorizes such contract, transaction or arrangement.

Section 3.12 Vote. Each Trustee shall be entitled to one (1) vote. The vote of a majority of the Trustees present at any meeting at which a quorum is present shall be the act of the Trustees, unless the act of a greater number or percentage of Trustees is required by the NPCL, the Certificate of Incorporation of the Corporation or these Bylaws.

Section 3.13 Action without a Meeting. Unless otherwise provided by the Certificate of Incorporation of the Corporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Trustees or of any committee thereof may be taken without a meeting, if all the members of the Board of Trustees or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Trustees or committee.

Section 3.14 Teleconference. Any or all Trustees may participate in a meeting of the Board of Trustees by means of a conference telephone or similar telecommunications equipment by which all persons participating in the meeting are able to hear each other at any special meeting of the Board of Trustees. Participation by such means at any special meeting of the Board of Trustees shall constitute presence in person at such meeting.

Section 3.15 Minutes. The Secretary or his or her designee shall maintain complete and accurate minutes of all Board meetings and shall retain all unanimous written consents executed by the Trustees. Said minutes and written consents shall be maintained in the permanent records of the Corporation.

Section 3.16 Entire Board of Trustees. For purposes of these Bylaws, the phrase "entire Board of Trustees" shall mean the total number of Trustees pursuant to Section 3.2 of these Bylaws including vacancies.

Section 3.17 Compensation. Trustees shall receive no compensation for their services as Trustees, but may be reimbursed for the expenses reasonably incurred by them in the performance of their duties in accordance with policies established by the Board of Trustees or the Member.

## ARTICLE IV.

### COMMITTEES

Section 4.1 Committees Generally. The Board of Trustees may designate such committees of the Board with such duties and responsibilities as it deems appropriate. [There shall be an Executive Committee and an Audit Committee and, in addition, the Board of Trustees may, by resolution approved by a majority of the entire Board, designate one (1) or more additional committees of the Board as may from time to time be deemed suitable, necessary, or convenient to aid in accomplishing the purposes of the Corporation. All committees shall consist of a minimum of three (3) members. Committees shall be required to maintain and submit minutes of their meetings to the full Board of Trustees. In addition, each Committee (through its chair, if any) shall be required to respond to inquiries made by the Board with regard to the activities of such Committee. The Chairman shall serve as an *ex officio* member of each Committee of which the Chairman is not otherwise a regular member. The President/Chief Executive Officer, if he/she is otherwise a Trustee, shall be an *ex officio* voting member of each Committee. Notwithstanding the foregoing, no committee shall have authority as to any of the following matters:

- (a) the power to appoint or remove Officers of the Corporation;
- (b) the filling of vacancies in the Board of Trustees or any committee thereof;
- (c) the amendment or repeal of any resolution of the Board of Trustees which by the terms thereof shall not be so amendable or repealable;
- (d) the fixing of compensation of the Trustees for serving on the Board of Trustees or on any committee;
- (e) obligating the Corporation to any contract or agreement;
- (f) causing the Corporation to incur debt, or pledging tangible or intangible assets of Corporation;
- (g) the authorization of indemnification for expenses incurred by Trustees, Officers or other persons in defending a civil or criminal action or proceeding under the applicable provisions of the NPCL pursuant to ARTICLE VI of these Bylaws;
- (h) the amendment or repeal of the Certificate of Incorporation of the Corporation or these Bylaws, or the adoption of new bylaws of the Corporation;
- (i) transferring, by sale or lease, any real property of the Corporation; and
- (j) the approval of a petition for non-judicial dissolution of the Corporation, a plan of merger or consolidation or the sale or other disposition of all or substantially all of the corporate assets.

Section 4.2 Executive Committee. The Executive Committee shall consist of the Chairman, President/Chief Executive Officer, Secretary and Treasurer. In order to provide continuity of governing body control, the Executive Committee shall exercise the authority of the Board of Trustees in the supervision and control of the affairs of the Corporation in the interval between the meetings of the Board. The Executive Committee shall have special charge of all matters not expressly assigned to some other Committee. The Executive Committee shall be considered always in session and the affirmative vote of a majority of the members of the Committee shall constitute valid action of such Committee. Except as otherwise prohibited by the NPCL, the Executive Committee shall and may exercise the powers of the Board of Trustees, provided such action is not inconsistent with the provisions of the Certificate of Incorporation of the Corporation, these Bylaws, any law or statute governing the Corporation or any limitations imposed by the Board. Any action taken by the Executive Committee shall be reported fully to the Trustees at the next regular or special meeting.

Section 4.3 Audit Committee. The Audit Committee shall consist of at least three (3) members of the Board of Trustees, elected to such committee at the Annual or other meeting of the Board of Trustees. No Trustee compensated for rendering services to the Corporation shall serve as a member of the Audit Committee. The Audit Committee shall, at a minimum, be responsible for:

- Retaining and evaluating the independent auditor who shall report to the Audit Committee;
- Reviewing with the independent auditor the scope and planning of the Corporation's audit;
- Reviewing and discussing the results of each audit with the independent auditor; and
- Overseeing the adoption and implementation of and compliance with the Corporation's Conflict of Interest policy.

Section 4.4 Tenure of Members of Committees of the Board. Each committee of the Board of Trustees and every member thereof shall serve at the pleasure of the Board and for such terms as the Board shall determine. The Board of Trustees shall have the power at any time to change the membership of any committee, to fill vacancies, and to discharge any such committees. The Board of Trustees may designate one or more Trustees as alternate members of any Committee, who may replace any absent or disqualified member at any meeting of any such Committee.

Section 4.5 Meetings. Meetings of committees, of which no notice shall be necessary, shall be held at such time and place as shall be fixed by the Chairman or President/Chief Executive Officer of the Corporation or the chair of the committee or by a vote of a majority of all of the members of the committee.

Section 4.6 Quorum and Manner of Acting. Unless otherwise provided by resolution of the Board of Trustees, a majority of all of the members of a committee shall constitute a quorum for the transaction of business. Except as otherwise set forth

in these Bylaws, a vote by a majority of the members present at a meeting at which a quorum is present shall constitute valid action taken by the Committee in question. The procedures and manner of acting of the committees of the Board of Trustees shall be subject at all times to the directions of the Board of Trustees.

Section 4.7      Alternate Committee Members.    The Board of Trustees may designate one or more Trustees as alternate members of any standing or special committee of the Board of Trustees who may replace any absent member or members at any meeting of such committee.

## ARTICLE V.

### OFFICERS

Section 5.1      Number. The Officers of the Corporation shall include: (i) a Chairman, (ii) a President/Chief Executive Officer, (iii) a Secretary, and (iv) a Treasurer. In addition, the Board of Trustees from time to time, may elect such other Officers and confer upon the Officers those powers and duties which it shall deem necessary or advisable for the conduct of the affairs of the Corporation. Any Officer may hold two or more offices except that the same person shall not be both President/Chief Executive Officer and Secretary.

Section 5.2      Election and Term of Office. The Officers shall be elected by the Trustees at the Annual Meeting of the Board unless otherwise determined by the Trustees, and shall serve until the next Annual Meeting, and until their successors are duly elected and qualified. The Chair must be a Trustee; all other Officers may be, but need not be, Trustees. Any Officer elected by the Trustees may be removed with or without cause by an affirmative vote of a majority of the Trustees then in office. Such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer shall not in and of itself create any contract rights.

Section 5.3      Resignation. Any Officer may resign at any time by giving written notice of such resignation to the Board, the Chairman or the Secretary. Such resignation shall take effect at the time specified therein or, if not so specified, upon its delivery to the Board, the Chairman, or the Secretary, as the case may be.

Section 5.4      Vacancies. A vacancy in any office by reason of death, resignation, removal or otherwise may be filled by the Board of Trustees for the unexpired portion of the term of such office. Every Officer so elected shall, unless sooner displaced, serve until the next Annual Meeting, and until such Officer's successor is duly elected and qualified.

Section 5.5      Duties of the Chairman. The Chairman shall preside at all meetings of the Board of Trustees. In the absence or disability of the Chairman, the President/Chief Executive Officer shall perform the duties and exercise all the powers of the Chairman.

Section 5.6      Duties of the President/Chief Executive Officer. The Board shall appoint a chief executive officer bearing the title of President/Chief Executive Officer who shall be its representative in the management and operation of the Corporation and shall have general care, supervision and direction of its affairs. Except as otherwise provided and subject always to control by the Board of Trustees, the President/Chief Executive Officer shall be responsible for the overall management of the Corporation. The President/Chief Executive Officer shall be accountable to the Board of Trustees for the management of the Corporation and shall report periodically

to the Board of Trustees on the affairs of the Corporation as the Board of Trustees shall require. The President/Chief Executive Officer shall be responsible for supervising the day to day operations of the Corporation, may employ and discharge other employees of the Corporation, may approve ordinary and reasonable expenditures and contracts and sign such contracts and other documents, including, without limitation, documents and forms required by federal, state and local governments to be executed by the Corporation's officers, and shall have such other duties as may be assigned by the Board of Trustees. Consistent with the policies and directives of the Board of Trustees, the President/Chief Executive Officer may delegate or assign such management duties as are necessary and prudent to accomplish the objectives of the Board of Trustees. The President/Chief Executive Officer shall serve at the pleasure of the Board and receive such compensation as the Board shall determine.

Section 5.7      Duties of the Treasurer. The Treasurer shall maintain the books of account and shall have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds in the name of and to the credit of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Trustees. The Treasurer shall ensure that a true and accurate accounting of the financial transactions of the Corporation is made and that reports of such transactions are presented to the Board of Trustees. The Treasurer shall also perform all other duties customarily incident to the office of Treasurer and such other duties as from time to time may be assigned by the Board of Trustees.

Section 5.8      Duties of the Secretary. The Secretary shall keep a record of all the meetings and proceedings of the Board of Trustees. Except as otherwise provided, the Secretary shall give or cause to be given notice, where required, of all meetings of the Trustees. The Secretary shall keep or cause to be kept a correct list of the Trustees of the Corporation, and shall perform the entire duties incident to the office of the Secretary. The Secretary shall be the custodian of the records and seal of the Corporation, and attest all acts of the Corporation when such attestation is required or deemed desirable. In the absence or disability of the Secretary, the Secretary's duties shall be assumed by such other person or persons as the Chairman or the Board of Trustees may designate.

## ARTICLE VI.

### INDEMNIFICATION

Section 6.1 Indemnification of Employees, Officers, Trustees and Members of Committees. The Corporation shall indemnify to the fullest extent permitted by law every Trustee, employee, Officer and member of a committee or of the Corporation made a party to a proceeding by reason of such person being or having been a Trustee, employee, Officer, or member of a committee of the Corporation, against judgments, penalties, fines, settlements and reasonable expenses actually incurred, including those expenses actually incurred prior to the final disposition of such proceeding.

Section 6.2 Prohibited Indemnification. Notwithstanding Section 6.1 hereof, the Corporation shall not indemnify any person if a judgment or other final adjudication adverse to the indemnified person (or to the person whose actions are the basis for the action or proceeding) establishes, or the Board of Trustees in good faith determines, that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

Section 6.3 Insurance. The Corporation is not required to purchase liability insurance for Trustees and Officers, but the Corporation may purchase such insurance if authorized and approved by the Board of Trustees. To the extent permitted by law, such insurance may insure the Corporation for any obligation it incurs as a result of this ARTICLE VI or operation of law and it may insure directly the Trustees, Officers, employees, or volunteers of the Corporation for liabilities against which they are not entitled to indemnification under this Article VI as well as for liabilities against which they are entitled or permitted to be indemnified by the Corporation.

## ARTICLE VII.

### GENERAL PROVISIONS

Section 7.1 Fiscal year. The fiscal year of the Corporation shall commence on January 1st and end as of December 31<sup>st</sup> of each year.

Section 7.2 Books and Records. There shall be kept at the office of the Corporation (i) correct and complete books and records of account; (ii) minutes of the proceedings of the Member, the Board of Trustees and any committee of the Board of Trustees; (iii) a current list of the Trustees, Officers and Member of the Corporation and their residential and business addresses; (iv) a copy of the Certificate of Incorporation of the Corporation and these Bylaws, (v) a copy of the Corporation's application for recognition of exempt status under Section 501(c)(3) of the Code (IRS Form 1023); and (vi) copies of the Foundation's past three (3) years' information returns (IRS Form 990).

Section 7.3 Corporate Seal. The Board of Trustees shall have the authority to select the inscription and form of the Foundation's corporate seal.

Section 7.4 Deposits, Checks and Notes. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Trustees may select. All deposits shall be made in the name of the Corporation. Checks, notes, drafts, bills of exchange, acceptances, undertakings, or other instruments or orders for the payment of money shall be signed by such Officers or agents as the Trustees may from time to time designate or shall bear the facsimile signature of such Officers or agents as the Trustees may from time to time designate.

Section 7.5 Execution of Contracts. The Board of Trustees, except as otherwise provided in these Bylaws, may authorize any Officer or Officers, agent or agents, in the name or and on behalf of the Corporation to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances; but, unless so authorized by the Board of Trustees, or expressly authorized by these Bylaws, no Officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily in any amount for any purpose.

Section 7.6 Conflict of Interest Policy. The Board of Trustees shall adopt, and shall cause the Corporation, the Board of Trustees and the Officers of the Corporation to adhere to, a Conflict of Interest Policy that is substantially consistent with prevailing principles and standards established for addressing conflicts of interest by applicable law, regulation and/or administrative guidance, including, but not limited to, the New York State Not-for-Profit Corporation Law and Internal Revenue Service guidance and policy.

Section 7.7      Loans. No loans shall be contracted on behalf of the Corporation unless specifically authorized by the Board of Trustees.

Section 7.8      Loans to Trustees and Officers. No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by the Corporation to its Trustees or Officers, or to any other corporation, firm, association or other entity in which one or more of its Trustees or Officers are trustees, directors or officers or hold a substantial financial interest, except a loan by one Type B not-for-profit corporation to Type B not-for-profit corporation. A loan made in violation of this section shall be a violation of the duty to the Corporation of the Trustees or Officers authorizing it or participating in it, but the obligation of the borrower with respect to the loan shall not be affected thereby.

**ARTICLE VIII.**

**DIRECTION AND CONTROL OF DISPOSITION OF DONOR RESTRICTED FUNDS:**  
**RETAINED POWER**

Section 8.1 Notwithstanding any provision hereof to the contrary, the disposition of any donor-restricted funds or assets of the Corporation shall remain at all times under the exclusive direction and control of the Board of Trustees of the Corporation.



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**CERTIFICATE OF INCORPORATION  
OF  
BROOKDALE HEALTH SYSTEM FOUNDATION**

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**Pursuant to Section 402 of the  
Not-For-Profit Corporation Law.**

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**Reginald Bullock Jr.  
Senior Vice President and  
General Counsel  
One Brookdale Plaza  
Brooklyn, New York 11212**

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**718.240.5777**

**CERTIFICATE OF INCORPORATION**

**OF**

**BROOKDALE HEALTH SYSTEM FOUNDATION**

**Under Section 402 of the Not-for-Profit Corporation Law**

The undersigned, a natural person over the age of eighteen years, for the purpose of forming a corporation under Section 402 of the New York State Not-for-Profit Corporation Law (the "NPCL"), hereby certifies as follows:

**FIRST:** The name of the corporation is Brookdale Health System Foundation (hereinafter referred to as the "Corporation").

**SECOND:** The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL and shall be a charitable corporation under Section 201 of the NPCL.

**THIRD:** The sole member of the Corporation shall be Brookdale Health System, Inc., a New York charitable not-for-profit corporation.

**FOURTH:** (a) The Corporation is organized, and shall be operated, exclusively for charitable, educational and scientific purposes, relief of the poor and underprivileged and lessening the burdens of government within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Code (as defined in Article FIFTEENTH below) to promote, facilitate and enhance the delivery of quality, efficient, effective and economical health care and related services and to improve and enhance access to such care and services and the general health and well-being of the communities of Brooklyn, New York served by the system of affiliated health care providers and related corporations and legal entities directly or indirectly controlled by Brookdale Health System, Inc., a New York not-for-profit corporation, which includes The Brookdale Hospital Medical Center, The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc., Urban Strategies/Brookdale Family Care Center, Inc., Brookdale Family Care Centers, Inc., The Brookdale Residence Housing Development Fund Corporation, Rockreal Corporation and various other corporations and legal entities (the forgoing entities hereinafter referred to collectively as the "Brookdale Health System"), by:

(1) soliciting, collecting, receiving and managing funds, securities, and other contributed assets, to be received by gift, grant, donation, deed, purchase, legacy, bequest, devise or otherwise, and to otherwise acquire money and property (real or personal) of every kind and description, wherever situated, within or without the State of New York, for use in furtherance of the charitable, educational and scientific purposes and purposes of relieving the poor and underprivileged and lessening the burdens of government of the Section 501(c)(3) tax-exempt charitable entities within the Brookdale Health System, and upon any terms and conditions, without limitations as to amount or value except such limitations, if any, as may now or hereafter be imposed by law, all with a view towards obtaining broad-based

financial support for such entities and promoting the best interests of the patient population served thereby; and

(2) subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes.

(b) The Corporation is organized, and shall be operated and shall engage in activities in furtherance of the purposes and mission set forth in Paragraph (a) of this Article FOURTH, exclusively for charitable, educational and scientific purposes, relief of the poor and underprivileged and lessening the burdens of government in the United States and abroad within the meaning of Section 170(c)(2)(B) and Section 501(c)(3) of the Code.

(c) The Corporation is not a hospital or diagnostic and treatment center, or a nursing home, or a facility providing health related service.

(d) Notwithstanding anything to the contrary in this Certificate, nothing herein shall authorize the Corporation, directly or indirectly, to engage in or to include among its purposes any of the activities mentioned in Section 404(a) through (v) of the NPCL, without the Corporation first having obtained the consent or approval from the appropriate governmental authority with respect thereto.

(e) Nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York to: (1) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law ("PHL"); (2) establish operate or maintain a hospital, a home care services agency, a hospice, a managed care organization or a health maintenance organization, as provided for by Articles 28, 36, 40 and 44, respectively, of the PHL and implementing regulations; (3) establish and operate an independent practice association, (4) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law; or (5) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL. Additionally, nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York, to (a) hold itself out as providing, or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

(f) The Corporation shall not operate for the purpose of carrying on a trade or business for profit.

**FIFTH:** In furtherance of its corporate purposes as set forth in Article FOURTH hereof, the Corporation shall have all of the general rights, powers and authority enumerated in the NPCL, including, in particular (a) Section 202 of the NPCL; (b) the power to solicit and receive grants, bequests and contributions for the purposes of the Corporation and the power to maintain a fund or funds of real or personal property in furtherance of the Corporation's

purposes; provided, however, that notwithstanding any provision to the contrary set forth in Article FOURTH hereof or any other Article of this Certificate of Incorporation, the Corporation shall not have, and shall not be authorized to exercise, any right, power or authority in respect of any entity affiliated with the Brookdale Health System that is or may be licensed under Article 28, Article 28-A, or Article 36 of the New York State PHL that would require establishment or licensure of the Corporation as an operator or active member of any such entity, including, but not limited to, any power or authority with regard to any of the matters set forth in 10 NYCRR Section 405.1(c).

**SIXTH:** No part of the Corporation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any trustee, director, officer or employee of the Corporation or other private person; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to or for the Corporation in furtherance of one or more of its purposes. No trustee, director, officer or employee of the Corporation or any private person shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

**SEVENTH:** No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent permitted by Section 501(h) of the Code if the Corporation makes an election thereunder), and the Corporation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

**EIGHTH:** Notwithstanding anything to the contrary in this Certificate, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status (a) as a corporation which is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, or (b) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.

**NINTH:** The names and addresses of initial members of the Corporation's Board of Trustees, who shall serve as Trustees until the initial meeting of the Board of Trustees of the Corporation and until their successors are elected, are as follows:

Lowell M. Rubin  
141 Argyle Road  
Brooklyn, New York 11218

Irina Benfield  
1055 River Road, Apt. 610  
Edgewater, New Jersey 07020

Bishop Hugh Nelson  
653 Park Lane  
Valley Stream, New York 11581

**TENTH:** In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to The Brookdale Hospital Medical Center and/or to one or more other members of the Brookdale Health System then qualifying as exempt from federal income tax under Section 501(c)(3) of the Code as the Board of Trustees of the Corporation shall determine, in its discretion, to be in the best interests of the charitable healthcare mission of the Corporation, or if no such organizations are then in existence and qualifying under Section 501(c)(3) of the Code, then to the Federal, State and/or local governments for a related public purpose, in such proportions as the Board of Trustees of the Corporation shall determine, subject to compliance with an order of a Justice or the Supreme Court of the State of New York.

**ELEVENTH:** The office of the Corporation shall be located in the County of Kings, State of New York.

**TWELTH:** In accordance with Section 508(e) of the Code, if in any taxable year the Corporation is a private foundation as defined in Section 509(a) of the Code, then in such year:

(a) The Corporation shall distribute such amounts for each taxable year at such time and in such manner so as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(b) The Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;

(c) The Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code;

(d) The Corporation shall not make any investments in such manner so as to subject the Corporation to tax under Section 4944 of the Code; and

(e) The Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

**THIRTEENTH:** No trustee, director or officer of the Corporation shall have any personal liability to the Corporation or its members for damage resulting from any breach of such trustee's, director's or officer's duties as a trustee, director or officer of the Corporation; provided, however, that this Article THIRTEENTH shall not eliminate or limit the liability of any trustee, director or officer: (a) if a judgment or other final adjudication adverse to such trustee, director or officer establishes that his or her acts or omissions (i) were in bad faith or involved intentional misconduct or a knowing violation of law or that such trustee, director or officer personally gained in fact a financial profit or other advantage to which he or she was not legally entitled, or (ii) violated Section 719 of the NPCL, unless the NPCL is amended or supplemented to so limit or eliminate such liability, or (b) to the extent that such personal liability is otherwise required by, or can not otherwise be eliminated in accordance with, the NPCL.

**FOURTEENTH:** (a) The Corporation shall, to the fullest extent permitted by the NPCL, indemnify any present or former trustee, director, officer, employee or agent of the Corporation or the personal representatives thereof, made or threatened to be made a party in any civil or criminal action or proceeding by reason of the fact that such trustee, director, officer, employee or agent, or his or her testator or intestate, is or was a member, trustee, director, officer, employee or agent of the Corporation or, at the request of the Corporation, served any other organization, entity or other enterprise in any capacity, to the full extent and in all such circumstances as shall be permitted under the NPCL, and all such indemnified costs and expenses incurred shall be advanced by the Corporation pending the final disposition of such action or proceeding.

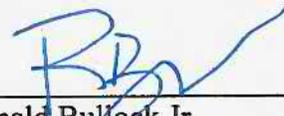
(b) Such required indemnification shall be subject only to the exception that no indemnification may be made to or on behalf of any trustee, director, officer, employee or agent in the event and to the extent that a judgment or other final adjudication adverse to the trustee, director, officer, employee or agent establishes that such trustee's, director's, officer's, employee's or agent's acts were committed in bad faith or involved intentional misconduct or a knowing violation of law or that such trustee, director, officer, employee or agent personally gained in fact a financial profit or other advantage to which he or she was not legally entitled (provided, however, that indemnification shall be made upon any successful appeal of any such adverse judgment or final adjudication).

(c) The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation, its members, trustees, directors, officers, employees and agents of the Corporation, and other persons otherwise entitled to indemnification, to the full extent and in such circumstances as is permitted under the NPCL. No indemnification shall be made under this Article FOURTEENTH if such indemnification would be inconsistent with the provisions of the Corporation's By-Laws, a resolution of Corporation's member(s) or Board of Trustees or other proper corporate action, or, the provisions of Sections 4941 through 4945 or Section 4958 of the Code, as any such of the foregoing may be in effect at the time of the accrual of the alleged cause of action asserted in the threatened or pending action or proceeding, which prohibits or otherwise limits such indemnification.

**FIFTEENTH:** All references herein to the Code are to the Internal Revenue Code of 1986, and shall be deemed to include both amendments thereto and corresponding statutory provisions of future United States Internal Revenue Laws which supercede the Code or particular provisions thereof.

**SIXTEENTH:** The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon the Secretary of State is: Brookdale Health System Foundation, Attn: General Counsel, One Brookdale Plaza, Brooklyn, New York 11212.

IN WITNESS WHEREOF this Certificate of Incorporation has been signed and the statements made herein affirmed as true under penalties of perjury this 2nd day of September, 2014.



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By: Reginald Bullock Jr.  
Sole Incorporator



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

**TO:** Public Health and Health Planning Council  
**FROM:** James E. Dering, General Counsel *JED*  
**DATE:** April 29, 2015  
**SUBJECT:** Restated Certificate of Incorporation of The Mount Sinai Medical Center, Inc.

The attached proposed Restated Certificate of Incorporation of The Mount Sinai Medical Center, Inc. ("the Foundation"), dated December 2, 2014, is being submitted for Public Health and Health Planning Council approval. The Foundation's sole member is also the sole member of the Mount Sinai Hospitals Group, Inc., which was established by the Public Health and Health Planning Council in January 2014 as the co-operator of The Mount Sinai Hospital, Beth Israel Medical Center, The New York Eye and Ear Infirmary and The St. Luke's-Roosevelt Hospital Center. The Foundation's Restated Certificate amends its corporate purposes to reflect its intent to solicit contributions on behalf of these four hospitals. Public Health and Health Planning Council approval of this change to the corporate purposes is required by Not for Profit Corporation Law § 804 (a) (i).

In addition to the proposed Restated Certificate of Incorporation, the following documents and information are attached in support of the Foundation's request for approval.

- 1) A letter, dated December 4, 2014 from the Foundation's attorney providing additional information about the Foundation, including a description of the Foundation's fund raising activities.
- 2) The Foundation's bylaws.
- 3) Letters from the intended beneficiaries acknowledging and approving of the Foundation's proposed fund raising activities on their behalf.
- 4) Disclosure information regarding the Foundation's board of directors.

The proposed Restated Certificate of Incorporation is in legally acceptable form.

Attachments

**RESTATED**  
**CERTIFICATE OF INCORPORATION**

**OF**  
**THE MOUNT SINAI MEDICAL CENTER, INC.**

**Under Section 805 of the Not-For-Profit Corporation Law**

The undersigned, Beth R. Essig, certifies that she is the Executive Vice President and Assistant Secretary of The Mount Sinai Medical Center, Inc. (the "Corporation"), a New York not-for-profit corporation, and does hereby certify as follows:

1. The name of the Corporation is The Mount Sinai Medical Center, Inc.
2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on August 15, 1967.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL and is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law ("NPCL"), and shall remain a Type B corporation after this Restated Certificate of Incorporation becomes effective.
4. The Certificate of Incorporation of the Corporation is hereby amended to effect the following changes pursuant to Section 801 of the NPCL:
  - (a) amend paragraph (1) of Article SECOND, which provides that one of the purposes of the Corporation is to support the charitable, scientific, research or educational purposes of The Mount Sinai Hospital and Mount Sinai School of Medicine, to: (i) update the name of Mount Sinai School of Medicine to its current legal name, the Icahn School of Medicine at Mount Sinai; (ii) describe additional entities affiliated with the Corporation whose purposes the Corporation shall support; and (iii) define the collective group of entities whose purposes the Corporation shall support as the "Mount Sinai Health System".
  - (b) amend paragraph (2) of Article SECOND, which provides that one of the purposes of the Corporation is to make donations, gifts and contributions to The Mount Sinai Hospital and Mount Sinai School of Medicine, to: (i) change the reference to "The Mount Sinai Hospital and Mount Sinai School of Medicine" to "the constituent entities of the Mount Sinai Health System"; and (ii) add making grants to such entities to the Corporation's purposes.
  - (c) amend Article SECOND by deleting paragraph (3) thereof, which states that the Corporation's purposes include to supervise and coordinate the activities of The Mount Sinai Hospital and Mount Sinai School of Medicine, and accordingly to:

- (i) re-number the subsequent paragraphs of Article SECOND; and (ii) update the numbering of subsequent references within Article SECOND to such re-numbered paragraphs;
- (d) amend paragraph 4 of Article SECOND, which provides that the Corporation's purposes include to receive sums from The Mount Sinai Hospital and/or Mount Sinai School of Medicine to cover its expenses of operation (which paragraph 4 is renumbered as paragraph 3 of Article SECOND by reason of the deletion of current paragraph 3 of Article SECOND), to change the reference to "The Mount Sinai Hospital and/or Mount Sinai School of Medicine" to "the constituent entities of the Mount Sinai Health System";
- (e) amend paragraph 5 of Article SECOND, which sets forth multiple purposes of the Corporation (which paragraph 5 is renumbered as paragraph 4 of Article SECOND by reason of the deletion of current paragraph 3 of Article SECOND), to: (i) insert introductory language providing that the purposes of the Corporation listed in such paragraph 5 shall be for the benefit of the constituent entities of the Mount Sinai Health System; (ii) add as additional purposes soliciting contributions and grants for the benefit of the constituent entities of the Mount Sinai Health System and receiving, holding, investing, and reinvesting certain institutional funds and other restricted assets and/or investment assets of such constituent entities for the benefit of such constituent entities; (iii) insert references to the constituent entities of the Mount Sinai Health System in relation to certain purposes; and (iv) to number each of the purposes set forth in paragraph 5 (hereby renumbered as paragraph 4);
- (f) renumber paragraph 6 of Article SECOND, which sets forth permissible actions of the Corporation, as paragraph 5 of Article SECOND by reason of the deletion of current paragraph 3 of Article SECOND;
- (g) insert a new paragraph 6 of Article SECOND, which sets forth certain restrictions on the powers of the Corporation as required by the New York State Department of Health for entities which will engage in fundraising on behalf of hospitals licensed under Article 28 of the Public Health Law;
- (h) amend Articles SECOND, NINTH and TENTH to change the references therein to "the Internal Revenue Code of 1954" to "the Internal Revenue Code of 1986; and
- (i) omit the language currently set forth in Article EIGHTH setting for the names of the initial directors of the Corporation until the first meeting, as such language is not required to be set forth in a Restated Certificate of Incorporation as provided in Section
- (j) make certain minor non-material changes to the format and language of the Certificate of Incorporation.

5. In accordance with Section 805(c) of the NPCL, this Restated Certificate of Incorporation does not include Article SIXTH or Article SEVENTH of the Corporation's Certificate of Incorporation as initially filed with the Department of State on August 15, 1967, which Articles address, respectively, the initial directors and incorporators of the Corporation.
6. This Restated Certificate of Incorporation was authorized by the affirmative vote of a majority of the members of the Board of Directors of the Corporation at a duly constituted meeting thereof and by the sole member of the Corporation of the Corporation's sole member, in accordance with NPCL Section 802(a).
7. The text of the Certificate of Incorporation of the Corporation, as amended hereby, is restated to read in its entirety as follows:

**FIRST:** That the name of the corporation is THE MOUNT SINAI MEDICAL CENTER, INC. (the "Corporation").

**SECOND:** That the purposes for which the Corporation is to be formed are:

(1) To conduct and carry on the work of the Corporation, not for profit, but exclusively for the support of the charitable, scientific, research or educational purposes of Mount Sinai Health System, Inc., Mount Sinai Hospitals Group, Inc., The Mount Sinai Hospital, the Icahn School of Medicine at Mount Sinai, Beth Israel Medical Center, The St. Luke's-Roosevelt Hospital Center, The New York Eye and Ear Infirmary, and such other not-for-profit or education corporations exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, as may be directly or indirectly controlled by or affiliated with any of the foregoing entities (such affiliated group of entities hereinafter referred to collectively as the "Mount Sinai Health System"), in such manner that no part of the income or property of the Corporation shall inure to the private benefit of any donor, member, trustee, officer or individual having a personal or private interest in the activities of the Corporation, and in such manner that it shall not in any way, directly or indirectly, engage in carrying on propaganda or otherwise attempt to influence legislation.

(2) Subject always to the provisions of paragraph "(1)" of this Article "SECOND", to make donations, gifts, grants and/or contributions out of its annual net income or assets, or both, to one or more of the constituent entities of the Mount Sinai Health System, in such amounts, equal or unequal, as the Board of Directors of the Corporation in its absolute discretion shall determine.

(3) Subject always to provisions of paragraphs "(1)" and "(2)" of this Article "SECOND", to receive from one or more of the constituent entities of the Mount Sinai Health System, such sums as the Corporation may require to cover its expenses of operation; provided, however, that any such receipts not actually required for such operations shall be ratably refunded at annual or more frequent intervals.

(4) Subject always to the provisions of paragraphs “(1)”, “(2)” and “(3)” of this Article “SECOND”, for the benefit of the constituent entities of the Mount Sinai Health System (a) to solicit contributions and grants, (b) to acquire, receive, purchase, take by gift, grant, devise, bequest, or otherwise, real, personal and mixed property of every kind and description wheresoever the same may be situated, and without limit as to amount, including, without limiting the generality of the foregoing, money, lands, buildings, mortgages, shares, stocks, debentures, bonds, securities, including the stocks, bonds, debentures or other securities of any donor, bills, notes, claims or any evidence of indebtedness and any interest in any property which may be necessary or convenient for the conduct of the Corporation; (c) to hold, invest, reinvest, use, mortgage, pledge, sell, lease, assign, give, exchange, transfer or otherwise dispose of the same at pleasure; (d) to receive, hold, invest, and reinvest certain institutional funds and other restricted assets and/or investment assets of the constituent entities of the Mount Sinai Health System for the benefit of such constituent entities; (e) to borrow money of any person, firm or corporation and to issue notes or obligations of the Corporation, from time to time, for any of the objects or purposes of the Corporation and/or one or more of the constituent entities of the Mount Sinai Health System and secure the same by lawful means; (f) to enter into, make, perform and carry out contracts of any kind or nature for any of the objects or purposes of the Corporation and/or one or more of the constituent entities of the Mount Sinai Health System, without limit as to amount; and (g) to have one or more offices to carry on all or any of the operations and the exercise of any of the powers of the Corporation.

(5) Subject always to the provisions of paragraphs “(1)”, “(2)”, “(3)” and “(4)” of this Article “SECOND”, to do all and every-thing necessary, suitable and proper for the accomplishment of any of the purposes or the attainment of any of the objects or the furtherance of any of the powers hereinabove set forth, and to the same extent as natural persons might or could do, either alone or through the agency of other corporations, organizations, foundations, institutions, governmental bodies or individuals, and to do every other act or acts, thing or things, incidental or appurtenant to or growing out of or connected with the aforesaid objects or purposes or any part or parts thereof, and to do all things not forbidden by the laws of the State of New York and with all the powers conferred upon corporations by the laws of said state.

(6) Nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York, to (1) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (“PHL”); (2) establish operate or maintain a hospital, a home care services agency, a hospice, a managed care organization or a health maintenance organization, as provided for by Articles 28, 36, 40 and 44 respectively, of the PHL and implementing regulations; (3) establish and operate an independent practice association, (4) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law

(SSL); or (5) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL. Additionally, nothing in this Certificate of Incorporation shall authorize the corporation within the State of New York, to (a) hold itself out as providing or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

**THIRD:** That the territory in which its operations are to be conducted is the states, territories and dependencies of the United States.

**FOURTH:** That the office of said corporation shall be located in the Borough of Manhattan, City, County and State of New York.

**FIFTH:** That the number directors of said corporation shall not be less than three nor more than seventy.

**SIXTH:** Consistent with the requirements of Section 704 of the Not-for-Profit Corporation Law, the Bylaws of the Corporation may provide for the classification of directors for the purpose of staggering their terms of office.

**SEVENTH:** That the names and residences of the directors until the first annual meeting of the members are as follows:

**EIGHTH:** That all of the subscribers to the certificate are of full age; that at least two-thirds of them are citizens of the United States; that at least one of them is a resident of the State of New York, and that of the persons named as directors, at least one of them is a citizen of the United States and a resident of the State of New York.

**NINTH:** (1) No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members, directors, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article SECOND hereof, as permitted under Article 5 of the Not-for-Profit Corporation Law.

(2) No part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.

(3) Notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the

prevention of cruelty to children or animals, as specified in section 501(c)(3) of the Internal Revenue Code of 1986, and shall not carry on any activities not permitted to be carried on (i) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law) or (ii) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law).

**TENTH:** Upon the dissolution of the Corporation, the Board of Trustees shall, after paying or providing for the payment of all liabilities of the Corporation, distribute all the remaining assets of the Corporation, subject to the approval of the Supreme Court of New York, but only to an organization or organizations whose purposes are exclusively charitable, educational, religious, or scientific and which shall at the time qualify as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue Law).

**ELEVENTH:** The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon him/her is: The Mount Sinai Medical Center, Inc., Office of the General Counsel, One Gustave Levy Place, Box 1099, New York, New York 10029.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**

**[SIGNATURE PAGE TO FOLLOW.]**

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been signed and the statements made herein affirmed as true under penalties of perjury this 2<sup>nd</sup> day of December, 2014.

By: Beth R. Essig  
Name: Beth R. Essig  
Title: Executive Vice President and Assistant Secretary

**APPROVAL OF JUSTICE OF THE  
SUPREME COURT**

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I, \_\_\_\_\_, a Justice of the Supreme Court of the State of New York of the \_\_\_\_\_ Judicial District do hereby approve the foregoing Restated Certificate of Incorporation of The Mount Sinai Medical Center, Inc. and consent that the same be filed.

Dated:

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Justice of the Supreme Court

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RESTATED  
CERTIFICATE OF INCORPORATION

OF

THE MOUNT SINAI MEDICAL CENTER, INC.

Under Section 805 of the Not-for-Profit Corporation Law  
of the State of New York

Filed By:

Jay E. Gerzog, Esq.  
Sheppard, Mullin, Richter & Hampton, LLP  
30 Rockefeller Plaza  
New York, New York 10112

December 4, 2014

Jay E. Gerzog  
212.653.8465 direct  
917.438.6135 fax  
JGerzog@sheppardmullin.com

File Number: 41JB-201580

## VIA EMAIL

Director, Bureau of House Counsel  
Division of Legal Affairs  
NYS Department of Health  
Corning Tower  
Rm 2484  
Empire State Plaza  
Albany, New York 12237

Re: Request for Public Health and Health Planning Council approval of the proposed Restated Certificate of Incorporation of The Mount Sinai Medical Center, Inc.

Dear Director:

I am writing on behalf of The Mount Sinai Medical Center, Inc. (the "Corporation") to request that the Public Health and Health Planning Counsel ("PHHPC") approve the filing of the enclosed Restated Certificate of Incorporation of the Corporation (the "Restated Certificate") with the New York State Department of State ("DOS"). The approval of the Corporation's Restated Certificate by the PHHPC is required pursuant to Section 804(a)(1) and Section 404(o) and (t) of the New York State Not-for-Profit Corporation Law (the "NPCL") by reason of the fact that the Restated Certificate proposes to amend the Corporation's purposes and powers to include soliciting contributions for benefit of certain affiliated hospitals licensed under Article 28 of the New York State Public Health Law (the "PHL"), that have recently become affiliated with the Corporation, as more specifically described immediately below.

### *Background: Mount Sinai Health System and Organizational Relationships*

The Corporation is a member of the Mount Sinai integrated healthcare delivery system. The sole member of the Corporation is Mount Sinai Health System, Inc., a New York not-for-profit corporation ("MSHS"). MSHS is also the sole member of (a) Icahn School of Medicine at Mount Sinai and (b) Mount Sinai Hospital Group, Inc. ("MSHG"), which, in turn, is the sole member and licensed co-operator (*i.e.*, active parent) of the following four hospitals licensed under Article 28 of the PHL: (i) The Mount Sinai Hospital; (ii) Beth Israel Medical Center (d/b/a's Mount Sinai Beth Israel and Mount Sinai Beth Israel Brooklyn); (iii) The New York Eye and Ear Infirmary (d/b/a New York Eye and Ear Infirmary of Mount Sinai); and (iv) The St. Luke's-Roosevelt Hospital Center (d/b/a's Mount Sinai St. Luke's and Mount Sinai Roosevelt) (collectively referred to herein as the "Mount Sinai Affiliated Hospitals"). Accordingly, the

(collectively referred to herein as the "Mount Sinai Affiliated Hospitals"). Accordingly, the Corporation is under common control with MSHG, the Mount Sinai Affiliated Hospitals and the Icahn School of Medicine at Mount Sinai.

The Corporation's purposes currently authorize it to solicit funds for the benefit of The Mount Sinai Hospital and the Icahn School of Medicine at Mount Sinai. As a result of Beth Israel Medical Center, The New York Eye and Ear Infirmary and The St. Luke's-Roosevelt Hospital Center's becoming affiliated with the Corporation, the Corporation's Certificate of Incorporation is being amended to expressly include with the purposes of the Corporation soliciting contributions for the benefit of Beth Israel Medical Center, St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary.

### *Approval of the Restated Certificate of Incorporation of MSMC*

Under NPCL Sections 404 (o) and (t), the approval of the PHHPC is required to file a certificate of incorporation whose powers include the solicitation of contributions for an entity licensed under Article 28 of the PHL. Pursuant to Section 804 and Section 805(d) of the NPCL, a Restated Certificate of Incorporation that amends a certificate of incorporation and adds, changes or eliminates a "purpose...the inclusion of which in a certificate of incorporation requires consent or approval of a government body," must have such government body's approval endorsed on or attached to the Restated Certificate of Incorporation prior to filing it with the DOS. The Corporation desires to amend its purposes to expressly provide that the Corporation's purposes will include soliciting funds on behalf of Beth Israel Medical Center, St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary (in addition to The Mount Sinai Hospital and Icahn School of Medicine at Mount Sinai) and, consequently, the approval of the Restated Certificate by the PHHPC is required under Section 804 and Section 805(d) of the NPCL.

The Corporation hereby respectfully requests that the PHHPC provide a letter of approval consenting to the filing of the Restated Certificate with the DOS. In accordance with the requirements of the DOH for such consent, as stated on the DOH's website,<sup>1</sup> the Restated Certificate specifically identifies the names of the supported Article 28 organizations (i.e. each of the Mount Sinai Affiliated Hospitals) and includes the following language in its entirety:

"Nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York, to (1) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (PHL); (2) establish operate or maintain a hospital, a home care services agency, a hospice, a managed care organization or a health maintenance organization, as provided for by Articles 28, 36, 40 and 44 respectively, of the PHL and implementing regulations; (3) establish and operate an independent practice association, (4) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a residence for adults, or an assisted living

<sup>1</sup> New York State Department of Health, "Certificates of Incorporation and Articles of Organization – When Approval is Necessary", available online at [https://www.health.ny.gov/permits/cert\\_of\\_incorp\\_and\\_articles\\_of\\_org.htm](https://www.health.ny.gov/permits/cert_of_incorp_and_articles_of_org.htm) (last accessed August 8, 2014)

program, as provided for by Article 7 of the New York State Social Services Law (SSL); or (5) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL. Additionally, nothing in this Certificate of Incorporation shall authorize the corporation within the State of New York, to (a) hold itself out as providing or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.”

As further required by the DOH, the following is a general description of the fundraising activities the Corporation intends to engage in on behalf of the Mount Sinai Affiliated Hospitals:

- the Corporation will engage in a broad array of fundraising activities, including, but not limited to, the solicitation of grants and contributions from corporations, individuals, public charities, private foundations and governmental agencies; and
- the Corporation may conduct one or more fundraising events, including but not limited to, benefit dinners, cocktail parties, golf outings and similar fundraising events.

### *Requisite Documents*

In accordance with DOH requirements for granting the requested consent, attached please find the following requisite documents:<sup>2</sup>

1. A copy of the signed and dated proposed Restated Certificate – attached as Exhibit 1;
2. A copy of the Corporation’s Certificate of Incorporation – attached as Exhibit 2;
3. The Bylaws of the Corporation – attached as Exhibit 3;
4. Original signed and dated letters from a duly-authorized representative of Beth Israel Medical Center, St. Luke’s-Roosevelt Hospital Center and The New York Eye and Ear Infirmary, acknowledging that each such hospital will accept funds raised by the Corporation – attached as Exhibit 4;
5. Required biographical information of the Corporation’s Board of Trustees – attached as Exhibit 5; and
6. A list of all entities, which control, or are controlled by, the Corporation and the nature of such relationships – attached as Exhibit 6.

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<sup>2</sup> Id.

# SheppardMullin

Director, Bureau of House Counsel

December 4, 2014

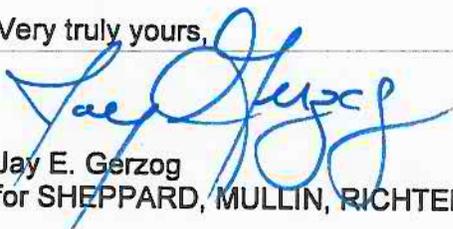
Page 4

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For your convenience, we have also enclosed a self-addressed, pre-paid FedEx return envelope for the approval letter. Please contact me directly with any questions or requests for additional information.

Thank you for your assistance and prompt attention to this matter.

Very truly yours,



Jay E. Gerzog  
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Enclosures

cc: Christopher Considine, Esq.

**Amendments to Bylaws of The Mount Sinai Medical Center, Inc.**

1. Section 3.04.4 of the Bylaws is amended as follows:

**“3.04.4 Honorary and Emeritus and Life Trustees.** The Board of Trustees may in its sole discretion designate and elect honorary, and emeritus ~~or life~~ trustees to serve on the Board of Trustees for such terms as the Board of Trustees shall determine; however, honorary, and emeritus ~~and life~~ trustees shall not be entitled to vote and shall not be counted for purposes of determining a quorum. Individuals serving as Life Trustees prior to the annual meeting of the Board of Trustees in 2014 shall be redesignated as Emeritus Trustees.”

2. Section 4.07 of the Bylaws is amended as follows:

**“4.07 Action by Board of Trustees Without Meeting.** Any action required or permitted to be taken by the Board of Trustees may be taken without a meeting if all the members of the Board of Trustees give their written or electronic consent in writing to the adoption of a resolution authorizing the action to the extent permitted by law. The resolution and the written or electronic consents thereto shall be filed with the minutes of the proceedings of the Board of Trustees.”

4. Section 5.02 of the Bylaws is amended as follows:

5. **“5.02 Qualification of Officers.** The Chairman of the Board of Trustees, ~~the Senior Vice Chairman of the Board of Trustees, the Vice Chairmen of the Board of Trustees,~~ the Treasurer and the Secretary shall be trustees and shall have such additional qualifications as shall be recommended by the Trustees Committee and approved by the Board of Trustees. The Senior Vice Chairmen and the Vice Chairmen of the Board of Trustees shall be trustees of at least one of the following entities: the Corporation, Mount Sinai Health System, Inc., Mount Sinai Hospitals Group, Inc., The Mount Sinai Hospital, Beth Israel Medical Center, The St. Luke’s-Roosevelt Hospital Center, The New York Eye and Ear Infirmary, and The Icahn School of Medicine at Mount Sinai, and have such additional qualifications as shall be recommended by the Trustees Committee and approved by the Board of Trustees. All other officers may, but need not, be trustees and shall have such additional qualifications as shall be recommended by the Chief Executive Officer and approved by the Board of Trustees.”

6. Section 6.07 of the Bylaws is amended as follows:

**“6.07 Action by Committees Without a Meeting.** Any action required or permitted to be taken by any committee may be taken without a meeting if all the members of the committee give their written or electronic consent in writing to the adoption of a

resolution authorizing the action to the extent permitted by law. The resolution and the written or electronic consents thereto shall be filed with the minutes of the committee.”

8. Section 6.10.3 of the Bylaws is amended as follows:

**“6.10.3        Compensation, Employee Benefits and Employee Relations Committee.** The Compensation, Employee Benefits and Employee Relations Committee shall (1) review and approve matters relating to personnel, labor relations, collective bargaining and compensation and fringe benefits of Corporation employees; (2) have the responsibility and authority to establish and fix the compensation and fringe benefits of all ~~senior and/or highly compensated personnel~~ Executives (Executives shall be those individuals who are “Disqualified Persons” under Treas. Reg. 53.4598-3T and those who, post-recruitment, will be “Disqualified Persons”) in accordance with those procedures and requirements set forth in the Operating Procedures of the Committee, and it shall also review the compensation and fringe benefits of other senior and/or highly compensated personnel; and (3) have the authority to serve as, or delegate and appoint, fiduciaries with respect to the Corporation’s employee benefit plans.”

**COMPOSITE COPY**

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**THE MOUNT SINAI MEDICAL CENTER, INC.**

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**CORPORATE BYLAWS**

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**Last Reviewed:  
September 30, 2013**

## ARTICLE I

### PURPOSE

The purposes for which The Mount Sinai Medical Center, Inc. (the “Corporation” and sometimes the “Medical Center”) is formed are set forth in its Certificate of Incorporation.

## ARTICLE II

### THE MEMBER

2.01 **Member.** The member of the Corporation shall be Mount Sinai Health System, Inc. (the “Member”).

2.02 **Annual Meeting.** The annual meeting of the Member shall be held at 5 p.m. at the principal office of the Member on the anniversary of the closing (the “Closing”) of the transactions contemplated by that certain Transaction Agreement, dated the 16th day of July, 2013, by and among the Corporation, The Mount Sinai Hospital (“MSH”) and Icahn School of Medicine at Mount Sinai (“ISMMS”), on the one hand, and Beth Israel Medical Center, The St. Luke’s-Roosevelt Hospital Center, The New York Eye and Ear Infirmary and Continuum Health Partners, Inc., on the other hand (the “Transaction Agreement”), or at such place and time as shall be fixed by the Chairman of the Board of Trustees or the Board of Trustees.

2.03 **Action.** The Member may take any action permitted by law in accordance with the certificate of incorporation, the bylaws or the policies and procedures of the Member. The Member shall have the power to appoint members to the Board of Trustees and to assign classes to members of the Board of Trustees consistent with Section 3.04.1.

## ARTICLE III

### BOARD OF TRUSTEES

3.01. **Powers.** The activities of the Corporation shall be governed by the Board of Trustees, except as otherwise provided by law or by these Bylaws (the “Bylaws”). The Board of Trustees

may adopt such rules and regulations for the conduct of its meetings, the exercise of its powers and the management of the affairs and property of the Corporation as it may deem proper, not inconsistent with the laws of the State of New York, the Certificate of Incorporation or these Bylaws.

**3.02. Number of Trustees.** The Board of Trustees shall consist of no more than 80 trustees.

**3.03. Qualification of Trustees.** All trustees shall be selected for their ability to serve effectively in fulfilling the Board of Trustees' responsibilities and the purposes of the Corporation. Trustees shall have such other qualifications as the Trustees Committee may deem appropriate to assure that the Board of Trustees represents a broad range of community interests.

**3.04. Term of Office; Election.**

**3.04.1. General.** The trustees shall be divided into three classes, designated Class I, Class II, and Class III, for purposes of staggering their terms of office. All classes shall be as nearly equal in number as possible. In order to effectuate the staggering of the terms of office of each class of trustees, trustees have been elected to the following terms of office: Class I trustees have been elected for a term expiring at the time of the annual meeting of the Member in the year 2014 or until the successors to such Class I trustees are elected and qualify; Class II trustees have been elected for a term expiring at the time of the annual meeting of the Member for the year 2015 or until the successors to such Class II trustees are elected and qualify; and Class III trustees have been elected for a term expiring at the time of the annual meeting of the Member for the year 2016 or until the successors to such Class III trustees are elected and qualify.

Thereafter, except as provided in Sections 3.04.2 and 5.03, upon the expiration of the initial terms of office as provided above, (i) the term of office of Class I trustees shall automatically renew for a term of three years or until their successors are elected and qualify, (ii) the term of office of Class II trustees shall automatically renew for a term of three years or until their successors are elected and qualify and (iii) Class III trustees shall be elected for a term of three years or until their successors are elected and qualify. Thereafter, except as provided in Sections 3.04.2 and 5.03, upon the expiration of the terms of office as provided above, trustees shall be

elected to each such Class at the annual meeting of the Board of Trustees for a term of three years or until their successors are elected and qualify.

**3.04.2. Chairman of the Board; Ex Officio Trustees.** Notwithstanding Section 3.04.1, (A) the Chairman of the Board of Trustees shall be elected to the Board of Trustees for a term consistent with his or her term in office as Chairman as provided in Section 5.03, and (B) the Board may designate and elect ex officio trustees to serve on the Board of Trustees until the expiration of their terms in the office on which their ex officio status is based.

**3.04.4. Honorary, Emeritus and Life Trustees.** The Board of Trustees may in its sole discretion designate and elect honorary, emeritus or life trustees to serve on the Board of Trustees for such terms as the Board of Trustees shall determine; however, honorary, emeritus and life trustees shall not be entitled to vote and shall not be counted for purposes of determining a quorum.

**3.05. Resignation; Removal.** Any trustee may resign at any time by giving written notice of such resignation to the Board of Trustees, the Chairman of the Board of Trustees or the Secretary. Such resignation shall take effect at the time specified therein or, if not so specified, upon receipt thereof by the Board of Trustees, the Chairman of the Board of Trustees or the Secretary, as the case may be. Any trustee may be removed by the Board of Trustees or the Member with or without cause at any time.

**3.06. Vacancies.** Vacancies in the membership of the Board of Trustees may be filled at any time by the Member or by the Board of Trustees.

## ARTICLE IV

### MEETINGS OF THE BOARD

**4.01. Annual Meeting.** The annual meeting of the Board of Trustees for the election of officers of the Corporation and for the transaction of such other business as may properly come before the meeting shall be held at 5 p.m. at the principal office of the Member on the anniversary of the Closing or at such place and time as shall be fixed by the Chairman of the

Board of Trustees or the Board of Trustees from time to time upon notice in the manner prescribed in Section 4.04.

**4.02. Regular Meetings.** Regular meetings of the Board of Trustees shall be held at the principal office of the Corporation at such time as shall be determined from time to time by the Chairman of the Board of Trustees or the Board of Trustees.

**4.03. Special Meetings.** Special meetings of the Board of Trustees shall be held at the offices of the Corporation or at such other place in the City of New York as the Chairman of the Board of Trustees, the Board of Trustees or the Chief Executive Officer may designate in the notice of meeting and may be called at any time by the Chairman of the Board of Trustees or the Chief Executive Officer, at the time and date specified in the notice of the meeting pursuant to Section 4.04 or in the waiver of notice thereof.

**4.04. Notice of Meetings; Changes in Date, Time and Place of Meetings; Adjourned Meetings.** The annual meeting and regular meetings of the Board of Trustees may be held without notice at the date, time and place specified in Sections 4.01 and 4.02; all annual meetings not held on the anniversary of the Closing and special meetings of the Board of Trustees shall be held upon notice in the manner prescribed in this Section 4.04. The Board of Trustees or the Chairman of the Board of Trustees may change the date, time and/or place of the previously-scheduled annual meeting and any regular or special meeting, provided that notice is given as prescribed in this Section 4.04. All notices of meetings required to be given shall be by mail, by facsimile transmission or by such electronic means of communication for which written confirmation of the electronic communication is available, at least four (4) but not more than thirty (30) days before the meeting to each trustee addressed to such trustee at such trustee's address as it appears in the records of the Corporation or delivered to such trustee personally not less than two (2) nor more than thirty (30) days before the day of such meeting. The Chairman of the Board of Trustees, or in his absence, the Chief Executive Officer, may adjourn any meeting of trustees at which a quorum does not exist or for any other reason. No notice need be given of any adjourned meeting, provided that the time, date and place to which the meeting is

adjourned is announced at the meeting at which the adjournment is taken. The attendance of a trustee at any meeting of the Board of Trustees shall constitute a waiver of notice thereof.

4.05. **Quorum.** Except as may be otherwise expressly required by law, at all meetings of the Board of Trustees the presence of five trustees plus one additional trustee for every ten trustees (or fraction thereof) in excess of fifteen then in office shall be necessary and sufficient to constitute a quorum for the transaction of business. In the absence of a quorum, a majority of the trustees present may adjourn the meeting to another date, time and place. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

4.06. **Voting.** Each trustee shall be entitled to one vote on each matter submitted to a vote of trustees. At all meetings of the Board of Trustees, all matters shall be decided by the vote of a majority of the trustees present at the meeting entitled to vote thereon, except as at the time otherwise expressly required by law or by these Bylaws.

4.07. **Action by Board of Trustees Without Meeting.** Any action required or permitted to be taken by the Board of Trustees may be taken without a meeting if all the members of the Board of Trustees consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto shall be filed with the minutes of the proceedings of the Board of Trustees.

4.08. **Telephone Participation in Meetings.** Any one or more members of the Board of Trustees may participate in a meeting of the Board of Trustees by means of a conference telephone or similar communications equipment allowing all trustees participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

4.09 **Minutes.** Minutes of all meetings shall be taken and shall reflect all business conducted, including findings, conclusions and recommendations, which shall be maintained in the Corporation's official corporate records.

## ARTICLE V

### OFFICERS

**5.01. Number of Officers.** The officers of the Corporation shall be the Chairman of the Board of Trustees, one or more Senior Vice Chairmen of the Board of Trustees, one or more Vice Chairmen of the Board of Trustees, the President and Chief Executive Officer, one or more Executive Vice Presidents and one or more Senior Vice Presidents, a Treasurer and a Secretary. The Board of Trustees may appoint such additional officers as it shall deem necessary or appropriate. The Board of Trustees may also appoint administrative officers to non-policy setting roles (including Vice Presidents, Associate and Assistant Secretaries and Associate and Assistant Treasurers) and agents as it shall deem necessary or appropriate.

**5.02. Qualification of Officers.** The Chairman of the Board of Trustees, the Senior Vice Chairmen of the Board of Trustees, the Vice Chairmen of the Board of Trustees, the Treasurer and the Secretary shall be trustees and shall have such additional qualifications as shall be recommended by the Trustees Committee and approved by the Board of Trustees. All other officers may, but need not, be trustees and shall have such additional qualifications as shall be recommended by the Chief Executive Officer and approved by the Board of Trustees.

**5.03. Chairman of the Board of Trustees.** The election, term of office and succession of the Chairman of the Board of Trustees and related provisions shall be governed by this Section 5.03 as follows:

**5.03.1. Election; Term of Office; Selection of Successor Chairman.** The Chairman of the Board of Trustees shall serve for an initial term expiring at the time of the annual meeting of the Board of Trustees in the year 2016, and, thereafter, a trustee may serve as Chairman of the Board of Trustees for a maximum of four successive terms, each of which shall be three years. In all cases, the Chairman shall hold office until the annual meeting of the Board of Trustees in the final year of each term or until the Chairman's successor shall have been elected and shall have qualified. Reasonably in advance of the expiration of any such three-year term of office, the Trustees Committee, and such additional trustees (if any) as the Executive

Committee may appoint, shall constitute an ad hoc committee which shall recommend a candidate or candidates (which, subject to the limitation in the first sentence of this Section 5.03.1, could include the incumbent Chairman) for the position of Chairman for consideration by the Board of Trustees for a three-year term of office, with the election to be held prior to the expiration of the then current term of office.

**5.03.2. Temporary Inability of Chairman of the Board to Serve.** In the event of the temporary absence or temporary incapacity of the Chairman of the Board of Trustees, the duties of the Office of Chairman of the Board of Trustees shall be performed by the Vice Chairman of the Board of Trustees designated to act during such period by the Chairman of the Board of Trustees. In the event that the Chairman of the Board of Trustees does not so designate a Vice Chairman of the Board of Trustees, a Vice Chairman of the Board of Trustees shall be designated by the Executive Committee to act during such period.

**5.03.3. Permanent Inability of Chairman of the Board to Serve.** In the event of the death, resignation, removal or permanent incapacity of the Chairman of the Board of Trustees, a meeting of the Executive Committee or the full Board of Trustees shall be called by any Vice Chairman of the Board of Trustees, the Chief Executive Officer or the Secretary, and the Executive Committee or the full Board of Trustees shall thereupon immediately meet to designate from among the Vice Chairmen of the Board of Trustees an acting Chairman of the Board of Trustees. The Trustees Committee, together with such additional trustees as the Executive Committee may appoint, or the full Board of Trustees shall determine the manner in which a succeeding Chairman of the Board of Trustees shall be selected.

**5.04. Election; Term of Office for Officers Other than the Chairman of the Board of Trustees.** Subject to Section 5.06 relating to vacancies, all officers other than the Chairman of the Board of Trustees shall be elected at the annual meeting of the Board of Trustees and shall hold office until the next annual meeting of the Board of Trustees or until their successors shall have been elected and shall have qualified.

**5.05. Resignation; Removal.** Any officer may resign at any time by giving written notice of such resignation to the Board of Trustees, the Chairman of the Board of Trustees, the Chief Executive Officer, the President or the Secretary. Such resignation shall take effect at the time specified therein or, if not so specified, upon receipt thereof by the Board of Trustees, the Chairman of the Board of Trustees, the Chief Executive Officer, the President or the Secretary, as the case may be. Any officer may be removed with or without cause at any time by the Board of Trustees.

**5.06. Vacancies.** If any office becomes or is declared vacant for any reason, the vacancy may be filled at any time by the Board of Trustees.

**5.07. Honorary Officers.** The Board of Trustees may from time to time appoint such honorary officers as it deems appropriate to serve for such period of time as the Board of Trustees deems appropriate.

**5.08. Powers and Duties.** The powers and duties of the officers shall be those usually appertaining to their respective offices and such other powers and duties as may be prescribed by these Bylaws or from time to time by the Board of Trustees, or the Chairman of the Board of Trustees in the case of offices held only by trustees, or by the Chief Executive Officer in the case of all other offices and all powers and duties incidental to the carrying out of such additional designated powers and duties.

**5.08.1. Chairman of the Board of Trustees.** The Chairman of the Board of Trustees shall preside at and shall set the agenda for all meetings of the Board of Trustees and shall serve as an ex officio member of all committees. The Chairman shall have such powers and duties as may be assigned to the Chairman from time to time by the Board of Trustees.

**5.08.2. Senior Vice Chairmen and Vice Chairmen of the Board of Trustees.**

Senior Vice Chairmen and Vice Chairmen of the Board of Trustees shall have such powers and duties as may be assigned to them from time to time by the Board of Trustees or the Chairman of the Board of Trustees.

**5.08.3. President and Chief Executive Officer.** The President and Chief Executive Officer shall be the chief executive officer of the Corporation and shall have such powers and duties as may be assigned to the President and Chief Executive Officer from time to time by the Board of Trustees or the Chairman of the Board of Trustees. The President and Chief Executive Officer shall have the authority and responsibility necessary to operate the Corporation and all of its activities and departments. The President and Chief Executive Officer shall be responsible for the development, submission and implementation of all plans to maintain the Corporation's compliance with statutory and regulatory requirements. The President and Chief Executive Officer shall be responsible to the Board of Trustees for the management of the Corporation. The Chairman of the Board of Trustees, together with such other trustees as he deems appropriate, shall be responsible for assuring the President and Chief Executive Officer's effective performance through ongoing documented monitoring and evaluation of the performance of the President and Chief Executive Officer against criteria which include the Corporation's compliance with statutory and regulatory requirements, the corrective actions required and taken to achieve such compliance, and the maintenance of corrective actions to achieve continued compliance in previously deficient areas.

**5.08.4. [Intentionally left blank/Reserved]**

**5.08.5. Executive Vice Presidents.** Executive Vice Presidents shall have such powers and duties as may be assigned to them from time to time by the Chief Executive Officer.

**5.08.6. Senior Vice Presidents.** Senior Vice Presidents shall have such powers and duties as may be assigned to them from time to time by the Chief Executive Officer.

**5.08.7. Vice Presidents.** Vice Presidents shall have such powers and duties as may be assigned to them from time to time by the Chief Executive Officer.

**5.08.8. Treasurer.** The Treasurer shall have the care and custody of all the funds and securities of the Corporation. ~~The Treasurer shall keep a full and accurate account of all moneys received and paid on account of the Corporation and shall render a statement of accounts whenever the Board of Trustees shall require.~~ The Treasurer shall have such other powers and duties as may be assigned to the Treasurer from time to time by the Board of Trustees or the Chairman of the Board of Trustees.

**5.08.9. Secretary.** The Secretary shall record all votes and the minutes of all proceedings of the Board of Trustees in a minute book to be kept permanently for that purpose. The Secretary shall give or cause to be given all notices required by law or by these Bylaws. The Secretary shall have custody of the corporate seal and shall have authority to affix the same to any obligation, instrument or contract executed on behalf of the Corporation and, when so affixed, to attest the same by the Secretary's signature. The Secretary shall keep and account for all books, documents, papers and records of the Corporation, except those for which some other officer or agent is properly accountable, and shall have such other powers and duties as may be assigned to the Secretary from time to time by the Board of Trustees or the Chairman of the Board of Trustees.

**5.09. Powers of the Member.** Notwithstanding anything to the contrary in this Article V, until the convening of the first meeting of the Board of Trustees occurring after the Closing, the Member shall have the exclusive power to appoint and remove officers. From and after the convening of the first meeting of the Board of Trustees occurring after the Closing, the Member shall no longer have the power to appoint and remove officers.

## ARTICLE VI

### COMMITTEES

**6.01. Appointment of Committees.** The standing committees of the Board of Trustees shall consist of the committees listed in Section 6.09 hereof and the standing committees of the Corporation shall consist of the committees listed in Section 6.10 hereof. The Board of Trustees

may from time to time establish such other standing or special committees of the Board of Trustees and such other standing or special committees of the Corporation as it deems necessary or appropriate. Such standing and special committees shall have such powers, duties and responsibilities as may be prescribed by these Bylaws or from time to time by the Board of Trustees.

**6.02. Membership; Chairmen of Committees; Etc.** Each standing or special committee shall consist of three or more persons to be designated by the Chairman of the Board of Trustees and approved by the Board of Trustees. Standing and special committees of the Board of Trustees shall consist exclusively of members of the Board of Trustees; standing and special committees of the Corporation may consist of trustees and persons who are not trustees. Except as provided below, committee members on all committees may serve for two three-year terms or until their successors are elected and qualify, except that in the case of any such member who has specific expertise essential to a particular committee as determined by the Chairman of the Board of Trustees, such member may serve for additional three-year terms or until his or her successor is elected and qualifies, and except, further, that such limitation shall not apply to membership on the Mount Sinai Auxiliary Board Committee. All committee members, including members of the Executive Committee, shall be elected by the Board of Trustees at the annual meeting of the Board of Trustees for the terms provided above. The Chairman of the Board of Trustees shall be an ex officio member of all committees. Additional ex officio memberships on any committee may be established by the Board of Trustees or by these Bylaws. All committee members, including members of the Executive Committee, shall serve at the pleasure of the Board of Trustees and the Board of Trustees shall have the power at any time, on the recommendation of the Chairman of the Board of Trustees, to fill vacancies in, change the membership of, or dissolve any such committee. Each committee shall have a chairman or co-chairmen and may have one or more vice chairmen who, except as provided below, shall be elected by the Board of Trustees from among the committee's members on the recommendation of the Chairman of the Board of Trustees for three-year terms or until their successors are elected and qualify. All

committee chairmen, co-chairmen and vice chairmen shall serve at the pleasure of the Board of Trustees and the Board of Trustees shall have the power at any time, on the recommendation of the Chairman of the Board of Trustees, to fill vacant chairmanships or to remove any chairman from office with or without cause.

**6.03. Meetings of Committees.** Committees established by the Board of Trustees may meet either regularly at stated times or specially on notice given at least 24 hours in advance by the Chairman, a Co-Chairman or any Vice Chairman of the committee, the Chairman of the Board of Trustees or not less than one-third of the members thereof (but in any case no less than two members) by mail, telegraph, telephone or in person or by such electronic means of communication for which written confirmation is available to all other members thereof, but no notice of any regular meeting need be given, and no notice of any special meeting need be given at which all members are present or notice of which has been waived by all absent members before or after such meeting.

**6.04. Vacancies.** In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Trustees to act at the meeting in the place of any such absent or disqualified member.

**6.05. Quorum.** Except as may be otherwise required by law, at any meeting of a committee, the presence of one-third of the members of such a committee (but in any case not less than two members) shall be necessary and sufficient to constitute a quorum for the transaction of business. In the absence of a quorum, a majority of the committee members present at such meeting may adjourn the meeting to another date, time and place.

**6.06. Action of Committee Members; Operating Procedures; Subcommittees.** At any meeting of a committee, each committee member present shall be entitled to one vote. Except as otherwise provided by law or by these Bylaws, the vote of a majority of committee members present and entitled to vote, if a quorum is present at such time, shall be the act of such committee. Each committee shall have authority to adopt and revise from time to time

guidelines and operating procedures or bylaws pursuant to which the committee will discharge and implement its responsibilities. Committees or the Board of Trustees may make rules for the holding and conduct of their meetings and may appoint such subcommittees and staff as they from time to time may deem necessary as appropriate.

**6.07. Action by Committees Without a Meeting.** Any action required or permitted to be taken by any committee may be taken without a meeting if all the members of the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto shall be filed with the minutes of the committee.

**6.08. Telephone Participation in Meeting.** Any one or more of the members of a committee may participate in a meeting of such committee by means of a conference telephone or similar communications equipment allowing all members participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

**6.09. Standing Committees of the Board of Trustees.** The standing committees of the Board of Trustees shall be as follows (subject to the authority of the Board of Trustees to establish additional standing committees set forth in Section 6.01):

**6.09.1. Executive Committee.** The Executive Committee shall have all the powers of the Board of Trustees between meetings of the Board of Trustees to the extent permitted by law.\*

**6.10. Standing Committees of the Corporation.** The standing committees of the Corporation shall be as follows (subject to the authority of the Board of Trustees to establish additional standing committees as set forth in Section 6.01):

**6.10.1. Audit and Compliance Committee.** The Audit and Compliance Committee shall monitor (a) the integrity of the Corporation's financial statements; (b) the

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\* Section 712 of the New York Not-for-Profit Corporation Law (the "NPCL") provides that the Executive Committee does not have authority as to the following matters: (1) the filling of vacancies in the Board of Trustees or in any committee; (2) the fixing of compensation of the trustees for serving on the Board of Trustees or on any committee; (3) the amendment or repeal of the Bylaws or the adoption of the new Bylaws; and (4) the amendment or repeal of any resolution of the Board of Trustees which by its terms shall not be so amendable or repealable. Section 509 of the NPCL provides that certain real estate transactions, including the purchase and sale of real property, can be approved only by the vote of the entire Board of Trustees.

Corporation's financial reporting process and system of internal controls; (c) the Corporation's compliance with legal and regulatory requirements and with standards of ethical conduct established by management or the Board of Trustees; (d) the qualifications, independence and performance of the Corporation's independent auditors; and (e) the performance of the Corporation's internal audit and compliance functions. The Audit and Compliance Committee shall propose, and the Board of Trustees shall adopt, a charter outlining the Audit and Compliance Committee's responsibilities, which charter shall be periodically reviewed and, if appropriate, revised. The Audit and Compliance Committee shall have authority to require such reports and other information from management and the independent auditors and obtain (at the Corporation's expense) such outside expert advice as the Audit and Compliance Committee deems necessary to discharge its responsibilities.

**6.10.2. Community Affairs Committee.** The Community Affairs Committee shall monitor matters relating to the Corporation's relationships with the various communities which it serves and to local and community leaders. The Community Affairs Committee shall coordinate its activities with the Government Affairs Committee as appropriate.

**6.10.3. Compensation, Employee Benefits and Employee Relations Committee.** The Compensation, Employee Benefits and Employee Relations Committee shall (1) review and approve matters relating to personnel, labor relations, collective bargaining and compensation and fringe benefits of Corporation employees; (2) have the responsibility and authority to establish and fix the compensation and fringe benefits of all senior and/or highly compensated personnel; and (3) have the authority to serve as, or delegate and appoint, fiduciaries with respect to the Corporation's employee benefit plans.

**6.10.4. Development Committee.** The Development Committee shall monitor matters relating to philanthropic fund raising, donations and testamentary and deferred gifts to the Corporation.

**6.10.5. Finance Committee.** The Finance Committee (1) shall monitor matters relating to the finances of the Corporation, including the preparation by management of the

annual budget of revenues and expenses and the annual budget of capital expenditures; and (2) shall monitor, establish and fix appropriate levels of general and professional liability, property and other types of insurance.

6.10.6. **Government Affairs Committee.** The Government Affairs Committee shall monitor matters relating to the Corporation's relationships to federal, state, and/or local governmental agencies. The Government Affairs Committee shall coordinate its activities with the Community Affairs Committee as appropriate.

6.10.7. **Graduate School Committee.** The Graduate School Committee shall monitor matters relating to the Graduate School of Biological Sciences, including its doctoral programs, masters programs and the MD/PhD programs, as well as matters relating to the housing and other prerequisites of students in the foregoing programs. The Graduate School Committee shall coordinate its activities with the Medical Education Committee as appropriate.

6.10.8. **Information Technology Committee.** The Information Technology Committee shall monitor the Corporation's information systems, including management information systems, data processing, clinical technology, and computer technology.

6.10.9. **Investments Committee.** The Investments Committee shall supervise the investment of the Corporation's endowment and other funds and accounts. Unless otherwise limited by the Board of Trustees, it shall have the authority to make investment decisions with respect to, and to authorize and effect investment transactions in, any and all such funds and accounts and to select and employ investment advisors. It shall also exercise any other investment supervisory power the Board of Trustees may have, subject to the approval of the Board of Trustees.

6.10.10. **Legal Committee.** The Legal Committee shall monitor the legal affairs of the Corporation, including litigation and the services of outside counsel. It shall monitor the selection of outside counsel and the terms of their retention.

6.10.11. **Medical Education Committee.** The Medical Education Committee shall monitor matters relating to undergraduate medical education and training conducted at or

under the auspices of the Corporation, as well as the Corporation's medical residency and continuing medical education and training programs, and matters relating to the housing and other perquisites of undergraduate students and medical residents. The Medical Education Committee shall coordinate its activities with the Graduate School Committee as appropriate.

**6.10.12. Mount Sinai Auxiliary Board.** The Mount Sinai Auxiliary Board shall be a joint committee of MSH, ISMMS and the Corporation with such purposes, rules and procedures as shall from time to time be established by the Boards of Trustees of MSH, ISMMS and the Corporation.

**6.10.13. Patient Care and Quality Assurance Committee.** The Patient Care and Quality Assurance Committee shall: (1) review and monitor the provision of patient care and quality assurance activities at or under the auspices of the Corporation; (2) oversee and coordinate the patient safety, malpractice prevention and quality assurance plans and programs at or under the auspices of the Corporation and insure that information gathered pursuant to those programs/plans will be utilized to review and to revise Corporation policies and procedures; (3) review and monitor matters related to professional staff development; and (4) comply with other applicable legal requirements, including guidelines issued by regulatory bodies.

**6.10.14. Public Affairs and Marketing Committee.** The Public Affairs and Marketing Committee shall monitor matters relating to the Corporation's public relations, including the dissemination of information through the press and other media concerning the Corporation and the publication of the Annual Report.

**6.10.15. Real Estate and Facilities Committee.** The Real Estate and Facilities Committee shall monitor matters relating to the real estate and facilities owned or leased by the Corporation, including the management of such properties and the maintenance and renovation of such properties, the acquisition of new properties, the sale or transfer of existing properties and construction and renovation of new and existing properties.

**6.10.16. Research Committee.** The Research Committee shall monitor matters relating to research conducted at or under the auspices of the Corporation, including matters

relating to research grants from the National Institutes of Health and other funding sources, the activities of the Institutional Review Board and other internal research-related committees, and the Corporation's policies and procedures relating to human subject safety.

**6.10.17. Strategic Planning Committee.** The Strategic Planning Committee shall be responsible for developing, and recommending to the full Board of Trustees or the Executive Committee for approval, strategic plans for the Corporation as part of an institution-wide strategic planning process. The strategic plans shall: (1) set forth criteria for the selection of primary areas of focus for programmatic growth and investment; and (2) establish priorities among the primary areas of focus, taking into account the missions of patient care, teaching and research of the Corporation.

**6.10.18. Technology Transfer Committee.** The Technology Transfer Committee shall monitor matters relating to patents, licensing and other activities related thereto, including the Corporation's technology portfolio and any current and potential agreements related thereto.

**6.10.19. Trustees Committee.** The Trustees Committee shall recommend candidates to the Board of Trustees for vacancies in the Board of Trustees and in the offices of the Board of Trustees, including a candidate or candidates for the Office of Chairman of the Board in conjunction with the Executive Committee as required by Section 5.03, whether occurring by reason of the expiration of the term of office or otherwise. It shall also make recommendations to the Chairman of the Board of Trustees with respect to the chairmanship and membership of each committee, identify potential new trustees, review the performance of sitting trustees and officers of the Board of Trustees, oversee the Board of Trustees' self-assessment, new trustee orientation and ongoing trustee education, and identify governance issues.

**6.10.20. Minutes.** Each committee shall keep regular minutes of its meetings and report the same to the Board of Trustees when required and all such minutes shall be filed with the records of such committee.

## ARTICLE VII

[RESERVED]

ARTICLE VIII

[RESERVED]

ARTICLE IX

INDEMNIFICATION

9.01. **Limitation of Liability.** Except as otherwise provided by law, no trustee or officer of the Corporation shall be liable to any person other than the Corporation based solely on such trustee's or officer's conduct in the execution of such office unless such conduct with respect to the person asserting liability constituted gross negligence or was intended to cause the resulting harm to the person asserting liability.

9.02. **Indemnity.** The Corporation shall, to the fullest extent permitted by applicable law, indemnify any person made, or threatened to be made, a party to any action or proceeding, whether criminal or civil, including an action by or in the right of the Corporation to procure a judgment in its favor, by reason of the fact that such person, or such person's testator or intestate, is or was a trustee or officer of the Corporation or a member of a committee established under Article VI, including also an action by or in the right of any corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in which such trustee, officer or Article VI committee member served in any capacity at the request of the Corporation, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein.

9.03. **Reimbursement or Advancement of Funds.** The Corporation shall, from time to time, reimburse or advance to any person referred to in Section 9.02 the funds necessary for payment of expenses incurred by such person in connection with any action or proceeding, or threatened action or proceeding, or appeal referred to in Section 9.02 upon receipt, if required by the New York Not-For-Profit Corporation Law or deemed appropriate by the Board of Trustees, of a

written undertaking by or on behalf of such person to repay such amount(s) if it is ultimately determined that such person is not entitled to indemnification under this Article IX or otherwise.

**9.03A. No Rights Hereunder in Certain Cases.** Notwithstanding anything in this Article IX to the contrary, no person referred to in Section 9.02 shall be entitled to indemnification, or reimbursement or advancement of funds, in connection with (1) any claim initiated by such person unless the Board of Trustees or the Executive Committee thereof has authorized or consented to the initiation of such claim (except as otherwise provided in Section 9.07 with respect to a claim by such person to enforce his rights under this Article IX) or (2) any claim by the Corporation against such person if such person was an officer of the Corporation whose employment by the Corporation has terminated and such claim by the Corporation is to recover funds and/or property improperly taken by or paid to such person.

**9.04. Indemnity, Reimbursement and Advancement to Fullest Extent of Law.** The Corporation, by resolution adopted by its Board of Trustees or the Executive Committee thereof, may indemnify and reimburse or advance expenses to any person to whom the Corporation is permitted to provide indemnification or the reimbursement or advancement of expenses to the fullest extent permitted by applicable law, as it may exist from time to time, whether pursuant to rights granted pursuant to, or provided by, the New York Not-For-Profit Corporation Law or other rights created by (1) a resolution of Trustees or (2) an agreement approved by the Board or such Committee providing for such indemnification or reimbursement or advancement of expenses, it being expressly intended that this Article IX authorizes the creation of such other rights in any such manner. Any such indemnification and any such reimbursement or advancement of expenses may, in the Board's or such Committee's discretion and to the extent permitted by law, be retroactive and be available with respect to events occurring prior to the adoption hereof and prior to any such resolution or agreement.

**9.05. Interpretation.** Any person entitled to be indemnified or to the reimbursement or advancement of expenses as a matter of right pursuant to this Article IX may elect to have the right to indemnification (or reimbursement or advancement of expenses) interpreted on the basis

of the applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding, to the extent permitted by law, or on the basis of the applicable law in effect at the time indemnification (or reimbursement or advancement of expenses) is sought.

**9.06. Contract Right.** The right to be indemnified or to the reimbursement or advancement of expenses pursuant to Sections 9.02 or 9.03 or a resolution authorized pursuant to Section 9.04 (A) is a contract right pursuant to which the person entitled thereto may bring suit as if the provisions hereof (or of any such resolution) were set forth in a separate written contract between the Corporation and such person, (B) is intended to be retroactive and shall, to the extent permitted by law, be available with respect to events occurring prior to the adoption hereof or of any such resolution, and (C) shall continue to exist after any rescission or restrictive modification hereof or of any such resolution with respect to events occurring prior thereto. The Corporation shall not be obligated under this Article IX (including any resolution or agreement authorized by Section 9.04) to make any payment hereunder (or under any such resolution or agreement) to the extent the person seeking indemnification hereunder (or under any such resolution or agreement) has actually received payment (under any insurance policy, resolution, agreement or otherwise) of the amount otherwise indemnifiable hereunder (or under any such resolution or agreement).

**9.07. Right to Sue.** If a request to be indemnified or for the reimbursement or advancement of expenses pursuant to this Article IX (including any resolution or agreement authorized by Section 9.04) is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and, if successful in whole or in part, the claimant shall be entitled also to be paid the expenses of prosecuting such claim. Neither the failure of the Corporation (including its Board of Trustees or independent legal counsel) to have made a determination prior to the commencement of such action that indemnification of or reimbursement or advancement of expenses to the claimant is proper in the circumstances, nor an actual determination by the Corporation (including its Board of Trustees or independent legal counsel) that the claimant is not entitled to indemnification or to the reimbursement or

advancement of expenses, shall be a defense to the action or create a presumption that the claimant is not so entitled.

**9.08. Binding on Successors.** For purposes of this Article, the term "Corporation" shall include any legal successor to the Corporation, including any corporation which acquires all or substantially all of the assets of the Corporation in one or more transactions.

**9.09. Rights Not Exclusive.** The rights granted pursuant to or provided by the foregoing provisions of this Article IX shall be in addition to and shall not be exclusive of any other rights to indemnification and expenses to which such person may otherwise be entitled by law, contract or otherwise.

**9.10. Indemnity Applicable to Service on Related Entities.** Without limitation of any indemnification provided by Section 9.02, any trustee or officer of the Corporation serving (i) another corporation, partnership, joint venture, trust or other enterprise of which 50% or more of the voting power or economic interest is held, directly or indirectly by the Corporation, or (ii) any employee benefit plan of the Corporation or any entity referred to in clause (i), in any capacity shall be deemed to be doing so at the request of the Corporation.

**9.11. Insurance.** The Corporation is not required to purchase directors' and officers' liability insurance, but the Corporation may purchase such insurance if authorized and approved by the Board of Trustees or the Executive Committee thereof. To the extent permitted by law, such insurance may insure the Corporation for any obligation it incurs as a result of this Article IX or by operation of law, and it may insure directly the trustees, officers, employees or volunteers of the Corporation for liabilities against which they are not entitled to indemnification under this Article IX as well as for liabilities against which they are entitled or permitted to be indemnified by the Corporation.

## ARTICLE X

### CONFLICT OF INTEREST; COMPLIANCE WITH LAWS

**10.01. Conflict of Interest.** All trustees, employees and members of the Corporation shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent individuals would exercise under similar circumstances in like positions. Trustees, employees and members of the Corporation should not use their positions, or confidential information gained therefrom, to their personal advantage. Furthermore, the judgment and independence of trustees, employees and members of the Corporation should not be impaired or appear to be impaired in the discharge of their duties and responsibilities on behalf of the Corporation because of any activity in which they may engage or any personal or financial interest or relationship they may have. A "Conflict of Interest" is defined to be any activity that violates, or could potentially violate, the foregoing standard. The Board of Trustees shall adopt such policies and procedures as may be necessary or appropriate with respect to the further definition of Conflict of Interest and the procedures for disclosing, managing and resolving Conflicts of Interest.

**10.02. Compliance With Laws.** The Board of Trustees shall also adopt policies and procedures intended to promote compliance by trustees, employees and members of the Corporation with ethical standards of behavior and with applicable laws and regulations.

## ARTICLE XI

### BUDGET

**11.01. Adoption of Budget.** The Board of Trustees shall adopt an operating and capital budget for the Corporation, showing the anticipated receipts and expenditures in the operation of the Corporation for the next succeeding fiscal year.

**11.02. Adjustments.** The Board of Trustees may, during the year, make necessary adjustments to the budget for such year. The Board of Trustees may authorize expenditures not included in the Corporation's annual budget.

## ARTICLE XII

**CORPORATE SEAL**

The corporate seal of the Corporation shall be in such form as may be approved by the Board of Trustees.

**ARTICLE XIII**

**OFFICE**

The principal office of the Corporation shall be located at One Gustave L. Levy Place, New York, New York 10029.

**ARTICLE XIV**

**AMENDMENTS**

Except as otherwise provided by law, these Bylaws may be amended or repealed, and new bylaws may be adopted by the affirmative vote of a majority of the trustees then in office or by the Member; provided, however, that the Board of Trustees may not amend these Bylaws to remove any powers of the Member provided by these Bylaws.

**ARTICLE XV**

**REVIEW OF BYLAWS**

These Bylaws shall be revised as necessary and shall be reviewed at least once every two years. These Bylaws shall be dated to specify the date of the last such review.



Don Scanlon  
Executive Vice President, Chief Financial Officer  
Mount Sinai Health System  
One Gustave L. Levy Place, Box 4500  
New York, NY 10029  
Tel (212) 731-3534  
Fax (212) 731-3532

March 13, 2015

Director, Bureau of House Counsel  
Division of Legal Affairs  
NYS Department of Health  
Corning Tower  
Rm 2484  
Empire State Plaza  
Albany, New York 12236

Re: Funds Raised by The Mount Sinai Medical Center, Inc.

Dear Director:

The undersigned, being a duly authorized representative of The Mount Sinai Hospital, hereby acknowledges and affirms that The Mount Sinai Hospital will accept funds raised for the benefit of The Mount Sinai Hospital by The Mount Sinai Medical Center, Inc.

Very truly yours,

The Mount Sinai Hospital

By: 

Name/Title: Don Scanlon, CFO/EVP



Beth Israel Medical Center  
First Avenue at 16th Street  
New York, NY 10003  
Tel: 212-420-2000

November 19, 2014

Director, Bureau of House Counsel  
Division of Legal Affairs  
NYS Department of Health  
Corning Tower  
Rm 2484  
Empire State Plaza  
Albany, New York 12237

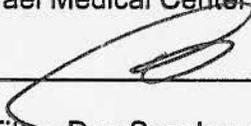
Re: Funds Raised by The Mount Sinai Medical Center, Inc.

Dear Director:

The undersigned, being a duly authorized representative of Beth Israel Medical Center (d/b/a's Mount Sinai Beth Israel and Mount Sinai Beth Israel Brooklyn), hereby acknowledges and affirms that Beth Israel Medical Center will accept funds raised for the benefit of Beth Israel Medical Center by The Mount Sinai Medical Center, Inc.

Very truly yours,

Beth Israel Medical Center

By:  \_\_\_\_\_

Name/Title: ~~Don Seanlon~~, Executive Vice President



The New York Eye and Ear Infirmary  
310 East 14<sup>th</sup> Street  
New York, NY 10003  
T 212-979-4000

November 19, 2014

Director, Bureau of House Counsel  
Division of Legal Affairs  
NYS Department of Health  
Corning Tower  
Rm 2484  
Empire State Plaza  
Albany, New York 12237

Re: Funds Raised by The Mount Sinai Medical Center, Inc.

Dear Director:

The undersigned, being a duly authorized representative of The New York Eye and Ear Infirmary, hereby acknowledges and affirms that the New York Eye and Ear Infirmary will accept funds raised for the benefit of The New York Eye and Ear Infirmary by The Mount Sinai Medical Center, Inc.

Very truly yours,

The New York Eye and Ear Infirmary

By: \_\_\_\_\_

Name/Title: Don Scarron, Executive Vice President



The St. Luke's-Roosevelt Hospital Center  
1111 Amsterdam Avenue  
New York, New York 10025  
T 212-523-4000

November 19, 2014

Director, Bureau of House Counsel  
Division of Legal Affairs  
NYS Department of Health  
Corning Tower  
Rm 2484  
Empire State Plaza  
Albany, New York 12237

Re: Funds Raised by The Mount Sinai Medical Center, Inc.

Dear Director:

The undersigned, being a duly authorized representative of The St. Luke's-Roosevelt Hospital Center (d/b/a's – Mount Sinai St. Luke's and Mount Sinai Roosevelt), hereby acknowledges and affirms that The St. Luke's-Roosevelt Hospital Center will accept funds raised for the benefit of The St. Luke's-Roosevelt Hospital Center by The Mount Sinai Medical Center, Inc.

Very truly yours,

The St. Luke's-Roosevelt Hospital Center

By: \_\_\_\_\_

Name/Title: Don Scanlon, Executive Vice President

**Biographies on Voting Trustees of The Mount Sinai Medical Center\***

**(\*a part of the Mount Sinai Health System)**

**July 28, 2014**

**Andrew M. Alper**

Years on Board: 7 (elected 11/2006)

Background: Mr. Alper manages his family office, Alper Investments, Inc. From 2002 to 2006 he served as President of the New York City Economic Development Corporation and Chairman of the New York City Industrial Development Agency.

Andrew M. Alper	Alper Investments, Inc. 630 Fifth Avenue, Suite 2455 New York, NY 10111
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Chairman of the Board of Trustees, University of Chicago; Trustee, University of Chicago Medical Center; Member, Visiting Committee to the Booth School of Business at the University of Chicago.

**Glenn R. August**

Years on Board: 3 (elected 2/2011)

Background: Mr. August is President and Senior Partner of Oak Hill Advisors, L.P., an investment firm that specializes in leveraged loans, high yield bonds, and turnaround private equity opportunities.

Glenn R. August	President Oak Hill Advisors, L.P. 1114 Ave. of the Americas, 27th Fl. New York, NY 10036
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Director, 92<sup>nd</sup> Street Y; Trustee, Horace Mann School.

**Christopher W. Brody**

Years on Board: 19 (elected 9/1994)

Background: Mr. Brody is a partner in Vantage Partners LLC, a private investment firm. From 1971 to 1988 he was with the investment firm of Warburg Pincus.

Christopher W. Brody	Vantage Partners, LLC 767 Third Avenue, Suite 1400 New York, NY 10017
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Member, Council on Foreign Relations; Director, Mary and Albert Lasker Foundation.

**Gerald J. Cardinale**

Years on Board: 1 (elected 11/2012)

Background: Mr. Cardinale is the Co-Founder and Managing Partner of Red Bird Capital Partners. In 2012 he retired from Goldman Sachs, where he was a Managing Director and Partner.

Gerald J. Cardinale	Redbird Capital Partners 660 Madison Avenue, Suite 1435 New York, NY 10065
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Director, American Association of Rhodes Scholars; Director, the Yo-Yo Ma Silk Road Project; Director, the Film Society of Lincoln Center; Member, Task Force for Student Support, Harvard University.

**James W. Crystal**

Years on Board: 32 (elected 1/1982)

Background: Mr. Crystal is Chairman and CEO of Frank Crystal & Co., Inc., one of the largest privately owned insurance brokerage companies in the United States.

James W. Crystal	Chairman and CEO Crystal & Company Financial Square, 32 Old Slip, 18th Floor New York, NY 10005-3504
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): None on record.

**Joel S. Ehrenkranz**

Years on Board: 32 (elected 1/1982)

Background: Mr. Ehrenkranz is the Founder and Senior Partner of Ehrenkranz & Ehrenkranz, LLP, Attorneys at Law.

Joel S. Ehrenkranz	Ehrenkranz & Ehrenkranz LLP 375 Park Avenue, Suite 2800 New York, NY 10152
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Vice Chairman, Lincoln Center for the Performing Arts; Trustee, New York University; Life Trustee, New York University School of Law; Honorary Trustee and Past President, Whitney Museum of American Art; Member, Council on Foreign Relations.

**Blaine (Fin) Fogg**

Years on Board: 26 (elected 12/1987)

Background: Mr. Fogg, an attorney specializing in corporate and securities law, is of counsel to the firm of Skadden, Arps, Slate, Meagher & Flom LLP.

Blaine V. Fogg	Skadden, Arps, Slate, Meagher & Flom Four Times Square, 45th Floor New York, NY 10036
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): President and CEO, Legal Aid Society of New York.

**Sonia E. Gardner**

Years on Board: 4 (elected 6/2010)

Background: Ms. Gardner is the President, Managing Partner and a Co-Founder of Avenue Capital Group, an investment firm specializing in the debt and equity securities of distressed companies.

Sonia E. Gardner	President and Managing Partner Avenue Capital Group 399 Park Avenue, 6th Fl. New York, NY 10022
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Member, New York and London Boards of Directors, 100 Women in Hedge Funds.

**Carla A. Harris**

Years on Board: 7 (elected 9/2006)

Background: Ms. Harris is Managing Director and Senior Client Advisor at Morgan Stanley, focusing primarily on the firm's securities and wealth management divisions.

Carla A. Harris	Vice Chairman, Wealth Management, Senior Client Advisor, Managing Director Morgan Stanley, Company Management 1585 Broadway, 39th Floor New York, NY 10036
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Treasurer and Director, Apollo Theater Foundation Inc.; Chairman and Director, The Food Bank for New York City.

**Joshua J. Harris**

Years on Board: 5 (elected 10/2008)

Background: Mr. Harris is President and Founding Partner at Apollo Management, L.P., a private equity management firm.

Joshua J. Harris	President Apollo Global Management, LLC 9 West 57th Street, 43rd Floor New York, NY 10019
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Member, Council on Foreign Relations; Member, Wharton Undergraduate Executive Board, University of Pennsylvania; Trustee, The Allen-Stevenson School; Trustee, Harvard Business School of Harvard University.

**Steven I. Hochberg, Senior Vice Chairman, Mount Sinai Health System**

Years on Board: less than 1 (elected 11/2013)

Background: Mr. Hochberg is a Managing Partner with Ascent Biomedical Ventures, a venture capital firm focused on the life sciences and pharmaceutical sectors. He joined the Mount Sinai board through its 2013 merger with Continuum Health Partners, of which he was Chairman.

Steven Hochberg	Deerfield Management 780 Third Avenue, 37th Floor New York, NY 10017
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Member, Board of Governors, New York Academy of Sciences.

**Frederick A. Klingenstein**

Years on Board: 43 (elected 2/1971)

Background: Mr. Klingenstein is the Founder of Klingenstein, Fields & Company, a private investment firm.

Frederick A. Klingenstein	Klingenstein, Fields & Co., L.P. 125 Park Avenue, 17th Floor New York, NY 10017
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Vice Chairman, Board of Trustees, American Museum of Natural History.

**Henry R. Kravis**

Years on Board: 33 (elected 6/1981)

Background: Mr. Kravis is the Co-Founder of global private equity firm Kohlberg Kravis & Roberts Co., which specializes in leveraged buyouts.

Henry R. Kravis	Kohlberg Kravis Roberts & Company 9 West 57th Street, 42nd Fl. New York, NY 10019
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Director, The Business Council; Trustee, Claremont McKenna College; Trustee, Columbia Business School; Director, Partnership for New York City; Trustee, Rockefeller University; Trustee, Tsinghua University School of Economics and Management.

Mr. Kravis is married to Marie-Josée Kravis, who is President of the Museum of Modern Art and Vice Chairman of Memorial Sloan-Kettering Cancer Center. She is also a Director of the Institute of Advanced Study at Princeton University and a Member of the Council on Foreign Relations.

**John A. Levin**

Years on Board: 34 (elected 2/1980)

Background: Mr. Levin is the Founder and Senior Portfolio Manager for Levin Capital Strategies, an investment firm.

John A. Levin	Levin Capital Strategies, LP 595 Madison Avenue, 17th Floor New York, NY 10022
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Trustee, Educational Broadcasting Corporation; Member, Board of Advisors, Yale School of Management.

**Marc S. Lipschultz**

Years on Board: 4 (elected 6/2010)

Background: Mr. Lipschultz is the Head of Energy and Infrastructure for global investment firm Kohlberg Kravis & Roberts (KKR).

Marc S. Lipschultz	Member Kohlberg Kravis Roberts & Co. 9 West 57th Street, Suite 4200 New York, NY 10019
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Director, American Enterprise Institute for Policy Research; Trustee, Bard College; Director, Michael J. Fox Foundation for Parkinson's Research; Trustee, Riverdale Country School; Director, 92<sup>nd</sup> Street Y.

**Daniel S. Loeb**

Years on Board: 2 (elected 2/2012)

Background: Mr. Loeb is the Founder and Chief Executive of Third Point LLC, a hedge fund based in New York.

Daniel S. Loeb	Chief Executive Officer Third Point, LLC 390 Park Avenue, 19th Floor New York, NY 10022
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Trustee, United States Olympic Committee; Trustee, Manhattan Institute; Trustee, Museum of Contemporary Art, Los Angeles; Chairman, Board of Success Academies Charter Schools; Trustee, Prep For Prep; Member, Council on Foreign Relations.

Not-for-Profit Board Affiliations (in addition to Mount Sinai): Trustee, United States Holocaust Museum; Trustee, Franklin & Marshall College; Member, Council on Foreign Relations; Member, National Council, American Enterprise Institute; Member, Robin Hood Veterans Advisory Board; Director, American Foundation for Equal Rights; Director, IDEAL School of Manhattan; Member, Senior Advisory Committee, Harvard University Institute of Politics.

**Michael Minikes**

Years on Board: 17 (elected 6/1997)

Background: Mr. Minikes is a Managing Director for Investment Client Management at JP Morgan, and former Chairman and President of JP Morgan Clearing Corporation.

Michael Minikes	Chief Executive Officer JP Morgan Clearing Corp. 383 Madison Avenue, 4th Fl. New York, NY 10179
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Trustee and Former Chairman, Queens College Foundation; Member, City University Business Leaders Council; Member, Steering Committee, UJA Wall Street Division.

**Neil S. Mitchell**

Years on Board: 1 (elected 11/2012)

Background: Mr. Mitchell is an Executive Director with Morgan Stanley's Private Wealth Management Division.

Neil S. Mitchell	Executive Director, Private Wealth Division Morgan Stanley 522 Fifth Avenue, 10th Floor New York, NY 10036
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Chairman, Project Renewal.

**Joseph Plumeri**

Years on Board: 4 (elected 9/2009)

Background: Mr. Plumeri is former Chairman and CEO of Willis Group Holdings. He is a past CEO of Citibank North America and past Chairman and CEO of Primerica.

Joseph J. Plumeri	c/o First Data Corporation 225 Liberty Street, 29th Floor New York, NY 10281
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Director, National Center on Addiction and Substance Abuse, Columbia University; Trustee, Intrepid Sea, Air & Space Museum; Director, Jackie Robinson Foundation; Trustee, Carnegie Hall; Member, Council on Foreign Relations.

**Jennifer G. Price (*ex officio*)**

Years on Board: 1 (elected 4/2013)

Background: Mrs. Price is an *ex officio* member of the Board of Trustees of MSMC; she serves in this capacity as President of the Mount Sinai Auxiliary Board. She is a practicing Real Estate Broker with Stribling & Associates, Ltd.

Jennifer Price	President Mount Sinai Auxiliary Board 1165 Fifth Avenue, #13B New York, NY 10029
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): None on record.

**Richard Ravitch**

Years on Board: 29 (elected 11/1984)

Background: Mr. Ravitch is currently chairing the New York State Budget Crisis Task Force with former Federal Reserve Chairman Paul Volcker. He is a past Chairman and CEO of the Metropolitan Transit Authority (the MTA).

Richard Ravitch	Ravitch Rice & Co., LLC 610 fifth Avenue, Suite 420 New York, NY 10020
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Not-for-Profit Board Affiliations (in addition to Mount Sinai): Trustee, AFL-CIO Housing Investment Trust; Emeritus Trustee, The Century Foundation.

**Andrew M. Saul**

**Years on Board: 34 (elected 9/1979)**

**Background: Mr. Saul is Founder and General Partner of Saul Partners, L.P.**

Andrew M. Saul	Saul Partners, L.P. 9 West 57th Street, Suite 3405 New York, NY 10019
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**Not-for-Profit Board Affiliations (in addition to Mount Sinai):** Trustee, The Federation of Jewish Philanthropies; Trustee, United Jewish Appeal Federation; Trustee and Chairman of Finance Committee, Metropolitan Transportation Authority (MTA); Trustee, The Wharton School of Business, University of Pennsylvania; Member, Chairman's Council, Metropolitan Museum of Art; Director, Manhattan Institute; Trustee, Sarah Neuman Nursing Home.

**Joseph C. Shenker**

**Years on Board: 4 (elected 2/2010)**

**Background: Mr. Shenker is Chairman of the legal firm Sullivan & Cromwell. He has had a distinguished career as an attorney specializing in mergers and acquisitions.**

Joseph C. Shenker	Chairman Sullivan & Cromwell LLP 125 Broad Street, 33rd Floor New York, NY 10004
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**Not-for-Profit Board Affiliations (in addition to Mount Sinai):** Steering Committee Member, Board of Visitors, Columbia Law School.

**Thomas W. Strauss**

**Years on Board: 30 (elected 12/1983)**

**Background: Mr. Strauss is the Chairman of Ramius, LLC (a Cowen Group Company) and Vice Chairman of The Cowen Group, Inc., a diversified financial services firm.**

Thomas W. Strauss	Ramius LLC 599 Lexington Avenue, 19th Floor New York, NY 10022
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**Not-for-Profit Board Affiliations (in addition to Mount Sinai):** Trustee, US-Japan Foundation; Trustee Emeritus, Riverdale Country School; Vice President and Treasurer, Bachmann-Strauss Dystonia & Parkinson Foundation.

**David M. Zaslav**

**Years on Board: 4 (elected 6/2010)**

**Background: Mr. Zaslav is President and CEO of Discovery Communications, a US-based global media and entertainment firm.**

David M. Zaslav	President and CEO Discovery Communications, Inc. One Discovery Place Silver Spring, MD 20910
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**Not-for-Profit Board Affiliations (in addition to Mount Sinai): Trustee, Paley Center for Media; Member, Advisory Board, Skills for America's Future (part of the Aspen Institute).**



## MEMORANDUM

**To:** Public Health and Health Planning Council  
**From:** James E. Dering, General Counsel *JED*  
**Date:** April 29, 2015  
**Subject:** Proposed Certificate of Amendment of the Certificate of Incorporation of  
ECMC Lifeline Foundation, Inc.

Attached is the proposed Certificate of Amendment of the Certificate Of Incorporation of ECMC Lifeline Foundation, Inc. This not-for-profit corporation seeks approval to change its name to ECMC Foundation, Inc. The public Health council approved the establishment of the corporation in 1993 to solicit contributions for the Erie County Medical Center. Public Health and Health Planning Council approval for a change of corporate name is therefore required by Not-For-Profit Corporate Law § 804 (a) and 10 NYCRR § 600.11 (a) (1). Also attached is a letter dated February 24, 2015 from Jennifer L. Albrecht, attorney for the corporation.

The Department has no objection to the proposed name change, and the proposed Certificate of Amendment is in legally acceptable form.

Attachments

New York State  
Department of State  
Division of Corporations  
One Commerce Plaza, 99 Washington Avenue  
Albany New York 12231

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
ECMC LIFELINE FOUNDATION, INC.**

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Under Section 803 of the Not-for-Profit Corporation Law

- FIRST:** The name of the Corporation is: ECMC Lifeline Foundation, Inc.
- SECOND:** The certificate of incorporation was filed by the Department of State on: October 5, 1993.
- THIRD:** The law the corporation was formed under is: New York State Not-for-Profit Corporation Law Section 402.
- FOURTH:** The Corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.

**FIFTH:** The amendment effected by this certificate of amendment is as follows: Paragraph First of the Certificate of Incorporation relating to the corporation name is hereby amended to read as follows:

**FIRST:** The name of the corporation is ECMC Foundation, Inc.

**SIXTH:** The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is:

462 Grider Street  
Buffalo, New York 14215

F931005000470  
INFO

CERTIFICATE OF INCORPORATION<sup>83</sup>  
OF  
ECMC LIFELINE FOUNDATION, INC.

Under Section 402 of the Not-For-Profit Corporation Law

THE UNDERSIGNED HEREBY CERTIFIES:

1. The name of the Corporation is ECMC Lifeline Foundation, Inc.
2. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law.
3. The purpose of the corporation shall be exclusively charitable within the meaning of Section 501(c)(3) of the United States Internal Revenue Code of 1954, as the same may be amended from time to time, and without limiting the generality of the foregoing, shall include the following purposes:
  - (a) To conduct fund-raising activities, promotions, events, and to solicit, raise, collect, procure, receive, accept, hold, invest and administer any funds, grants, gifts, bequests, devises, contributions and property of any sort, whether real, personal, tangible or intangible without limitation as to amount or value and to use, disperse or donate the income or principal therefor for the use and benefit of the Erie County Medical Center, or as the same may be known by any subsequent name or successor in interest in such manner as in the judgment

(a) by a corporation exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or

(b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1954, as amended.

6. It is the intention of the corporation to qualify and remain qualified as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

Accordingly:

(a) the corporation shall not have authority to issue capital stock;

(b) the corporation shall not be conducted or operate for profit and no part of the net earnings of the corporation shall inure to the benefit of any individual; provided that nothing contained in this Certificate shall prevent the payment in good faith of reasonable and proper remuneration to any officer, director or employee of the corporation, or to any other person, organization, firm, association, corporation or institution in return for services rendered to the corporation in furtherance of the corporate purposes as permitted under Article 5 of the Not-For-Profit Corporation Law;

(c) no substantial part of the activities of the corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation; nor shall the corporation participate in or intervene in (including the publishing or

(D) make any taxable expenditures as defined in Section 4945 of said Code.

7. The corporation is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

8. The corporation shall be a Type B corporation under Section 201 of the Not-For-Profit Corporation Law of the State of New York.

9. Notwithstanding any other provision of this Certificate of Incorporation, the corporation shall not be authorized to establish, operate or maintain a hospital or to provide hospital service or health related service or to operate a home care services agency or hospice or health maintenance organization or a comprehensive health services plan, as provided for by Article 28, 36, 46 and 44, respectively of the Public Health Law of the State of New York.

10. The names and addresses of the persons constituting the first Board of Directors of the corporation are:

	<u>NAME</u>	<u>Address</u>
Road	Richard E. Hauck	5960 Old Lake Shore Lakeview, New York 14085
	Maurden Maguire	205 Depew Avenue Buffalo, New York 14214
14224	Joan F. Lillis	25 Leocrest Court West Seneca, New York

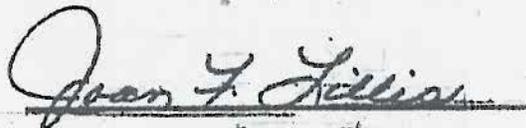
5

14. The affidavit of service of the petition to the Supreme Court and the proposed certificate of incorporation upon the Attorney General and the approval of the New York State Public Health Council are annexed hereto.

15. The Secretary of State, pursuant to Chapter 564 of N.Y.S. Laws of 1981 Section 402(a)(7), is hereby designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary shall mail a copy of any process against the corporation served upon him is 462 Grider Street, Buffalo, New York 14213.

16. This Certificate of Incorporation is not for the incorporation of an existing unincorporated group.

IN WITNESS WHEREOF, the undersigned Incorporator, being at least 18 years of age, has made and affirmed the statements contained herein as true under the penalties of perjury.



JOAN F. LIELIS, INCORPORATOR  
25 LEOCREST COURT  
WEST SENECAP, NY 14224

**Lewis, Shirley (HEALTH)**

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**From:** Colleen M. Leonard <colleen.leonard@health.ny.gov>  
**Sent:** Monday, March 09, 2015 3:06 PM  
**To:** Lewis, Shirley (HEALTH)  
**Subject:** Assigned Council Correspondence - 201568.47230.col  
**Attachments:** 19\_ECMC Lifeline Foundation Inc.pdf; ECMC Lifeline Foundation Cert of Inc 10 05 93.pdf; ECMC Lifeline Foundation Executed Certificate of Amendment 20150224.pdf; ECMC Lifeline Foundation NYS Dept of Health 20150224 req for cert of amend consent.pdf

This Council Correspondence has been Assigned to you by Colleen Leonard.

Message: For appropriate handling. Thank you.

Date Due: 3/23/2015

Contact Info: Albrecht, Jennifer / 716-853-4080

#: 201568.47230.col

Type: PHHPC Direct

Action: PLEASE HANDLE

Category: PUBLIC HEALTH AND HEALTH PLANNING COUNCIL - COLLEEN

Subcategory: CERTIFICATE

Description: Request for PHHPC consent to file Certificate of Amendment of the Certificate of Incorporation of ECMC Lifeline Foundation, Inc.

DCO Notes: 03/09/2015 03:06:06 PM - Colleen Leonard - To DLA for appropriate handling.

Program Notes: 3/9/2015 3:04:44 PM - Colleen M. Leonard - Program Area Assigned: Colleen Leonard

Program Assigned: Shirley Lewis, Craig Rippon, Zartash Syed

Assigned To: Forwarded:

*(See attached file: 19\_ECMC Lifeline Foundation Inc.pdf)(See attached file: ECMC Lifeline Foundation Cert of Inc 10 05 93.pdf)(See attached file: ECMC Lifeline Foundation Executed Certificate of Amendment 20150224.pdf)(See attached file: ECMC Lifeline Foundation NYS Dept of Health 20150224 req for cert of amend consent.pdf)*



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

September 27, 1993

Ms. Tracie Carpinello  
Service Representative  
Prattice Hall Legal & Financial Services  
500 Central Avenue  
Albany, New York 12206

Re: Certificate of Incorporation of ECMC Lifeline Foundation, Inc.

Dear Ms. Carpinello:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 24th day of September, 1993, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of ECMC Lifeline Foundation, Inc. dated July 30, 1993.

Sincerely,

Keren S. Westervelt  
Executive Secretary

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CERTIFICATE OF INCORPORATION  
OF

ECMC LIFELINE FOUNDATION, INC.

K C C  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED OCT 05 1993

TAX \$             
BY:           

ERIE

*Handwritten initials/signature*

FILED:  
MARGARET L. SNAJCZUK, ESQ.  
97 QUAKER LAKE TERRACE  
ORCHARD PARK, NY 14127

BILLED

11

931005000529



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel *JED*

DATE: April 29, 2015

SUBJECT: Proposed Dissolution of Threshold Center for Alternative Youth Service, Inc.

Threshold Center for Alternative Youth Service, Inc. ("Threshold") requests Public Health and Health Planning Council approval of its proposed Dissolution in accordance with the requirements of Not-For-Profit Corporation Law §1002(c) and §1003, as well as 10 NYCRR Part 650.

Threshold was formed in 1980 and one of its purposes was to "establish, own lease, operate and maintain" a diagnostic and treatment center. On December 31, 2013, Threshold ceased operations and surrendered its operating certificate to the Department. Its programming was transferred to the Anthony L. Jordan Health Center. Therefore, there is no longer a reason for Threshold to exist. Threshold's assets will be distributed and liabilities will be disposed of pursuant to an agreement referenced in Threshold's proposed Plan of Dissolution.

Attached are a copy of the duly executed proposed Certificate of Dissolution, a letter from Threshold's attorney explaining the need for the proposed Dissolution, a proposed Plan of Dissolution, and a proposed Verified Petition seeking the Supreme Court's approval of Threshold's Certificate of Dissolution.

The Certificate of Dissolution is in legally acceptable form.

JED: sls  
Attachments

February 19, 2014

Colleen Frost  
Public Health and Health Planning Council  
NYS Department of Health  
Rm. 1805, Corning Tower  
Empire State Plaza  
Albany, New York 12237

**Re: Dissolution of Threshold Center For Alternative Youth Services, Inc.**

Dear Ms. Frost:

Our client, Threshold Center For Alternative Youth Services, Inc. ("Threshold"), determined by Board Resolution in December of 2013 to proceed with a Dissolution as a NYS Not for Profit Corporation. As early as December of 2012 the Board resolved that it was not economically feasible to continue operating. The Corporation has liabilities slightly less than \$500,000 to the New York State Department of Health as the result of an audit in 2006 for the agency's Family Health and School Based Health Care Programs with a NYS DOH audit exception determined in 2006. Threshold was able to identify a community health agency that would take over its historic mission to provide medical services including counseling to youth and young adults, Anthony L. Jordan Health Corporation ("Jordan"). Threshold has received NYS DOH approval to cease operations and Jordan has received a CON. As a result it is appropriate for Threshold to commence the process under N-PCL 510, 1002(d) and 1008 to Dissolve and Distribute Assets. It has been determined that N-PCL approval for Dissolution is required from the Public Health and Health Planning Council. In order to commence that process we are submitting an executed

- Petition for Dissolution and Distribution of Assets together with Exhibits, and Draft;
- Petition to the Attorney General;
- Order Approving Plan of Dissolution;
- Certificate of Dissolution;
- Order to Show Cause to creditors

Please advise me of any other documents that you would want as part of the process of obtaining approval for dissolution from the Public Health and Health Planning Council.

Very truly yours,

**BOYLAN CODE LLP**

C. Bruce Lawrence

CBL/sjc

Enclosure

**Certificate of Dissolution of  
Threshold Health Services, Inc.  
Under Section 1003 of the Not-for-Profit Corporation Law**

I, Karen Podsiadly, Secretary of Threshold Center For Alternative Youth Services, Inc., hereby certifies:

1. The name of this corporation is Threshold Center For Alternative Youth Services, Inc., ("Threshold" or the "Corporation"). The name has not been changed since its formation.

2. Threshold's Certificate of Incorporation was filed with the New York State Department of State on June 11, 1975.

3. The names and addresses of each of the officers and directors of the Corporation and the title of each are as follows:

Name	Title	Address
John Olsan	Chair	3 Babcock Drive Rochester, NY 14610
Kathy Cherrington	Vice Chair	105 Baycrest Drive Rochester, NY 14622
Keven Loughran	Treasurer	206 Rutgers Street Rochester, NY 14607
Karen M. Podsiadly	Secretary	50 Pomeroy Street Rochester, NY 14621

4. Threshold is a "Type B" New York not-for-profit corporation.

5. At the time of authorization of the Corporation's Plan of Dissolution and Distribution of Assets, pursuant to N-PCL § 1002, the Corporation held no assets legally required to be used for a particular purpose.

6. Threshold hereby elects to dissolve.

7. A Plan of Dissolution and Distribution of Assets was authorized by unanimous consent of the Board of Directors.

8. On \_\_\_\_\_, 2014, the New York State Supreme Court, Monroe County, issued an Order Approving the Plan of Dissolution and Distribution of Assets. Pursuant to Section 1003(a)(8) of the Not-for-Profit Corporation Law, a copy of that Order is attached hereto as Exhibit A.

9. Approval of the dissolution of the Corporation is required to be obtained from the following government agencies and officers, whose approvals is attached hereto as Exhibit B (see N-PCL §§ 404(b)-(u), 1002(c) and 1003(b)(1)): Public Health and Health Planning Council

10. The Corporation has carried out the Plan of Dissolution and Distribution of Assets.

11. Pursuant to Sections 1003(b)(2) and 1004(a) of the Not-for-Profit Corporation Law, attached hereto as Exhibit C is the endorsement/consent of the New State Attorney General and state tax commission.

~~IN WITNESS WHEREOF~~, the undersigned has signed Certificate of Dissolution of Threshold Center For Alternative Youth Services, Inc., this \_\_\_ day of \_\_\_\_\_, 2014 .

\_\_\_\_\_  
Karen Podsiadly, Secretary

## **Plan of Dissolution and Distribution of Assets of Westside Health Services, Inc.**

The Board of Directors of Threshold Center For Alternative Youth Services, Inc., (“Threshold” or the “Corporation”) at a meeting duly convened on the 6th day of December, 2013, pursuant to notice given in accordance with the applicable law, a quorum being present at all times, having considered the advisability of voluntarily dissolving the corporation, and it being the unanimous opinion of the Board that dissolution is advisable and in the best interests of the corporation which no longer has the financial ability to continue operations and pay its debts, and the Board having adopted, by unanimous vote, a plan for a voluntary dissolution of the Corporation, does hereby resolve that the corporation be dissolved in accordance with the following plan:

1. There being no members of the Corporation, no vote of membership is required to approve this dissolution, and action of the Board of Directors is sufficient.
2. Approval of the dissolution of the Corporation is not required to be obtained from government agencies and officers, whose approvals are attached (*see* N-PCL §§1002(c)):
3. The Corporation has limited assets remaining, in the nature of cash. Such assets are legally required to be used for payment of legal and accounting expenses of Westside’s dissolution and any remaining funds for a pro rata payment of its outstanding debt. The current cash is approximately \$50,000.00.
4. The assets owned by the corporation are substantially insufficient to satisfy unpaid liabilities of the Corporation.
5. (a) The Corporation has liabilities of less than \$500,000 to the New York State Department of Health as the result of an audit in 2006 of Medicaid reimbursement for the agency’s Family Health and School Based Health Care Programs.
5. (b) The total amount of accounting fees (The Bonadio Group) and legal fees (Boylan Code, LLP) estimated in relation to the dissolution procedure are not expected to exhaust the remaining funds on hand. All final distributions will be reflected in the Corporation’s final financial report.
6. Within two hundred seventy (270) days after the date that an Order Approving Plan of Dissolution and Distribution of Assets is signed by the Court, the Corporation shall carry out this Plan.
7. There are restricted assets, an endowment held at the Rochester Area Community Foundation in the approximate amount of \$25,000.00 which are legally required to be used for a specific purpose. The Board will seek Court approval as part of the Dissolution to grant said funds to Community Place of Greater Rochester, a domestic

corporation engaged in activities substantially similar to those of Threshold (N-PCL §§1005(3)(A)).

8. Threshold ("Seller") in consideration of the payment of the sum of Five Thousand Five-Hundred dollars (\$5,500.00) will sell and transfer to Anthony L. Jordan Health Corporation ("Jordan"), a New York not-for-profit corporation, of 82 Holland Street, Rochester, NY 14605, ("Buyer"), its successors and assigns, its miscellaneous personal property. Jordan has received CON approval from NYS to begin to deliver services to the community substantially similar to the services currently being delivered by Threshold at 145 Parcels Ave., Rochester, NY.

### CERTIFICATION

I, Karen Podsiadly, Secretary of Threshold Center For Alternative Youth Services, Inc., hereby certifies under penalty of perjury that a special meeting of the Board of Directors of the Corporation was duly held at 12:15 PM on December 6, 2013 at 57 Central Park, Rochester, New York and the within Plan of Dissolution and Distribution of Assets was duly submitted and passed by a unanimous vote of the Directors.

Dated: December 6, 2013

Karen Podsiadly, Secretary of Threshold  
Center For Alternative Youth Services, Inc.

IN THE MATTER OF THE APPLICATION OF  
THRESHOLD CENTER FOR ALTERNATIVE YOUTH  
SERVICES, INC., FOR AN ORDER APPROVING PLAN  
OF DISSOLUTION AND DISTRIBUTION OF ASSETS  
PURSUANT TO SECTION 1002 OF THE NOT-FOR-  
PROFIT CORPORATION LAW AND APPROVAL OF  
SALE OF SUBSTANTIALLY ALL ASSETS PURSUANT  
TO SECTION 510

**VERIFIED PETITION FOR APPROVAL OF CERTIFICATION OF DISSOLUTION**

**TO: THE OFFICE OF THE ATTORNEY GENERAL  
OF THE STATE OF NEW YORK**

Rochester Regional Office  
144 Exchange Boulevard  
Rochester, New York 14614

Petitioner, Threshold Center For Alternative Youth Services, Inc. by John Olsan Board

Chair of the corporation, as and for its Verified Petition alleges:

1. Threshold Center For Alternative Youth Services, Inc. ("Threshold" or the "Corporation"), whose principal address is 145 Parsells Ave, Rochester, New York 14609, was incorporated pursuant to New York's Not-for-Profit Corporation Law on April 3, 1980. A copy of the Certificate of Incorporation is attached hereto as Exhibit A.

2. The names, addresses and titles of the Corporation's officers are as follows:

Name	Title	Address
John Olsan	Chair	3 Babcock Drive Rochester, NY 14610
Kathy Cherrington	Vice Chair	105 Baycrest Drive Rochester, NY 14622
Keven Loughran	Treasurer	206 Rutgers Street Rochester, NY 14607

Karen M. Podsiadly

Secretary

50 Pomeroy Street  
Rochester, NY 14621

3. The purposes for which the Corporation was organized are as follows:

(a) The main purpose for which the corporation is being formed is to organize, operate and maintain one or more youth center, containing facilities for entertainment, counseling, instruction, social, and other opportunities for children or young adults who would otherwise be unable to enjoy such opportunities in the general areas in which they live.

(b) To counsel children and young adults with personal family and economic problems.

(c) To disseminate information of interest and assistance to young people by means of lectures, meetings, movies, photographs and written material.

(d) To obtain funding from federal, state and local governmental agencies and from the general public to carry out its purposes.

(e) To lease or procure office space, material and equipment for the carrying out of any of its purposes.

(f) To lease, purchase or mortgage real estate for the carrying out of any of its purposes.

(g) To hire personnel, including but not limited to one or more clerks, secretaries, lecturers, counselors, instructors, teachers, janitors, accountants, attorneys, physicians, and any other employees that may become necessary as the organization progresses.

(h) To develop children and young adults physically, morally and socially by all proper methods customarily employed in similar organizations.

(i) To establish, own, lease, operate and maintain a diagnostic and treatment center to provide medical services and treatment under the supervision of a physician for the

prevention, diagnosis or treatment of human disease, pain, injury, deformity, or physical condition.

4. Threshold's Certificate of Incorporation includes the following specific requirements with regard to the distribution of assets upon dissolution: "In the event of dissolution, all of the remaining assets and property of the corporation shall after necessary expenses thereof be distributed to such organizations as shall qualify under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, subject to an order of a Justice of the Supreme Court of the State of New York." There are restricted assets, an endowment held at the Rochester Area Community Foundation in the approximate amount of \$25,000.00 which are legally required to be used for a specific purpose. The Board will seek Court approval as part of the Dissolution to grant said funds to Community Place of Greater Rochester, a domestic corporation engaged in activities substantially similar to those of Threshold (N-PCL §§1005(3)(A).

5. Threshold is a "Type B" corporation as defined under Section 201(b) of the Not-for-Profit Corporation Law.

6. In accordance with section 1001 of the Not-for-Profit Corporation Law, a meeting of the Threshold's Board of Directors was held pursuant to duly given notice. At this meeting, a resolution was duly passed on December 6, 2013 by all of the directors of the Corporation, Exhibit B, adopting a Plan of Dissolution and Distribution of Assets and authorizing the filing of a Certificate of Dissolution in accordance with section 1003 of the Not for-Profit Corporation Law. A copy of the Plan, certified by the Secretary is attached as Exhibit C.

7. Threshold has no members.

8. On \_\_\_\_\_, 2014, an Order was issued by the New York State Supreme Court approving the Corporation's Plan of Dissolution and Distribution of Assets.

9. Approval of the dissolution of the corporation is required to be obtained from the following government agencies and officers, and copies of such approvals are attached hereto as Exhibit D: Public Health and Health Planning Council.

10. The Corporation has carried out the Plan of Dissolution and Distribution of Assets, and has submitted a copy of the corporation's final report showing zero assets. In accordance with Section 1003(c), attached hereto as Exhibit E is a final financial report showing disposition of the Corporation's assets and liabilities.

**WHEREFORE**, petitioner requests that the Attorney General approve the Certificate of Dissolution of Threshold Health Services, Inc., a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1003.

Dated: \_\_\_\_\_, 2014  
Rochester, New York

**BOYLAN CODE LLP**  
*Attorneys for Threshold Center For Alternative  
Youth Services, Inc.*

\_\_\_\_\_  
C. Bruce Lawrence  
145 Culver Road, Suite 100  
Rochester, New York 1420  
Telephone: 585.232.5300  
Facsimile: 585.238.9012

**VERIFICATION**

STATE OF NEW YORK )  
COUNTY OF MONROE ) :SS.:

John Olsan, being duly sworn, deposes and says:

I am the Board Chair of Threshold Center For Alternative Youth Services, Inc., the Corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

\_\_\_\_\_  
**John Olsan**

Sworn to before me this  
\_\_\_\_ day of December, 2013.

\_\_\_\_\_  
Notary Public

March 4, 2015

Stacey Stump  
Division of Legal Affairs  
Public Health and Health Planning Council  
NYS Department of Health  
24<sup>th</sup> Floor  
Empire State Plaza  
Albany, New York 12237

**Re: Dissolution of Threshold Center For Alternative Youth Services, Inc.**

Dear Ms. Stump:

On behalf of our client, Threshold Center For Alternative Youth Services, Inc. ("Threshold"), I was asked to provide additional copies of some of the documents that were sent on February 19, 2014 to the PHHPC seeking approval to proceed with dissolution as a NYS Not for Profit Corporation.

- Copy of my attorneys submittal letter of February 19, 2014
- Proposed Certificate of Dissolution
- Plan of Dissolution
- Proposed Verified Petition

I was told by Craig of your office that the PHHPC has approved the dissolution and that these papers will assist in issuing that approval. If there is anything further that you need please feel free to contact me.

Very truly yours,

**BOYLAN CODE LLP**

  
C. Bruce Lawrence

CBL/sjc  
Enclosures  
Cc: Sue Davin

