STATE OF NEW YORK  
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL 
AGENDA  
October 8, 2015 
Immediately following the Special Establishment and Project Review Committee  
(which is scheduled to begin immediately following the Committee on Codes, Regulations  
and Legislation scheduled for 9:30 a.m.)

- 90 Church Street 4th Floor, Room 4A & 4B, New York City 
- New York State Department of Health Offices at the Triangle Building, 
  335 East Main Street, 1st Floor Video Conference Room, Rochester, NY 14604 

I. INTRODUCTION OF OBSERVERS 
Jeffrey Kraut, Chair

II. APPROVAL OF MINUTES 
August 6, 2015 
Exhibit #1

III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES 
A. Report of the Department of Health 
   Sally Dreslin, M.S., R.N., Executive Deputy Commissioner of Health

B. Report of the Office of Primary Care and Health Systems Management Activities 
   Daniel Sheppard, Deputy Commissioner, Office of Primary Care and Health Systems Management

C. Report of the Office of Health Insurance Programs Activities 
   Elizabeth Misa, Medicaid Deputy Director, Office of Health Insurance Programs

D. Report of the Office of Quality and Patient Safety Activities 
   Patrick Roohan, Director, Office of Quality and Patient Safety

E. Report of the Office of Public Health Activities 
   Sylvia Pirani, M.S.,M.P.H. Director, Office of Public Health Practice

IV. PUBLIC HEALTH SERVICES 

Report on the Activities of the Committee on Public Health 
Jo Ivey Boufford, M.D., Chair of the Public Health Committee
V. HEALTH POLICY

Report on the Activities of the Committee on Health Planning

John Rugge, M.D., Chair of the Health Planning Committee

VI. REGULATION

Report of the Committee on Codes, Regulations and Legislation

Angel Gutiérrez, M.D., Chair of the Committee on Codes, Regulations and Legislation

For Emergency Adoption

15-14 Addition of Part 4 to Title 10 NYCRR – (Protection Against Legionella)

***To be distributed under separate cover***

15-12 Amendment of Section 9.1 of Title 10 NYCRR
(Prohibit Additional Synthetic Cannabinoids)

For Adoption

13-21 Amendment of Part 405 of Title 10 NYCRR
(Hospital Observation Services)

12-02 Amendment of Part 757 of Title 10 NYCRR
(Chronic Renal Dialysis Services)

14-13 Amendment of Parts 58 and 34 of Title 10 NYCRR
(Patient Access of Laboratory Test Results)

VII. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Gary Kalkut, M.D., Vice Chair of Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 1: Applications Recommended for Approval – No Issues or Recusals, Abstentions/Interests

CON Applications

Acute Care Services - Construction

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>151204 C Vassar Brothers Medical Center (Dutchess County)</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>
## Hospice Services - Construction

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>151270 C Hospice Buffalo Inc (Erie County)</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

**CATEGORY 2:** Applications Recommended for Approval with the Following:

- PHHPC Member Recusals
- Without Dissent by HSA
- Without Dissent by Establishment and Project Review Committee

## Acute Care Services - Construction

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>151213 C Strong Memorial Hospital (Monroe County) Ms. Hines – Recusal Mr. Robinson – Recusal</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

**CATEGORY 3:** Applications Recommended for Approval with the Following:

- No PHHPC Member Recusals
- Establishment and Project Review Committee Dissent, or
- Contrary Recommendations by HSA

**NO APPLICATIONS**

**CATEGORY 4:** Applications Recommended for Approval with the Following:

- PHHPC Member Recusals
- Establishment and Project Review Committee Dissent, or
- Contrary Recommendation by HSA

**NO APPLICATIONS**

**CATEGORY 5:** Applications Recommended for Disapproval by OHSNM or Establishment and Project Review Committee - with or without Recusals

**NO APPLICATIONS**

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**NO APPLICATIONS**

3
B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 1: Applications Recommended for Approval – No Issues or Recusals, Abstentions/Interests

CON Applications

Acute Care Services – Establish/Construct

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 151216 E</td>
<td>Columbia Memorial Hospital (Columbia County)</td>
<td>Contingent Approval</td>
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</tbody>
</table>

Ambulatory Surgery Centers – Establish/Construct

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 151201 E</td>
<td>Crystal Run Ambulatory Surgery Center of Middletown (Orange County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2. 151246 B</td>
<td>Mid-Bronx Endoscopy Center (Bronx County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>3. 151288 B</td>
<td>Colonie ASC, LLC d/b/a Specialty Eye Surgery and Laser Center of the Capital Region (Albany County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>4. 152036 E</td>
<td>AGCNY East, LLC d/b/a Endoscopy Center of Central New York (Onondaga County)</td>
<td>Contingent Approval</td>
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</table>

Diagnostic and Treatment Centers – Establish/Construct

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 151250 B</td>
<td>LISH, Inc. (Suffolk County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2. 152015 B</td>
<td>Community Health Initiatives, Inc. (Kings County)</td>
<td>Contingent Approval</td>
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</tbody>
</table>
### Dialysis Services – Establish/Construct

<table>
<thead>
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<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 151269 B</td>
<td>Schenectady Partners, LLC d/b/a Rotterdam-Schenectady Dialysis Center (Schenectady County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2. 151298 E</td>
<td>Pelham Parkway Dialysis Center (Bronx County)</td>
<td>Contingent Approval</td>
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<tr>
<td>3. 151308 B</td>
<td>Brooklyn Gardens Dialysis Center (Kings County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>4. 152025 E</td>
<td>Mohawk Valley Dialysis Center (Montgomery County)</td>
<td>Contingent Approval</td>
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</table>

### Residential Health Care Facility – Establish/Construct

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
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</thead>
<tbody>
<tr>
<td>1. 151180 E</td>
<td>ECRNC, LLC d/b/a Evergreen Commons Rehabilitation and Nursing Center (Rensselaer County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2. 151196 E</td>
<td>Daleview Care Center (Nassau County)</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

**CATEGORY 2:** Applications Recommended for Approval with the Following:

- PHHPC Member Recusals
- Without Dissent by HSA
- Without Dissent by Establishment and Project Review Committee

### CON Applications

### Acute Care Services – Establish/Construct

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
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</thead>
<tbody>
<tr>
<td>1. 152008 E</td>
<td>NYU Hospitals Center (Kings County) Dr. Kalkut – Recusal</td>
<td>Contingent Approval</td>
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</table>
### Ambulatory Surgery Centers – Establish/Construct

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
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<tbody>
<tr>
<td>1. 151008 B</td>
<td>Pittsford Pain Center LLC (Monroe County) Ms. Hines – Recusal Mr. Robinson – Recusal</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2. 151200 E</td>
<td>South Shore Surgery Center (Suffolk County) Mr. Kraut – Recusal</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>3. 151226 E</td>
<td>DHCH, LLC d/b/a Digestive Health Center of Huntington (Suffolk County) Mr. Kraut - Recusal</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>4. 151258 E</td>
<td>Suffolk Surgery Center, LLC (Suffolk County) Mr. Kraut - Recusal</td>
<td>Contingent Approval</td>
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</table>

### Residential Health Care Facilities – Establish/Construct

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
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</thead>
<tbody>
<tr>
<td>1. 151131 E</td>
<td>Latta Road Nursing Home West, LLC (Monroe County) Mr. Robinson – Recusal</td>
<td>Contingent Approval</td>
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<tr>
<td>2. 151133 E</td>
<td>Latta Road Nursing Home East, LLC (Monroe County) Mr. Robinson – Recusal</td>
<td>Contingent Approval</td>
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<tr>
<td>3. 151134 E</td>
<td>Hamilton Manor Nursing Home, LLC (Monroe County) Mr. Robinson – Recusal</td>
<td>Contingent Approval</td>
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</table>

### Certified Home Health Agency – Establish/Construct

<table>
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<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
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<tr>
<td>1. 151099 E</td>
<td>HCR (Monroe County) Ms. Hines – Interest Mr. Robinson – Interest</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>
CATEGORY 3: Applications Recommended for Approval with the Following:

- No PHHPC Member Recusals
- Establishment and Project Review Committee Dissent, or
- Contrary Recommendations by or HSA

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

- PHHPC Member Recusals
- Establishment and Project Review Committee Dissent, or
- Contrary Recommendation by HSA

CON Applications

Ambulatory Surgery Centers – Establish/Construct

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
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<tbody>
<tr>
<td>1. 151186 B</td>
<td>Premier Ambulatory Services Development Company, LLC d/b/a Premier Ambulatory Surgery Center (Erie County) Mr. Holt – Interest Dr. Brown – Abstained at EPRC</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

Residential Health Care Facilities – Establish/Construct

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
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</thead>
<tbody>
<tr>
<td>1. 151060 E</td>
<td>Warren Operations Associates, LLC d/b/a Warren Center for Rehabilitation and Healthcare (Warren County) Mr. Fassler – Recusal Dr. Rugge – Interest Dr. Berliner – Abstained at EPRC</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

CATEGORY 5: Applications Recommended for Disapproval by OHSM or Establishment and Project Review Committee - with or without Recusals

NO APPLICATIONS
### CATEGORY 6: Applications for Individual Consideration/Discussion

#### HOME HEALTH AGENCY LICENSURES

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>E.P.R.C. Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1909 L</td>
<td>MedPro Homecare Agency, Inc. (Queens, New York, Kings, Richmond, Bronx, and Nassau Counties)</td>
<td>To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation</td>
</tr>
<tr>
<td>2042 L</td>
<td>Touch of Love Homecare Agency Inc. (Bronx, Richmond, Kings, New York, Queens, and Nassau Counties)</td>
<td>To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation</td>
</tr>
<tr>
<td>2059 L</td>
<td>Victory Home Care Services, Inc. (Suffolk and Nassau Counties)</td>
<td>To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation</td>
</tr>
<tr>
<td>2133 L</td>
<td>Theresa Home Care, Inc. (New York, Kings, Bronx, Queens, Richmond, and Nassau Counties)</td>
<td>To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation</td>
</tr>
<tr>
<td>2184 L</td>
<td>Kirenaga Home Care Brooklyn, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)</td>
<td>To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation</td>
</tr>
<tr>
<td>2186 L</td>
<td>Kirenaga Home Care Queens, Inc. (New York, Bronx, Kings, Richmond, Queens, and Nassau Counties)</td>
<td>To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation</td>
</tr>
<tr>
<td>2193 L</td>
<td>Imo’s Nursing Agency, Inc. (Queens, New York, Kings, Richmond, and Bronx Counties)</td>
<td>To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation</td>
</tr>
<tr>
<td>Location</td>
<td>Company Name</td>
<td>County Information</td>
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<tr>
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<tr>
<td>2260 L</td>
<td>ABR Homecare of NY, Inc.</td>
<td>Suffolk and Nassau Counties</td>
</tr>
<tr>
<td>2293 L</td>
<td>Loyal Home Care, Inc.</td>
<td>Kings, Bronx, Queens, Richmond and New York Counties</td>
</tr>
<tr>
<td>2362 L</td>
<td>HT&amp;T Corporation d/b/a HT&amp;T Home Care</td>
<td>Queens, Kings, Brooklyn, Richmond, New York and Nassau Counties</td>
</tr>
<tr>
<td>2381 L</td>
<td>Sundance Home Care, Inc.</td>
<td>Kings, Queens, New York, Bronx, Richmond, and Nassau Counties</td>
</tr>
<tr>
<td>2405 L</td>
<td>Queens Home Care, Inc. d/b/a Home Instead Senior Care Franchise #765</td>
<td>Queens, New York, Bronx, Richmond, Kings and Nassau Counties</td>
</tr>
<tr>
<td>2414 L</td>
<td>Collins Anyanwu-Mueller d/b/a Angelic Touching Home Health Care Agency</td>
<td>Westchester and Rockland Counties</td>
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<tr>
<td>2437 L</td>
<td>Artful Home Care, Inc.</td>
<td>Suffolk and Nassau Counties</td>
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<tr>
<td>2452 L</td>
<td>Companion Angels Home Care Solutions, LLC</td>
<td>New York, Queens, Bronx, Richmond, and Kings Counties</td>
</tr>
<tr>
<td>Line</td>
<td>Company Name</td>
<td>Counties</td>
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<tr>
<td>2459</td>
<td>Family First Home Companions of New York, Inc.</td>
<td>Suffolk, Nassau, and Queens Counties</td>
</tr>
<tr>
<td>2467</td>
<td>1st Home Care of NY Corp.</td>
<td>Queens, New York, Bronx, Richmond, Kings and Nassau Counties</td>
</tr>
<tr>
<td>2469</td>
<td>Zenith Home Care of NY, LLC</td>
<td>Westchester, Putnam, and Bronx Counties</td>
</tr>
<tr>
<td>2474</td>
<td>Acute Care Experts of New York, Inc.</td>
<td>Nassau, Rockland, Suffolk, Sullivan, Dutchess, Ulster, Orange, Westchester, and Putnam Counties</td>
</tr>
<tr>
<td>2475</td>
<td>SR Miracle Care Agency, Inc.</td>
<td>Bronx, Queens, New York, Richmond, Kings, and Westchester Counties</td>
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<td>2485</td>
<td>Qualycare Home Care</td>
<td>Bronx, New York, and Queens Counties</td>
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<tr>
<td>2490</td>
<td>ZaQia Chaplin, LLC d/b/a Trusting Hands Homecare Agency</td>
<td>Nassau, Suffolk, and Queens Counties</td>
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<tr>
<td>2492</td>
<td>Trivium of New York, LLC</td>
<td>Queens, Bronx, Kings, Richmond, New York and Nassau Counties</td>
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<td>2493</td>
<td>Brookside Home Care Inc.</td>
<td>Nassau, Suffolk and Queens Counties</td>
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<tr>
<td>Line</td>
<td>Company Name</td>
<td>Counties</td>
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<tr>
<td>2503</td>
<td>L. Woerner, Inc. d/b/a HCR/HCR Home Care</td>
<td>Schoharie, Otsego, and Delaware Counties</td>
</tr>
<tr>
<td>2504</td>
<td>L. Woerner, Inc. d/b/a HCR/HCR Home Care</td>
<td>Clinton, Hamilton, St. Lawrence, Franklin, Warren, Essex and Washington Counties</td>
</tr>
<tr>
<td>2505</td>
<td>L. Woerner, Inc. d/b/a HCR/HCR Home Care</td>
<td>Madison, Oswego, Onondaga, Jefferson, Cayuga and Cortland Counties</td>
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<td>2521</td>
<td>GM Family Resources, Inc.</td>
<td>Richmond, New York, Kings, Bronx, Queens, and Nassau Counties</td>
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<tr>
<td>2546</td>
<td>Edira Family Home Care LLC</td>
<td>Queens, Bronx, Kings, Richmond, New York and Nassau Counties</td>
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<td>2573</td>
<td>Exceptional Home Care Services, Inc.</td>
<td>Bronx, Richmond, Kings, New York and Queens Counties</td>
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<td>2300</td>
<td>Albemarle Terrace, Inc. d/b/a Terrace Home Care</td>
<td>Bronx, Queens, Kings, New York and Richmond Counties</td>
</tr>
<tr>
<td>2605</td>
<td>Samuel Konig d/b/a Park Inn Home Care</td>
<td>Queens, New York, Bronx, Richmond, Kings and Nassau Counties</td>
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<tr>
<td>License Number</td>
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<tr>
<td>2188 L</td>
<td>Marquis Home Care, Inc. (Queens, Bronx, Kings, Richmond, New York and Westchester Counties)</td>
<td>To be presented at the Special Establishment/Project Review Committee on 10/8/15</td>
</tr>
<tr>
<td>2436 L</td>
<td>Paramount Homecare Agency, Inc. (Kings, New York, Queens, Richmond, Bronx, and Nassau Counties)</td>
<td>To be presented at the Special Establishment/Project Review Committee on 10/8/15</td>
</tr>
<tr>
<td>2441 L</td>
<td>Kirenaga Home Care Manhattan, Inc. d/b/a Synergy Homecare (New York, Kings, Bronx, Richmond, Queens, and Westchester Counties)</td>
<td>To be presented at the Special Establishment/Project Review Committee on 10/8/15</td>
</tr>
<tr>
<td>2501 L</td>
<td>CareGuardian, Inc. d/b/a Hometeam (New York, Kings, Queens, Bronx, and Richmond Counties)</td>
<td>To be presented at the Special Establishment/Project Review Committee on 10/8/15</td>
</tr>
<tr>
<td>2542 L</td>
<td>Better Choice Home Care, Inc. (Bronx, Richmond, Kings, Nassau, New York, and Queens Counties)</td>
<td>To be presented at the Special Establishment/Project Review Committee on 10/8/15</td>
</tr>
<tr>
<td>2547 L</td>
<td>All Boro Home Care, Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)</td>
<td>To be presented at the Special Establishment/Project Review Committee on 10/8/15</td>
</tr>
<tr>
<td>2554 L</td>
<td>Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency (Bronx, Queens, Nassau, Richmond, New York, and Kings Counties)</td>
<td>To be presented at the Special Establishment/Project Review Committee on 10/8/15</td>
</tr>
<tr>
<td>2592 L</td>
<td>Hakuna, Inc. (New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)</td>
<td>To be presented at the Special Establishment/Project Review Committee on 10/8/15</td>
</tr>
</tbody>
</table>
151264 E  Allcare Family Services, Inc. (Erie County)  To be presented at the Special Establishment/Project Review Committee on 10/8/15  No Recommendation

2280 L  CDS Monarch, Inc. (Monroe and Wayne Counties) Ms. Hines – Interest  To be presented at the Special Establishment/Project Review Committee on 10/8/15  No Recommendation

2158 L  Azor Care at Home, Inc. d/b/a Azor Home Care (New York, Bronx, Kings, Richmond, Queens, and Westchester Counties) Mr. Fassler - Interest  To be presented at the Special Establishment/Project Review Committee on 10/8/15  No Recommendation

2606 L  L Woerner, Inc. d/b/a HCR/HCR Home Care (Genesee, Wyoming, Monroe, Orleans, Orleans, Livingston, Wayne, and Ontario Counties) Ms. Hines – Interest  To be presented at the Special Establishment/Project Review Committee on 10/8/15  No Recommendation

2456 L  America Homecare Agency Services Corporation (Schenectady, Rensselaer, Warren, Saratoga, Schoharie, Albany and Washington Counties) Dr. Rugge - Recusal  To be presented at the Special Establishment/Project Review Committee on 10/8/15  No Recommendation

Certificates  Exhibit #18

Restated Certificate of Incorporation

Applicant

Housing Works Health Services III, Inc.

E.P.R.C. Recommendation

To be presented at the Special Establishment/Project Review Committee on 10/8/15  No Recommendation
Certificate of Amendment of the Certificate of Incorporation

Applicant

Samaritan Village, Inc.

E.P.R.C. Recommendation

To be presented at the Special Establishment/Project Review Committee on 10/8/15
No Recommendation

The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc.

To be presented at the Special Establishment/Project Review Committee on 10/8/15
No Recommendation

Brookdale Family Care Centers, Inc.

To be presented at the Special Establishment/Project Review Committee on 10/8/15
No Recommendation

Urban Strategies/Brookdale Family Care Center, Inc.

To be presented at the Special Establishment/Project Review Committee on 10/8/15
No Recommendation

Certificate of Dissolution

Applicant

River Hospital Foundation, Inc.

E.P.R.C. Recommendation

To be presented at the Special Establishment/Project Review Committee on 10/8/15
No Recommendation

VIII. PROFESSIONAL

Executive Session - Report of the Committee on Health Personnel and Interprofessional Relations

One Case arising under PHL 2801-b

IX. NEXT MEETING

November 19, 2015 - ALBANY
December 10, 2015 – ALBANY
X. ADJOURNMENT
The meeting of the Public Health and Health Planning Council was held on Thursday, August 6, 2015 at the Empire State Plaza, Concourse Level, Meeting Room 6, Albany, New York Chairman, Mr. Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

| Dr. Howard Berliner | Dr. Gary Kalkut |
| Dr. Jo Ivey Boufford | Mr. Jeffrey Kraut |
| Dr. Lawrence Brown | Dr. Glenn Martin |
| Ms. Kathleen Carver-Cheney | Ms. Ellen Rautenberg |
| Mr. Michael Fassler | Mr. Peter Robinson |
| Ms. Kim Fine | Dr. Theodore Strange |
| Dr. Carla Boutin-Foster | Dr. Patsy Yang |

DEPARTMENT OF HEALTH STAFF PRESENT

Mr. Charles Abel
Mr. Udo Ammon
Ms. Karen Madden
Ms. Anna Colello
Mr. JP O’Hare
Mr. Alex Damiani
Mr. Jeong Oh
Ms. Barbara DelCogliano
Mr. Justin Pfeiffer
Mr. Christopher Delker
Ms. Sylvia Pirani
Mr. James Dering
Ms. Linda Rush
Ms. Alejandra Diaz
Mr. Michael Ryan
Ms. Sally Dreslin
Mr. Timothy Shay
Ms. Kathleen Ericsen
Mr. Daniel Sheppard
Mr. Kenneth Evans
Ms. Lisa Thomson
Mr. Mark Furnish
Ms. Lisa Ullman
Ms. Yvonne Lavoie
Mr. Justin Vinciguerra
Ms. Colleen Leonard
Mr. Richard Zahnleuter

INTRODUCTION

Mr. Kraut called the meeting to order and welcomed Council members, meeting participants and observers.

RESOLUTION OF APPRECIATION FOR MR. CHRISTOPHER DELKER

Mr. Kraut announced Mr. Delker’s upcoming retirement from state service and thanked him for his hard work through the years. Mr. Kraut read and presented a Resolution of Appreciation.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES
Mr. Kraut introduced Ms. Dreslin to the give the Department of Health Activities Report.

**Legionella**

Ms. Dreslin began her report to update the members on legionella in New York City. There has been an outbreak in the Bronx that has resulted in 97 cases including 8 deaths as of August 5, 2015. Since the trend was identified, Wadsworth Laboratories has been testing samples both environmental and human to support the City’s investigation. This is sophisticated testing that our Wadsworth Center excels at. The Department continues to see some more cases although the persistently hot and humid weather that promotes the bacterial growth is abating and in addition the identified contaminated cooling towers have been disinfected. The Department would like healthcare providers to consider legionella and conduct patient testing whenever they might suspect the disease. Legionella is a bacterial disease that can cause mild respiratory illness but it can also cause pneumonia and lead to death. So some symptoms include muscle aches, headache, tiredness, dry cough followed by a high fever, chills, and occasionally diarrhea. Legionella is more likely to affect the elderly and people who have compromised immune systems but important to note the disease does not spread from person to person. The Department will continue working with New York City and monitor the situation closely and updating as necessary.

**Medical Marijuana**

Ms. Dreslin spoke on the topic of medical marijuana. The Department has selected five organizations out of the 43 that applied to be issued registrations to manufacture and dispense medical marijuana. The selection of the five registered organizations is a major step forward in New York’s accelerated time table to implement the medical marijuana program by January 2016. New York is working to launch the program and begin providing care to patients faster than any other state has previously done. The five organizations are Bloomfield Industries, Columbia Care New York, Empire State Health Solutions, Attain, and Pharmacann. Each organization will manufacture in one location and operate four dispensing facilities across the State. In selecting the organizations, the Department made sure the proposed dispensaries were geographically dispersed in a way that will meet the needs of all certified patients. The Department will continue to monitor patient demand, in order to make sure that all patients who meet the requirements of the compassionate care act will indeed benefit from the program.

Ms. Dreslin noted that only certain forms of medical marijuana are permitted and all products will be tested for quality and consistency. The Department’s goal has always been to ensure that all New Yorkers have access to the best and safest treatments possible. This medical marijuana program meets that goal and by making this therapy available in the safest way possible we will hopefully alleviate suffering from many New Yorkers with debilitating diseases.
Synthetic Cannabinoids

Ms. Dreslin stated that in the month of July, Governor Cuomo initiated a push for stronger regulations to combat the sale of synthetic cannabinoids in New York. These dangerous man-made compounds have resulted in a dramatic increase in reports of emergency department visits and poison control center calls. During April 1 to June 30 New York State saw more than 1900 emergency department visits and more than 680 poison control center calls due to adverse health effects associated with synthetic cannabinoid use. This is more than a 10-fold increase over the same time period in 2014. It is alarming that of those people going to emergency departments more of them are going to critical care units. Nationally there have been 15 synthetic cannabinoid related deaths reported to poison control centers in the first five months of this year, but so far no deaths have occurred in New York State and we’re trying to keep it that way. That is why the Department is expanding the existing list of banned substances to include two more chemical compounds that drug producers have begun to make since 2012. The Governor Cuomo banned the sale of possession of dozens of synthetic cannabinoids and bath salts in 2012.

Naloxone

Ms. Dreslin advised that the Department is also working to avoid fatal opioid overdoses. There are now more than 220 registered overdose programs in the State. They are training individuals to respond appropriately to opioid overdose. In addition to calling 911, people can be trained to administer a naloxone. Naloxone is a medication that can reverse the deadly effects of heroin and other opioids. It works by temporarily blocking the effects of the opioid, whether illicit or prescription allowing the individual to regain consciousness and resume normal breathing. It poses no danger to anyone who otherwise might come into contact with it. More than 65,000 citizen responders have been trained so far, and nearly 1300 naloxone administrations have been reported to the Department. Another 500 additional administrations have been reported by law enforcement personnel who are also receiving training. The Department has joined forces with the New York State Division of Homeland Security and Emergency Services, and the New York State Office of Alcoholism and Substance Abuse Services to provide free naloxone training to fire departments as well across the State. Firefighters are often the first to arrive on the scene of a suspected opioid overdose and that is why it is critical that non-EMS fire departments and all emergency responders receive this training. After completing the training naloxone will be made available free of charge to participating fire departments. The training, a component of Governor Cuomo’s Combat Heroine and Prescription Drug Abuse Campaign is funded and administered by the Department of Health. The Department is also collaborating with other state agencies to train inmates who are about to be released, their family and friends as well as school nurses and school employees. Most people who are trained will have the option to receive a naloxone kit free of charge and taken together, these efforts will enhance the safety of New Yorkers who have succumbed to this terrible addiction.
Ms. Dreslin announced that in July, the Department joined the nation in celebrating the 50th anniversary of Medicaid and Medicare. In 1965 when President Lyndon Johnson signed into law these two pieces of legislation that have truly altered the face of healthcare in our country. The anniversary came just after Governor Cuomo’s announcement that New York’s Medicaid per person spending had fallen to a 13 year low over this past year. This significant decrease has saved billions of dollars for New York’s taxpayers and the drop in spending happened even as we added new beneficiaries to the Medicaid program. The credit goes to the reforms implemented in 2011 by the Medicaid Redesign Team, and the savings from the revamped program are now being reinvested through DSRIP into 25 performing provider systems. These networks which involve hospitals, private physicians, community service groups and more are all working to decrease avoidable hospital admissions and improve our State’s safety net system and the healthcare system at large.

Tick-Borne Diseases and Mosquito-Borne Diseases

Ms. Dreslin stated that summertime often means increased exposure to ticks and mosquitoes and Lyme is not our only tick-borne challenge in the warm weather. Every summer New York has about 1000 cases of other tick-borne diseases. All of this on top of nearly 7000 cases of Lyme each year, and at the same time we’re dealing with mosquito-borne diseases. This summer three counties, Onondaga, Oswego, and Madison have all identified West Nile Virus and EEE, which is Eastern Equine Encephalitis. Onondaga County has six pools test positive for EEE, Madison has had four pools and Oswego has had three. The State has approved the three counties to receive imminent threat to public health status which enables the State reimbursement formula to increase so that the county has more resources for combating these diseases. We are also seeing West Nile Virus around the State. There have been 35 positive pools this summer with 20 of those in Suffolk County on Long Island. The Department continues to be vigilant about these disease and work together with local health departments in combating.

Capital for a Day

Ms. Dreslin noted that this summer also marked the debut of Capital for a Day. Governor Cuomo launched this initiative in Rochester on July 9. Capital for a day was created to bring State government directly to the people it serves. The day-long event partners state officials with residents, local leaders and stakeholders to examine first hand the needs of the community. What grew out of this were several new initiatives to better connect New York Schools to local growers and producers across the State working with the Office of General Services, of Agriculture and Markets, the Department of Health is promoting the use of fresh healthy foods in school meals across the State while at the same time giving a boost to the State’s agricultural industry. The Department of Health also announced grants to 26 organizations statewide which will allow local organizations to combat obesity and other chronic diseases in high-need school districts and surrounding communities. The grant recipients will work with school districts and school retailers to improve access to nutritious food and increase opportunities for daily physical activity.
New York State’s Declining Smoking Rates

Ms. Dreslin announced good news that there is a decline in New York’s smoking levels which are now at their lowest rate in recorded history. The Department’s data shows that for the last four years the smoking rate among high school students has dropped 42 percent and now remains at 7.3 percent. Meanwhile the adult smoking rate has dropped to 14.5 percent and remains below the national average which is 17.8 percent. Attributed to these drastic reductions is the State’s wide-ranging tobacco control efforts which includes the prevention agenda and comprehensive cancer control program. These programs focus on the use of evidence-based strategies to encourage people to stop smoking as well as aggressive public awareness campaigns. The State also promotes policies that make tobacco less accessible to youth. This includes the State’s Adolescent Tobacco Use Prevention Act (ATUPA), which combats illegal sales to minors through sting operations across the State.

Health Exchange Market Place

Ms. Dreslin next advised that there was also some good news about the health exchange market place, the New York State of Health. The report was released recently and as of February 28, 2015, more than 2.1 million people have enrolled in health insurance coverage through the New York State of Health. This represents more than a two-fold increase from the first open enrollment period where we enrolled more than 960,000 people. 89 percent of the people who had enrolled said that they had previously been uninsured. By providing more New Yorkers with affordable health insurance coverage we are giving them greater access to healthcare that bodes well for the health of all New Yorkers.

Mr. Dreslin concluded her report. Mr. Kraut thanked her and inquired if members had questions or comments. To see the complete report and comments from members, please see pages 6 through 18 of the attached transcript.

Report of the Office of Primary Care and Health Systems Management Activities

Next, Mr. Kraut introduced Mr. Sheppard to give her report on the Activities of the Office of Primary Care and Health Systems Management.

Mr. Sheppard noted that the Department looks forward to working with PHHPC over the next months and years on updating and modernizing our regulations to better align with an evolving healthcare delivery system, the Department is working to find some paths within the current framework to accommodate requests from the industry who, clearly the pace of change is rapid and we get almost on a daily basis increasingly innovative complex, certificate of need and other proposals that require our most excellent staff’s attention.

Mr. Sheppard stated that the Department is looking at how to facilitate the opening of small clinics within homeless shelters and other non-traditional community-based settings to increase access to primary care and healthcare services, very often for some of our most fragile citizens. This effort involves working with our policy people, our planning and licensure folks, most particularly the Department’s architecture bureau in trying to navigate within the regulations both state and federal that we have to operate within trying to find paths that with patient safety first and foremost we can move primary care as rapidly as possible into
Mr. Sheppard spoke on the topic of trauma center verification. The work by Lee Burns and her staff is critical, and they are real professionals. A big recent accomplishment that I want to acknowledge is that the following facilities have been successfully verified as trauma centers: North Shore University was verified as a level one adult trauma center; South Side Hospital, a level two adult trauma center; Westchester Medical Center, a level one adult and pediatric trauma center; Upstate University Hospital, a level one adult and pediatric center; Erie County Medical Center, level one adult; and Strong Memorial Hospital, level one adult. There are going to be five additional hospital centers set to have their verification visits in 2015. There are two more centers scheduled for visits in March 2016. Additionally, there are four new trauma centers who were provisionally designated, New York Methodist Hospital, Orange Regional Medical Center, St. Luke’s Cornwall and Canton-Potsdam Hospital and approximately 15 community hospitals have expressed interest in level four designation and there are a handful more that have expressed interest in level three designation.

Mr. Sheppard closed his report by acknowledging Mr. Delker’s contributions and publically thanked him for his guidance. To read the complete report please see pages 19 through 24 of the attached transcript.
Mr. Kraut asked for a motion to approve the June 11, 2015 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval, Dr. Gutérrrez seconded the motion. The minutes were unanimously adopted. Please refer to page 24 of the attached transcript.

**Report of the Office of Public Health Activities**

Mr. Kraut introduced Ms. Pirani to give the report of the activities of the Office of Public Health.

Ms. Pirani began her report by giving an update on the Prevention Agenda which was discussed at the most recent Public Health Committee meeting where we reported on the fact that we have met 16 of the 96 outcome objectives in the Prevention Agenda and substantial progress has been made on an additional 22 indicators. We discussed our ongoing efforts to help coordinate local prevention agenda efforts with activities and hospitals have underway related to DSRIP and community benefit. We talked about getting ready for the next three year planning cycle which will launch this fall and our next ad-hoc committee meeting is September 24. We also talked about focusing some attention on health disparities and when the Office of Minority Health Disparities report will be issued later this year.

Ms. Pirani noted that the Department has received two competitive grants. One is a multiyear grant awarded by the CDC to enhance our food safety efforts and improve response to outbreaks of foodborne illness. This is $260,000 for the first year and for about at least five years of funding and New York is one of only six states to receive such funding. Foodborne illness affects tens of millions of people and kills thousands in the United States each year resulting in billions of dollars in healthcare related costs and this grant is to establish a center of excellence in New York State. The Department is going to partner with Cornell University and focus attention on strengthening surveillance systems and outbreak investigations, improving the timeliness, completeness and effectiveness of our surveillance and outbreak response activities, establish training of local and state public health personnel, and insure active participation by state and local health departments. This is a regional award so it’s HHS regions 1, 2, and 3. So will actively involve all of them, and it’s really a quality improvement effort which really supports our accreditation efforts.

Ms. Pirani spoke about the second award granted to New York which is one of nine states selected for funding under the Paul Coverdale National Acute Stroke program, a new five-year CDC cooperative agreement. $750,000 in year one. The Department is going to facilitate regional pilots to encourage the development of integrated stroke systems of care across health systems including EMS, hospitals, and post-discharge care organizations. We’re going to link data collected through SPARCS and vital statistics with data on processes of acute stroke care reported as part of the stroke designation program to inform the development of statewide measures to measure outcomes and guide and track improvements in stroke systems of care. This is an important initiative that also represents collaboration between the Office of Public Health and the Office of Quality and Patient Safety.
Ms. Pirani concluded his report. Mr. Kraut thanked Ms. Pirani for her report. To read Ms. Pirani’s complete report please see pages 24 through 26 of the attached transcript.

PUBLIC HEALTH SERVICES

Mr. Kraut introduced Dr. Boufford to give the Council an update on the work of the Public Health Committee.

Dr. Boufford began her report that stating the collaboration at county level between hospitals among hospitals and local health departments and other stakeholders that can be very valuable going forward and achieving prevention goals around the state that hopefully will be reinforced through the advanced primary care work as well as the DSRIP domain for component.

Dr. Boufford spoke on the topic of the maternal mortality work. The Public Health Committee selected one particular sort of health problem that we wanted to try to as we called it move the needle on in addition to our oversight of the prevention agenda work and during the sort of late 2013 and 2014 we worked closely with the Department. Dr. Boufford commended Rachel Delong, Marilyn Casica, Dr. Gus Birkhead, and Sylvia Pirani who at the first couple of meetings really gave us terrific briefings on the status of maternal mortality for the State of New York. New York has the dubious distinction of being 47 out of 50 states in terms of maternal mortality and the racial disparities are 3:1 for African American women dying in childbirth and 7:1 in the City of New York. So this is significant public health problem even though the numbers are quite small relative to some of the other epidemics that appropriately attract a lot of attention. The Committee decided to try to keep attention on it so that we can take action. We also had a very nice review of all of the very robust activities that are going on in the Department to address maternal mortality and the Committee identified that much of the focus has been on hospital-based management of acute crises and lifesaving activities as well as chart review to develop clinical guidelines to improve management of those crises but there had been relatively less focus on what we might call preconception or interconception care before the hospital based delivery and then between birth, between pregnancies and to some degree after birth so we decided to focus our efforts there, and did some looking at the evidence which shows that one of the most important risk avoidance strategies in maternal mortality is prevention of unplanned pregnancy especially in women of 35 or over 40. And so that lead us into thinking about the issue of reproductive health in relation to the primary care enterprise and similarly the early identification of pregnant, of women who are pregnant who may become high risk.

Dr. Boufford stated the Committee is reviewing the increasing incidence of chronic diseases like diabetes, heart disease, related obesity in younger women which means that pregnancy may or may not be the very simple straight-forward, hopefully simple and straight-forward activity. So it means that early referral and referral availability for specialty care and OBGYN is very important. The Committee is looking at the elements of the State Healthcare Reform in which we might integrate higher level attention to maternal mortality and reproductive health and so we’ve had great cooperation from colleagues working on the advanced primary care models as well as in the SHIP and SIM and the health home and healthcare insurance groups. Dr. Boufford commended Rachel Delong who has put a lot of time and energy into talking with colleagues and colleagues have been quite responsive.
Dr. Boufford spoke on the topic of health home, and noted thanked Dr. Gesten and his colleagues for their information. Health home members are women with multiple chronic diagnoses and/or all people with multiple chronic diagnoses and mental health problems, 55 percent of these are women, 35 percent of these women are in reproductive age, and we identified 10 percent of them gave birth during the last year in the health homes. This raises questions about the priority of attention to reproductive health and the context of the health home as well as looking at costs that might be mitigated by early intervention and early referral systems that are more robust and the health department has offered to work with care coordinators in the health home for training. There was also an issue raised about gaps in health insurance coverage potentially that might put women at risk for access to care after they are no longer pregnant until they can be reenrolled, there may be some slight delays, generally speaking there are not any significant flaws in the insurance coverage issues that are being advanced through the healthcare reforms.

Dr. Boufford explained the Committee is very excited about collaboration among many players who have been very committed to improving the issue of maternal mortality in the State but have not had the mechanism or the vehicle. The Public Health Committee and the work of this Council and being able to bring this issue forward has created some new potential for partnerships with the State with New York State ACOG, with Greater New York and HANYs as well as the City of New York.

Dr. Boufford also noted that the Committee discussed the distressing lack of any state investment in the public health side of our work in the Prevention Agenda and the 50 percent reduction in the PHP budget are all elements that reflect a very imbalanced investment strategy for the healthcare reform in New York State and the Committee is hoping that that can be addressed over future weeks and months.

Dr. Boufford concluded her report and Mr. Kraut inquired if Members had comments. To view the complete report, please see pages 26 through 33 of the attached transcript.

HEALTH POLICY

Mr. Kraut moved to the next topic, Health Policy and introduced Mr. Robinson to give the report on the activities of the Health Planning Committee.

Mr. Robinson noted for the record that he has a conflict of interest on the request for a Stroke Center Designation application for Jones Memorial Hospital. Mr. Robinson exited the meeting room. Mr. Kraut described the application.

Mr. Kraut made a motion to approve the request. Dr. Gutiérrez seconded the request. The motion to approve the stroke center designation for Jones Memorial Hospital passed with Mr. Robinson’s recusal.

To view the complete report, please see pages 33 and 34 of the attached transcript.
REGULATION

Mr. Kraut introduced Dr. Gutierrez to give his Report of the Committee on Codes, Regulations and Legislation.

Report of the Committee on Codes, Regulation and Legislation

For Emergency Adoption

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

Dr. Gutiérrez introduced for emergency adoption 13-08 Amendment of Subpart 7-2 of Title 10 NYCRR (Children’s Camps). Dr. Gutiérrez motioned to adopt and Dr. Berliner seconded the motion. The motion failed with 2 abstentions, and one member opposing. There was a second motion for emergency adoption which failed with 3 abstentions and one nay. A third motion was made by Mr. Robinson to table the adoption. Dr. Berliner seconded the motion. The motion to table carried with no abstentions. Please see pages 34 through 50 for the Members discussion.

15-12 Amendment of Section 9.1 of Title 10 NYCRR (Prohibit Additional Synthetic Cannabinoids)

Dr. Gutiérrez next introduced 15-12 Amendment of Section 9.1 of Title 10 NYCRR (Prohibit Additional Synthetic Cannabinoids) for emergency adoption. Dr. Gutiérrez motioned for emergency adoption which was seconded by Dr. Brown. The motion carried. Please see pages 50 and 51 of the attached transcript.

For Adoption

12-23 Amendment of Section 16.25 and Addition of Section 16.59 of Title 10 NYCRR (Computed Tomography (CT) Quality Assurance)

Next, Dr. Gutiérrez described 12-23 Amendment of Section 16.25 and Addition of Section 16.59 of Title 10 NYCRR (Computed Tomography (CT) Quality Assurance) and motioned for adoption. Dr. Berliner seconded the motion. The motion carried with an abstention from Dr. Martin. Please see pages 51 and 52 of the attached transcript.

For Information

14-13 Amendment of Parts 58 and 34 of title 10 NYCRR (Patient Access of Laboratory Test Results)

12-02 Amendment of Part 757 of Title 10 NYCRR (Chronic Renal Dialysis Services)

Dr. Gutiérrez described For Information Section 14-13 Amendment of Parts 58 and 34 of title 10 NYCRR (Patient Access of Laboratory Test Results) and 12-02 Amendment of Part 757 of Title 10 NYCRR (Chronic Renal Dialysis Services). Please see pages 52 through 62 of the attached transcript to view the Members comments.

Dr. Gutierrez concluded his report. Mr. Kraut thanked him and moved to the next item on the agenda introducing Dr. Kalkut to give the Report of the Project Review Recommendations and Establishment Actions.
PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

- PHHPC Member Recusals
- Without Dissent by HSA
- Without Dissent by Establishment and Project Review Committee

Ambulatory Surgery Center - Construction  
Exhibit #5

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<th>Number</th>
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<tr>
<td>1. 151107 C</td>
<td>New York Presbyterian Hospital – Columbia Presbyterian Center (New York County)</td>
<td>Contingent Approval</td>
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<td></td>
<td>Dr. Boutin-Foster - Recusal</td>
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<td>Dr. Brown – Recusal</td>
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Dr. Kalkut introduced application 151107 and noted for the record that Dr. Boutin-Foster has a conflict and has exited the meeting room. Dr. Kalkut motioned for approval which was seconded by Dr. Berliner. The motion to approve carried with one recusal. Dr. Boutin-Foster returned to the meeting room. Please see pages 62 through 65 of the attached transcript.

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<td>2. 151178 C</td>
<td>Nicholas H Noyes Memorial Hospital (Livingston County)</td>
<td>Contingent Approval</td>
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<td></td>
<td>Ms. Hines – Recusal (not present at meeting)</td>
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<td>Mr. Robinson - Recusal</td>
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Dr. Kalkut described application 151178 and noted for the record that Mr. Robinson is recusing and left the meeting room. Dr. Kalkut motioned for approval, Mr. Fassler seconded the motion. The motion carried with Mr. Robinson’s recusal. Mr. Robinson returned to the meeting room. Please see pages 65 and 66 of the attached transcript.

Diagnostic and Treatment Center - Construction  
Exhibit #6

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<td>1. 151121 C</td>
<td>East Side Endoscopy (New York County)</td>
<td>Contingent Approval</td>
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<td>Dr. Martin - Interest</td>
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Dr. Kalkut called application 151121 and noted Dr. Martin’s interest. Dr. Kalkut motioned for approval which was seconded by Mr. Fassler. The motion to approve carried. Please see page 66 and 67 of the transcript.
CATEGORY 3: Applications Recommended for Approval with the Following:

- No PHHPC Member Recusals
- Establishment and Project Review Committee Dissent, or
- Contrary Recommendations by HSA

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

- PHHPC Member Recusals
- Establishment and Project Review Committee Dissent, or
- Contrary Recommendation by HSA

NO APPLICATIONS

CATEGORY 5: Applications Recommended for Disapproval by OHSM or Establishment and Project Review Committee - with or without Recusals

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

- PHHPC Member Recusals
- Without Dissent by HSA
- Without Dissent by Establishment and Project Review Committee

Acute Care Services– Establish/Construct

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<td>1. 151205 E</td>
<td>Peconic Bay Medical Center (Suffolk County) Mr. Kraut – Recusal</td>
<td>Contingent Approval</td>
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<tr>
<td>3. 151221 E</td>
<td>Southampton Hospital (Suffolk County) Mr. Kraut – Recusal</td>
<td>Contingent Approval</td>
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4. 151247 E Eastern Long Island Hospital (Suffolk County) Contingent Approval
   Mr. Kraut – Recusal

Dr. Kalkut called applications 151205, 151221, and 151247 and noted for the record that
Mr. Kraut has a conflict and has left the meeting room. Dr. Kalkut motioned for approval,
Dr. Berliner seconded the motion. The motion to approval carried with Mr. Kraut’s
recusals. Please see pages 68 and 69 of the attached transcript.

**Acute Care Services– Establish/Construct**

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<td>2. 151217 E</td>
<td>North Shore LIJ Healthcare, Inc. (Nassau County)</td>
<td>Contingent Approval</td>
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<td>Mr. Kraut – Recusal</td>
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Mr. Kraut remained outside the meeting room. Dr. Kalkut called application 151217 and
motioned for approval, Mr. Fassler seconded the motion. The motion passed with
Mr. Kraut’s noted recusal. Mr. Kraut returned to the meeting. Please see page 69 of the
transcript.

**CATEGORY 3:** Applications Recommended for Approval with the Following:

- No PHHPC Member Recusals
- Establishment and Project Review Committee Dissent, or
- Contrary Recommendations by or HSA

**Dialysis Services– Establish/Construct**

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<td>1. 151169 E</td>
<td>Westchester Center for Renal Care (Westchester County)</td>
<td>Contingent Approval</td>
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Dr. Kalkut introduced application 151169 and motioned for approval. Dr. Berliner
seconded the motion. The motion to approve carried. Please see page 70 of the transcript.

**CATEGORY 2:** Applications Recommended for Approval with the Following:

- PHHPC Member Recusals
- Without Dissent by HSA
- Without Dissent by Establishment and Project Review Committee

**Diagnostic and Treatment Center– Establish/Construct**

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<td>1. 151166 B</td>
<td>The Birthing Center of NY (Kings County)</td>
<td>Contingent Approval</td>
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<td>Dr. Kalkut - Interest</td>
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Dr. Kalkut called application 151166 and motioned for approval. The motion was seconded by Dr. Gutiérrez. The motion to approve passed. Please see pages 70 through 73 of the attached transcript.

Residential Health Care Facilities– Establish/Construct

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<tbody>
<tr>
<td>1. 142278 E</td>
<td>Nesconset ZJ 1 LLC d/b/a Nesconset Center for Nursing and Rehabilitation (Suffolk County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td></td>
<td>Ms. Carver-Cheney - Recusal</td>
<td></td>
</tr>
</tbody>
</table>

Dr. Kalkut introduced application 142278 and noted for the record that Ms. Carver-Cheney has a conflict and has left the meeting room. Mr. Kalkut motioned for approval, Dr. Berliner seconded the motion. The motion to approve passed with Ms. Carver-Cheney’s recusal. See pages 73 and 74 of the attached transcript.

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. 142279 E</td>
<td>Huntington Acquisition 1, LLC d/b/a Hilaire Rehab &amp; Nursing (Suffolk County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td></td>
<td>Ms. Carver-Cheney - Recusal</td>
<td></td>
</tr>
</tbody>
</table>

Dr. Kalkut noted Ms. Carver-Cheney has a conflict on application 142279 and noted that she has left the meeting room. Dr. Kalkut motioned for approval, Dr. Berliner seconded the motion. The motion carried with Ms. Carver-Cheney’s recusal. Ms. Carver-Cheney remained outside the meeting room. Please see page 74 of the attached transcript.

**CATEGORY 4:** Applications Recommended for Approval with the Following:

- PHHPC Member Recusals
- Establishment an Project Review Committee Dissent, or Contrary Recommendation by HSA

**HOME HEALTH AGENCY LICENSURES**

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>2313L</td>
<td>AHS Criticare, LLC (Bronx, Kings, Nassau, New York, Queens and Richmond Counties)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td></td>
<td>Ms. Carver-Cheney – Recusal</td>
<td></td>
</tr>
</tbody>
</table>

Dr. Kalkut moved to Category 4 and introduced application 2313-L and noted for the record that Ms. Carver-Cheney has a conflict and is not present in the meeting room. Dr. Kalkut motioned for approval, Dr. Berliner seconded the motion. The motion carried with Ms. Carver-Cheney’s recusal. Please see page 75 of the attached transcript.
**CATEGORY 5:** Applications Recommended for Disapproval by OHSM or Establishment and Project Review Committee - with or without Recusals

**NO APPLICATIONS**

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**CON Applications**

**Acute Care Services – Establish/Construct**

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 142211 B</td>
<td>Sympaticare, LLC d/b/a Summit Park Hospital (Rockland County) Ms. Carver-Cheney – Recusal</td>
<td>Dr. Kalkut moved to application 142211 and noted that Ms. Carver-Cheney has a conflict and has remained outside the meeting room. Dr. Kalkut motioned for approval, Dr. Berliner seconded the motion. The motion approve carried with Ms. Carver-Cheney’s recusal. Please see pages 75 and 76 of the attached transcript.</td>
</tr>
</tbody>
</table>

**Residential Health Care Facility – Establish/Construct**

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 141223 B</td>
<td>Sympaticare, LLC d/b/a Summit Park Nursing Care Center (Rockland County) Ms. Carver-Cheney – Recusal</td>
<td>Dr. Kalkut called application 141223 and noted for the record that Ms. Carver-Cheney has a conflict has remained outside the meeting room. Dr. Kalkut motioned for approval, Dr. Gutiérrez seconded the motion. The motion to approve carried with Ms. Carver-Cheney’s recusal. Ms. Carver-Cheney returned to the meeting room. Please see page 76 of the attached transcript.</td>
</tr>
</tbody>
</table>

**A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES**

**CATEGORY 1:** Applications Recommended for Approval – No Issues or Recusals, Abstentions/Interests
### CON Applications

#### Acute Care Services - Construction

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 151162 C</td>
<td>University Hospital SUNY Health Science Center (Onondaga County)</td>
<td>Approval</td>
</tr>
</tbody>
</table>

Dr. Kalkut moved Category 1 and called application 151162 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion carried. Please refer to page 77 of the transcript.

#### B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

**CATEGORY 1:** Applications Recommended for Approval – No Issues or Recusals, Abstentions/Interests

### CON Applications

#### Diagnostic and Treatment Centers – Establish/Construct

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 132131 B</td>
<td>SMC Manhattan Center (New York County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2. 142069 B</td>
<td>Bethany Village Primary Care Network, Inc. (Chemung County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>3. 142222 B</td>
<td>Healthquest Health Center, LLC (New York County)</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

#### Residential Health Care Facilities – Establish/Construct

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 151014 E</td>
<td>PRNC Operating, LLC d/b/a Plattsburgh Rehabilitation and Nursing Center (Clinton County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2. 151085 E</td>
<td>AURNC Operating, LLC d/b/a Auburn Rehabilitation &amp; Nursing Center (Cayuga County)</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>
3. 151087 E BVRNC Operating, LLC d/b/a Blossom View Rehabilitation & Nursing Center (Wayne County)  
4. 151182 E 1 Bethesda Drive Operating Company, LLC d/b/a Elderwood at Hornell (Steuben County)  
5. 151191 E West Ledge Op, LLC d/b/a Pinnacle Center for Rehabilitation on the Hudson (Westchester County)  

Certified Home Health Agencies– Establish/Construct  

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 151118 E</td>
<td>Willcare (Orange County)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>2. 151119 E</td>
<td>Willcare (Erie County)</td>
<td>Contingent Approval</td>
</tr>
</tbody>
</table>

Dr. Kalkut called applications 132131, 142069, 142222, 151014, 151085, 151087, 151182, 151191, 151118 and 151119 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 78 through 81 of the attached transcript.

 CATEGORY 3:  

Applications Recommended for Approval with the Following:

- No PHHPC Member Recusals
- Establishment and Project Review Committee Dissent, or
- Contrary Recommendations by or HSA

HOME HEALTH AGENCY LICENSURES  

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968 L</td>
<td>Finecare Homecare, Inc. (New York, Kings, Queens and Bronx Counties)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>1972 L</td>
<td>Beth Israel Homecare Inc., d/b/a American Homecare in NY (New York, Kings, Queens, Bronx, Richmond and Nassau Counties)</td>
<td>Contingent Approval</td>
</tr>
<tr>
<td>License No.</td>
<td>Company Name</td>
<td>Counties</td>
</tr>
<tr>
<td>------------</td>
<td>---------------------------------------------------</td>
<td>---------------------------------------------------</td>
</tr>
<tr>
<td>2217 L</td>
<td>Savi’s Homecare Services, Inc.</td>
<td>Bronx, Kings, Queens, Richmond, New York and Westchester Counties</td>
</tr>
<tr>
<td>2251 L</td>
<td>Samaritan Services, Inc.</td>
<td>Kings, Queens, Bronx, Richmond, New York and Westchester Counties</td>
</tr>
<tr>
<td>2258 L</td>
<td>Epic Home Care, LLC</td>
<td>Westchester, Putnam, Rockland, Sullivan, Dutchess, Ulster and Orange Counties</td>
</tr>
<tr>
<td>2265 L</td>
<td>Curatio Health Care Systems, LLC d/b/a Curatio Home Care Services</td>
<td>Bronx, Kings, Queens, Richmond, New York and Westchester Counties</td>
</tr>
<tr>
<td>2273 L</td>
<td>Caresense Health, LLC</td>
<td>Kings, Queens, New York, Bronx and Nassau Counties</td>
</tr>
<tr>
<td>2298 L</td>
<td>Brarr Inc. d/b/a Home Helpers &amp; Direct Link of Staten Island 58669</td>
<td>Richmond County</td>
</tr>
<tr>
<td>2376 L</td>
<td>Warm Touch Home Care, LLC</td>
<td>Queens, Kings, Bronx, New York, Richmond and Nassau Counties</td>
</tr>
<tr>
<td>2382 L</td>
<td>Amazing Grace Home Care Solutions, LLC</td>
<td>Albany, Schenectady and Rensselaer Counties</td>
</tr>
<tr>
<td>2386 L</td>
<td>Reliable Home Care Service Corp.</td>
<td>Bronx, Kings, Queens, Richmond and New York Counties</td>
</tr>
<tr>
<td>License</td>
<td>Business Name</td>
<td>Counties</td>
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<td>---------</td>
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<td>-----------------------------------------------</td>
</tr>
<tr>
<td>2390 L</td>
<td>Long Island Licensed Home Health Care Agency, LLC (Queens County)</td>
<td></td>
</tr>
<tr>
<td>2398 L</td>
<td>Mason &amp; Bugayeva Home Care Services, Inc. (Kings, Bronx, Queens and New York Counties)</td>
<td></td>
</tr>
<tr>
<td>2408 L</td>
<td>Inspired Inhouse Health Care, Inc. (Queens, Bronx, Kings, Richmond, New York and Nassau Counties)</td>
<td></td>
</tr>
<tr>
<td>2420 L</td>
<td>Care for Seniors, LLC d/b/a Home Instead Senior Care (Richmond, Kings and New York Counties)</td>
<td></td>
</tr>
<tr>
<td>2421 L</td>
<td>Accolade Care, Inc. (New York, Kings, Queens, Bronx and Richmond Counties)</td>
<td></td>
</tr>
<tr>
<td>2422 L</td>
<td>JJ Wells Company, LLC d/b/a Nurse Next Door Manhattan (New York County)</td>
<td></td>
</tr>
<tr>
<td>2426 L</td>
<td>Bantam Enterprises, Inc. d/b/a Right at Home (Westchester, Rockland, Orange, Putnam, Sullivan, Ulster, Dutchess, Nassau, Suffolk and Bronx Counties)</td>
<td></td>
</tr>
<tr>
<td>2428 L</td>
<td>Golden Promises Home Care LLC (Westchester, Rockland, Orange, Putnam, Sullivan, Ulster, Dutchess, Nassau, Suffolk and Greene Counties)</td>
<td></td>
</tr>
<tr>
<td>2431 L</td>
<td>KB HomeCare, Inc. d/b/a Visiting Angels (Westchester and Putnam Counties)</td>
<td></td>
</tr>
<tr>
<td>License No.</td>
<td>Agency Name</td>
<td>Counties</td>
</tr>
<tr>
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</tr>
<tr>
<td>2439 L</td>
<td>Thelus Specialty Care Agency, LLC</td>
<td>(Suffolk, Nassau, Westchester, Rockland and Queens Counties)</td>
</tr>
<tr>
<td>2453 L</td>
<td>Caring Connections, LLC</td>
<td>(Rockland County)</td>
</tr>
<tr>
<td>2470 L</td>
<td>Centercare Home Care Agency, LLC</td>
<td>(Queens, New York, Bronx, Kings, Richmond and Nassau Counties)</td>
</tr>
<tr>
<td>2476 L</td>
<td>Infinite Care, Inc.</td>
<td>(Kings, Queens, Richmond, New York, Bronx and Nassau Counties)</td>
</tr>
<tr>
<td>2486 L</td>
<td>Jefferson’s Ferry Home Care, Inc.</td>
<td>(Suffolk and Nassau Counties)</td>
</tr>
<tr>
<td>2648 L</td>
<td>Columbia County Department of Health</td>
<td>(Columbia County)</td>
</tr>
<tr>
<td>2598L</td>
<td>Wavecrest HFA, Inc. d/b/a Wavecrest Home Care</td>
<td>(Queens County)</td>
</tr>
<tr>
<td>2599L</td>
<td>Parkview HFA, Inc. d/b/a Parkview Home Care</td>
<td>(Bronx County)</td>
</tr>
<tr>
<td>2286L</td>
<td>Attentive Home Care Agency, Inc. d/b/a Always Home Care</td>
<td>(Bronx, Kings, Nassau, New York, Richmond and Queens Counties)</td>
</tr>
</tbody>
</table>
2315L Universal Health Care, LLC d/b/a At Your Side Home Care Services (Bronx, Kings, New York, Queens, Richmond and Nassau Counties) Contingent Approval

2373L Platinum Home Health Care, Inc. (Nassau, Bronx, Kings, New York, Queens and Richmond Counties) Contingent Approval

2506L Effective Home Care, L.L.C. (Bronx, Kings, New York, Queens, Richmond and Westchester Counties) Contingent Approval

2530L Angel Care, Inc. (Bronx, Kings, New York, Queens, Richmond and Nassau Counties) Contingent Approval

2567L HCS Home Care of Westchester, Inc. d/b/a A&J Home Care (Putnam and Westchester Counties) Contingent Approval

2616L Willcare, Inc. d/b/a Willcare (See exhibit for list of Counties served) Contingent Approval

2617L Litson Health Care, Inc. d/b/a Willcare (See exhibit for list of Counties served) Contingent Approval

2288L Morningside Acquisition III, LLC d/b/a Morningside at Home (Bronx County) Contingent Approval

Dr. Kalkut moved to Category 3 and called applications 1968, 1972, 2217, 2251, 2258, 2265, 2273, 2298, 2376, 2382, 2386, 2390, 2398, 2408, 2420, 2421, 2422, 2426, 2428, 2431, 2439, 2453, 2470, 2476, 2486, 2648, 2598, 2599, 2613, 2286, 2315, 2373, 2506, 2530, 2567, 2616, 2617, and 2288 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion carried. Please see pages 81 and 82 of the transcript.
CATEGORİY 6: Applications for Individual Consideration/Discussion

CON Applications

Ambulatory Surgery Centers – Establish/Construct

<table>
<thead>
<tr>
<th>Number</th>
<th>Applicant/Facility</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>151186 B Premier Ambulatory Services Development Company, LLC d/b/a Premier Ambulatory Surgery Center (Erie County)</td>
<td>Deferred</td>
</tr>
</tbody>
</table>

Dr. Kalkut moved to Category 6 and called application 151186 and motioned for a deferral. Dr. Gutiérrez seconded the motion. The motion to defer passed. Please see pages 82 and 83 of the attached transcript.

Certificate of Amendment of the Certificate of Incorporation

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Council Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certificate of Amendment of the Certificate of Incorporation of The Capital Region Geriatric Center, Inc.</td>
<td>Approval</td>
</tr>
</tbody>
</table>

Dr. Kalkut introduced the Certificate of Amendment of the Certificate of Incorporation of The Capital Region Geriatric Center, Inc. for consent to file and motioned for approval. Dr. Berliner seconded the motion. The motion passed. Please see page 83 of the attached transcript.

AD HOC COMMITTEE ON FREESTANDING AMBULATORY SURGERY CENTERS AND CHARITY CARE

Mr. Kraut moved to the next item on the agenda and introduced Mr. Robinson to give a report on the activities of the Ad Hoc Committee on Freestanding Ambulatory Surgery Centers and Charity Care.

Mr. Robinson began his report by thanking Mr. Delker for his work on the Committee and asked Mr. Delker to present the recommendations to the Council.

Mr. Delker stated that the report addresses the issue of ASCs and charity care in serving the underserved in response to the Council on the Department’s noticing that in the initial years of limited life approval many of the ambulatory surgery centers were not reaching the charity care goals particularly. The Committee was convened back in September to examine the reasons. Over the course of four meetings there was much discussion both operators of ASCs and advocates for the underserved regarding the difficulties and successes that are entailed in trying to bring ambulatory surgery services to the underserved. The Committee also heard from the industry, from the New York State Association of Ambulatory Surgery Centers and they are very supportive of reaching out to underserved populations, and including for Medicaid and charity...
care and others who expressed the concern that it is standard practice among their members to try to enroll uninsured clients into Medicaid if they are found to be eligible. So when a client presents or is referred, they do make an effort to do that and they did not, and also they will if the client is not eligible at the time of service, they often become eligible following service due to the cost incurred liability incurred by undergoing the procedure. The association did not want to point loss that they are disposed to serve the uninsured and to enroll them in Medicaid and they did not want this, the resulting declining numbers in uninsured to paradoxically indicate that they may not be supportive. Their initiative to enroll the uninsured in Medicaid wherever possible that that might somewhat seem to contradict their efforts to serve the uninsured by showing up as actually paid clients under Medicaid, that point is in the final report.

Mr. Delker also stated that the Committee heard on this latest draft from the New York City Department of Health who has been very supportive of this effort and is working with the American Cancer Society to bring uninsured clients into endoscopy screening, and also heard from several providers that are collaborating in this effort. NYC pointed out that in the paper the Committee suggested that the applicants ASCs document contacts with FQHCs or other entities that might serve as referrals for the uninsured, they wanted the recommendation to be a little more specific about contacts so the report reflects the added information to the effect that with specific examples of meetings, conference calls, letters, and other active measurable indicators that would show that.

Mr. Delker also explained that the Committee recognized in the discussions that with the increasing and Medicaid enrollment and the increased enrollment under the Affordable Care Act, the number of uninsured is declining and some of the Committee members were concerned that our earlier discussions and draft might have left the impression that it was OK to just go after Medicaid and bad debt and consider that the obligation. The report has added language at the end of this current draft to the effect that these things are good developments, but they should not be seen as substitutes altogether for charity care, and that all ASCs should still be expected to show a sustained good faith effort to reach charity care clients.

Mr. Delker stated that building on what Ms. Dreslin said earlier in the morning and describing the report from New York State of Health last week, which showed that some 2 million New Yorkers have enrolled through the exchange through the end of the second enrollment period representing 89 percent of them were uninsured at the time of enrollment. According to U.S. census data there were 2.1 million New Yorkers uninsured in 2013 before the implementation of the Affordable Care Act, so the amount of uninsured is coming close to the total number of uninsured who enrolled is coming close to the total number of uninsured. There is still always going to be uninsured people out there and ASC should be expected to serve them. The operators have stated that it is getting harder and harder to find uninsured and charity care clients which reinforces the Committee’s decision not to put an actual percentage of uninsured or charity care in the guidelines in the paper. It just has to be borne in mind that each ASC has to be evaluated according to its own circumstances and service area and the type of services that are being proposed. We have to be ever mindful of the context in evaluating these applicants of the changing insurance situation, broader coverage, growth of Medicaid managed care, and the way the whole landscape of healthcare is changing underneath our feet through DSRIP and PPSs and other activities.
Mr. Delker concluded by stating that report provides guidance to the Council, to the Department and to ASC operators and applicants about what is expected and at the same time acknowledges that this is occurring in a changing healthcare environment.

After further discussion Mr. Robinson motioned to adopt the Ad Hoc Committee on Freestanding Ambulatory Surgery Centers and Charity Care Recommendations. Dr. Berliner seconded the motion. The motion passed.

Mr. Robinson concluded his report. To view the complete report and members questions, please see pages 84 through 94 of the attached transcript.

**ADJOURNMENT:**

Mr. Kraut adjourned the public portion of the Council meeting.
JEFF KRAUT: Good morning. I’d like to welcome everybody
to the August 6 meeting of the Public Health and Health Planning
Council. I’m Jeff Kraut the chair of the Council and I have the
privilege to call to order this meeting. I want to welcome
members of the Department staff, Ms. Dreslin, and participants
and observers. As I said previously, I gave you some kind of
groundrules here. We have three individuals I’d like to spend a
few minutes talking about before I ask for reports. First, many
of you are aware that Dr. Bhat has resigned from the council and
he was a dedicated member of the council, and on behalf of the
council, both Dr. Boufford and I have written a resolution of
appreciation, and I just want to read you, not the entire thing
but some part of it into the record to thank Dr. Bhat for his
years of service. He served from June 3, 2010 to November 30,
2010 on the Public Health Council and then on the merged council
from December of 2010 till May 26 of this year. And as a tenure
on the council he was dedicated, he served as chair of the
committee on health professional and interprofessional
relations, a member of the codes regulation and legislation
committee and he served on the ad-hoc committee on freestanding
am-surg centers and charity care, and he’s made significant
contributions to improving the health of New York State’s
residents, improving the delivery system for our citizens, and
we want to acknowledge his valuable service on the Council for
the past five years. In addition, in June we received the resignation of Dr. Grant. She resigned from the Council and she’s taken a new position in a new kind of phase of her life as Sr. Vice President for Chapter Programing to the Say Yes to Education. This is a national non-profit organization. In that capacity she’s going to be providing programing support to community-wide chapters in the upstate, New York City, Buffalo, and Syracuse as well to a smaller chapter that’s located in Harlem in the City and she has also been an equally dedicated member of the new council and we wish her well in her endeavors. She served from April to November of 2010 on the Public Health and Health Planning – on the State Hospital Review and Planning Council, the predecessor entity, and on May of 2011 to June of 2015 on the Public Health and Health Planning Council and she served on the Council as Vice-Chair of Health Planning, Vice Chair of the Health Personnel and Interpersonal Relations Committee and is a member of Establishment and Project Review, and together with Dr. Bhat we wish her well in their new ventures. We thank her for her years of service and the gratitude and we will be sending her a certificate of appreciation as well on behalf of the council.

And I want to talk about Chris Delker who is here today with us. Chris as you know or you may have heard if you haven’t seen the flyer, there after 36 years of State service and that
was not his only career – he’s done other things, but in healthcare Chris is retiring. We’re going to have an event to vest him and his years of service on October 6 and there’s a flyer out there. You should actually keep this flyer. It’s probably going to be a collector’s item because Chris is smiling in the picture and that – you know, he’s a serious guy, let’s admit it, but to have – that’s why it’s so fuzzy because there’s not too many pictures – I guess they grabbed that off of FaceBook, Chris. We had to photoshop it in, but you know, I could spend an hour talking about Chris. I’ve known him for I think a good part of his professional career, we’ve overlapped, he is going to be with us on the Committee day, on September 24, some of his last act, but we’re not going to be together as a Council to congratulate him. And we too have a certificate of appreciation. But Chris has served, that spanned the administration of five governors, bookended by Cuomos, and seven commissioners of health. There are only a handful of people in the Department today that have those legacies, and more importantly the historical perspective on the development of policy, and Chris is one of those go-to guys. Whenever we have a problem, and he will remind us that we had this problem 20 years ago, we’re still trying to solve it, he has displayed expertise in so many facets of healthcare delivery system and those of us will remember he managed and administered the Heal New York
program. He was intimately involved in the implementation of the Berger Commission mandates, he’s given us counsel since 1995, he probably was the godfather of a lot of the policies and updating, revising, certificate of need regulations, the bed need methodologies which we’re still doing. You can’t leave until we get the long term care one done. The cost thresholds.

He was there at the beginning of ambulatory surgery centers, provider networks, the whole span of trying to create a more contemporary framework for design and construction and operation of facilities. The industry owes you an enormous debt of gratitude for a kind of forward thinking but also keeping us grounded in what we’re able and capable of doing. He most likely, most recently served on the ad-hoc committee on freestanding surgery centers and charity care. He was helping us look at those factors affecting the level of Medicaid and charity care. Something I know he was passionate and still is.

And so, Chris, on behalf of the council on all of us we just want to congratulate you, wish you well, and the character that you’ve displayed, the content of your character, we are just enormously gratified to have somebody such as yourself with years of public service serving the people of New York State and our healthcare industry, so congratulations.

[applause]

Chris, you……. 
CHRIS DELKER: I might exercise my seniority and take more, but,

JEFF KRAUT: Nobody will say no to you. At least before.

CHRIS DELKER: Well, briefly, thank you for that tribute and thank you for the opportunity to work with you over these years. It’s been a privilege. And I’d like to thank you personally as a citizen and a tax payer for the contributions you make coming here as you do away from your regular endeavors. Some of you loss of income, without compensation. But certainly the public health system that safeguards us and the health facilities that serve us when we need them are better off for your efforts and I thank you for that.

[applause]

JEFF KRAUT: Well Chris, good luck, long life and enjoy whatever that next chapter takes you.

OK, so today what we’re going to do is we just finished the health policy and the special meeting of the project review. We’re going to go through the reports from the Department of Health, hear from Ms. Dreslin, Mr. Sheppard, Ms. Pirani, Dr.
Boufford will report on the public health services and committee. Dr. Gutierrez will update us on regulation. We’ll return to Dr. Kalkut on project review and establishment. Mr. Robinson will then brief us on the ad-hoc committee on freestanding ambulatory surgery and charity care, and I’ll go through the agenda. Members of the council and most of our guests who regularly familiar and attend these meetings, we’ve organized the – well, I’ll tell you what, I’ll go through this when we go through the project review on the rules. So, let me turn it over to Ms. Dreslin now who will give the report for the Department.

MS. DRESLIN: Thank you. And good morning. It’s my pleasure to be here today. The health department has had a very busy summer and I do have a number of updates for you. So I’d like to start with the latest news about legionella in New York City. As you may know, there’s been an outbreak in the Bronx that has resulted in 97 cases including 8 deaths as of last night. Since the trend was identified, Wadsworth laboratories has been testing samples both environmental and human to support the city’s investigation. This is sophisticated testing that our Wadsworth Center excels at. We do continue to see some more cases although the persistently hot and humid weather that promotes the bacterial growth is abating and in addition the
identified contaminated cooling towers have been disinfected. So we hope the trend is changing. But we do want healthcare providers to consider legionella and conduct patient testing whenever they might suspect the disease. Legionella is a bacterial disease that can cause mild respiratory illness but it can also cause pneumonia and lead to death. So some symptoms include muscle aches, headache, tiredness, dry cough followed by a high fever, chills, and occasionally diarrhea. Legionella is more likely to affect the elderly and people who have compromised immune systems but important to note the disease does not spread from person to person. So we will continue working with New York City. We will be monitoring the situation closely and updating as necessary.

On another front the Department announced news on medical marijuana. The Department has selected five organizations out of the 43 that applied to be issued registrations to manufacture and dispense medical marijuana. The selection of the five registered organizations is a major step forward in New York’s accelerated time table to implement the medical marijuana program by January 2016. New York is working to launch the program and begin providing care to patients faster than any other state has previously done. The five organizations are Bloomfield Industries, Columbia Care New York, Empire State Health Solutions, Attain, and Pharmacann. And there’s
information available on our website. Each organization will manufacture in one location and operate four dispensing facilities across the State. In selecting the organizations we did we made sure the proposed dispensaries were geographically dispersed in a way that will meet the needs of all certified patients. But we will continue to monitor patient demand, in order to make sure that all patients who meet the requirements of the compassionate care act will indeed benefit from the program.

Only certain forms of medical marijuana are permitted and all products will be tested for quality and consistency. Our goal has always been to ensure that all New Yorkers have access to the best and safest treatments possible. This medical marijuana program meets that goal. And by making this therapy available in the safest way possible we will hopefully alleviate suffering from many New Yorkers with debilitating diseases.

On another note, last month Governor Cuomo initiated a push for stronger regulations to combat the sale of synthetic cannabinoids in New York. As you may know these dangerous man-made compounds have resulted in a dramatic increase in reports of emergency department visits and poison control center calls. During April 1 to June 30 New York State saw more than 1900 emergency department visits and more than 680 poison control center calls due to adverse health effects associated with
synthetic cannabinoid use. This is more than a 10-fold increase over the same time period in 2014. But what’s more alarming is that of those people going to emergency departments more of them are going to critical care units. Nationally there have been 15 synthetic cannabinoid related deaths reported to poison control centers in the first five months of this year, but so far no deaths have occurred in New York State and we’re trying to keep it that way. That’s why we’re expanding the existing list of banned substances which you’ll be voting on today, hopefully, to include two more chemical compounds that drug producers have begun to make since 2012. That’s when Governor Cuomo banned the sale of possession of dozens of synthetic cannabinoids and bath salts. We believe these new regulations will help keep New Yorkers safe.

The Department is also working to avoid fatal opioid overdoses. There are now more than 220 registered overdose programs in the State. They are training individuals to respond appropriately to opioid overdose. So, besides calling 911, people can be trained to administer a naloxone. Naloxone is a medication that can reverse the deadly effects of heroin and other opioids. It works by temporarily blocking the effects of the opioid, whether illicit or prescription allowing the individual to regain consciousness and resume normal breathing. It poses no danger to anyone who otherwise might come into
contact with it. More than 65,000 citizen responders have been trained so far, and nearly 1300 naloxone administrations have been reported to the Department. Another 500 additional administrations have been reported by law enforcement personnel who are also receiving training. The Department has joined forces with the New York State Division of Homeland Security and Emergency Services, and the New York State Office of Alcoholism and Substance Abuse Services to provide free naloxone training to fire departments as well across the State. Firefighters are often the first to arrive on the scene of a suspected opioid overdose and that’s why it’s critical that non-EMS fire departments and all emergency responders receive this training. After completing the training naloxone will be made available free of charge to participating fire departments. The training, a component of Governor Cuomo’s Combat Heroine and Prescription Drug Abuse Campaign is funded and administered by the Department of Health. The Department is also collaborating with other state agencies to train inmates who are about to be released, their family and friends as well as school nurses and school employees. Most people who are trained will have the option to receive a naloxone kit free of charge and taken together, these efforts will enhance the safety of New Yorkers who have succumbed to this terrible addiction.
Last month we joined the nation in celebrating the 50th anniversary of Medicaid and Medicare. It was 1965 when President Lyndon Johnson signed into law these two pieces of legislation that have truly altered the face of healthcare in our country. The anniversary came just after Governor Cuomo’s announcement that New York’s Medicaid per person spending had fallen to a 13 year low over this past year. This significant decrease has saved billions of dollars for New York’s taxpayers and the drop in spending happened even as we added new beneficiaries to the Medicaid program. Credit goes to the reforms implemented in 2011 by the Medicaid Redesign Team, and the savings from the revamped program are now being reinvested through DSRIP into 25 performing provider systems. These networks which involve hospitals, private physicians, community service groups and more are all working to decrease avoidable hospital admissions and improve our State’s safety net system and the healthcare system at large.

Summertime often means increased exposure to ticks and mosquitoes and Lyme is not our only tick-borne challenge in the warm weather. Every summer we get about 1000 cases of other tick-borne diseases. All of this on top of nearly 7000 cases of Lyme each year, and at the same time we’re dealing with mosquito-borne diseases. This summer three counties, Onondaga, Oswego, and Madison have all identified West Nile Virus and EEE,
which is Eastern Equine Encephalitis. Onondaga County has six pools test positive for EEE, Madison has had four pools and Oswego has had three. The State has – all three have received imminent threat to public health status for these counties and this enables the State reimbursement formula to increase so that the county has more resources for combating these diseases. We are also seeing West Nile Virus around the State. In fact, we have had 35 positive pools this summer with 20 of those in Suffolk County on Long Island. But the Department continues to be vigilant about these diseases and work together with local health departments in combating.

This summer also marked the debut of capital for a day. Governor Cuomo launched this initiative in Rochester on July 9. Capital for a day was created to bring State government directly to the people it serves. The day-long event partners state officials with residents, local leaders and stakeholders to examine first-hand the needs of the community. What grew out of this were several new initiatives to better connect New York Schools to local growers and producers across the State working with the Office of General Services, of Agriculture and Markets, the Department of Health is promoting the use of fresh healthy foods in school meals across the State while at the same time giving a boost to the State’s agricultural industry. The Department of Health also announced $6 point million [sic] in
grants to 26 organizations statewide. These creating healthy
schools and communities grants will allow local organizations to
combat obesity and other chronic diseases in high-need school
districts and surrounding communities. The grant recipients
will work with school districts and school retailers to improve
access to nutritious food and increase opportunities for daily
physical activity.

And for a final bit of good news, I’d like to discuss the
decline in the State’s smoking rates. New York’s smoking levels
are now at their lowest rate in recorded history. Our data shows
that for the last four years the smoking rate among high school
students has dropped 42 percent and now remains at 7.3 percent.
Meanwhile the adult smoking rate has dropped to 14.5 percent and
remains below the national average which is 17.8 percent. We
attribute these drastic reductions to the State’s wide-ranging
tobacco control efforts which includes the prevention agenda and
our comprehensive cancer control program. These programs focus
on the use of evidence-based strategies to encourage people to
stop smoking as well as aggressive public awareness campaigns.
The State also promotes policies that make tobacco less
accessible to youth. This includes the State’s adolescent
tobacco use prevention act, ATUPA, which combats illegal sales
to minors through sting operations across the State. In
addition to our efforts – in addition our efforts include making
resources to break the addiction more widely available to people who are trying to quit. We also had some good news about the health exchange marketplace, the New York State of Health. The report was released recently. As of February 28 this year more than 2.1 million people have enrolled in health insurance coverage through the New York State of Health. This represents more than a two-fold increase from the first open enrollment period where we enrolled more than 960,000 people. 89 percent of the people who had enrolled said that they had previously been uninsured. It’s remarkable. By providing more New Yorkers with affordable health insurance coverage we’re giving them greater access to healthcare that bodes well for the health of all New Yorkers.

So as you can see it has been a busy summer for the Department. In judging from what I see now, today especially it will remain this way into the foreseeable future. So thank you very much, and that concludes my comments.

JEFF KRAUT: Thank you Ms. Dreslin. Any questions from the Council? Yes, Dr. Brown.

LAWRENCE BROWN: I want to continue to commend the Department for it’s excellent leadership, and your report certainly demonstrates that on a number of levels. I want to –
one of the things you probably know that Dr. Martin and I also 
serve on the Advisory Panel for behavioral health services 
advisory council, and that issue of synthetic cannabinoids 
continues to be a concern for treatment professionals. So, we 
salute and we clearly want to continue to collaborate with the 
Department and we believe that it presents that interest and 
conundrum because on the one hand as treatment professionals we 
generally stay away from law and order issues. But quite 
frankly it’s kind of difficult to do that given how we see this 
perpetuated in the State of New York. So, I want you to know 
that we are there in support of you and as recent as the last 
meeting this has been a topic of the agenda for each council 
meeting for that group as well.

Also wanted to commend the Department because through the 
AIDS Institute, it’s campaign on drug user health certainly is 
one that I would like to commend. I’m not sure I would really 
give them a lot of kudos for having selected me to be a 
participant in the webcast, but that’s another issue. But I’d 
like to salute them for doing so because I think the stigma with 
respect to drug use, and actually with those who treat those who 
have substance use disorders continues to be prevalent in New 
York State and one way to do that is to have a Department like 
the New York State Department of Health to take the leadership 
role that it has. I have one question; it felt like I was going
to go on forever, Mr. Chair. I understand and appreciate that. 
With the ISTOP program, and I’ve been certainly a supporter of it, I was wondering, those patients who have the benefit of medical marijuana, will they be registered in the ISTOP program?

MS. DRESLIN: They will. And thank you for your words.
Thank you.

JEFF KRAUT: The other issue with the synthetic cannabinoids depends particularly, the ones, whoever is cooking them, they accompany extraordinary aggression at times, and it creates a risk to both law enforcement and our health personnel. So it’s, they come in super strong. Dr. Martin.

GLENN MARTIN: So I will echo but not repeat the comments of my colleague. But I just want to say again, and it’s anecdotal, on the ground, there still remains fairly significant problems, as you know, with I think the enforcement of the rules. At least in bodegas in the New York City area and probably others. I mean, I just know in the New York City area from anecdotal, but I suspect that in truck stops throughout the State, it’s still there. And I know, in the enforcement, it’s not directly under DOH, but again, just the idea of getting the
word out to the local authorities and making it a priority would be greatly appreciated.

MS. DRESLIN: Absolutely. And we are working across agency including law enforcement at a variety of levels state, local, and even in some sense federal. So we do recognize that challenge and are trying to incorporate that into a really comprehensive approach.

JEFF KRAUT: Ms. Rautenberg.

ELLEN RAUTENBERG: Hi. Are our health code laws sufficient to legionnaires and cleaning water towers? Obviously, a hospital was part of the issue.

JEFF KRAUT: Also I think one of the things in the next round when Dr. Birkhead is here we might go through that in October. I’m not sure, you know, just so we have people from Wadsworth here. Oh, wait a minute. He’s retired, right. Well, he’s not going to be here. Day two.

[we’re going to review that at that point]

I think let them go through the process here.
ELLEN RAUTENBERG: Secondly, is there some oversight, external oversight on the medical marijuana? Citizens, physicians, ethicists? The Department often puts together sort of oversight committees. Is there one on medical marijuana?

MS. DRESLIN: There is not one. There is not an external medical oversight committee on medical marijuana. There is a cross agency initiative to continue to monitor the program, to make sure that it’s the safest that it is very highly regulated. The commissioner of health and the superintendent of the State police are actively involved, and we continue to monitor for both ensuring access for certified patients and eligible patients but also to ensure that the program integrity remains strong and will be continuing to evaluate diseases that could be included on an ongoing basis as is reflected in the statute and the regulations and insuring that it meets the needs in a safe and regulated manner. Sure.

JEFF KRAUT: Thank you. I’m going to now ask Mr. Sheppard to give an update on the activities of the Office of Primary Care and Health Systems Management.
DAN SHEPPARD: Thank you Mr. Kraut. I’m going to I guess build on, it’s been a busy summer theme that executive deputy commissioner Dreslin began. Sally mentioned several initiatives that reside within OPCHSM, opioid, esthetic cannabinoids and the opioid prevention as well as medical marijuana, Mr. Segara who is sitting over there to present on the synthetic cannabinoid regulations later is our director of the Bureau of Narcotics Enforcement and is a leader on those issues and has had a very busy summer. So, just building on the busy summer theme for the Office of Primary Care and Health Systems Management, as we look forward to working with PHHPC over the next months and years on updating and modernizing our regulations to better align with, gross understatement is an evolving healthcare delivery system, we’re working today to find some paths within our current framework to accommodate requests from the industry who, clearly the pace of change is rapid and we get almost on a daily basis increasingly innovative complex, certificate of need and other proposals that require our most excellent staff’s attention.

So, just some examples of this that we’re working on now are looking at how to facilitate the opening of small clinics within homeless shelters and other non-traditional community-based settings to increase access to primary care and healthcare services, very often for some of our most fragile citizens.
This effort involves working with our policy people, our planning and licensure folks, most particularly our architecture bureau in trying to navigate within the regulations both state and federal that we have to operate within trying to find paths that with patient safety first and foremost we can move primary care as rapidly as possible into communities, again, we see homeless shelters, small clinics are a big area there.

Colocation and shared space, separate apart from integrated behavioral health services, colocation and shared space is really I think a dominant issue and a policy, at a regulatory level for us. And again, how as systems, as systems, our healthcare systems network and integrate the natural synergies between types of licensed providers and how do we, again, in a way that is compliant with regulation statute and patient safety as well as financial integrity on public payment side, how do we bring these entities together and allow these natural collaborations and relationships to grow for the benefit of patients, again, within a regulatory framework that we have to operate in now and then from that what are the ideas, what are the proposals that again will engage with PHHPC, with legislature, with CMS on an ongoing basis to try to modernize our healthcare system. And then also I suppose we had a flavor of earlier today in the special meeting looking at need differently in the context of projects that are parts of
integrated delivery systems. These are all, I think it’s rich
and interesting work. It is busy. Very, very busy and I just,
on top of more routine work that continues to happen here, so
definitely credit to many of the staff you see sitting around
here and the many more who are back in the Department.

Another area of summer activity are requests for
applications for a number of projects both an unprecedented
amount of capital dollars that we’ve been blessed to have the
responsibility of administering to the industry that we’re
working through. We’re in the process of currently reviewing,
over 640 applications for $1.2 billion of capital restructuring
financing program funding. We have teams evaluating these
awards and we’re expecting decisions by the October/November
timeframe…October timeframe on this. I think if you think about
HEAL being $1.5 billion administered over a multiyear period,
we’re talking about $1.2 billion administered in a single
offering here. I think, for the impact, I think we’re obligated
as necessary to do that given the impact it will have on
propelling DSRIP forward. But again, certainly for a busy
summer.

We’re also in the process of we just received over a number
of applications, well over 100 applications for 3400 assisted
living program slots and OPHCSM staff are in the process of
evaluating those applications with decisions expected also in
the fall timeframe. Doctors Across New York, the applications for both practice support and the loan payment programs are coming in for the next cycle and we’re evaluating those, and finally we are on the RFA front, we’re finalizing RFAs for an additional $1.3 billion of new capital funding for healthcare transformation projects that were provided in the most recent budget, and I think, move forward on that. An additional activity that we’re doing is working with over 30 hospitals statewide. These are financially struggling hospitals on sustainability plans. This is connected to transitional, transformational, transitional funding that was in the budget and again, it’s both small, rural, urban, small, large, there are a number of facilities out there that need to try to chart a path forward and working with them to do that. And finally but not certainly not exclusively, I want to talk about trauma center verification. I, again, the time I spent here I haven’t heard much discussion in PHHPC about the OPCHSM’s role with respect to emergency medical services, but the work that’s done by the staff in this area, by Lee Burns who heads up the area and her staff is critical, and they’re real professionals. A big recent accomplishment that I want to acknowledge there is that the following facilities have been successfully verified as trauma centers. North Shore University was verified as a level one adult trauma center; South Side Hospital, a level two adult
trauma center; Westchester Medical Center, a level one adult and pediatric trauma center; Upstate University Hospital, a level one adult and pediatric center; Erie County Medical Center, level one adult; and Strong Memorial Hospital, level one adult. There are going to be five additional hospital centers set to have their verification visits in 2015. And then there are two more centers scheduled for visits in March 2016. And I just, additionally there are four new trauma centers who were provisionally designated. That’s New York Methodist Hospital, Orange Regional Medical Center, St. Luke’s Cornwall and Canton-Potsdam Hospital. And about 15 community hospitals have expressed interest in level four designation and there are a handful more that have expressed interest in level three designation.

So that’s a sampling of ongoing activities and OPCHSM. And I suppose I would be remiss, although we’ll have our opportunities as a Department to acknowledge Chris’s contributions, but I can’t imagine having tried to navigate my way through my first year on this job without Chris and I just want to publicly thank him for all the help and guidance he’s provided me. So thank you.
JEFF KRAUT: Thanks Mr. Sheppard. Any questions for Mr. Sheppard? Well, it’s a busy summer, like every summer. Thank you.

Now - oh, before I do this I should’ve done something earlier. I just need a motion to adopt the June 11, 2015 minutes. Second. All those in favor?

[Aye]

Opposed? Motion carries.

I’ll now ask Ms. Pirani to give us an update on the activities of the Office of Public Health.

SYLVIA PIRANI: Good morning. I’m pleased to give the report this morning. I just wanted to give you a quick update on the Prevention Agenda which we talked about at the most recent Public Health Committee meeting where we reported on the fact that we’ve met 16 of the 96 outcome objectives in the Prevention Agenda and substantial progress has been made on an additional 22 indicators. We discussed our ongoing efforts to help coordinate local prevention agenda efforts with activities and hospitals have underway related to DSRIP and community benefit. We talked about getting ready for the next three year planning cycle which will launch this fall and our next ad-hoc committee meeting is September 24. We also talked about focusing some
attention on health disparities and when the Office of Minority Health Disparities report will be issued later this year.

And then on other public health fronts just very briefly I wanted to let people know that the department has received two competitive grants we thought you’d like to hear about. One is a multiyear grant awarded by the CDC to enhance our food safety efforts and improve response to outbreaks of foodborne illness. This is $260,000 for the first year and for about at least five years of funding and we’re one of only six states to receive such funding. Foodborne illness affects tens of millions of people and kills thousands in the United States each year resulting in billions of dollars in healthcare related costs and this grant is to establish a center of excellence in New York State. We’re going to partner with Cornell University and focus attention on strengthening surveillance systems and outbreak investigations, improving the timeliness, completeness and effectiveness of our surveillance and outbreak response activities, establish training of local and state public health personnel, and insure active participation by state and local health departments. This is a regional award so it’s HHS regions 1, 2, and 3. So will actively involve all of them, and it’s really a quality improvement effort which really supports our accreditation efforts. So we’re very pleased about that. And then the second award is one that Anna touched on. It’s,
New York is one of nine states selected for funding under the Paul Coverdale National Acute Stroke program, a new five-year CDC cooperative agreement. $750,000 in year one. We’re going to facilitate regional pilots to encourage the development of integrated stroke systems of care across health systems including EMS, hospitals, and post-discharge care organizations. We’re going to link data collected through SPARCS and vital statistics with data on processes of acute stroke care reported as part of the stroke designation program to inform the development of statewide measures to measure outcomes and guide and track improvements in stroke systems of care. This is an important initiative that also represents collaboration between the Office of Public Health and the Office of Quality and Patient Safety. So we’re very excited about this opportunity.

And that concludes my report.

JEFF KRAUT: Thank you. Any questions for Ms. Pirani?

Thank you. Yes? I’m going to ask Dr. Boufford to give the report on the Public Health Committee.

JO BOUFFORD: OK, thank you. Ms. Pirani just told you about the update on the Prevention Agenda which is moving well and I think really is providing platform for collaboration at county level between hospitals among hospitals and local health
departments and other stakeholders that can be very valuable going forward and achieving prevention goals around the state that hopefully will be reinforced through the advanced primary care work as well as the DSRIP domain for component.

I just want to add a little bit on the maternal mortality work. We began - we haven’t talked about it to the council for a while, so just very quickly, the Public Health Committee had wanted to select one particular sort of health problem that we wanted to try to as we called it move the needle on in addition to our oversight of the prevention agenda work and during the sort of late 2013 and ’14 we worked closely with, and I want to commend certainly Rachel Delong and Marilyn Casica as well as Gus Birkhead and Sylvia who first couple of meetings really gave us terrific briefings on the status of maternal mortality I the State of New York. New York has the dubious distinction of being 47 out of 50 states in terms of maternal mortality and the racial disparities are 3:1 for African American women dying in childbirth and 7:1 in the City of New York. So this is significant public health problem even though the numbers are quite small relative to some of the other epidemics that appropriately attract a lot of attention. So we’ve decided to try to keep attention on it so that we can take action. We also had a very nice review of all of the very robust activities that are going on in the Department to address maternal mortality and
the committee identified that much of the focus has been on hospital-based management of acute crises and life saving activities as well as chart review to develop clinical guidelines to improve management of those crises but there had been relatively less focus on what we might call preconception or interconception care before the hospital based delivery and then between birth, between pregnancies and to some degree after birth so we decided to focus our efforts there, and did some looking at the evidence which shows that one of the most important risk avoidance strategies in maternal mortality is prevention of unplanned pregnancy especially in women of 35 or over 40. And so that lead us into thinking about the issue of reproductive health in relation to the primary care enterprise and similarly the early identification of pregnant, of women who are pregnant who may become high risk. The other issue that was identified in our review was the increasing incidence of chronic diseases like diabetes, heart disease, related obesity in younger women which means that pregnancy may or may not be the very simple straight-forward, hopefully simple and straight-forward activity that may be in people’s minds. So it means that early referral and referral availability for specialty care and OBGYN is very important. So that’s where we put our energy and that led us naturally to looking at the elements of the State Healthcare Reform in which we might integrate higher level
attention to maternal mortality and reproductive health and so we’ve had great cooperation from colleagues working on the advanced primary care models as well as in the SHIP and SIM and the health home and healthcare insurance groups, and I want to especially commend Rachel Delong who’s put a lot of time and energy into talking with colleagues and colleagues have been quite responsive. I think we’re not at the end of those conversations yet but we are gonna be, the couple quick reports, one is that we did review the advanced primary care standards and there are several elements we think relate to some of the opportunities for early identification and discussion with women of reproductive age if they, a very simple question, “do you wish to get pregnant in the next year?” it’s not terribly complicated, but then the need to follow up on that. And this would fit into the standards for patient centered care population health and care management, and one of the challenges that was identified is that to be accepted as a standards in the advanced primary care obviously everyone wants to use evidence-based standards and one of the classical dilemmas in the U.S. preventive services taskforce work is that evidence-base on women’s health interventions is very poor. The investigations have not been as extensive as they should be and there’s not a lot of class A or B evidence around any women’s health or reproductive health issues, and so this has stymied us at the
moment, but we won’t be blocked. We’re going to keep working on it with colleagues like Dan and his colleagues there.

On the health home, very interesting look at their data and again thanking Foster Gestin and his colleagues for this, 55 percent of health home members, these are women with multiple chronic diagnoses and/or all people with multiple chronic diagnoses and mental health problems, 55 percent of these are women, 35 percent of these women are in reproductive age, and we identified 10 percent of them gave birth during the last year in the health homes. So this raises questions about the priority of attention to reproductive health and the context of the health home as well as looking at costs that might be mitigated by early intervention and early referral systems that are more robust and the health department has offered to work with care coordinators in the health home for training. There was also an issue raised about gaps in health insurance coverage potentially that might put women at risk for access to care after they’ve, when they’re no longer pregnant until they can be reenrolled, and I think this was investigated pretty fully and people felt that while there may be some slight delays, generally speaking there aren’t any significant flaws in the insurance coverage issues that are being advanced through the healthcare reforms. And then lastly we are very excited about collaboration among many players who have been very committed to improving the issue
of maternal – addressing the issue of maternal mortality in the state but have not had the mechanism or the vehicle, and I think the Public Health Committee and the work of this council and being able to bring this issue forward has created some new potential for partnerships with the State with New York State ACOG, with Greater New York and HANYs as well as the City of New York. All of those folks working on maternal care, maternal mortality, and others have filled out a matrix which identifies who’s doing what and identifying opportunities for alignment as well as gaps which may need attention and we have had an initial call and there will be two meetings, one in September, one in October to come together and develop a collaborative agenda. So, we’re very excited about that because I think it will serve the purposes of many folks who really want to see this issue tackled.

So we’ll have a lot more to report. I also would feel obligated to say that we did discuss in the Committee, Council that the distressing lack of any state investment in the public health side of our work in the Prevention Agenda and the 50 percent reduction in the PHP budget are all elements that reflect a very imbalanced investment strategy for the healthcare reform in New York State and we’re hoping that that can be addressed over future weeks and months. Thank you.
JEFF KRAUT: Thank you. Are there questions for Dr. Boufford? I was surprised by the percentage of reproductive women in health homes. I would’ve expected –

JO BOUFFORD: So were they... when they looked at the data.

JEFF KRAUT: I don’t know why because I never probably seen data, but just intuitively I would’ve expected it to be low, but –

JO BOUFFORD: Well, I think the issue is this moving up of early, an earlier age of chronically ill individuals obviously substance abuse and mental health is part of the problem as well. But it was quite surprising.

JEFF KRAUT: And did they have data on women going in and out of Medicaid eligibility and the dis - does it break up continuity of –

JO BOUFFORD: There was a lot of investigation, Sylvia may have detail like the feeling was that there really weren’t any significant gaps.
SYLVIA PIRANI: But the people working on the health exchange have really focused on this problem to maintain continuity.

JEFF KRAUT: Maintain continuity. That’s great. I could spend a lot of time – anyway, any other questions? Thank you very much Dr. Boufford. Lot of things to think about. That’s some progress on some of these issues. Yeah, we heard the resources question –

JO BOUFFORD: I want to commend the department, the Public Health staff who just are amazing given the resources they have to do what they’re doing. So, they’re very very committed. It’s a pleasure to work with them.

JEFF KRAUT: Thank you. And thank you. Mr. Robinson, could you give a report on the Health Planning Committee.

PETER ROBINSON: Yes, we had one agenda item and I’m going to recuse myself from that and turn it back over to you.

JEFF KRAUT: I just did that to have fun with you. We have one item on the agenda and that is – I lost the page. Hold on... so the one item that we have on the, Mr.
Robinson has left the room, make a motion to approve Jone’s Memorial Hospital in it’s request for stroke center designation. The committee met this morning and recommended approval as did the Department and I so move the motion. Do I have a second? Second Dr. Gutierrez. Any discussion or any comments from the Department? Any discussion from the Council? Hearing none I’ll call for a vote. All those in favor aye?

[Aye]

Opposed? Abstention? The motion carries. And I will take the prerogative to conclude Mr. Robinson’s – is he going to give a report on health planning? No. that’s it, right. So that was the only thing. I’ll take the prerogative to close your meeting and thank you for your report.

I now like to call on Dr. Gutierrez to give a report on the Codes, Regulations, and Legislation Committee.

ANGEL GUTIERREZ:  Good morning. Still. My name is Angel Gutierrez. I chair the committee on Codes Regulations and Legislation and at the July 23 meeting we reviewed five proposals for emergency adoption, once again, we children’s camps. The first matter is a proposed emergency amendment of subpart 7-2 of the State sanitary code regarding children’s camps. These amendments are necessary to implement
the law that established the New York State Justice Center for the Protection of People with Special Needs. At the committee meeting Tim Shay from the Department of Health noted that there have been no changes to the emergency amendments previously approved by the Council which have been in effect since June 30, 2013. He indicated that the emergency amendment currently in effect will expire September 8 so it is necessary to request approval of another emergency adoption. Mr. Shea explained that the Department has not yet put forth permanent regulations because the Justice Center is continuing to work with a number of state agencies on it’s agenda and has asked the Department to wait until this work concludes. The committee voted to recommend adoption to the full council and I so move.

[Second]

So, Yeah.

JEFF KRAUT: Any questions for Dr. Gutierrez or the Department? Hearing none I’ll call for a vote. All those in favor aye?

[Aye]

Opposed? Abst–hold on. What do we – Just hold on for a minute. I think we have a quorum issue. Dr. Yang left? OK.
LAWRENCE BROWN: Mr. Chair, if I could during this brief pause -

JEFF KRAUT: Sure.

LAWRENCE BROWN: I’d like to acknowledge Dr. Gutierrez in terms of his being the chair of the Codes Committee and always seeming to be there to second every motion. So can we do something to, how do get some diversity in there? Oh, I know Mr Berliner -

JEFF KRAUT: It’s Berliner, and we can let them compete. They just have faster auditory processing speeds. When we ask for a motion.

Ok, so we have a quorum? And I now again call the vote.

All those in favor aye?

[Aye]

Abstentions? We have one abstention, two abstention. Does the motion? ...OK so we need 13 affirmative votes to pass this, to continue emergency adoption. If we do not vote this, the consequence is this - I’ll turn to the attorneys. The consequence of not adopting this? You guys want to – OK. There
is a consequence of not adopting this, (and you obviously don’t care) 😊

Mr. (Zanloiter) and after conferring with Mr. Furnish I think that the disposition of this is that it has to be tabled.

JEFF KRAUT: If I can’t—

[If you cannot get the requisite number.]

JEFF KRAUT: So before I ask for a vote, tabled means continued until the next meeting. Am I correct?

[yes]

[If I may, Rick, does it also mean that we cannot proceed – I’m over here, it also means that we cannot proceed to file the emergency regulation already in place and it will lapse. So the protections currently I place will not continue. Correct?]

MICK STONE: Yes, that’s correct.

[So, I guess the Department would urge moving forward.]
JEFF KRAUT: When would it lapse? Before we meet next.

So, -- Let me get a straw vote. Let me just -- and I don’t want to call a vote. The individuals who are not going to support this, do you want to express -- what’s the concern here? and you understand what the ramifications are if you do that?

GLENN MARTIN: OK. No, my concerns

This has been an emergency regulation that’s gone for year after year now. There is no emergency. This reflects a malfunctioning process within the bureaucracy. I don’t think it is proper and I don’t plan on encouraging it. I voted against it before. I’m consistent in my opposition to using an emergency go around for something that is not an emergency. It’s certainly an important state issue and I have no problem with it, I just think that it’s not something that should come up again and again as an emergency. I also note that it’s going to go into effect after camps close, it seems to me on September 8, which would make the emergency aspect of it even less compelling, though I do understand it’s not just camps and may have some other implications. But I am balancing in my own mind what I think is a fundamental abuse of a process, not in any intentional horrible way, but a fundamental abuse of a process against this issue, so I’m voting against it.
JEFF KRAUT: Dr. Gutierrez.

ANGEL GUTIERREZ: Mr. Shay and Dr. Ryan are here and you have gone through this before. Perhaps you may want to repeat some of the remarks you made before regarding why is it important that we pass the emergency regulation?

TIM SHAY: Sure. As mentioned, these regulations implement legislation that was created at the Justice Center. Imposes additional requirements for camps that have developmentally disabled children for reporting and investigating incidents, for training nurse staff, for doing additional background checks before hiring those staff, and without these regulations those additional requirements will not be imposed. I will add that since the last codes council meeting, there’s been request by the Justice Center for us to submit a permanent regulation. We’re in a process of doing that at this time. As you recall the reason for our delay was that they were working on trying to standardize incident reporting and investigation requirements across a six state agencies that it oversees. I guess that task proved to be too challenging and they decided that each agency will need to move forward on it’s own and we’re working to do that at this time.
JEFF KRAUT: OK. So, I understand your point and we’ve certainly echoed it over the years. And the consequence of failing to negotiate a satisfactory resolution of this issue means there will be no regulation. So, the Justice Center would understand there will be no regulation for background checks at all. Once this lapse. OK. That has other consequences.

TIM SHAY: The state sanitary code currently has some background check requirements. The Justice Center imposes additional background checks. So, essentially we’re not going to impose any additional background checks other than what’s the minimum if we do not pass this. yes.

GLENN MARTIN: So obviously I note and appreciate the new information, but what timeline are we talking about? Does this mean a permanent regulation will be before us at our next meeting and then we can do this for a temporary period of time?

JEFF KRAUT: Mr. Shay, you may not know the answer to that, because it’s above –

TIM SHAY: The timeline is going to be a little challenging for me to lay out. We are working within the department now to get some concensus on how to move forward. So, I would expect
that before, if we were to have another emergency amendment
before that emergency amendment was expired, the Department
would be able to impose something for permanent..

GLENN MARTIN: And can I also have clarification of this
emergency amendment is how long? This particular one we’re
voting on now? This goes on for how long?

JEFF KRAUT: To the next cycle.

TIM SHAY: It’s 90 days.

JEFF KRAUT: I mean, there is a valid issue that Dr.
Martin has raised and he’s taking a principle stand and respect
what you’re doing. I just, everything has a consequence and
sometimes it’s unintended. You know, this may not be the time
and place to try this. It is a problem, you know, particularly
like in reimbursement but we did it for I believe six years? We
did emergency adoption every, it was like – Dr. Boutin-Foster.

CARLA BOUTIN-FOSTER: I mean, my challenge, I’m really
torn by this. it’s not so much that it’s an emergency adoption,
but I just don’t get the 20 percent and that’s something that
I’ve raised a couple of times and which is why I was abstaining.
I definitely support, I definitely think there needs to be additional protection for children with special needs, so if you’re telling me that, if there are 10 children out of 100 then these additional background checks are not necessary so you need at least 20. So the implication could be that a camp could say, well, we’re going to limit the number of children with special needs that we have. So, my challenge in sort of frustration with this is that the 20 percent makes no sense to me. And I guess if you’re looking at it from a financial perspective, yes, that’s more money, but again, we’re talking about children who are not – I mean, I guess the protection is to protect children who may not be able to advocate for themselves and speak and say something happened. So, I support in theory what it is that you’re trying to do, but I just, I’m just not – I’m torn. I don’t oppose it, but it just makes no sense that we’re saying, you have a cut off. 20 children, yes. 10 or 5, no. It just doesn’t make any sense to me.

JEFF KRAUT: And my recollection is that was because the burden, like a small town or village summer camp that has a small number of kids you know, there was a rationale for it. I remember reading in one of the reports why we did that. you may not satisfy Dr. Boutin-Foster but there was a rationale, wasn’t there?
TIM SHAY: Well, the way the regulations came to be, there were special regulations in developed in 1986 and they fell on camps with 20 percent or more developmentally disabled population. We, as this legislation came to be, we implement this in conjunction with the justice center who agreed with our application, this regulation, of the legislation to the 20 percent group threshold. There are some financial costs associated with it and when we had previous codes council meeting we had the council had suggested that we hear from some of the camp operators to see what their thought was applying this all of all of the camps and they were very opposed to it. We had letters from state legislators who said that they never intended this to apply to every camp that had a single child with a developmental disability, and therefore we continue to apply these Justice Center requirements to the camps with the 20 percent.

JEFF KRAUT: So, this requires a legislative solu – this is a regulatory or a legis – there can be a legislative solution? Or is this all regulatory?

TIM SHAY: This is all regulatory at this time.
JEFF KRAUT: OK. So, let me just think.

TIM SHAY: And I can just add that I’ve also approached the camp safety advisory council, we’ve asked them for advice and consultation on how we can best apply these legislation, and they agreed with our current position. They thought there could be unintended consequences if it was universally applied to camps that may exclude children with disabilities.

JEFF KRAUT: Separate and apart from this discussion because I hear there’s some sympathy for this position, let’s ask the Department of Health to give us the consequences unrelated to this that we will not do emergency adoption beyond a certain number of cycles. Does that help or hurt the regulation making process? But just addressing some, -- an emergency is an emergency and don’t respond today because we’ll talk about it at the next - I’m not asking for a question, but it’s a valid issue that requires, because we’ve been frustrated by this, so let’s see if we can understand the implications of having, say you can’t do it for more than three cycles or four cycles but recognizing there’s always exceptions to the rule. I still - yes, Dr. Martin. I want to try to get a vote today, and I’m willing to lose the vote and then ask for a motion to table or reconsider it.
GLENN MARTIN: but the point is, I’m concerned that by having gotten into this pattern of just repeating every 90 days that in fact it hasn’t allowed for a full expression of Dr. Boutin-Foster’s concerns or any real way for us to deal with the fact that there are many of her I the room that aren’t thrilled with what the regulation is written and yet we’re proposed with I’m killing kids if I don’t let this go through today. I know no one’s ever said that, but that’s sort of the idea –

JEFF KRAUT: I understand –

GLENN MARTIN: But that’s a situation.

JEFF KRAUT: The dramatic undertones.

GLENN MARTIN: And that’s obviously not my intent, but my intent is I think it’s a process that’s broken and if they continue to perpetuate it I don’t think helps. If, looks, if push comes to shove and I had an assurance that this is the last, the honest to God last 90 days and there’s going to be something real that we can look at that will allow us to debate the issues that are here, I will be happy – that’s probably an overstatement, I will vote for, this 90 day extension. But if
it’s the same thing, we don’t know, it may take, there may be this, there may be that, no screw it.

JEFF KRAUT: OK. Alright. You know, my entire objective I sharing this is to make you happy. So, no, I understand the point. So let me just see. How many — Colleen give me some logistic numbers. How many people do we have eligible to vote?

So there’s 16 members eligible to vote and we need 13 members — OK. So we need 13. Let me, keeping to your guns, don’t change your position right now, let me see if I can get 13 affirmative votes. OK. All those in favor of the emergency adoption of this regulation, continuance of the emergency adoption say yay and nay—let’s do a roll call so I’m clear.

Dr. Berliner
Dr. Boufford
Yes
Dr. Boutin-Foster
Abstain
Dr. Brown
Abstain
Ms. Kathleen Carver-Cheney
Yay
Mr. Fassler
1. Yes
2. Ms. Fine
3. Yes
4. Dr. Gutierrez
5. Yes
6. Dr. Kalkut
7. Yes
8. Dr. Martin
9. No
10. Ms. Rautenberg
11. Yes
12. Mr. Robinson
13. Yes
14. Dr. Strange
15. Yes
16. Dr. Yang
17. Yes
18. The chair wish to vote?
19. Yes.
20. Ms. Dreslin
21. Yes.
22.
23. 12. Because we got one more abstention.
JEFF KRAUT: OK. So the motion fails. I’d like to make another motion to reconsider this and or maybe just make a motion to table – well, we had a vote. We had insufficient, we have no recommendation. Can we make a motion just to table this one cycle please?

PETER ROBINSON: Make a motion to table this item for the next cycle.

JEFF KRAUT: So, I have a second, so what we will do because then there’s no action taken. That’s the kind of legislative limbo. So, we will not vote, we will not attempt to vote on this again to try to get an affirmative or a negative vote to turn it, and we’ll continue it to the next meeting, taking into account, don’t expect a different outcome it sounds like at the next meeting. If some of these issues are not explained or, and maybe the parties that have been involved in negotiating some of this understand you’ll fail the next time we will not table it.

LAWRENCE BROWN: Mr. Chair, can we also ask the Department because I appreciate the stakeholders and I understand we’re participating in a prior discussion, but it appeared, and it may be just my blind side of seeing it, just
appear to be one sided. I didn’t hear about advocates for those with developmentally disabled at the table. I heard about owners of camps, heard about those who have some financial involvement or investment in it. So can we have the other side, those who actually represent this population, this vulnerable population as well?

JEFF KRAUT: Didn’t they speak when we first presented this? No. they never did. OK.

Let’s leave that to Dr. Gutierrez when he does the Committee. Dr. Gutierrez, could you move on to the next item for emergency adoption. Wait a minute, we’ve got to vote on that. I’m going to vote. We had a motion and it was seconded by Dr. Berliner. I’d now like to vote on tabling this matter. all those in favor, aye.

[aye]

Yes.

CARLA BOUTIN-FOSTER: Will there be further discussion between meetings or we’re just -

JEFF KRAUT: What I would suggest is the next committee day, let this be discussed at the codes committee given what
went on and just work with Mr. Shay and the Department to see if we can come up with a unanimous recommendation. OK. so, I just would like a motion is to table the matter until the next council meeting. all those in favor?

[aye]

Opposed? Abstentions? The motion carries. Dr. Gutierrez, please continue.

ANGEL GUTIERREZ: For emergency adoption is synthetic cannabinoids. The proposed regulations would amend part 9 of title 10 NYCRR to expand the list of prohibited synthetic cannabinoids. This is in response to a rash of hospitalizations related to new forms of synthetic cannabinoids with chemical compositioning not explicitly included in the current regulation. The proposal will also update the regulation for consistency with the federal schedule one of control substances. Josh from the Department explains that naming the newly identified synthetic cannabinoids will better enable law enforcement of the regulation and make it clear that the possession, manufacture, distribution or sale of this chemical compound is illegal. The committee voted to recommend adoption to the full council and I so move.
JEFF KRAUT: I have a motion. Do I have a second?

[Second]

Second, Dr. Brown. Any comments or discussion? Hearing none I’ll call for a vote. All those in favor aye?

[Aye]

Opposed? Abstention? The motion carries.

ANGEL GUTIERREZ: For adoption is computer tomography quality assurance. The proposed regulations will amend part 16 of number 10 NYCRR ionizing radiation to include requirements for the use of computer tomography on humans within the New York State, excluding New York City. The New York City Department of Health and Mental Hygiene regulates the use of ionizing radiation within the five boroughs. The proposed regulations will provide quality assurance and safety standards that directly address CT, Physical, and Operational parameters. In addition the regulation will require accreditation by a nationally recognized accrediting body that is acceptable to the Department which would be consistent with the accrediting bodies accepted by the Centers for Medicare and Medicaid services. The proposal was published in the State Register on May 6, 2015 and underwent a 45 day comment period. Steve (Cavits) from the Department informed the committee that five public comments were
received from medical physicists asking clarification questions and none were opposed to the proposal. In addition, at previous meetings, the codes committee had discussed the utility and impracticality of documenting and sharing those such information with patients on how such a requirement will fit into this proposal or a proposal in the future. Mr. Cavit stated that CT manufacturers currently do not have the ability to record actual patient dose and indicated that this can be revisited once the industry has implemented methodologies to capture that information. The committee voted to recommend adoption to the full council, and I so move.

JEFF KRAUT: I have a motion, do I have a second? Dr. Berliner. Any conversations or discussions? Comments? Hearing none, I’ll call for a vote. All those in favor, aye?

[Aye]

Opposed? Abstention? The motion carries.

You abstaining Dr. Martin? Dr. Martin is abstaining. Thank you.

ANGEL GUTIERREZ: For information, patient access to laboratory test results. The proposed regulations would amend provisions of part 34 and 58 of title 10 would govern laboratory
test results reporting practices. As explained by Dr. Michael Ryan by the Department, the proposal will make state regulations consistent with federal regulations and permit laboratories to release patient test results directly to the patient upon patient request without the ordering providers written consent. This proposal was published in the State Register on June 17 and completed the 45 day comment period on August 3. Since this was before the committee for information only, there was no vote.

And for information also is a chronic renal dialysis services. This proposal will repeal part 757 of title 10 which governs New York State Renal Dialysis facilities and create a new part 75-10. The new part 75-10 will conform to changes in federal regulations pertaining to providers of end stage renal disease services, clarify in specific terms and strengthen operational requirements. Kathleen Ericson from the Department reviewed the three main components of the proposal, codes and standards, additional requirements not specifically addressed in federal regulations such as the timeframe for assessments and staffing requirements. This proposal was published in the State Register on June 3 and completed the 45 day comment period on July 20. No comments were received. Since this was before the committee for information, there was no vote. That, Mr. Chairman concludes my report.
JEFF KRAUT: Dr. Gutierrez, I have a question, and I don’t know who responds to the laboratory regulations if there’s somebody here?

ANGEL GUTIERREZ: Yes.

JEFF KRAUT: The thing that I’m questioning about this because, this is something because I spend a lot of time with our folks is only the ordering physician is permitted to discuss the lab results and we’re moving to more of a retail approach on laboratory testing where individuals can go in and requests laboratory testing. Why isn’t it that we’re not allowing our pathologists or our laboratory medicine professionals to participate and discuss those results directly with patients. You know, we’re not, we’re practicing in a team and we have a lot of team members doing things that play different roles, and I would think when I read through some of this, just, it’s anachronistic to me, and I’m just wondering is there somebody that could discuss that? Is there, you know…

Just press the – identify.

MICHAEL RYAN: Michael Ryan from the Department. The regulatory changes that are being proposed are specifically related to access to the test results, and allowing those
patients to access those test results. We are trying to do this to be consistent with the federal rule. The — what you’re bringing up is related to interpretation of results and discussing those interpretation of those results with a patient. traditionally it’s been the physician, the provider who has done that with a patient. We have had comments to this regulation pertaining to the question that you have addressed with respect to pathologists and pathologists being able to interact with a patient and discuss those tests results and those comments came from several individuals. And the Department has discussed those types of approaches with the College of American Pathologists, but specifically this regulation is about accessing the test results by the patients. Not the interactions between the patient and their provider or others.

JEFF KRAUT: But, if we’re fixing the regs, why wouldn’t we just add that? I mean, do you, is there a problem putting aside that that’s not about — is this something we, is this something from a policy you think is a bad policy? You know, I don’t know if you’re prepared to go into depth but I’m just trying to understand but this is an opportunity as this regulation comes by here we can deal with some of those issues because it gives us a more ability to create a more contemporary framework and how we’re actually delivering care and fixing the
code wherever we can. I think that’s part of what we’ve been
trying to do over the years.

GARY KALKUT: Can I also ask, is that a current issue with
the code? Certainly disclosure by members of a team covering
physician when lab results come in later are done not by, often
not by the primary care physician but by a covering physician or
another type of provider.

JEFF KRAUT: Who’s not the ordering physician.

GARY KALKUT: Who is not the ordering physician, but
representing the ordering physician in some way.

JEFF KRAUT: And couldn’t the pathologist represent the
ordering physician if they’re working as part of a team in one
entity? Part of a medical group?

Go ahead.

DR. STRANGE: I think this is a very slippery slope, I
have to tell you. Because I think the interpretation of lab
data by anybody other than the ordering physician could
potentially lead to some major pitfalls in terms of the
interpretation of what a pathologist sees a lab test as as
opposed to what it fits into the clinical of what you’re ordering for. So, for example, thyroid disease; there’s many different ways to interpret thyroid tests in terms of when you order a TSH, T3, T4, and how those three may be interpreted I the face of clinical view or clinical presentation. PSA for example is another one. And I think it would be very slippery for a pathologist who looked at a PSA and said you potentially can have cancer here, when the issue may not have been cancer at all, and an elevated PSA doesn’t always mean cancer. An elevated TSH doesn’t always mean hypothyroidism, and I think this needs to be looked at in, I’m not suggesting they should not be part of a team, but it cannot be taken in isolation that just the pathologist should be able to look at a set of blood tests because somebody else isn’t around or by diagnostic biopsy because somebody else isn’t around and make an interpretation to a patient. I think that would be very dangerous legally and from a quality point of view.

GARY KALKUT: And I would agree with that. I think there has to be a road to navigate through this where there is clinical context, it’s happening now.

JEFF KRAUT: I see a different role for, than you guys do on the benefits and the knowledge of laboratory medicine and
it’s role in kind of patient empowerment. But OK, I won’t take
the time now to debate it, but I’ll defer, since I’m bookended
by two physicians, I will defer – here is a third and a fourth.
Go ahead.

ANGEL GUTIERREZ: Well, I’m a physician, being
is a physician, I’m in favor of the patient being given a copy
of the report that says your blood sugar is 450. But for me to
engage in explaining whether that’s out of the, I don’t think we
should go there.

JEFF KRAUT: OK.

MICHAEL RYAN: Can I just clarify that the language that
you’re referring to is language that’s in part 34. And these
are business practice regulations and these regulations were put
into place to insure that there are no kickbacks, and there’s
proper business relationships between laboratories and the
people that are ordering the tests. That’s what’s driving these
regulations. So make sure that you understand that it’s business
practice related, it’s not the practice of medicine here that
we’re discussing in the regs.

JEFF KRAUT: OK.
GLENN MARTIN: The point I was going to make is that we function as a team, some function more in a team; some function less in a team. My private practice of psychiatry I am basically the team. If I send somebody out for labs I’m sitting there with the records, I certainly talk to the internist, etc., etc. I don’t talk to the pathologist who’s running it and they have no idea generally what meds they’re on, what the TSH means, what a psychiatrist wants to see is a TSH as compared to a regular generalist looks; we’re usually pickier. There are all sorts of reasons why this could be a problem. Could be an issue. I’m not saying I’m opposed to it entirely, I just think as Dr Strange pointed out, it’s more subtle and complex. And I agree that we have this mantra of patient empowerment which I by no means wish to diminish, but there’s also the idea that the idea that the team functions with somebody sort of in the center of it or at least keeping track, and the idea that the generalist or whatever we’re going to call them actually knows what’s going on and there’s not a whole bunch of specialists running around making interpretations, frightening the crap out of people and going off on their own chases is not great medicine either. So I think that the regs should certainly reflect and give the ability to practice good medicine, but they shouldn’t be open to such an extent where it may have unintended
consequences, and that’s why I say it’s more complex than simply doing it. So that’s my –

JEFF KRAUT: Alright. So then, we’ll do a final comment, then we’ll close.

GARY KALKUT: I don’t think it’s an issue of primary care versus specialty care if they’ve seen the patient. They may have no idea about who a pathologist is, what they’re doing, where they, how they enter into it.

JEFF KRAUT: OK. I’m just used to – the things that I’ve observed slightly different practices are organized differently than some of the things you’re explaining. That’s all. And Dr. Boutin-Foster and then I’ll give you the final word.

CARLA BOUTIN-FOSTER: Does this pertain to all exams? So would HIV, HSV, other STDs be included in this?

[So, as Mike was explaining before, in public health law section 587 there’s a prohibition on clinical laboratories giving any kind of kickback to the practitioner who ordered the laboratory test. So, traditionally the practitioner is the one who explains the test results to the patient and interprets]
them. If the laboratory takes on that responsibility, that can be considered giving something of value to the practitioner who ordered the test. In essence, it’s a kickback. So that’s what our regulation is about. If the pathologist didn’t work for the clinical laboratory, then the pathologist could be part of the team of people providing care to the patient. But that’s what the regulation is actually about, and yes, to answer your question, it applies regardless of the type of clinical laboratory test.

JEFF KRAUT: When we go into a value-based bundled payment and we’re bundling, that’s not an issue. Again, there’s, and I’m not going to get into it, I’m just going to suggest that concern evaporates when we’re contractually bundling and that we’ve contracted for that expertise as part of the bundle and that group, that person, the clinical lab is part of that team. I mean, this is what I mean. There’s, you have to understand some of the changes that you’re describing where the care manager, you know, it’s beyond they’re empowered, there’s a doctor there, we’re going to be getting test results, it’s going to become - I’m just telling you - I think this requires a little more thought, but we’ll come back to it. But alright, last, last, last comment. OK.
HOWARD BERLINER: So, given the growing movement, I mean, allowing people to kind of write to labs directly and get their own DNA and get the results back from a lab, or order their own lab tests from may not be in, from a New York State lab but from someplace in a lab sending back directly, how do those things fit in to what the current law is or any changes?

[a number of interesting policy questions are being raised here and of course, we could amend our regulations in many different ways, but the proposed regulation that is for information right now is simply a proposal to make our regulations consistent with recent changes to the federal regulations that allow patients to get access to their lab results. That’s all we’re doing. ]

JEFF KRAUT: Alright. We won’t pile on. OK. Anything else Dr. Gutierrez?

[no]

Thank you very much for the clarification.

I’d now like to call on Dr. Kalkut to do project review. Recommendation and actions. Before I do, I just want to remind everybody about our policy on conflicts. Members of the council and most of our guests regularly attend these meetings should be familiar now with the reorganization of the agenda by topics or
categories which captures our roles and responsibilities, and we have taken to batching certificate of need applications. Now, before we came into the room the members have reviewed the batched applications and have thought about whether they want, they’re declaring a conflict of interest. We’ve recorded that on the agenda. If you think you’d like a project moved to a different category when that batch is called by Dr. Kalkut please let him know and give you an opportunity if any of you want to change anything on how we’re batching this. If there’s anything that you saw there or want to change, just let us know now and certainly before we call the vote. Yes, Dr. Martin.

GLENN MARTIN: I don’t know if it makes a difference, but I’m pretty sure I recused myself from the East Side Endoscopy at the Committee level.

JEFF KRAUT: You declared an interest.

GLENN MARTIN: Fine. I didn’t know if I was listed.

JEFF KRAUT: Yeah, it was. OK. Dr. Kalkut I’ll turn it over to you.
GARY KALKUT: Thank you. I’m going to change the order of the agenda in order to assure a quorum for applications that have significant recusals. So I’d like to move to category II, for construction. First, the first application is 151107C, New York Presbyterian Hospital, Columbia Presbyterian Center in New York County. Conflict and recusal by Dr. Brown who has left the room and Dr. Boutin-Foster has left the room. This is to convert 19 neonatal care beds to intermediate care beds to 19 neonatal intensive care beds, create 17 new neonatal intensive care beds for a total of 50 and perform renovations to get that done. The Department recommended approval with conditions and contingencies, and Project Review recommended approval, approved that. Approval with conditions and contingencies. Make a motion? Dr. Berliner. Questions? Hearing none, I’d call a vote. All in favor?

[Aye]

Opposed? Abstain? The motion carries.

JEFF KRAUT: Hold on. You make a motion, I do that.

GARY KALKUT: I’m sorry. I’m in –

JEFF KRAUT: Dr. Berliner. Is there any discussion. Hearing none, I’ll call for a vote. All those in favor, aye?
[Aye]

Opposed? Motion carries.

GARY KALKUT: There’s a little bit of an Al Hague moment.

JEFF KRAUT: That’s OK.

GARY KALKUT: I apologize for that.


JEFF KRAUT: No, that’s ok. That’s fine.

You can go in the next.

GARY KALKUT: We’re waiting for Dr. Boutin-Foster.

[yeah, I just want to make sure]

Next application, 151178C Nicholas Noyes Memorial Hospital, Livingston County. Conflict by Mr. Robinson who has left the room. This is to certify therapeutic radiology service and one linear accelerator with requisite and construction. The Department and project review have recommended approval with contingencies. I make a motion.
JEFF KRAUT: Second, Dr. Fassler. Any questions? All those in favor, aye?

[Aye]

Opposed? Abstentions? The motion carries.

GARY KALKUT: Application 151121C, East Side Endoscopy in New York County. There’s an interest declared by Dr. Martin. This is to certify a second specialty pain management to become a dual specialty freestanding ambulatory surgery center. The department has recommended approval with conditions and contingency and continuation of the operating certificate expiration of February 4, 2016. The Establishment and Project Review Committee approved that recommendation. I make a motion.

JEFF KRAUT: I have a second, Dr. Fassler. Comments?

HOWARD BERLINER: Charlie, why is this a dual, single specialty rather than a multispecialty?

CHARLIE ABEL: I’ll call, remind you perhaps that we had this discussion about a year ago now with respect to certain limited specialties and the comfort the Department would have in advancing the notion of dual-specialties and specifically it
would only be where we had situations where we didn’t have a class C operating room that would be required for multispecialty to allow for the provision for all types of surgeries. So, we felt comfortable after reviewing options that for applications that requested within a limited number of specialties that they could have two specialties, especially if there was no class C operating room.

HOWARD BERLINER: So if they wanted to add, if they hired someone on salary, not as an owner, so they didn’t have, would they have to come back through us if they wanted to put in an additional specialty?

CHARLIE ABEL: An additional specialty would then make it a proposal for a multispecialty facility and as a result, that classification of certification would require a class C operating room.

JEFF KRAUT: Any other questions? All those in favor aye?

[AYE]

Opposed? Abstention? The motion carries.
GARY KALKUT: I’d like to move to category II for establishment and construction and I’d like to group three of the applications we would vote on them separately. 151205 E. Peconic Bay Medical Center in Suffolk County. Mr. Kraut has declared a conflict and has left the room. This is to disestablish Peconic Bay Corporation d/b/a East End Health Alliance as the active parent and cooperator of Peconic Bay Medical Center with a companion CON application to follow. Today, both the Department and the Project Review Committee recommended approval with conditions and contingencies. There are two other CON applications that relate to this disestablishment. First, 151221E, Southampton Hospital in Suffolk County, again, to disestablish Peconic Health Corporation d/b/a East End Health Alliance as the active parent and cooperator. Approval with conditions was recommended by both the Department and Project Review and last, 151247E, Eastern Long Island Hospital, Suffolk County to disestablish Peconic Bay Health Corporation d/b/a East End Health Alliance as the active parent and cooperator of the hospital. Again, with approval with conditions and contingencies by both the Department and Project Review. Make a motion.

PETER ROBINSON: OK, we have a motion. Do we have a second?
Any comments from you Mr. Abel? Call the question, all in favor?

[aye]

Any opposed? Motion carries.

GARY KALKUT: And I’d like to come back to the companion CON and that is 151217E, Northshore LIJ Healthcare in Nassau County. Conflict by Mr. Kraut who has left the room. And that is to establish Northshore LIJ Healthcare as the active parent and cooperator of Peconic Bay Medical Center. I’d like to note that the completion of the CON 151205 prior to the completion of the project was added as a condition. Both the Department and Project Review recommended approval and I make a motion.

[Second]

PETER ROBINSON: Thank you. I have a second from Dr. Gutierrez. Oh, no. Oh, really, Mr. Fassler. How exciting. Any comments Mr. Abel? Hearing none, I’ll call the question. All in favor?

[aye]

Any opposed? Abstentions? The motion carries. We can get Mr. Kraut back into the room. Thank you.
GARY KALKUT: OK. Continuing on now with category III, application for dialysis services for establishment and construction. This is 151169E, Westchester Center for Renal Care in Westchester County. This is to transfer 100 percent membership from two withdrawing members to eight new members. The Department recommended approval with conditions and contingencies. The Project Review Committee approved that with the same conditions and contingencies with one member abstaining. Motion, to entertain the application.

JEFF KRAUT: I have a motion, I have a second, Dr. Berliner. Comments? Questions? All those in favor, aye.

[Aye]

Opposed? Abstentions? The motion carries.

GARY KALKUT: OK. Next is 151166B, the Birthing Center of New York in Kings County. I declared an interest at the Project Review Committee and here, and this is to establish and construct a freestanding diagnostic and treatment center, birthing center located at 6702-6706 Third Avenue in Brooklyn. Both the Department and the project review recommended approval with conditions and contingencies. Motion?
JEFF KRAUT: So moved. Second, Dr. Gutierrez. Any questions or comments? Ms. Rautenberg and then Dr. Boufford.

ELLEN RAUTENBERG: Can you tell us, Charlie, how far that is from the closest hospital obstetrical department.

CHARLIE ABEL: Well, I can’t but we do have Maimonides which obviously is a very large obstetrical department and Lutheran, so I don’t have the exact-

JEFF KRAUT: It’s probably I’d say less than a mile from Lutheran and less than a mile and a quarter from Maimonides. Dr. Boufford.

JO BOUFFORD: Yeah, I have a related question. I was surprised not to see an explicit statement of a backup agreement with a hospital which I thought was required for these. I didn’t see it.

JEFF KRAUT: Oh, yeah, we did ask the question at the meeting and I think they affirmed that it’s with Lutheran.
JO BOUFFORD: It wasn’t in the written material and I wasn’t at the committee, so that’s why I’m asking the question. It is with Lutheran then. OK. I wondered what the current rules were on that.

JEFF KRAUT: And Dr. Yang is on the medical staff at Lutheran. She runs the department.

GARY KALKUT: She doesn’t run the department at Lutheran but she does, she has privileges at Lutheran.

JEFF KRAUT: She’s privileged at Lutheran, OK. It’s, on one hand you know, it’s kind of nice to see this. On the other hand you want to make sure it’s safe. That’s the issue.

JO BOUFFORD: They used to be almost prohibited because of the levels of regulation that were around them and I didn’t know if we’d gone to the point where they could just, get it set up –

JEFF KRAUT: I think the mid-wife mediated birthing centers are primarily in hospitals. They’re not – there’s one that failed years ago.
ELLEN RAUTENBERG: It’s very rare to have a freestanding one.

JEFF KRAUT: Right. Any other questions? Comments? All those in favor, aye?

[Aye]

Opposed? Abstentions? The motion carries.

GARY KALKUT: Next is 142278E, Nesconset ZJ1 LLC d/b/a Nesconset Center for Nursing and Rehabilitation in Suffolk County. There’s a conflict and recusal by Ms. Carver-Cheney who’s left the room. This is to establish Nesconset ZJ1 LLC as the new operator of the facility located at 100 Southern Boulevard in Nesconset, currently operated by Nesconset Acquisition LLC. And to decertify 12 residential facility beds. Note that this represents a one change, one percent change in the member LLC. Both the Department and the Project Review Committee voted for approval with conditions and contingencies recommended.
JEFF KRAUT: I have a motion. May I have a second, Dr. Berliner. Any comments? Questions? Hearing none, all those in favor, aye?

[Aye]

Opposed? Abstentions? The motion carries.

GARY KALKUT: Next is 142279E, Huntington Acquisitions I, d/b/a Hilaire Rehab and Nursing in Suffolk County. Again conflict by Ms. Carver-Cheney who has left the room. This is to establish Huntington Acquisitions I, LLC as the new operator of the 76 bed facility located at 9 Hilaire Drive, Huntington, Currently operated by Hilaire Farm Skilled Living and Rehabilitation Center LLC, similar notation that there’s a one percent change in the member LLC. Both the Department and the Project Review Committee voted approval with conditions and contingencies. Motion.

JEFF KRAUT: I have a motion. I have a second, Dr. Berliner. Any comments? Questions? All those in favor, aye?

[Aye]

Opposed? Abstentions? The motion carries.

Ask Ms. Carver-Cheney to come back in. Oh, one more.
GARY KALKUT: This is a category IV. Home health agency licensures.

2313L, AHS Criticare LLC, Bronx, Kings, Nassau, New York, Queens, and Richmond County. Ms. Carver-Cheney has a conflict and has left the room. The Department recommended approval with contingency. The Project Review Committee recommended approval also with contingency with one member abstaining. Motion.

JEFF KRAUT: I have a motion, I have a second, Dr. Berliner. Any comments or questions? All those in favor, aye?

[Aye]

Opposed? Abstentions? The motion carries.

GARY KALKUT: OK. Now moving to applications for acute care services. Establish and construction. This is 142211B, Sympaticare LLC, d/b/a Summit Park Hospital in Rockland County. This was the matter discussed in the special committee earlier this morning.

JEFF KRAUT: She has recusals, sorry, go ahead.

GARY KALKUT: Again, conflict declared by Ms. Carver-Cheney who is not in the room. This is to establish Sympaticare
LLC as the new operator of the hospital located on Sanatorium Road in Pamona. To decertify 17 beds, convert 57 beds to medical surgical ones and decertify several services and perform renovations. The Department recommended approval with conditions and contingencies, as did the Establishment and Project Review Committee today. Motion.

JEFF KRAUT: I have a motion. I have a second, Dr. Berliner. Any additional comments? All those in favor, aye?

[Aye]

Opposed? Abstentions? The motion carries.

GARY KALKUT: 141223B, Sympaticare LLC d/b/a Summit Park Nursing Care Center in Rockland. Conflict declared by Ms. Carver-Cheney who is not in the room. This is to establish Sympaticare LLC as the new operator of the Summit Park Nursing Care Center located on Sanatorium Road in Pomona. Currently operated by Rockland County and to decertify 41 residential beds and perform renovations. Note that contingency number four has been withdrawn. The Department is recommended approval with conditions and contingencies, as has the Project Review Committee. I’d make a motion.
JEFF KRAUT: I have a motion. May I have a second.

Second, Dr. Gutierrez. Any questions? Comments? All those in favor - Ms. Carver-Cheney, you just have to stay out. All those in favor, aye?

[Aye]

Opposed? Abstentions? The motion carries.

Now you can come back in.

GARY KALKUT: Thank you. We’ll now move to the top of the agenda category I, application for acute care services for construction. 151162C. University Hospital SUNY Health Sciences Center in Onondaga County. Request is for indefinite life status for it’s outpatient multispecialty ambulatory surgery center. Originally approved through project CON 101123. Both the Department and the Project Review Committee recommended approval for indefinite life. I’d make a motion.

JEFF KRAUT: I have a motion. I have a second Dr. Gutierrez. Any comments? Any questions? All those in favor, aye?

[Aye]

Opposed? Abstentions? The motion carries.
GARY KALKUT: Moving forward, 132131B, SMC Manhattan Center, New York County. This is to establish and construct a new diagnostic and treatment center located at 512 West 126th Street in Harlem to provide primary care services primarily to individuals and family living with HIV AIDS. Both the Department and the Project Review Committee recommended approval with conditions and contingencies.

JEFF KRAUT: You want to move this as a batch?

GARY KALKUT: Happy to do so. 142069B, Bethany Village Primary Care Network in Chemung County. This is to establish and construct diagnostic and treatment center to be located at 2977 Westinghouse Road in Horsehead. Both the Department and the Project Review Committee recommended approval with conditions and contingencies.

Next is 142222B, Healthquest Health Center in New York County. This is to establish and construct a new diagnostic and treatment center to be located at 3500 Nostron Avenue in Brooklyn. The Department and the Project Review Committee recommended approval with conditions and contingencies.

151014E, PRNC Operating, LLC, d/b/a Plattsburgh Rehabilitation and Nursing Center in Clinton County. This is to
establish PRNC Operating LLC as the new operator of the 89 bed facility located at 8 Bushey Blvd. Plattsburgh, currently operating as Evergreen Valley Nursing Home. Both the Department and the Project Review Committee recommended approval with conditions and contingencies.

151085E, AURNC Operating LLC, d/b/a Auburn Rehabilitation and Nursing Center in Cayuga County. This is to establish AURNC Operating LLC as the new operator of the Auburn Nursing Home a 92 bed facility located at 85 Thornton Avenue in Auburn. Both the Department and the Project Review Committee recommended approval with conditions and contingencies.

151087E, BVRNC Operating LLC, d/b/a Blossom View Rehabilitation and Nursing Center in Wayne County. This is to establish BVRNC Operating LLC as the new operator of the existing 129 bed facility located at 6884 Maple Avenue in Sodus and to decertify 5 residential healthcare facility beds. Both the Department and the Project Review Committee recommended approval with conditions and contingencies. There’s an added contingency of submission of a photocopy of the certificate of doing business under an assumed name that is acceptable to the Department that has been added to the application. Let’s continue with the same.

151182E, One Bethesda Drive Operating Company LLC d/b/a Elderwood at Hornell in Steuben County. This is to establish
One Bethesda Drive Operating Company as the new operator of the
112 bed facility located at One Bethesda Drive North Hornell
which is currently operated as the McCauley Manor at Mercy Care.
Both the Department and the Project Review Committee recommended
approval with conditions and contingencies.

151191E, Westledge OP, LLC, d/b/a Pinnacle Center for
Rehabilitation on the Hudson in Westchester County. This is to
establish Westledge OP LLC as the new operator of the 96 bed
facility located at 2000 Main Street in Peekskill which is
currently operated as Westledge Rehabilitation and Nursing
Center. Four residential healthcare facility beds will be
decertified to achieve a 96 bed facility. Both the Department
and the Project Review Committee recommended approval with
conditions and contingencies.

151118E, WellCare Orange County. This is to establish
National Health Industries Incorporated and Almost Family
incorporated as the controlling persons at the Grandparent and
Great-grandparent levels of Litson Certified Care. Both the
Department and the Project Review Committee recommended approval
with conditions and contingencies.

151119E, WellCare in Erie County, to establish Healthcare
Industries and Almost Family Inc., as the controlling persons at
the Grandparent and Great-grandparent level of Western Regional
Healthcare, Western Regional Health Corporation Inc., both the
Department and the Project Review Committee recommended approval with conditions and contingencies. And I’d make a motion.

JEFF KRAUT: have a motion on the batch. I have a second by Dr. Berliner. Is there any question or comment on any of the applications in the batch? Hearing none, I’ll call for a vote. All those in favor, aye?

[Aye]

Opposed? Abstentions? The motion carries.

GARY KALKUT: We’ll now go to the approval for the applications for home agency licensures. After I take a drink of water.

JEFF KRAUT: You just gotta read the number.

GARY KALKUT: Right.

Project Review Committee recommended approval with contingency with one member abstaining.

JEFF KRAUT: I have a motion, second Dr. Gutierrez. Any comments on any of these applications? You’ll note, just do this for the record, Ms. Hines abstained on all of these out of her long-standing concern about the ability to oversight that, so I just recognize that. any other questions? All those in favor, aye?

[Aye]

Opposed? Abstentions? The motion carries.

GARY KALKUT: Next is category VI. 151186B, Premier Ambulatory Services Development Company LLC d/b/a Premier Ambulatory Surgery Center in Erie County. This is to establish and construct a freestanding multispecialty ambulatory surgery center initially specializing in ophthalmology and gastroenterology procedures to be located at 2816 Pleasant Avenue in Hamburg. The Department recommended conditions and contingencies and expiration of the operating certificate five years from the date of issuance. The Project Review Committee recommend deferral of this application to gather additional information for the deferral for one cycle. Make a motion?
JEFF KRAUT: I have a second Dr. Gutierrez. So we’re just going to defer this one cycle. All those in favor, aye?

[Aye]

Opposed? Abstentions? The motion carries.

Is there any other?—

GARY KALKUT: There’s one other and that’s certificate of amendment. Certificate of amendment of the certificate of incorporation. The Capital Region Geriatric Center incorporated name change. Department recommended approval as did the Project Review Committee in the special session this morning.

JEFF KRAUT: Motion to approve. Second, Dr. Berliner, any comments? All those in favor, aye?

[Aye]

Opposed? Abstentions? The motion carries.

We did Sympaticare. Colleen, is there anything that we missed? I know we jumped all over the agenda so I just want to make sure from your perspective.

[We are good]
OK. Thank you so much, Dr. Kalkut. I know that was difficult and appreciate it.

We’ll now call on report of the ad-hoc committee on freestanding ambulatory surgery centers and charity care. Mr. Robinson.

PETER ROBINSON: Thank you Mr. Kraut. The final committee meeting which I don’t think we had sufficient representation for did cover a little bit of where we were in the report, but I don’t think really added a whole lot. However in the interim we did continue to gather some input in what you have in your recommendations are pretty consistent with that input. I do actually want to do what you indicated earlier and I’d like to just add to that my special thanks to Chris Delker and actually give him the privilege of maybe making this report to the Council in recognition of the work that he’s done on this. Chris.

CHRIS DELKER: Thank you. The report basically addresses the issue of ASCs and charity care in serving the underserved in response to the Council on the Department’s noticing that in the initial years of limited life approval many of the ambulatory surgery centers were not reaching the charity care goals particularly, so the Committee was convened back in September to
examine the reasons. And over the course of four meetings we had a lot of discussion and I think most importantly we heard a lot from the individuals who are out there both operators of ASCs and advocates for the underserved regarding the difficulties and successes that are entailed in trying to bring ambulatory surgery services to the underserved. And I think we learned a lot about how reaching out to underserved populations particularly charity care populations does take quite an effort on the part of an ambulatory surgery center. Something in the way perhaps of a patient navigator at least a dedicated person or large part of a full time equivalent to make that happen. We also heard from the industry, from the New York State Association of Ambulatory Surgery Centers and they are very supportive of reaching out to underserved populations, and including for Medicaid and charity care and others, and they did point out I think in some of the later comments they made just prior to this final draft, they did express the concern that it’s standard practice among their members to try to enroll uninsured clients into Medicaid if they are found to be eligible. So when a client presents or is referred, they do make an effort to do that and they did not, and also they will if the client is not eligible at the time of service, they often become eligible following service due to the cost incurred liability incurred by undergoing the procedure. So, the
association did not want to point loss that they are disposed to
serve the uninsured and to enroll them in Medicaid and they did
not want this, the resulting declining numbers in uninsured to
paradoxically indicate that they may not be supportive. They’re
actually, it’s because of their initiative to enroll the
uninsured in Medicaid wherever possible that that might somewhat
seem to contradict their efforts to serve the uninsured by
showing up as actually paid clients under Medicaid. That point
is in the paper. We also heard on this latest draft from the New
York City Department of Health who has been very supportive of
this effort and is working with the American Cancer Society to
bring uninsured clients into endoscopy screening, and we heard
from several, from some of the providers that are collaborating
in this effort. But the city did point out that in our paper we
suggested that the applicants ASCs document contacts with FQHCs
or other entities that might serve as referrals for the
uninsured, they wanted us to be a little more specific about
contacts so we added information to the effect that with
specific examples of meetings, conference calls, letters, and
other active measurable indicators that would show that. There
were also some concerns expressed by some of the committee
members towards the end of our deliberations that are, well, let
me back up a little. One of the things that was recognized in
the discussions that with the increasing and Medicaid enrollment
and the increased enrolment under the affordable care act, the
number of uninsured is declining and some of the committee
members were concerned that our earlier discussions and draft
might have left the impression that it was OK to just go after
Medicaid and bad debt and consider that the obligation. So we
did add language at the end of this current draft to the effect
that these things are good developments, but they should not be
seen as substitutes altogether for charity care, and that all
ASCs should still be expected to show a sustained good faith
effort to reach charity care clients. Now, building on what Ms.
Dreslin said earlier this morning and describing the report from
New York State of Health last week, which showed that some 2
million New Yorkers have enrolled through the exchange through
the end of the second enrollment period representing 89 percent
of them were uninsured at the time of enrollment. According to
U.S. census data there were 2.1 million New Yorkers uninsured in
2013 before the implementation of the Affordable Care Act, so
the amount of uninsured is coming close to the total number of
uninsured who enrolled is coming close to the total number of
uninsured. Now, we should not be content with that. There’s
still always going to be uninsured people out there and ASC
should be expected to serve them. But I think that that very
favorable development underscores some of the comments we heard
from ASC operators saying that it’s getting harder and harder to
find uninsured and charity care clients. And I think that reinforces the committee’s decision not to put an actual percentage of uninsured or charity care in the guidelines in the paper here. It just has to be borne in mind that each ASC has to be evaluated according to its own circumstances and service area and the type of services that are being proposed. And we have to be ever mindful of the context in evaluating these applicants of the changing insurance situation, broader coverage, growth of Medicaid managed care, and the way the whole landscape of healthcare is changing underneath our feet through DSRIP and PPSs and other activities. So I think what the paper does, it does provide guidance to the council, to the Department and to ASC operators and applicants about what is expected and at the same time acknowledges that this is occurring in a changing healthcare environment.

PETER ROBINSON: Thank you very much Chris. I would like to invite the people that are on the ad-hoc committee if there’s anything that they would like to comment on. Dr. Berliner.

HOWARD BERLINLER: Chris, I’d like to add – and Mr. Robinson about how much you’ll be missed. Surely there’ll be no
one to remind us about the tax that ambulatory surgery centers pay.

CHRIS DELKER: Yes, and you’ll see that the added information shows that that’s been up to $1.2 billion over the last seven years. But before you go on Howard, I have to remind you there was a time when you promised you would not advocate for repeal of CON until I retired.

HOWARD BERLINER: Oh, I was going to say that.

CHRIS DELKER: I thought I could outlast you, but you keep getting reappointed.

HOWARD BERLINER: September. You know, it’s gone. No, but what I wanted to ask you about, could you just go over, I mean, Medicare billing does not count in the tax.

CHRIS DELKER: That’s correct. The HCCRA tax, it’s 9.63 percent on commercial plans and commercial managed care plans. It’s about 7 percent on Medicaid, the State’s share of Medicaid and other governmental payers. It is not applied to the federal share of Medicaid or to Medicare.
HOWARD BERLINER: So we are not talking in terms of ambulatory surgery about well over a $3 billion industry. It’s hard to estimate because we don’t know. But I’m assuming most of the ophthalmology oriented ambulatory surgery centers are largely Medicare so they’re not really paying very much in the tax.

CHRIS DELKER: Probably true.

HOWARD BERLINER: Probably paying half of the Medicaid tax. So, this is you know, I mean, when we do this application by application I mean it seems a lot smaller than when you put it together as an entire industry now. It’s a big industry in this State.

CHRIS DELKER: Yeah, well, I, over ¾ of the surgery in this state is done on an ambulatory basis. I think three billion is probably right. I trust your arithmetic on that.

HOWARD BERLINER: Well, it’s I actually think given those caveats actually much more than three billion if that’s the tax they’re paying and that’s not including Medicare and the half of the Medicaid share. But I guess, you know, part of the question then becomes, Siri doesn’t understand this. We’re dealing in a
system now which has an increasing number of people who are insured thanks to the ACA and the work of the marketplace. We’re dealing with a situation where we’re seeing increasing bad debt as opposed to an actual need. I’m sure there still is very much an actual need for charity care. But I’m wondering to what extent is all this money that’s now being poured into the bad debt and charity care fund. I mean, does that need to be redirected in some way to be more appropriately applied to people who can’t afford, who don’t have insurance or can’t afford to pay for care. This is now becoming such a big sum of that money and again, I mean, yes, 80 percent of the ambulatory surgery or 80 percent of the surgeries ambulatory surgery but quite a bit of that ambulatory surgery is hospital-based and therefore not subject to the tax.

CHRIS DELKER: Right.

HOWARD BERLINER: So we’re talking about relatively small number of facilities that are generating like, a lot of money for the, for bad debt and charity care potentially.

JEFF KRAUT: I think you asked a question but it was a wonderful statement. But Howard, in all seriousness, you’re, you know, because we’ve been doing this for years, this is a
reasonable framework I think to go forward given, you know we were looking for a hard number, a hard stop. So, what I take away from this is that the, that when an applicant applies we’re going to not only be looking for what they are comfortable to commit to given the communities they’re serving, but there is an affirmative obligation to do so and second, I would say given the framework you gave to work with the FQHCs, the expectation is that would be part and parcel of the application process that we would’ve seen evidence of that outreach at the outset, and then when they come in for the limited life, the review, you’re gonna have to evaluate it against all these factors at that point in time. Is that the takeaway?

PETER ROBINSON: That’s a broad intent obviously there are geographic issues here in terms of where FQHCs are located and where the ambulatory surgery centers are, but there would be a presumption that there would be an effort to reach out and to establish linkages between providers that care for the medically underserved and the indigent as well as Medicaid, insuring Medicaid access.

GLENN MARTIN: I just want to emphasize what I think New York City’s DOH MH was saying also, is there’s still a large pool of people who will never be insured because they are not
legally in this country to the extent that congress believes
they should get insurance. And that certainly when we look at
the geographic differences personally my expectation if you’re
opening up in New York City is the concept of charity care and
people are in there that aren’t going to be able to get these
other services is going to be important where it may be less so
in other geographic areas where in fact the State’s efforts have
paid off really well and a lot of the uninsured are now insured.
So I think it’s just an important thing that we all have to keep
in our heads as we go forward.

PETER ROBINSON: I think that’s right, which is why I
think we recognize the fundamental obligation but recognize that
the standard that we’re going to apply is not a one-size-fits
all that we’re really going to have to look at each on a case by
case basis, and I think that’s how we’ve managed the balance
that I think everybody was looking for.

JEFF KRAUT: OK. any other comments or questions?

PETER ROBINSON: I’d like to make a motion that this
report serve as a recommendation for how the department applies
the charitable care standards that are still fundamental to what
we want to do as a sort of working guiding document for them.
So I’ll make that motion.

JEFF KRAUT: So we have a motion for the Council to accept the work of the subcommittee and for the two advanced to the Department for future policy and guidance. I have second Dr. Berliner. Any other discussion? All those in favor, aye?

[Aye]

Opposed? Abstentions? The motion carries.

Thank you again to Chris and the staff have worked on this and it’s a nice piece of work and I think it’s to our chairman Mr. Robinson that did this in a very short timeframe and got it back to us. We appreciate it very much. We know how much work that takes. Thank you. Anything else? That’s it. OK. I am going to go into Executive Session in a moment, but before I close down I wanted to make a statement about our next meeting is on September 24 is the Committee day and August – October 8 is our next full meeting that’ll be held in New York City. We’re going to go into Executive Session take on a matter, so, the public will conclude the public portion of the Public Health and Health Planning Council meeting.

[end of audio]
15-14 Addition of Part 4 to Title 10 NYCRR  
(Protection Against Legionella)

To Be Distributed Under Separate Cover
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 9.1 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon filing with the Department of State.

Subdivision (b) of section 9.1 is amended as follows:

(b) Synthetic Cannabinoid means any manufactured chemical compound that is a cannabinoid receptor agonist and includes, but is not limited to any material, compound, mixture, or preparation that is not listed as a controlled substance in Schedules I through V of § 3306 of the Public Health Law, and not approved by the federal Food and Drug Administration (FDA), and contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric), homologues (analogs), and salts of isomers and homologues (analogs), unless specifically exempted, whenever the existence of these salts, isomers, homologues (analogs), and salts of isomers and homologues (analogs) is possible within the specific chemical designation:

(1) Naphthoylindoles. Any compound containing a 3-(1-Naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited to: JWH 007, JWH 015, JWH 018, JWH 019, JWH 073, JWH 081, JWH 98, JWH 122, JWH 164, JWH 200, JWH 210, JWH 398, AM 2201, MAM 2201, EAM 2201 and WIN 55 212.)
(2) Naphthylmethylindoles. Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited to: JWH-175, and JWH-184.)

(3) Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited: JWH 307.)

(4) Naphthylmethylindenes. Any compound containing a naphthylmethyl indenes structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited: JWH-176.)

(5) Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any
extent and whether or not substituted in the phenyl ring to any extent. (Other names in this structural class include but are not limited to: RCS-8 (SR-18), JWH 201, JWH 250, JWH 203, JWH-251, and JWH-302.)

(6) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyethyl) group, whether or not substituted in the cyclohexyl ring to any extent. (Other names in this structural class include but are not limited to: CP 47,497 (and homologues (analogs)), cannabicyclohexanol, and CP 55,940.)

(7) Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyethyl) group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. (Other names in this structural class include but are not limited to: AM 694, Pravadoline (WIN 48,098), RCS 4, AM-2233 and AM-679.)

(8) [2,3-Dihydro-5-methyl-3-(4-morpholinyethyl)pyrrolo [1,2,3-de]-1, 4-benzoxazin-6-yl]-1-napthalenylmethanone. (Other names in this structural class include but are not limited to: WIN 55,212-2.)

(9) (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c]chromen-1-ol. (Other names in this structural class include but are not limited to: HU-210.)
(10) (6aS, 10aS)-9-(hydroxymethyl)-6,6-demethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (Dezanabinol or HU-211)

(11) Adamantoylindoles. Any compound containing a 3-(1-adamantoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the adamantyl ring system to any extent. (Other names in this structural class include but are not limited to: AM-1248.)

(12) Adamantoylindazoles including but not limited to Adamantyl Carboxamide Indazoles. Any compound containing a 3-(1-adamantoyl)indazole structure with substitution at the nitrogen atom of the indazole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the adamantyl ring system to any extent. (Other names in this structural class include but are not limited to: AKB-48, MAB-CHMINACA, 5F-AKB-48.)

(13) Tetramethylcyclopropylcarbonylindoles or any compound structurally derived from 3-(2,2,3,3-tetramethylcyclopropylcarbonyl) indole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, including without limitation the following: UR-11, XLR-11, A-796,260.
(14) Any other synthetic chemical compound that is a cannabinoid receptor agonist that is not listed in Schedules I through V of § 3306 of the Public Health Law, or is not an FDA approved drug.
Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council (PHHPC) is authorized by Section 225 of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC) subject to the approval of the Commissioner of Health. PHL Section 225(5)(a) provides that the SSC may deal with any matter affecting the security of life and health of the people of the State of New York.

Legislative Objectives:

PHL Section 225(4) authorizes PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety by amending the SSC to address issues that jeopardize health and safety. Accordingly, PHHPC has issued 10 NYCRR Part 9, which prohibits the possession, manufacture, distribution, sale or offer of synthetic phenethylamines and cannabinoids. This amendment would add additional chemicals to the list of explicitly prohibited synthetic cannabinoids.

Needs and Benefits:

“Synthetic cannabinoids” encompass a wide variety of chemicals that are designed specifically to stimulate the same receptor in the body as cannabinoid 9-tetrahydrocannabinol (THC). However, they cause additional side effects that mimic other controlled substances and have been linked to severe adverse reactions, including death and acute renal failure. Reported side effects include: tachycardia (increased heart rate); paranoid behavior, agitation and irritability; nausea and vomiting; confusion; drowsiness; headache; hypertension; electrolyte
abnormalities; seizures; and syncope (loss of consciousness). Additional signs and symptoms of synthetic cannabinoids include: anxiety; tremor; hallucinations; and violent behavior. These effects can be similar to those of phencyclidine (PCP). It has been reported that some recent patients have presented with both somnolence (drowsiness) and bradycardia (decreased heart rate), some requiring endotracheal intubation.

Synthetic cannabinoids are frequently applied to plant materials and then packaged as incense, herbal mixtures or potpourri. They often carry a “not for human consumption” label, and are not approved for medical use in the United States. Products containing synthetic cannabinoids are, in actuality, consumed by individuals, most often by smoking, either through a pipe, a water pipe, or rolled in cigarette papers.

Products containing synthetic cannabinoids have become prevalent drugs of abuse. In 2012, before 10 NYCRR Part 9 was promulgated, calls to New York State Poison Control Centers relating to the consumption of synthetic cannabinoids had increased dramatically. Over half of the calls to the Upstate Poison Control Center in 2011 involved children under the age of 19, which was consistent with the results of a 2011 “Monitoring the Future” national survey of youth drug-use trends that showed that 11.4% of 12th graders used a synthetic cannabinoid during the twelve months prior to the survey, making it the second most commonly used illicit drug among high school seniors at the time.

In 2012, the Department issued 10 NYCRR Part 9, which addressed this emergent threat to public health by prohibiting the possession, manufacture, distribution, sale or offer of synthetic cannabinoids and other substances. Thereafter, New York State experienced a substantial decrease in reported cases of adverse health effects related to synthetic cannabinoid use, an achievement that was sustained until the early part of this year.
Recently, however, New York State experienced a dramatic increase in synthetic cannabinoid-related adverse events and emergency department visits. During April 1 to June 30, New York State has seen more than 1,900 emergency department visits and 680 poison control center calls due to reports of adverse health effects associated with synthetic cannabinoid use. This represents more than a tenfold increase over the same time period in 2014, when there was more than 150 emergency department visits and 50 poison control center calls reported.

Nationally, there have been 15 synthetic cannabinoid-related deaths reported to poison control centers during from January to May of 2015. In New York, no fatalities have been reported to date, although there has been a 44% increase in the proportion of patients being admitted to critical care units from April 6 to June 30, 2015 when compared to the proportion of patients admitted to the critical care unit from Jan 1, 2011 to April 5, 2015. Calls received by poison control centers generally reflect only a small percentage of actual instances of poisoning.

Testing has identified synthetic cannabinoids that were not known to the Department in 2012, when 10 NYCRR Part 9 was first issued, and that are associated with the recent increase in cannabinoid-related adverse events and emergency department visits. Identifying these new synthetic cannabinoids in the regulation will simplify and enhance the efforts of local governments to control these dangerous chemicals.

Costs:

Costs to Private Regulated Parties:

The regulation imposes no new costs for private regulated parties.
**Costs to State Government and Local Government:**

There will be no additional cost to State Government. Local governments are already enforcing 10 NYCRR Part 9, which prohibits the possession, manufacture, distribution, sale or offer of synthetic phenethylamines and cannabinoids. The addition of these chemicals is expected to have negligible cost on local enforcement programs.

**Local Government Mandates:**

The SSC establishes a minimum standard for regulation of health and sanitation. Local governments can, and often do, establish more restrictive requirements that are consistent with the SSC through a local sanitary code. PHL § 228. Local governments have the power and duty to enforce the provisions of the State Sanitary Code, including 10 NYCRR Part 9, utilizing both civil and criminal options available. PHL §§ 228, 229, 309(1)(f) and 324(1)(e).

**Paperwork:**

The regulation imposes no new reporting or filing requirements.

**Duplication:**

The federal Synthetic Drug Abuse Prevention Act of 2012 banned the sale and distribution of products containing the synthetic cannabinoids identified in this regulation, by placing them on the federal schedule I list of substances under the federal Controlled Substances Act (21 U.S.C. § 812[c]). This regulation does not conflict with or duplicate that federal law, because it provides local enforcement authority, which the federal law does not provide.
Alternatives:

The Department considered relying on the existing regulation to address these recently identified synthetic cannabinoids. However, the Department determined that amending the regulation to explicitly identify these substances would enhance state and local enforcement authority and more effectively address this public health threat.

Federal Standards:

As noted above, the Synthetic Drug Abuse Prevention Act of 2012 places synthetic cannabinoids on the federal schedule I list of substances under the federal Controlled Substances Act (21 U.S.C. § 812[c]). This regulation does not conflict with or duplicate that federal law, because it provides local enforcement authority, which the federal law does not provide.

Compliance Schedule:

Regulated parties should be able to comply with these regulations effective upon filing with the Secretary of State.

Contact Person:

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Regulatory Flexibility Analysis for Small Business and Local Governments

Effect of Rule:

The amendment will affect only the small businesses that are engaged in selling products containing synthetic cannabinoids. The Department does not have information concerning the number of small businesses that currently sell these products. However, in 2011 and 2012, Commissioner’s Orders were issued banning certain synthetic phenethylamines and synthetic cannabinoids, resulting in approximately 8,000 establishments being served with one or both Orders by public health authorities. Banned product was found in 286 of these locations. Subsequent to these efforts, the number of related complaints dropped significantly.

This regulation affects local governments by establishing a minimum standard regarding the possession, manufacture, distribution, sale or offer of sale of additional synthetic cannabinoids. Local governments have the power and duty to enforce the provisions of the State Sanitary Code, including Part 9, utilizing any civil and criminal remedies that may available. PHL §§ 228, 229, 309(1)(f) and 324(e). Local governments are also empowered to establish a local sanitary code that is more restrictive than the State Sanitary Code.

Compliance Requirements:

Small businesses must comply by not engaging in any possession, manufacturing, distribution, sale, or offer of sale of the additional synthetic cannabinoids.

Local governments must comply by enforcing the State Sanitary Code. Local boards of health may impose civil penalties for a violation of this regulation of up to $2,000 per violation, pursuant to PHL § 309(1)(f). Pursuant to PHL § 229, local law enforcement may seek criminal penalties for a first offense of up to $250 and 15 days in prison, and for each subsequent offense.
up to $500 and 15 days in prison.

**Professional Services:**

Small businesses will need no additional professional services to comply. Local governments, in certain instances where local governments enforce, will need to secure laboratory services for testing of substances.

**Compliance Costs:**

**Costs to Private Regulated Parties:**

The regulation imposes no new costs for private regulated parties.

**Costs to State Government and Local Government:**

There will be no additional cost to State Government. Local governments are already enforcing 10 NYCRR Part 9, which prohibits the possession, manufacture, distribution, sale or offer of synthetic phenethylamines and cannabinoids. The addition of these chemicals is expected to have negligible cost on local enforcement programs.

**Economic and Technological Feasibility:**

Although there will be an impact on small businesses that sell these products, the prohibition is justified by the extremely dangerous nature of these products.

**Minimizing Adverse Impact:**

The New York State Department of Health will assist local governments by providing
consultation, coordination and information and updates on its website.

**Small Business and Local Government Participation:**

The Department will work with local governments to provide technical information concerning the newly-listed synthetic cannabinoids.

**Cure Period:**

Violation of this regulation can result in civil and criminal penalties. In light of the magnitude of the public health threat posed by these substances, the risk that some small businesses will not comply with regulations and continue to make or sell or distribute the substance justifies the absence of a cure period.
Rural Area Flexibility Analysis

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any additional reporting, record keeping or other compliance requirements on public or private entities in rural areas.
Job Impact Statement

Nature of the Impact:

The Department of Health does not expect there to be a positive or negative impact on jobs or employment opportunities.

Categories and Numbers Affected:

The Department anticipates no negative impact on jobs or employment opportunities as a result of the amended rule.

Regions of Adverse Impact:

The Department anticipates no negative impact on jobs or employment opportunities in any particular region of the state.

Minimizing Adverse Impact:

Not applicable.
**Emergency Justification**

“Synthetic cannabinoids” encompass a wide variety of chemicals that are designed to stimulate the same receptor in the body as cannabinoid 9-tetrahydrocannabinol (THC). However, they cause additional side effects that mimic other controlled substances and have been linked to severe adverse reactions, including death and acute renal failure. Reported side effects include: tachycardia (increased heart rate); paranoid behavior, agitation and irritability; nausea and vomiting; confusion; drowsiness; headache; hypertension; electrolyte abnormalities; seizures; and syncope (loss of consciousness). Additional signs and symptoms of synthetic cannabinoids include: anxiety; tremor; hallucinations; and violent behavior. These effects can be similar to those of phencyclidine (PCP). It has been reported that some recent patients are also presenting with both somnolence (drowsiness) and bradycardia (decreased heart rate), some requiring endotracheal intubation.

Synthetic cannabinoids are frequently applied to plant materials and then packaged as incense, herbal mixtures or potpourri. They often carry a “not for human consumption” label, and are not approved for medical use in the United States. Products containing synthetic cannabinoids are, in actuality, consumed by individuals, most often by smoking, either through a pipe, a water pipe, or rolled in cigarette papers.

Products containing synthetic cannabinoids have become prevalent drugs of abuse. When 10 NYCRR Part 9 was first promulgated, calls to New York State Poison Control Centers relating to the consumption of synthetic cannabinoids had increased dramatically. Over half of the calls to the Upstate Poison Control Center in 2011 involved children under the age of 19 years of age which is consistent with the results of a 2011 Monitoring the Future national survey of youth drug-use trends that showed that 11.4% of 12th graders used a synthetic cannabinoid.
during the twelve months prior to the survey, making it the second most commonly used illicit
drug among high school seniors at that time.

In 2012, the Department issued 10 NYCRR Part 9, which addressed this emergent threat
to public health by prohibiting the possession, manufacture, distribution, sale or offer of
specified synthetic cannabinoids and other substances. Thereafter, New York State experienced a
substantial decrease in reported cases of adverse health effects related to synthetic cannabinoid
use, an achievement that was sustained until the early part of this year.

Recently, however, New York State experienced a dramatic increase in synthetic
cannabinoid-related adverse events and emergency department visits. During April 1 to June 30,
New York State has seen more than 1,900 emergency department visits and 680 poison control
center calls due to reports of adverse health effects associated with synthetic cannabinoid use.
This represents more than a tenfold increase over the same time period in 2014, when there was
more than 150 emergency department visits and 50 poison control center calls reported.
Nationally, there have been 15 synthetic cannabinoid-related deaths reported to poison control
centers during from January to May of 2015. In New York, no fatalities have been reported to
date, although there has been a 44% increase in the proportion of patients being admitted to
critical care units from April 6 to June 30, 2015 when compared to the proportion of patients
admitted to the critical care unit from Jan 1, 2011 to April 5, 2015. Calls received by poison
control centers generally reflect only a small percentage of actual instances of poisoning.

Testing has identified synthetic cannabinoids that were not known to the Department in
2012, when 10 NYCRR Part 9 was first issued, and that are associated with the recent increase in
cannabinoid-related adverse events and emergency department visits. Identifying these new
synthetic cannabinoids in the regulation will simplify and enhance the efforts of local
governments to control these dangerous chemicals.

Because synthetic cannabinoids continue to be an urgent public health issue, and because the Department has learned of additional specific synthetic cannabinoids since the regulation was first promulgated, the Commissioner of Health and the Public Health and Health Planning Council have determined it necessary to file these regulations on an emergency basis. Public Health Law § 225, in conjunction with State Administrative Procedure Act § 202(6), empowers the Council and the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest.
Pursuant to the authority vested in the Public Health and Health Planning Council and subject to the approval by the Commissioner of Health pursuant to Sections 2803, 2805-v and 2805-w of the Public Health Law, paragraph (2) of subdivision (e) of Part 405.19 is amended, subdivision (g) of Section 405.19 is repealed and a new Section 405.32 is added to Title 10 (Health) 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:

Paragraph (2) of subdivision (e) of Section 405.19 is amended to read as follows:

(2) Every person arriving at the emergency service for care shall be promptly examined, diagnosed and appropriately treated in accordance with triage and transfer policies and protocols adopted by the emergency service and approved by the hospital. Such protocols must include written agreements with local emergency medical services (EMS) in accordance with subparagraph (b) (1) (i) of this section. All patient care services shall be provided under the direction and control of the emergency services director or attending physician. In no event shall a patient be discharged or transferred to another facility, unless evaluated, initially managed, and treated as necessary by an appropriately privileged physician, physician assistant, or nurse practitioner. No later than eight hours after presenting in the emergency service, every person shall be admitted to the hospital, or assigned to [an]observation [unit]services in accordance with [subdivision (g) of this] section 405.32 of this part, or transferred to another hospital in accordance with paragraph (6) of this subdivision, or discharged to self-care or the care of a physician or other appropriate follow-up service. [Hospitals which elect to use physician assistants or nurse practitioners shall develop and implement written policies and treatment
protocols subject to approval by the governing body that specify patient conditions that may be
treated by a registered physician assistant or nurse practitioner without direct visual supervision
of the emergency services attending physician.]

Subdivision (g) of section 405.19 is repealed.

A new Section 405.32 is added to read as follows:

405.32 Observation services.

(a) General.

(1) Observation services are post-stabilization services appropriate for short-term treatments,
assessment, and re-assessment of those patients for whom diagnosis and a determination
concerning inpatient admission, discharge, or transfer can reasonably be expected within
forty-eight hours.

(2) If observation services are provided, the services shall be provided in a manner which
protects the health and safety of the patients in accordance with generally accepted
standards of medical practice.
(3) Direct referral is defined as a patient referred to the hospital for observation services by a nursing home, hospital outpatient clinic, diagnostic and treatment center, private practice physician or appropriately licensed practitioner, without receiving emergency room or critical care services on the day observation care begins. The referring practitioner must be a licensed physician or appropriately licensed practitioner and must have conducted a physical assessment of the patient within the previous eight hours from the referral.

(4) Patients may be assigned to observation services only by order of a physician or appropriately licensed practitioner.

(5) Patients may be assigned to observation services only through the emergency department or by direct referral in accordance with hospital policies, procedures and bylaws, in conformance with applicable statutes and regulations.

(b) Organization and Notice.

(1) The medical staff shall develop and implement written policies and procedures, approved by the governing body, that are based on the clinical needs of the patient, that shall specify:
(i) the organizational structure for providing observation services, including the specification of authority and accountability of the services,

(ii) the proper clinical location for the care of a patient requiring observation services,

(iii) the appropriate medical and administrative oversight of observation services

(iv) clinical criteria for observation assignment and discharge,

(v) assignment of a physician, nurse practitioner, or physician assistant who will be responsible for the care of the patient and timely discharge from observation services, and

(vi) integration with related services and quality assurance activities of the hospital.

(2) The hospital, in conjunction with the discharge planning program of the hospital, shall establish and implement written criteria and guidelines specifying the circumstances, the actions to be taken, and the appropriate contact agencies and individuals to accomplish adequate discharge planning for persons in need of post observation treatment or services but not in need of inpatient hospital care.

(3) Patients in observation shall be cared for by staff appropriately trained and in sufficient numbers to meet the needs of the patients.

(4) Patients being assigned to the observation services, or the patient representative, shall be provided with an oral and written notice within twenty-four hours of such placement that
the patient is not admitted to the hospital and is under observation status. The hospital shall make a good faith effort to obtain written acknowledgment of receipt of the notice by the patient or the patient representative, and if not obtained, document its good faith efforts to obtain such acknowledgment and the reason why the acknowledgment was not obtained. Such written notice shall include, but not be limited to the following information:

(i) a statement that observation status may affect the patient’s Medicare, Medicaid and/or private insurance coverage for the current hospital services, including medications and other pharmaceutical supplies, as well as coverage for any subsequent discharge to a skilled nursing facility or home and community based care; and

(ii) that the patient should contact his or her insurance plan to better understand the implications of being placed in observation status.

(c) Locations. Hospitals may provide observation services in the following locations:

(1) Inpatient beds;

(2) Distinct Observation Units; or
(3) In a hospital designated as a critical access hospital pursuant to Subpart F of Part 485 of Title 42 of the Code of Federal Regulations or a sole community hospital pursuant to section 412.92 of Title 42 of the Code of Federal Regulations, or any successor provisions, observation services may be provided in the emergency department.

(d) Distinct Observation Units.

(1) Physical Standards

(i) The observation unit shall comply with the applicable provisions of Parts 711 and 712-2 and section 712-2.4 of this Title for construction projects approved or completed after January 1, 2011, except that the unit need not be adjacent to the emergency department.

(ii) Observation unit beds shall not be counted within the state certified bed capacity of the hospital and shall be exempt from the public need provisions of Part 709 of this Title.

(iii) The observation unit shall be marked with a clear and conspicuous sign that states: “This is an observation unit for visits of up to 48 hours. Patients in this unit are not admitted for inpatient services.”

(2) Any hospital seeking to establish a distinct observation unit shall, not less than 90 days prior:
(i) if no construction, as defined in subdivision 5 of section 2801 of the Public Health Law, will be needed, no construction waivers are being requested, and no service will be eliminated, notify the Department in writing of the general location of the unit and the number of beds; and submit a certification from a licensed architect or engineer, in the form specified by the Department, that the space complies with the applicable provisions of Parts 711 and 712-2 and section 712-2.4 of this Title for construction projects approved or completed after January 1, 2011; or

(ii) if construction, as defined in subdivision 5 of section 2801 of the Public Health Law, will be needed, or construction waivers are being requested, or a service will be eliminated:

    (a) submit a request for limited review under 710.1(c)(5) of this Title, provided that for purposes of Part 710, a construction project involving only the creation of an observation unit and the addition of observation unit beds shall not be subject to review under section 710.1(c)(2) or (3) of this Title, unless the total project cost exceeds $15 million or $6 million respectively; and

    (b) comply with the applicable provisions of Parts 711 and 712-2 and section 712-2.4 of this Title for construction projects approved or completed after January 1, 2011.
(3) Any hospital operating an observation unit pursuant to a waiver granted by the Department shall be required to comply with the provisions of this subdivision within 12 months of its effective date.
REGULATORY IMPACT STATEMENT

Statutory Authority:
The authority for the proposed revision to Title 10 NYCRR Part 405 is section 2803 of the Public Health Law (PHL), which authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health, to effectuate the provisions and purposes of Article 28 of the PHL with respect to minimum standards for hospitals and section 2805-v of the PHL, which authorizes PHHPC and the Commissioner to adopt regulations with respect to observation services in general hospitals. In addition, Section 2805-w of the Public Health Law requires patient notice of observation services.

Legislative Objectives:
While observation services have been widely used, it wasn’t until 2011 a Medicaid rate was implemented and 2012 that regulations were adopted creating operational standards for observation units, pursuant to a recommendation adopted by Governor Cuomo's Medicaid Redesign Team. In January 2013 Governor Cuomo signed legislation (L. 2013, ch. 5) creating section 2805-v of the Public Health Law in relation to hospital observation services which differ from the type of observation services provided for in the current regulations. In addition, Chapter 397 of the Laws of 2013 added a new Section 2805-w to the Public Health Law specific to patient notice of observation services.
The proposed changes are designed to make the regulations consistent with sections 2805-v and 2805-w, as well as make modifications based on the experiences of hospitals and the desire to bring the regulations more in line with Medicare rules, while still assuring patient safety and quality of care.

**Current Requirements:**

Current regulations require that observation services be rendered in a discrete unit, under the direction and control of the emergency services. Additionally, observation services are currently limited to twenty-four hours, at which time the hospital must either discharge or admit the patient. Observation services have been identified as a means of improving patient care and relieving overcrowding in emergency departments by increasing efficiency and patient through-put. However, the current regulations differ significantly from sections 2805-v and 2805-w and from Medicare rules.

**Needs and Benefits:**

The proposed regulations repeal 405.19(g) and create a new section 405.32. In response to the recent legislation, the new regulations will allow observation services to be rendered in a distinct unit or in inpatient beds, with no limit on the number of observation beds. The facility will be able to determine the appropriate oversight, and the maximum observation stay will increase to
forty-eight hours. Many of the provisions in the current section 405.19(g) are retained in the new 
405.32(d).

Additionally, proposed changes would allow hospitals to accept direct referrals to observation by 
community providers, following appropriately adopted policies and procedures. The new 
regulations will also require both verbal and written notice be given to patients explaining that 
observation services are considered outpatient services with all concurrent applicable insurance 
rules.

These regulatory changes incorporate the statutory changes and take into account the desire for 
appropriate consistency with Medicare rules and operational experiences over the past year, 
while maintaining proper safeguards and attention to patient safety and quality of care.

COSTS

Costs to Private Regulated Parties:

This regulation creates no additional burdens or costs to regulated parties. It will eliminate the 
requirement for discrete units which may have required construction costs to be in compliance 
with construction standards.

Costs to Local Government:

There are no costs to local government.
Costs to the Department of Health:
The proposed amendment would impose no new costs on the Department.

Costs to Other State Agencies:
There are no costs to other State agencies or offices of State government.

Local Government Mandates:
The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:
This regulation requires no additional paperwork other than written notice to patients about their assignment to observation services and signage at the entrance to the observation area.

Duplication:
There are no relevant State regulations which duplicate, overlap or conflict with the proposed amendment. Federal Medicare payment rules set forth standards for reimbursement of observation services. These proposed regulations provide clear and consistent operating standards for observation services. The regulations do not conflict with Medicare payment rules.
Alternatives:

The Department believes that Chapter 5 of the Laws of 2013 requires the Department to promulgate these regulations. The Department considered not requiring verbal and written notice to patients regarding their assignment to observation services. Based on the literature and recent newspaper articles, the Department determined that such information was important for patients to know.

Federal Standards:

The proposed amendment does not exceed any minimum operating standards for health care facilities imposed by the Federal government.

Compliance Schedule:

The proposed amendments will be effective 90 days after publication of a Notice of Adoption in the New York State Register. Facilities operating observation units pursuant to a waiver approved by the Department will have 12 months to comply with these regulations.

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STATEMENT IN LIEU OF

REGULATORY FLEXIBILITY ANALYSIS

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.
STATEMENT IN LIEU OF
RURAL AREA FLEXIBILITY ANALYSIS

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas. The regulation includes an exemption for critical access hospitals and sole community hospitals, allowing them to utilize emergency room beds.
STATEMENT IN LIEU OF

JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have an adverse impact on jobs and employment opportunities.
Pursuant to the authority vested in the Public Health and Health Planning Council by Section 2803 of the Public Health Law, subject to the approval of the Commissioner of Health, Part 757 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Part 757 Chronic Renal Dialysis Services is REPEALED in its entirety, and New Part 757 is added as follows:

PART 757 CHRONIC RENAL DIALYSIS SERVICES
(Statutory authority: Public Health Law §2803)

Sec.
§757.1 Codes and standards.
§757.2 Additional requirements for chronic renal dialysis centers.
§757.3 Chronic renal dialysis center staffing.

§757.1 Codes and standards.

Operators of chronic renal dialysis centers shall comply with the codes and standards referred to in this section. Nothing herein shall preclude the operator of a chronic renal dialysis center from exceeding any codes and standards relating to the quality of care set forth in this Part. If a conflict occurs between the codes and standards set forth herein, or
between them and regulations found elsewhere in this Chapter, the operator of a chronic renal dialysis center shall comply with the more restrictive requirement. The following codes and standards are hereby incorporated by reference, with the same force and effect as if fully set forth at length herein. Copies of such codes and standards are available for inspection and copying at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, NY 12237. Copies are also available from the publisher or issuing organization at the addresses listed below.


(b) In the document entitled "Guidelines for the Prevention of Intravascular Catheter Related Infections", the provisions entitled "Recommendations for Placement of Intravascular Catheters in Adults and Children", Parts I-IV; and "Central Venous Catheters, Including PICCs, Hemodialysis and Pulmonary Artery Catheters in Adult and Pediatric Patients", pages 16 through 18, *Morbidity and Mortality Weekly Report*, volume 51, number RR-10, August 9, 2002. This publication is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Central Building, Baltimore, MD or at the National Archives and Records Administration, United States Government Printing Office, Washington, D. C. 20402.
(c) "Recommendation for Preventing Transmission of Infections Among Chronic Hemodialysis Patients", developed by the Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, volume 50, number RR05, April 27, 2001. This publication is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Central Building, Baltimore, MD or at the National Archives and Records Administration, United States Government Printing Office, Washington, D. C. 20402.

§757.2 Additional requirements for chronic renal dialysis centers.

(a) Whenever referred to in this Part, the following definitions shall have the following meanings:

(1) *Dialysis station* means an individual patient treatment area that accommodates the dialysis equipment and the routine and emergency care indicated, and is sufficiently separate from other dialysis stations to afford protection from cross-contamination with blood-borne pathogens. A hemodialysis station shall be equipped with a chair or a bed, a hemodialysis machine, and access to a purified water source and dialysate concentrates.

(2) *End-Stage Renal Disease (ESRD) network* means entities contracted with the federal government that collect and share data and other information with the Centers for Medicare and Medicaid Services
(CMS), New York State and chronic renal dialysis centers within a specific geographic area.

(3) *Chronic renal dialysis center* means an ambulatory care facility approved by CMS to provide chronic renal dialysis services and licensed by the New York State Department of Health to provide such services.

(4) *Home dialysis* means dialysis provided at home by a patient or care partner who is trained by a registered professional nurse to deliver dialysis (peritoneal or hemodialysis) treatments at the patient’s place of residence. The nurse responsible for home dialysis training must be a registered professional nurse who meets the licensure and practice requirements of New York State, has 12 months experience providing nursing care and 3 months experience working as a nurse in the specific dialysis modality (peritoneal or hemodialysis).

(5) *Dialysate* means aqueous fluid containing electrolytes and, usually, dextrose, which is intended to exchange solutes with blood during hemodialysis. It is the fluid made from water and concentrates delivered to the dialyzer by the dialysate supply system.

(6) *Product water* means water produced by a water treatment system or by an individual component of a system.
(b) Operators of chronic renal dialysis centers shall comply with Parts 751 and 752 of this Subchapter.

(c) The operator of a chronic renal dialysis center that provides pediatric services on other than an emergency basis, shall obtain pediatric nephrology consultation services with one or more board certified pediatric nephrologists. Such board certified pediatric nephrologist(s) shall follow current evidence based professionally accepted clinical practice standards for evaluating and monitoring the pediatric dialysis patients.

(d) Each chronic renal dialysis center certified for home dialysis services must ensure through its interdisciplinary team, that home dialysis services are at least equivalent to those provided to patients who receive such services at the chronic renal dialysis center, and meet all applicable requirements contained in Title 42 of the Code of Federal Regulations, Part 494, *Conditions for Coverage for End-Stage Renal Disease Facilities*, 2008 edition.

(e) Each chronic renal dialysis center shall ensure that its water treatment and dialysate supply systems protect hemodialysis patients from adverse effects arising from known chemical and microbial contaminates that may be found in water and improperly prepared dialysate. Each chronic renal dialysis center shall develop, implement and comply with policies and procedures related to water treatment, dialysate, and reuse that are understandable and include the following:
(1) sample of product water and a sample of dialysate shall have a microbiological examination at least once every month;

(2) sample of product water shall have a chemical examination at least once every three months; and

(3) water samples shall be examined by a laboratory licensed pursuant to Section 502 of the Public Health Law that is approved by the Department for the analysis of potable water.

(f) Each chronic renal dialysis center shall ensure that dialysis stations meet the requirements set forth in subdivision (a) (1) of this section.

(g) Each chronic renal dialysis center shall collaborate with its ESRD network, suppliers, utility service providers and the Department for surveys and for emergency preparedness, and shall also collaborate with other chronic renal dialysis centers to ensure that lifesaving dialysis services are available in the event of an emergency or disaster. The chronic renal dialysis center shall develop written policies and procedures that detail the actions it shall take and plan to be implemented in the event of an emergency or disaster.
§ 757.3 Chronic renal dialysis service staffing.

(a) In addition to other requirements that may be applicable to the operator as set forth in this Chapter, the operator of chronic renal dialysis center shall ensure that the center is adequately staffed with qualified personnel as described in and in accordance with this section.

(1) Registered Professional Nurses. All registered professional nurses (RNs) working in a chronic renal dialysis center shall hold an active New York State license to practice in accordance with Article 139 of the Education Law and its implementing regulations. At least one RN shall be present, on duty, and available to provide nursing services including nursing supervisory duties at all times when patients are present at the center.

(2) Licensed Practical Nurse. All licensed practical nurses (LPNs) working in a chronic renal dialysis center shall hold an active New York State license to practice in accordance with Article 139 of the Education Law and its implementing regulations. LPN responsibilities shall be consistent with the authorization and training provided by the center. In addition, LPNs practicing in a chronic renal dialysis center who have received training and demonstrated the competencies required by such chronic renal dialysis center may, if authorized by the LPNs’ supervising RN, access and provide care to patients with central venous catheters. A supervising RN shall, in his or her sole discretion, determine whether an LPN has received the appropriate training and
demonstrated competencies as required by the center to provide care to patients with central venous catheters. All LPNs who are authorized to perform intravenous therapy procedures shall perform such procedures in accordance with the provisions set forth in Section 400.15 of this Title.

(3) **Qualified Social Worker.** The operator of chronic renal dialysis center shall have on staff, a qualified social worker who is licensed and registered by the New York State Education Department to practice as a licensed master social worker (LMSW) or licensed clinical social worker (LCSW) as defined in and in accordance with Article 154 of the Education Law.

(4) **Patient Care (Dialysis) Technicians.** The operator of a chronic renal dialysis center shall ensure that all unlicensed staff who have responsibility for direct patient care meet or exceed the center's written policies and procedures that define the minimum experience and training qualifications of patient care technicians (PCTs) and perform such patient care only under the direction of an RN. The operator of a chronic renal dialysis center shall ensure that all PCTs that provide patient care at its center are certified by a CMS approved national commercial dialysis technician certification organization within 18 months post hire. Such PCTs must, under the direction of an RN, complete a training program approved by the medical director of the chronic renal dialysis center.

(b) The operator of chronic renal dialysis center shall comply with the following
requirements and shall annually review, approve and implement policies and procedures
that include or address the following:

(1) Non-catheter patient assessment and documentation must be completed by the RN
within sixty (60) minutes of initiation of dialysis.

(2) Catheter patient assessment and documentation must be completed by the RN within
forty-five (45) minutes of initiation of dialysis;

(3) All supervising RNs must be thoroughly familiar with and clearly understand the
training and qualifications of LPNs under their supervision as well as the types of tasks
that may be delegated to such LPNs at the chronic renal dialysis center. Supervising
RNs shall determine, at their discretion, whether to delegate such tasks to the LPNs.

(4) All unlicensed staff that has patient care responsibilities must be supervised by RNs.

(5) Training, qualifications, practice, supervision and other requirements for all LPNs
that may access central venous catheters. LPNs that may access central venous catheters
must successfully complete an initial and thereafter an annual training program for
central venous access which includes successful completion of a written examination and
competency demonstration. This training must be approved by the operator’s governing
body and the medical director. Documentation of such training must be maintained by
the chronic renal dialysis center and made available to the Department upon request.
LPNs who access central venous catheters must provide such care under the direction of an RN.

(6) The chronic renal dialysis center shall clearly define the minimum experience and training qualifications of all patient care technicians (PCTs) who provide services in such center and services that PCTs are authorized to perform. The operator of a chronic renal dialysis center shall maintain documentation that demonstrates that PCTs in its center have, within 18 months post hire, and maintain certification by a CMS approved national commercial dialysis technician certification organization.
REGULATORY IMPACT STATEMENT

Statutory Authority:
The statutory authority for the promulgation of this regulation is contained in Public Health Law (PHL) section 2803. Section 2803 authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:
The legislative objective of PHL Article 28 includes the protection and promotion of the health of the residents of New York State by requiring the efficient provision and proper utilization of health services of the highest quality at a reasonable cost, including chronic renal dialysis services.

Needs and Benefits:
Part 757 of Title 10 of the New York Codes Rules and Regulations (NYCRR) outlines the chronic renal dialysis requirements for services provided in New York State chronic renal dialysis centers. This regulation currently specifies that these centers must comply with the regulations contained in Title 42 of the Code for Federal Regulations (CFR), Public Health, Part 405, Subpart U – Conditions for Coverage of Suppliers of End State Renal Disease (ESRD) Service, (42 CFR Part 405), 1988 edition. In 2008, 42 CFR Part 405 was amended and renumbered as Part 494.
The amendments to 42 CFR Part 494 [formerly Part 405] establish new conditions for coverage that chronic renal dialysis centers must meet to be approved by the Centers for Medicare and Medicaid Services. It establishes performance expectations for centers and encourages patients to participate in their plan of care and treatment. It also reflects advances in dialysis technology and standard care practices.

10 NYCRR Part 757 must be updated to be in compliance with the revised federal Conditions for Coverage for ESRD Facilities. The proposed regulation also requires chronic renal dialysis centers to comply with certain standards that reflect current technology and practice in the field of ESRD care.

The proposed regulations clarify terms specific to dialysis treatment and requirements related thereto. The proposed regulations clarify that the operator of a chronic renal dialysis center that provides pediatric services must obtain pediatric nephrology consultation services with a board certified pediatric nephrologist. The proposed regulations also clarify standards for the frequency and analysis of product water samples, and ensures that the chronic renal dialysis center is adequately staffed by qualified personnel. The proposed regulations clearly define the scopes of practice, and the roles and responsibilities of the chronic renal dialysis staff.

Additionally, the proposed regulations require chronic renal dialysis centers to comply with certain requirements for ESRD care. In particular, for patients receiving dialysis at
the chronic renal dialysis center, time frames for patient assessment and documentation to be completed by an RN would be required no later than 60 minutes of initiation of dialysis for non-catheter patients and no later than 45 minutes of initiation of dialysis for catheter patients. The purpose of this patient assessment is to evaluate the current health status of the patient, the appropriateness of the dialysis prescription and the tolerance of the procedure by the patient. Furthermore provisions were added to require each chronic renal dialysis center to collaborate with its ESRD network, suppliers, utility service providers and the Department for survey and for emergency preparedness, as well as with other chronic renal dialysis centers to ensure that life saving dialysis services are available in the event of an emergency or disaster.

Costs:
Operators of chronic renal dialysis centers are already required to meet the requirements set forth in 42 CFR Part 494 Conditions for Coverage for End-Stage Renal Disease (ESRD) Facilities which have been incorporated into the proposed regulation. The standards that chronic renal dialysis centers must adhere to under the proposed regulation reflect current technology and practice in the field of ESRD care. The proposed regulation will not impose any additional costs.

Local Government Mandates:
The proposed regulation does not impose any additional mandates on local governments.
Paperwork:
There is no additional paperwork required as a result of the proposed regulation.

Duplication:
The proposed regulation incorporates by reference amended federal regulations, and codes and standards and clarifies requirements for New York State chronic renal dialysis centers to provide a consistent regulatory and enforcement structure and to better meet expectations of the regulated parties and the public and ensure no conflict between federal and State regulations exist.

Alternatives:
There are no viable alternatives. The current regulations in Part 757 are outdated and do not reflect current technology and practice. Federal amendments to 42 CFR Part 494 [formerly Part 405] renders the provisions in Part 757 outdated and obsolete.

Federal Standards:
The proposed regulation incorporates by reference and conforms to the federal standards in 42 CFR Part 494, as well as national standards in end stage renal dialysis treatment. In addition, it clarifies certain definitions, water and dialysate quality provisions and personnel provisions specific to New York State standards.
**Compliance Schedule:**

This proposed amendment will become effective upon publication of a Notice of Adoption in the *New York State Register*.

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Effect of Rule:

There are 246 ESRD sites in New York State and 120 ESRD operators. There are 8 large operators (100 employees or more) and 113 small operators (1 to 99 employees). Of the 246 ESRD sites, 73 are run by large operators and 173 are run by small operators.

Compliance Requirements:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. ESRD facilities are already in compliance with these provisions as this measure incorporates by reference amended federal requirements set forth in 42 CFR Part 494. In addition, the proposed regulation clarifies standards for New York State chronic renal dialysis centers, and standards reflecting current technology and practice in the field of ESRD care. For patients receiving dialysis at the chronic renal dialysis center, time frames for patient assessment and documentation to be completed by an RN would be required no later than 60 minutes of initiation of dialysis for non-catheter patients and no later than 45 minutes of initiation of dialysis for catheter patients. The purpose of this patient assessment and documentation requirement is to ensure that an RN evaluates the current health status of the patient, the appropriateness of the dialysis prescription and the tolerance of the procedure by the patient. Furthermore provisions were added to require each chronic
renal dialysis center to collaborate with its ESRD network, suppliers, utility service
providers and the Department for survey and for emergency preparedness, as well as with
other chronic renal dialysis centers to ensure that life saving dialysis services are
available in the event of an emergency or disaster. Such standards must be immediately
complied with in order not to jeopardize health and safety. Therefore, a cure period was
not determined necessary and included in the rule.

**Professional Services:**
No additional professional standards are required as a result of the proposed regulation.
This measure incorporates by reference amended federal regulations and standards
reflecting current technology and practice in the field of ESRD care, and clarifies such
standards for New York State chronic renal dialysis centers.

**Compliance Costs:**
This measure incorporates by reference amended federal regulations, and standards
reflecting current technology and practice in the field of ESRD care, and clarifies
requirements for New York State chronic renal dialysis centers.

**Economic and Technological Feasibility:**
This proposal is economically and technologically feasible.

**Minimizing Adverse Impact:**
There is no adverse impact.
Small Business and Local Government Participation:

Outreach to the affected parties is being conducted. Organizations who represent the affected parties and the public can also obtain the agenda of the Codes, Regulations and Legislation Committee of the Public Health and Health Planning Council (PHHPC) and the proposed regulation on the Department’s website. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

“Dear Chief Executive Officer (CEO)” letters were sent to affected parties outlining the components of 42 CFR Part 494 summarizing the general requirements that apply and linking them to the full text of the federal regulation online. The letter also included a Departmental contact for any questions. Chronic renal dialysis centers should already be in compliance with the federal regulations.
RURAL AREA FLEXIBILITY ANALYSIS

No Rural Area Flexibility Analysis is required pursuant to section 202-bb (4) (a) of the State Administrative Procedure Act (SAPA). It is apparent, from the nature of the proposed regulation that it will not impose any adverse impact on rural areas, and does not impose any new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.
JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201-a (2) (a) of the State Administrative Procedure Act (SAPA). It is apparent, from the nature of the proposed regulation that it will have no impact on jobs and employment opportunities.
Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 576 and 587 of the Public Health Law, Sections 58-1.8, 58-8.4 and 34-2.11 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) are amended, to be effective upon publication of a Notice of Adoption in the State Register, as follows:

Section 58-1.8 is amended as follows:

58-1.8 Results of tests to be reported only to physicians or other authorized persons. No person shall report the result of any test, examination or analysis of a specimen submitted for evidence of human disease or medical condition except to a physician, his agent, or other person authorized by law to employ the results thereof in the conduct of his practice or in the fulfillment of his official duties. [Reports shall not be issued to the patients concerned except with the written consent of the physician or other authorized person, except that information concerning blood type and Rh factor may be provided in writing to the individual whose blood was tested without the consent of the individual's physician.] Upon request by a patient or the patient’s personal representative, clinical laboratories may provide a patient access to completed test reports that can be identified as belonging to that patient as provided in section 34-2.11 of this Title.
Section 58-1.9 is amended as follows:

58-1.9 Testing to be done on premises except in certain instances. All specimens accepted by a laboratory for specified tests shall be tested on its premises. However, specimens for infrequently performed tests or those not included within specialties or subspecialties stated on its permit or those requiring specialized equipment and skill may be forwarded to and accepted by another laboratory under permit issued by the commissioner or to a laboratory which is operated by a government agency or a nonprofit research institution or to any other laboratory approved by the department. The reports of the results of such tests shall be sent by the testing laboratory to the forwarding laboratory, except that the forwarding laboratory may authorize the testing laboratory to send the report [directly to the physician or other authorized person who requested the test] as provided in section 58-1.8 of this Part, in which event the testing laboratory shall send a duplicate of the said report to the forwarding laboratory. Where the results of a test have been reported to it by the testing laboratory, the forwarding laboratory shall send a transcript of such report [to the physician or other authorized person who requested the test] as provided in section 58-1.8 of this Part and shall indicate thereon the name of the laboratory actually performing the test. [In no event shall any report of the result of any test or transcript thereof be sent to the patient concerned except with the written consent of the physician or other authorized person who requested the test.]

Subdivision (a) of section 58-8.4 is amended as follows:
(a) No clinical laboratory shall notify a physician or other person legally authorized to receive the result that an HIV test is positive solely on the basis of HIV antibody screening, except that a clinical laboratory may report a preliminary finding of HIV infection [pursuant to the written request of a physician or other person legally authorized to receive the test results] as provided in section 58-1.8 of this Part. Results for specimens found non-reactive by HIV antibody screening may be reported to the physician who ordered the testing or other person legally authorized to receive the result.

Subdivision (b) of section 34-2.11 is amended as follows:

(b) A clinical laboratory shall not communicate to a patient of a referring health services purveyor the results of a clinical laboratory test, including, but not limited to, a Pap smear. A clinical laboratory shall not prepare such communication for the health services purveyor to send, or otherwise facilitate the preparation or sending of such communication by the health services purveyor. Such communication or its facilitation shall be deemed consideration given for referral of specimens for performance of clinical laboratory services and is prohibited, except that:

(1) a clinical laboratory may communicate [to] in writing to the patient (by mail or electronically) an accurate and complete account of the result of the laboratory test
along with information required to be included in a report of test results pursuant to Subpart 58-1 of this Title under the following circumstances:

[(i) the referring health services purveyor authorized by law to order and use the results of laboratory tests has provided affirmative written authorization (on paper or electronically), which specifically names the patient;]

[(ii)] (i) the laboratory test results have already been, or are simultaneously being communicated to the referring health services purveyor authorized by law to order and use the results of laboratory tests;

[(iii)] (ii) the clinical laboratory advises the patient that the referring health services purveyor authorized by law to order and use the results of laboratory tests has received or is receiving the test results;

[(iv)] (iii) the clinical laboratory shall include, in the communication to the patient, a clear statement, presented in a prominent manner, to the effect that the communication should not be viewed as medical advice and is not meant to replace direct communication with a physician or other health service purveyor;

[(v)] (iv) the clinical laboratory directs the patient's inquiries regarding the meaning or interpretation of the test results to the referring health services purveyor; and
[(vi)] (v) the communication to the patient does not include any information which would be consideration given for referral of specimens, including, but not limited to, medical advice specifically directed at the patient concerning the patient’s condition, including diagnosis or treatment of the patient’s condition.
REGULATORY IMPACT STATEMENT

Statutory Authority:
Public Health Law (PHL) Sections 576 and 587 set forth the duties and powers of the department related to the operation of clinical laboratories and their business practices. PHL Sections 576 and 587 also include authority for the adoption of regulations guiding the operation of clinical laboratories and blood banks including, but not limited to, laboratory reporting.

Legislative Objectives:
The legislature enacted New York State PHL Article 5, Title V, to promote the public health, safety and welfare by requiring the licensure of clinical laboratories and blood banks, by establishing minimum qualifications for directors, and by requiring that the performance of all procedures employed by clinical laboratories and blood banks meet minimum standards accepted and approved by the department. PHL Sections 576 and 587 authorize the Department to promulgate regulations providing guidance relative to the proper operations of a clinical laboratory. Regulations reflect the complexity of laboratory test methods and cover all phases of laboratory testing, including the reporting of laboratory test results. PHL Article 5, Title VI relates to business practices, ethics and consumer protections.

10 NYCRR Subparts 58-1 (Clinical Laboratories), 58-8 (HIV Testing) and 34-2 (Laboratory Business Practices) currently state that laboratory test results cannot be reported directly to the patient unless written authorization is first provided by the
physician or authorized person. These requirements are described in 10 NYCRR § 58-1.8 (Results of tests to be reported only to physicians or other authorized persons); 10 NYCRR § 58-1.9 (Testing to be done on premises except in certain instances); 10 NYCRR § 58-8.4 (HIV results reporting requirements); and 10 NYCRR § 34-2.11 (Recall letters and reporting of test results).

**Needs and Benefits:**

The right to access personal health information, including laboratory results, is a powerful tool towards allowing patients to track their health progress, become engaged decision makers with the guidance of health care professionals and comply with important treatment plans. On February 6, 2014, the Federal Department of Health and Human Services (HHS) published amendments to 42 CFR Part 493 and 45 CFR Part 164 that allow patients to access their test results directly from a laboratory (see [http://www.gpo.gov/fdsys/pkg/FR-2014-02-06/pdf/2014-02280.pdf](http://www.gpo.gov/fdsys/pkg/FR-2014-02-06/pdf/2014-02280.pdf)). The new Federal rule became effective on April 7, 2014, with a compliance date of October 6, 2014. Stakeholders who commented on the amendments felt that federal regulations were a barrier that prevented patients from having an active role in their personal health care decisions and that the amendments would empower patients to take an active role in managing their health and health care. While patients historically have had the right under the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA Privacy Rules) to access their own health records, the rule had excluded access to laboratory test results. The February 6th amendments removed the exclusion in 45 CFR §
164.524(a)(1) and amended CLIA regulations at 42 CFR § 493.1291(l) to specify that “Upon request by a patient (or the patient’s personal representative), the laboratory may provide patients, their personal representatives, and those persons specified under 45 CFR 164.524(c)(3)(ii), as applicable, with access to completed test reports that, using the laboratory’s authentication process, can be identified as belonging to that patient.” Although the use of the word “may” in 42 CFR 493.1291(l) does not require a clinical laboratory to provide a patient access to their completed test report, HHS emphasized that it is important to read the amended CLIA regulation in concert with the changes to the HIPAA Privacy Rule at 45 CFR Part 164. When taken together, the amendments will require HIPAA covered laboratories to provide individuals, upon request, with access to their laboratory test reports. A laboratory, as a health care provider, is only a HIPAA covered entity if it conducts one or more covered transactions electronically, such as transmitting health care claims or equivalent encounter information to a health plan, requesting prior authorization from a health plan for a health care item or service it wishes to provide to an individual with coverage under the plan, or sending an eligibility inquiry to a health plan to confirm an individual’s coverage under that plan. As described by HHS, these amendments will result in the preemption of a number of state laws that prohibit a laboratory from releasing a test report directly to the individual or that prohibit the release without the ordering provider’s consent because the state laws now would be contrary to the access provision of the HIPAA Privacy Rule mandating direct access by the individual. Therefore, 10 NYCRR § 58-1.8, 10
NYCRR § 58-1.9, 10 NYCRR § 58-8.4 and 10 NYCRR § 34-2.11 are being amended to be consistent with the new federal rules.

Costs

Costs to Private Regulated Parties:

HHS indicated that data were not available to calculate the estimated costs and benefits that will result from their amendments. HHS provided an analysis of the potential impact based upon available information and certain assumptions. It was determined that impacted laboratories may require additional resources to ensure patients receive test reports when requested and patients will benefit from having direct access to their laboratory test results. It should be noted that HIPAA covered entities will already have procedures in place for responding to requests for records. Clinical laboratories will incur costs to implement processes to allow patients access to their test reports as a consequence of the amendments to the federal rules. Under HIPAA privacy rules, HIPAA covered entities will be allowed to impose on the individual a reasonable, cost-based fee for providing access to their test results, including the cost of supplies for and labor of copying the requested information. Although clinical laboratories will incur costs to implement processes to allow patients access to their test reports as a consequence of the amendments to the federal rules, the amendments to 10 NYCRR § 58-1.8, 10 NYCRR § 58-1.9, 10 NYCRR § 58-8.4 and 10 NYCRR § 34-2.11 are simply making the State regulations consistent with the new federal rules.
Costs for Implementation and Administration of the Rule:

Costs to State Government:

No new costs would be incurred by state government.

Costs to the Department:

No new costs would be incurred by the Department of Health.

Costs to Local Government:

To the extent that local governments operate clinical laboratories they may incur the same costs as private regulated parties.

Local Government Mandates:

The proposed regulation complies with federal policy and will impose new mandates on any clinical laboratory operated by a county, city, town or village government.

Paperwork:

There will be an increase in paperwork attributable to activities related to providing patients with direct access to test results. The increase will be dependent upon the number of requests received by a laboratory and if a laboratory uses paper- or electronic-based systems for the reporting of test results.

Duplication:

These rules do not duplicate any other law, rule or regulation.
Alternative Approaches:

There are no viable alternatives to this regulatory proposal. This proposal conforms state regulations to federal regulations.

Federal Standards:

The amendments to 10 NYCRR § 58-1.8, § 58-8.4, and § 34-2.11 are being made to be consistent with recent changes in the Code of Federal Regulations (CFR), specifically 42 CFR Part 493 and 45 CFR Part 164. In the absence of these amendments, New York State regulations would be contrary to the access provision of the HIPAA Privacy Rule mandating direct access by the individual.

Compliance Schedule:

The amended regulations will become effective upon publication of a Notice of Adoption in the New York State Register. Clinical laboratories regulated by New York State (NYS) are aware of the amended federal rule which became effective on April 7, 2014. Clinical laboratories were also notified by the Department in February 2014 that steps would be taken to amend NYS regulations to be consistent with the Federal amendments. Consequently, regulated parties will be able to comply with changes to 10 NYCRR § 58-1.8 as of their effective date.
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Albany, New York 12237
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(518) 473-2019 (FAX)
REGSQNA@health.ny.gov
REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

In July 2014, the Department's Clinical Laboratory Evaluation Program (CLEP) issued permits to 933 clinical laboratories. Of these, 372 are located out of State and do not qualify as small businesses. Of the remaining 561 laboratories located in New York State, 51 are governmental laboratories, and 166 are estimated to be small businesses.

Compliance Requirements:

The proposed rules will not result in any additional burden beyond those that are incurred as a consequence of the changes to the federal rule. Impacted clinical laboratories that are small businesses or governmental laboratories will need to develop mechanisms to provide patients access to laboratory test results. HHS projected a laboratory would incur a one-time burden of 2 to 9 hours to identify the applicable legal obligations and to develop the processes and procedures for handling patient requests for access to test reports.

Professional Services:

The proposed rules will not result in any additional burden beyond those that are incurred as a consequence of the changes to the federal rule. HHS projected a laboratory would incur a one-time burden of 2 to 9 hours to identify the applicable legal obligations and to develop the processes and procedures for handling patient
requests for access to test reports. Additionally, HHS assumed an hourly rate for a management-level employee to be $50.06.

**Compliance Costs:**
The proposed rules will not result in any additional costs beyond those that are incurred as a consequence of the changes to the federal rule. HHS indicated that data were not available to calculate the estimated costs and benefits that will result from their amendments. HHS provided an analysis of the potential impact based upon available information and certain assumptions. It was determined that impacted laboratories may require additional resources to ensure patients receive test reports when requested and patients will benefit from having direct access to their laboratory test results. It should be noted that HIPAA covered entities will already have procedures in place for responding to requests for records and HIPAA privacy rules currently permit HIPAA covered entities to charge an individual reasonable cost-based fee for providing access to health information.

**Economic and Technological Feasibility:**
The proposed regulations will not present economic or technological difficulties to any small businesses and local governments affected by these amendments. The technical infrastructure for reporting laboratory test results is already in place.

**Minimizing Adverse Impact:**
The changes to the federal rules conflict with state regulations that prohibit a laboratory from releasing a test report directly to the individual or that prohibit the release without the ordering provider’s consent. Therefore, the Department of Health did not consider alternate, less stringent compliance requirements, or regulatory exceptions for facilities operated as small businesses or by local government.

**Small Business and Local Government Participation:**

Clinical laboratories designated as a small business or governmental laboratories by New York State (NYS) are aware of the amended federal rule which became effective on April 7, 2014. Clinical laboratories were also notified by the Department in February 2014 that steps would be taken to amend NYS regulations to be consistent with the federal rules. Discussions on this topic have also been held with Greater New York Hospital Association and the College of American Pathologists.
RURAL AREA FLEXIBILITY ANALYSIS

Types and estimated numbers of rural areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (http://quickfacts.census.gov). Approximately 87 clinical laboratories are located in rural areas.

<table>
<thead>
<tr>
<th>Allegany County</th>
<th>Greene County</th>
<th>Schoharie County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cattaraugus County</td>
<td>Hamilton County</td>
<td>Schuyler County</td>
</tr>
<tr>
<td>Cayuga County</td>
<td>Herkimer County</td>
<td>Seneca County</td>
</tr>
<tr>
<td>Chautauqua County</td>
<td>Jefferson County</td>
<td>St. Lawrence County</td>
</tr>
<tr>
<td>Chemung County</td>
<td>Lewis County</td>
<td>Steuben County</td>
</tr>
<tr>
<td>Chenango County</td>
<td>Livingston County</td>
<td>Sullivan County</td>
</tr>
<tr>
<td>Clinton County</td>
<td>Madison County</td>
<td>Tioga County</td>
</tr>
<tr>
<td>Columbia County</td>
<td>Montgomery County</td>
<td>Tompkins County</td>
</tr>
<tr>
<td>Cortland County</td>
<td>Ontario County</td>
<td>Ulster County</td>
</tr>
<tr>
<td>Delaware County</td>
<td>Orleans County</td>
<td>Warren County</td>
</tr>
<tr>
<td>Essex County</td>
<td>Oswego County</td>
<td>Washington County</td>
</tr>
<tr>
<td>Franklin County</td>
<td>Otsego County</td>
<td>Wayne County</td>
</tr>
<tr>
<td>Fulton County</td>
<td>Putnam County</td>
<td>Wyoming County</td>
</tr>
<tr>
<td>Genesee County</td>
<td>Rensselaer County</td>
<td>Yates County</td>
</tr>
<tr>
<td>Schenectady County</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

- Albany County
- Monroe County
- Orange County
- Broome County
- Niagara County
- Saratoga County
- Dutchess County
- Oneida County
- Suffolk County
- Erie County
- Onondaga County

**Compliance Requirements:**

The proposed rules will not result in any additional burden beyond those that are incurred as a consequence of the changes to the federal rule. Impacted clinical laboratories that are in rural areas will need to develop mechanisms to provide patients access to laboratory test results. HHS projected a laboratory would incur a one-time burden of 2 to 9 hours to identify the applicable legal obligations and to develop the processes and procedures for handling patient requests for access to test reports.

**Professional Services:**

The proposed rule will not result in any additional burden beyond those that are incurred as a consequence of the changes to the federal rule. HHS projected a laboratory would incur a one-time burden of 2 to 9 hours to identify the applicable legal obligations and to develop the processes and procedures for handling patient
requests for access to test reports. Additionally, HHS assumed an hourly rate for a
management-level employee to be $50.06.

**Compliance Costs:**

The proposed rules will not result in any additional costs beyond those that are incurred as a consequence of the changes to the federal rule. HHS indicated that data were not available to calculate the estimated costs and benefits that will result from their amendments. HHS provided an analysis of the potential impact based upon available information and certain assumptions. It was determined that impacted laboratories may require additional resources to ensure patients receive test reports when requested and patients will benefit from having direct access to their laboratory test results. It should be noted that HIPAA covered entities will already have procedures in place for responding to requests for records and HIPAA privacy rules currently permit HIPAA covered entities to charge an individual reasonable cost-based fee for providing access to health information.

**Minimizing Adverse Impact:**

The changes to the federal rules conflict with state regulations that prohibit a laboratory from releasing a test report directly to the individual or that prohibit the release without the ordering provider’s consent. Therefore, the Department of Health did not consider alternate, less stringent compliance requirements, or regulatory exceptions for rural facilities.
Opportunity for Rural Area Participation:

Clinical laboratories located in rural areas are aware of the amended federal rule which became effective on April 7, 2014. Clinical laboratories were also notified by the Department in February 2014 that steps would be taken to amend NYS regulations to be consistent with the Federal amendments. Discussions on this topic have also been held with Greater New York Hospital Association and the College of American Pathologists.
STATEMENT IN LIEU OF JOB IMPACT STATEMENT

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.
Executive Summary

Description
Vassar Brothers Medical Center (VBMC), a 365-bed, voluntary not-for-profit, Article 28 hospital located at 45 Reade Place, Poughkeepsie (Dutchess County), requests approval to replace and modernize significant portions of the existing VBMC campus and to decertify fifteen total licensed beds, bringing the total licensed beds to 350.

The major components of the applicant's proposal are as follows: construction of a new 696,440 sq. ft. patient bed tower; replacement and expansion of the emergency department; replacement of most of the operating rooms and interventional suites; expansion and modernization of the central plant; addition of conference space, educational space and amenities; addition of six intensive care beds; decertification of nine pediatric beds; and decertification of twelve medical/surgical beds.

Health Quest Systems, Inc. is the sole corporate member and active parent of VBMC, Putnam Hospital Center and Northern Dutchess Hospital. VBMC is a member of the Health Quest Systems, Inc. obligated group. BFA Attachment C provides the organizational chart of Health Quest Systems, Inc.

OPCHSM Recommendation
Contingent Approval

Need Summary
The current bed capacity is 365 and will be reduced to 350 beds. The facility will reduce twelve medical/surgical beds and nine pediatric beds while increasing critical care beds by six.

Program Summary
The facility is deemed to be operating in substantial compliance with all applicable State and Federal codes, rules and regulations.

Financial Summary
Project costs of $466,164,933 will be met as follows: Equity of $100,000,000 and tax-exempt bonds for $366,164,933 with a maturity of 30 years bearing interest at 4.1% for tax-exempt debt.

Budget:
- Revenues $487,814,700
- Expenses $343,148,644
- Net $144,666,056
- Income/(Loss)
Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management
Approval contingent upon:

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

2. Submission of a bond resolution for the project, acceptable to the Department of Health. [BFA]

3. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-02. [AER]

4. Submission of State Environmental Quality Review Act (SEQRA) Findings as required under Section 617.4 of the New York Codes, Rules, and Regulations (NYCRR). [SEQ]

Approval conditional upon:

1. The project must be completed within five 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, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant’s start of construction. [AER]

7. Construction must start on or before July 1, 2016 and construction must be completed by December 31, 2019, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date
October 8, 2015
Project Description
Vassar Brothers Medical Center, a 365 bed tertiary care hospital located at 45 Reade Place, Poughkeepsie (Dutchess County), New York 12601, is seeking approval to construct a 696,440 sq. ft. bed tower. The end result will be a 4.1 percent reduction in beds, or a reduction of 15. In addition, the Emergency Department will be expanded.

Background

<table>
<thead>
<tr>
<th>Current Beds</th>
<th>Proposed Change</th>
<th>Proposed Beds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical/Surgical</td>
<td>276</td>
<td>-12</td>
</tr>
<tr>
<td>Critical Care</td>
<td>24</td>
<td>6</td>
</tr>
<tr>
<td>Pediatrics</td>
<td>18</td>
<td>-9</td>
</tr>
<tr>
<td>Obstetrics</td>
<td>32</td>
<td>0</td>
</tr>
<tr>
<td>Neonatal Continuing Care</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Neonatal Intensive Care</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Neonatal Intermediate Care</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total Beds</strong></td>
<td><strong>365</strong></td>
<td><strong>-15</strong></td>
</tr>
</tbody>
</table>

Service Category

<table>
<thead>
<tr>
<th>Service Category</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Med/Surg</td>
<td>70.5%</td>
<td>73.5%</td>
<td>69.4%</td>
<td>67.4%</td>
<td>69.3%</td>
</tr>
<tr>
<td>Pediatric</td>
<td>31.0%</td>
<td>31.8%</td>
<td>37.9%</td>
<td>34.1%</td>
<td>31.8%</td>
</tr>
<tr>
<td>Obstetric</td>
<td>74.9%</td>
<td>74.5%</td>
<td>72.9%</td>
<td>74.1%</td>
<td>70.1%</td>
</tr>
<tr>
<td>High-Risk Neonates</td>
<td>71.9%</td>
<td>90.6%</td>
<td>75.3%</td>
<td>70.5%</td>
<td>75.5%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>69.3%</td>
<td>72.5%</td>
<td>68.6%</td>
<td>66.7%</td>
<td>68.1%</td>
</tr>
</tbody>
</table>

Adult Surgical Discharges

<table>
<thead>
<tr>
<th>Year</th>
<th>Inpatient</th>
<th>Amb. Surg.</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>5,415</td>
<td>8,436</td>
<td>13,851</td>
</tr>
<tr>
<td>2012</td>
<td>4,948</td>
<td>7,316</td>
<td>12,264</td>
</tr>
<tr>
<td>2013</td>
<td>4,681</td>
<td>8,329</td>
<td>13,010</td>
</tr>
<tr>
<td>2014</td>
<td>4,590</td>
<td>8,628</td>
<td>13,218</td>
</tr>
</tbody>
</table>

Conclusion

The addition of private patient rooms and a streamlined system of care will make it easier to directly see patients, increase patient accessibility, improve efficiency, improve the quality of care and help improve patient stays. This is a much needed renovation at an aging facility.

Recommendation

From a need perspective, approval is recommended.
Program Analysis

Project Proposal
Vassar Brothers Medical Center (VBMC), a 365-bed tertiary care hospital located at 45 Reade Place in Poughkeepsie (Dutchess County) requests approval to replace and modernize significant portions of the existing campus and decrease total bed count to 350. VBMC seeks to build a contemporary facility with all private rooms and current industry standard in-room space for clinical care, as well as appropriate space and amenities for family to participate in the care plan. The facility would also house modern systems and mechanicals to run an efficient operation.
The construction project would involve building a new, nearly 700,000 square foot patient bed tower, replacing and expanding the emergency department (ED), and replacing most of the operating rooms (ORs) and interventional suites. Additionally, VBMCs central plant would be updated, and conference, educational space and other amenities added to enhance physician, visitor, and employee experiences in the new bed tower.

Upon completion of this project, staffing is anticipated to increase by 21.0 FTEs (Environmental Services) and remain at that level through the third year of operation.

Compliance with Applicable Codes, Rules and Regulations
This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility’s enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost
Total project cost is estimated at $466,164,933 broken down as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Construction</td>
<td>$313,462,253</td>
</tr>
<tr>
<td>Renovation and Demolition</td>
<td>$4,312,465</td>
</tr>
<tr>
<td>Site Development</td>
<td>$27,439,850</td>
</tr>
<tr>
<td>Temporary Utilities</td>
<td>$6,156,201</td>
</tr>
<tr>
<td>Asbestos Abatement or Removal</td>
<td>$436,000</td>
</tr>
<tr>
<td>Design Contingency</td>
<td>$25,776,809</td>
</tr>
<tr>
<td>Construction Contingency</td>
<td>$17,805,962</td>
</tr>
<tr>
<td>Fixed Equipment</td>
<td>$13,458,884</td>
</tr>
<tr>
<td>Architect/Engineering Fees</td>
<td>$21,311,000</td>
</tr>
<tr>
<td>Other Fees (Consultant)</td>
<td>$702,632</td>
</tr>
<tr>
<td>Movable Equipment</td>
<td>$20,316,783</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>$8,000,000</td>
</tr>
<tr>
<td>Interim Interest Expense</td>
<td>$4,434,222</td>
</tr>
<tr>
<td>CON Fee</td>
<td>$2,000</td>
</tr>
<tr>
<td>Additional Processing Fee</td>
<td>$2,549,872</td>
</tr>
<tr>
<td>Total Project Cost</td>
<td>$466,164,933</td>
</tr>
</tbody>
</table>

Project costs are based on a construction start date of July 1, 2016, with a 36-month construction period.
The applicant’s financing plan appears as follows:

- **Equity from Health Quest Systems, Inc. (Active Parent)** $100,000,000
- **Tax-Exempt fixed rate bonds (4.1% interest, 30-year term)** $366,164,933
- **Total** $466,164,933

Cain Brothers and Company LLC has provided a letter of interest for underwriting the bond financing. The bonds will be issued either by the Dormitory Authority of the State of New York or a local issuer.

**Operating Budget**
The applicant has submitted operating budgets, in 2015 dollars, for the Current Year and for Year One of operations, and include Health Quest Allocated operating expenses, as shown below:

<table>
<thead>
<tr>
<th></th>
<th>Current Year</th>
<th>Year One</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Inpatient Revenue</strong></td>
<td>$250,228,209</td>
<td>$280,628,873</td>
</tr>
<tr>
<td><strong>Total Outpatient Revenue</strong></td>
<td>$205,281,795</td>
<td>$207,185,827</td>
</tr>
<tr>
<td><strong>Total Overall Revenue</strong></td>
<td>$455,510,004</td>
<td>$487,814,700</td>
</tr>
<tr>
<td><strong>Net Income/(Loss)</strong></td>
<td>$41,262,004</td>
<td>$31,166,056</td>
</tr>
</tbody>
</table>

- **Discharges (Inpatient)** 17,998 20,086
- **Visits (Outpatient)** 218,693 220,938

*Other Operating Revenue consists of:
- Cafeteria sales: Current year $1,572,000 and Year One incremental $194,000
- Meaningful use: Current year $2,976,000 and Year One incremental $0 (federal funding for implementation of facility-wide electronic medical records systems.)
- Other operating revenue: Current year $3,889,000 and Year One incremental $0 and is composed of the following items:
  - **Rental Income** $905,000
  - **Ulster Radiation Oncology Mgmt. Fee** $685,000
**Distribution of Health Quest (HQ) Allocation and Other Expenses:**

<table>
<thead>
<tr>
<th>Service Category</th>
<th>Current Year</th>
<th>Year One</th>
</tr>
</thead>
<tbody>
<tr>
<td>HQ Clinical Allocated Services</td>
<td>$19,363,000</td>
<td>$19,799,104</td>
</tr>
<tr>
<td>HQ Administrative Services</td>
<td>$53,814,000</td>
<td>$55,026,027</td>
</tr>
<tr>
<td>HQ Lab</td>
<td>$14,436,000</td>
<td>$14,761,135</td>
</tr>
<tr>
<td>Service Contracts/Maint</td>
<td>$7,431,000</td>
<td>$7,598,365</td>
</tr>
<tr>
<td>Insurance</td>
<td>$3,520,000</td>
<td>$3,599,279</td>
</tr>
<tr>
<td>Other Purchased Services</td>
<td>$3,005,000</td>
<td>$3,072,680</td>
</tr>
<tr>
<td>Cash Assessment Taxes</td>
<td>$2,787,000</td>
<td>$2,849,770</td>
</tr>
<tr>
<td>Lease/Rentals</td>
<td>$2,434,000</td>
<td>$2,488,820</td>
</tr>
<tr>
<td>Other</td>
<td>$4,210,000</td>
<td>$4,304,820</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$111,000,000</strong></td>
<td><strong>$113,500,000</strong></td>
</tr>
</tbody>
</table>

Utilization by payor source for the first year of operation is anticipated as follows:

**Inpatient**

<table>
<thead>
<tr>
<th>Payor Source</th>
<th>Discharges</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial FFS</td>
<td>5,250</td>
<td>26.14%</td>
</tr>
<tr>
<td>Medicare FFS</td>
<td>11,375</td>
<td>56.63%</td>
</tr>
<tr>
<td>Medicaid FFS</td>
<td>3,206</td>
<td>15.96%</td>
</tr>
<tr>
<td>Private Pay</td>
<td>255</td>
<td>1.27%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>20,086</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

**Outpatient**

<table>
<thead>
<tr>
<th>Payor Source</th>
<th>Visits</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial FFS</td>
<td>80,665</td>
<td>36.51%</td>
</tr>
<tr>
<td>Medicare FFS</td>
<td>82,077</td>
<td>37.15%</td>
</tr>
<tr>
<td>Medicaid FFS</td>
<td>42,190</td>
<td>19.10%</td>
</tr>
<tr>
<td>Private Pay</td>
<td>16,006</td>
<td>7.24%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>220,938</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

The following is noted with respect to the submitted budget:

- Revenues are based upon VBMC’s current experience in operating the hospital. Outpatient revenues are derived from three service lines: Emergency Department, Ambulatory Surgery, and Referred Ambulatory services. The hospital has no outpatient clinic services.
- Expense assumptions are based upon VBMC’s historical experience in operating the hospital.
- Utilization assumptions are based on the facility’s current operations with increases factored in due to a substantial increase in the over 65+ population in the region and significant improvements to the facility that has allowed the facility to increase their overall patient population by limiting the amount of outmigration for specific services.

**Capability and Feasibility**

Project costs of $466,164,933 will be met as follows: Equity of $100,000,000 from the parent entity Health Quest Systems, Inc. and $366,164,933 financed via Tax-Exempt fixed rate bonds at an interest rate of 4.1% for a 30-year term. As shown on BFA Attachment B, the parent entity has enough liquid assets to cover the project’s equity requirement.
Working capital requirements are estimated at $81,302,450, which is equivalent to two months of year one expenses. The applicant will provide the entire amount of the working capital from operations. As shown on BFA Attachment A, the applicant has enough liquid assets to cover the working capital requirement.

BFA Attachment A is VBMC’s 2012-2014 certified financial statements, which shows the facility generated an average net income of $35,626,000 and had both average positive net asset and average positive working capital positions for the period shown.

BFA Attachment B is Health Quest Systems, Inc. and Subsidiaries’ 2012-2014 certified financial statements, which shows that the entity generated an average net income of $34,006,000 and had both average positive net asset and average positive working capital positions for the period shown.

The submitted budget indicates a net income of $144,666,056 for Year One. Revenues are based on the current reimbursement methodologies for hospitals. The submitted budget is reasonable.

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

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

**Attachments**

<table>
<thead>
<tr>
<th>BFA Attachment A</th>
<th>2012-2014 Certified Financial Statements for Vassar Brothers Medical Center</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment B</td>
<td>2012-2014 Certified Financial Statements for Health Quest Systems, Inc. and Subsidiaries</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Health Quest Systems, Inc. Org Chart</td>
</tr>
</tbody>
</table>
Hospice Buffalo, Inc., a not-for-profit corporation that operates an Article 40 Hospice Program serving Erie County at two sites, requests approval to decertify ten residence beds, close one site, and consolidate their remaining beds at their main campus with an inpatient designation.

The hospice currently operates from the following two locations:

- The Center for Hospice and Palliative Care-Mitchell Campus (main site) located at 225 Como Park Blvd, Cheektowaga, NY, which currently has a ten-bed residence unit that includes eight residence specific beds and two beds dually certified for inpatient and residence care. Also on the campus, but not affected by this proposal, is a newly renovated 22-bed inpatient unit.
- St. John Baptist Hospice Buffalo House (off-campus site) located at 111 Maple Street, Buffalo, NY, which has eight inpatient beds and no residence beds.

The off-campus site will close and the residence site on the Mitchell campus will become a 10-bed inpatient unit. Upon approval of this project the final bed complement will be 32 inpatient beds and no residence beds.

Due to recent collaborations with area nursing homes, Hospice of Buffalo, Inc. finds it unnecessary to continue maintaining residence beds. Rather, providing hospice care as an overlay to nursing home care has proven to be a more cost effective way to spend limited resources.

**OPCHSM Recommendation**

Approval

**Need Summary**

Hospice Buffalo, Inc. intends to decertify its ten-bed hospice residence unit and cease operating any hospice residence beds at any location and close their leased offsite location which housed some of their hospice inpatient beds. Upon approval of this application, there will still be a remaining need for six additional hospice beds in the County.

**Program Summary**

Based on 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.

<table>
<thead>
<tr>
<th>Incremental Budget:</th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$2,084,121</td>
<td>$2,147,114</td>
</tr>
<tr>
<td>Expenses</td>
<td>$3,092,372</td>
<td>$3,227,964</td>
</tr>
<tr>
<td>Net Income/(Loss)</td>
<td>($1,008,251)</td>
<td>($1,080,850)</td>
</tr>
</tbody>
</table>
Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

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

Council Action Date
October 8, 2015
**Need Analysis**

**Background**
Hospice Buffalo, Inc. is currently certified to operate 32 hospice inpatient beds and 10 hospice residence beds and offer the following services:

- Audiology
- Bereavement
- Clinical Laboratory Service
- Home Health Aide
- Homemaker
- Hospice Residence
- Housekeeper
- Inpatient Certified
- Inpatient Services
- Medical Social Services
- Medical Supplies Equipment and Appliances
- Nursing
- Nutritional
- Pastoral Care
- Personal Care
- Pharmaceutical Service
- Physician Services
- Psychology
- Therapy-Occupational
- Therapy-Physical
- Therapy-Respiratory
- Therapy-Speech Language Pathology

Hospice Buffalo, Inc. is authorized to provide services in Erie County.

**Analysis**
The Hospice Bed Need Methodology for Erie County shows a need for 38 hospice beds. The allocation of resources in this county is shown below in the following table:

<table>
<thead>
<tr>
<th>County</th>
<th>Inpatient Bed Need</th>
<th>Current Inpatient Unit/Facilities</th>
<th># of Operating Hospice Beds</th>
<th># of Beds Approved, Not Yet Operational</th>
<th># of Beds Pending Approval</th>
<th>Remaining Inpatient Bed Need</th>
</tr>
</thead>
<tbody>
<tr>
<td>Erie</td>
<td>38</td>
<td>Hospice Buffalo, Inc. – Cheektowaga (+ 2 dual cert)</td>
<td>22</td>
<td>0</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hospice Buffalo, Inc. – Buffalo</td>
<td>8</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>38</td>
<td></td>
<td>32</td>
<td>0</td>
<td>0</td>
<td>6</td>
</tr>
</tbody>
</table>

Hospice Buffalo Inc. will decertify the ten residence beds currently located in Cheektowaga. Additionally they will convert the two dually certified beds to inpatient-only beds and relocate the eight inpatient beds from Buffalo to Cheektowaga, creating an additional ten-bed inpatient unit in Cheektowaga. The current Residence Unit was originally constructed and licensed as an inpatient unit and served as a temporary inpatient unit during the renovation of the existing 22-bed hospice inpatient unit. The proposed ten-bed hospice inpatient unit will operate in the same manner as the facility’s existing 22-bed hospice inpatient unit and the Hospice Buffalo’s Director of Inpatient Services will provide oversight of both units.

**Conclusion**
Hospice Buffalo, Inc. intends to decertify all of its residence beds and has determined that providing hospice care as an overlay to nursing home care is a much more cost effective way to spend limited resources. Upon approval of this application, there will be a continued need for additional hospice beds in the County.

**Recommendation**
From a need perspective, approval is recommended.
Program Analysis

Program Description
Hospice Buffalo, Inc., a voluntary corporation, currently operates an Article 40 hospice which serves the residents of Erie County. It is also currently certified to operate a 22-bed hospice inpatient unit and a 10-bed hospice residence unit (with 2 of these 10 residence beds dually certified for both inpatient care and residence care) in a freestanding facility located in Cheektowaga, which also houses their hospice's main parent office practice location, and another 8-bed hospice inpatient unit in leased space in a freestanding facility located in Buffalo.

The current proposal seeks approval to close the current 8-bed hospice inpatient unit located in leased space in a freestanding facility located in Buffalo, and to convert the 10-bed hospice residence unit (with 2 of these 10 residence beds dually certified for both inpatient care and residence care) located in Cheektowaga, into a 10-bed hospice inpatient unit. Since this hospice residence already required hospice inpatient level construction standards when initially approved due to its 2 dually certified beds, the proposed conversion of the 10 hospice residence beds into 10 hospice inpatient level beds requires no construction reconfigurations or changes in staffing. The Hospice Buffalo Director of Inpatient Services will continue to oversee both the existing 22-bed hospice inpatient unit, and the newly converted 10-bed hospice inpatient unit, all located within the same building.

The proposal will result in Hospice Buffalo operating 32 total hospice inpatient beds in two units (one 22-bed unit and one 10-bed unit), both located in the same building at their main offices in Cheektowaga. The proposal will also result in Hospice Buffalo no longer operating any hospice residence beds at any location, and closing their leased offsite location which housed hospice inpatient beds.

Hospice Buffalo, Inc. is currently in compliance with all applicable codes, rules, and regulations.

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget
The applicant has submitted their incremental first and third year operating budgets for the ten-bed unit, in 2015 dollars, as summarized below:

<table>
<thead>
<tr>
<th></th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicare</td>
<td>$1,722,091</td>
<td>$1,774,141</td>
</tr>
<tr>
<td>Medicaid</td>
<td>$119,918</td>
<td>$123,543</td>
</tr>
<tr>
<td>Private Pay/Other</td>
<td>$242,112</td>
<td>$249,430</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td>$2,084,121</td>
<td>$2,147,114</td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$2,903,124</td>
<td>$3,035,210</td>
</tr>
<tr>
<td>Capital</td>
<td>$189,248</td>
<td>$192,754</td>
</tr>
<tr>
<td><strong>Total Expenses</strong></td>
<td>$3,092,372</td>
<td>$3,227,964</td>
</tr>
<tr>
<td><strong>Net Income/(Loss)</strong></td>
<td>($1,008,251)</td>
<td>($1,080,850)</td>
</tr>
<tr>
<td><strong>Utilization (patient days)</strong></td>
<td>3,321</td>
<td>3,321</td>
</tr>
<tr>
<td><strong>Cost per patient day</strong></td>
<td>$931.16</td>
<td>$971.99</td>
</tr>
</tbody>
</table>
Utilization by payor source for both Year One and Year Three is as follows:

- Medicaid 5.48%
- Medicare 80.30%
- Private Pay 4.70%
- Other 9.52%
- Total 100.00%

The following is noted with respect to the submitted budget:

- Revenue was calculated based on the entity’s 2014 reimbursement by payer mix with an annual increase of 1.5% per year.
- Expense assumptions are based upon Hospice Buffalo, Inc.’s historical experience operating inpatient beds, with an annual 2% cost of living increase for years two and three.
- Utilization assumptions are based on the applicant’s actual inpatient bed occupancy trends, prorated to the ten-bed unit.
- The applicant indicated that, like the eight-bed inpatient unit currently operating at the Buffalo House site, the new ten-bed unit on the main campus is expected to operate at a loss to be covered by funding from the Hospice Foundation of WNY. An affidavit from the Hospice Foundation of WNY, has been provided attesting that they are willing to contribute necessary funds to cover losses.

Based on the above, the budget is reasonable.

**Capability and Feasibility**

There are no project costs associated with this project.

The submitted budget indicates a net loss of $1,008,251 and $1,080,850 during the first and third years of operation, respectively. The losses will be covered through philanthropic funding from the Hospice Foundation of WNY. As of December 31, 2014, the Foundation had a net equity position of over $28 million, showing sufficient resources to cover the projected losses for the new inpatient unit.

BFA Attachment A is the 2013-2014 certified financial statements of The Center for Hospice & Palliative Care, Inc. and Related Entities, which show that the organization had an average positive working capital position and an average positive net asset position and generated an average net loss of $471,219 for the period shown. The financial statements for 2014 also show the financial status for Hospice of Buffalo, Inc. specifically, which shows that the facility generated both a positive work capital and net asset position and generated a net loss of $2,136,740 for 2014. The applicant indicated that the 2014 losses were due to the facility’s nine-month renovation of the clinical building on the Mitchell Campus. This renovation project forced the facility to operate out of the vacant ten-bed residence unit which reduced their overall operating capacity by twelve beds and greatly reduced their revenue.

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

**Recommendation**

From a financial perspective, approval is recommended.

**Attachments**

- BFA Attachment A 2013 and 2014 certified financial statements of the Center for Hospice and Palliative Care, Inc. and Related Entities and the 2014 certified financial statements for Hospice Buffalo, Inc. and Hospice Foundation of WNY
Description
Strong Memorial Hospital (SMH), an 830-bed, voluntary not-for-profit, Article 28 hospital located at 601 Elmwood Avenue, Rochester (Monroe County), requests approval to certify eight new pediatric intensive care unit (PICU) beds, and to construct six pediatric operating rooms, a GI procedure room, and a pediatric catheterization laboratory with support space to be housed on the fourth floor of SMH’s new Golisano Children’s Hospital (GCH). The construction will accommodate a total of twenty-eight pediatric beds on the sixth floor of the GCH: twenty PICU beds comprised of the eight incremental plus twelve current PICU beds to be relocated from the legacy SMH, and eight general pediatric beds that will also be relocated to the sixth floor GCH space. The hospital’s total licensed bed capacity will increase to 838 beds.

In 2012, CON approval authorized the construction of the GCH, a new tower connected to SMH that opened in July 2015. The tower includes two shelled floors designed to accommodate the existing Pediatric Operating Program and Pediatric Intensive Care Unit, currently located in the legacy SMH, as well as eight additional pediatric beds. The current proposal seeks to complete this planned fit-out of the shelled space. Subsequent CON’s are anticipated to process backfilling space vacated in the legacy SMH facility as a result of this proposal.

Need Summary
Strong Memorial is expecting a 63 percent increase in pediatric ICU discharges from the current year to the third year after completion. Strong Memorial handles very complex pediatric cardiovascular surgery, neurology, and electrophysiology cases. These procedures, along with more routine procedures, can fill the beds, resulting in overflows that force Strong Memorial to transfer patients to other facilities. These complex cases typically take longer than average procedures. The addition of the eight new pediatric ICU beds included in this build-out at GCH will help treat the growing number of patients in the only dedicated pediatric facility in the Finger Lakes Region.

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

Financial Summary
The total project costs of $45,283,688 will be funded by SMH as follows: $26,483,688 from accumulated funds, and the remaining $18,800,000 to be financed via a bank loan. The applicant has indicated that if the bank loan is not available, they will fund the entire project with accumulated funds.

<table>
<thead>
<tr>
<th>Budget</th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$44,397,150</td>
<td>$44,719,150</td>
</tr>
<tr>
<td>Expenses</td>
<td>39,695,000</td>
<td>39,914,000</td>
</tr>
<tr>
<td>Net Income</td>
<td>$4,702,150</td>
<td>$4,805,150</td>
</tr>
</tbody>
</table>
Health Systems Agency
The Finger Lakes Health Systems Agency recommends Approval of this project.

Office of Primary Care and Health Systems Management
Approval contingent upon:
1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSECON upon submission [PMU]
2. Submission of a final financing package for the project, inclusive of an executed loan commitment if applicable, acceptable to the Department of Health. [BFA]
3. The applicant is required to submit design development drawings, complying with requirements of 10NYCRR Part 710.4, for review and approval by DASNY and the submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-02. [AER] [DAS]

Approval conditional upon:
1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The applicant is required to submit final construction documents, complying with requirements of 10NYCRR Part 710.7, to NYS DOH Bureau of Architecture and Engineering Facility Planning (BAEFP) prior to start of construction. [DAS]
3. Construction must start on or before December 1, 2015, and must be completed by February 1, 2017, presuming approval to start construction is granted prior to commencement. In accordance with 10NYCRR Part 710.10(a), if construction is not started on or before the start date, this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date
October 8, 2015
### Need Analysis

#### Table 1: Strong Memorial Bed Change Chart

<table>
<thead>
<tr>
<th>Bed Category</th>
<th>Current Beds</th>
<th>Bed Change</th>
<th>Beds Upon Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burns Care</td>
<td>7</td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>Coronary Care</td>
<td>8</td>
<td></td>
<td>8</td>
</tr>
<tr>
<td>Intensive Care</td>
<td>67</td>
<td></td>
<td>67</td>
</tr>
<tr>
<td>Maternity</td>
<td>45</td>
<td></td>
<td>45</td>
</tr>
<tr>
<td>Medical / Surgical</td>
<td>458</td>
<td></td>
<td>458</td>
</tr>
<tr>
<td>Neonatal Continuing Care</td>
<td>14</td>
<td></td>
<td>14</td>
</tr>
<tr>
<td>Neonatal Intensive Care</td>
<td>26</td>
<td></td>
<td>26</td>
</tr>
<tr>
<td>Neonatal Intermediate Care</td>
<td>20</td>
<td></td>
<td>20</td>
</tr>
<tr>
<td>Pediatric</td>
<td>60</td>
<td></td>
<td>60</td>
</tr>
<tr>
<td>Pediatric ICU</td>
<td>12</td>
<td>8</td>
<td>20</td>
</tr>
<tr>
<td>Physical Medicine and Rehabilitation</td>
<td>20</td>
<td></td>
<td>20</td>
</tr>
<tr>
<td>Psychiatric</td>
<td>93</td>
<td></td>
<td>93</td>
</tr>
<tr>
<td>Total</td>
<td>830</td>
<td>8</td>
<td>838</td>
</tr>
</tbody>
</table>

#### Table 2: Strong Memorial Pediatric ICU Discharges

<table>
<thead>
<tr>
<th>Bed Category</th>
<th>Current Year</th>
<th>1st Year</th>
<th>3rd Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pediatric ICU</td>
<td>952</td>
<td>1,252</td>
<td>1,552</td>
</tr>
</tbody>
</table>

#### Table 3: Strong Memorial Hospital Occupancy through 2014

<table>
<thead>
<tr>
<th>Bed Category</th>
<th>Discharges</th>
<th>Occupancy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Med/Surg</td>
<td>560</td>
<td>27,066</td>
</tr>
<tr>
<td>Pediatric</td>
<td>72</td>
<td>3,776</td>
</tr>
<tr>
<td>Obstetric</td>
<td>45</td>
<td>3,584</td>
</tr>
<tr>
<td>General</td>
<td>93</td>
<td>2,477</td>
</tr>
<tr>
<td>Psychiatric</td>
<td>0</td>
<td>368</td>
</tr>
<tr>
<td>Chem. Dependence</td>
<td>60</td>
<td>882</td>
</tr>
<tr>
<td>High-Risk Neonates</td>
<td>38,153</td>
<td>38,634</td>
</tr>
</tbody>
</table>

SMH has the only pediatric ICU in the Finger Lakes Region. The PICU’s average occupancy for the last three years has been consistently close to capacity, with the current year’s census up to 112%, necessitating intensive care to be provided in regular pediatric beds co-located in the PICU. Census has been driven by recruitments in complex pediatric specialties not available elsewhere in the region. Given the high occupancy, SMH is inadequately prepared to accommodate any surge in pediatric cases due to flu epidemics, community or trauma related emergencies.

Utilization assumptions are based on the facility’s historical per day occupancy pattern for pediatric intensive care services. SMH is the regional provider of pediatric services for the sixteen counties that make up the primary and secondary service areas of the hospital. With the addition of the eight net new PICU beds, occupancy is expected to be at 88% in Year 1, based on the current average length of stay (LOS) of SMH PICU patients.
Conclusion
Modernization and consolidation of services will better serve patients and families of the Finger Lakes Region, reducing travel and inconvenience.

Recommendation
From a need perspective, approval is recommended.

Program Analysis

Project Proposal
Strong Memorial Hospital, an existing Article 28 830-bed hospital located at 601 Elmwood Avenue in Rochester (Monroe County) requests approval to construct six operating rooms, a procedure suite, and a pediatric catheterization laboratory with support space to be housed on the fourth floor of the new Golisano Children's Hospital (GCH). Additionally, the construction will accommodate a total of twenty-eight pediatric beds to be located on the sixth floor GCH. The pediatric bed complement will include eight incremental pediatric ICU beds, as well as the relocation of twelve pediatric ICU beds and eight general pediatric beds.

Centralizing all pediatric procedural cases in one facility improves the efficiency of pediatric anesthesiologists, pediatric nurses and other support staff and minimizes the duplication of support space specifically designed for pediatric cases.

Staffing will increase by 38.30 FTEs, in the first year of operation and to 39.30 by the third year of operation to include registered nurses, nurse practitioners, aides, technicians and administrative and management staff.

Compliance with Applicable Codes, Rules and Regulations
This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility’s enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing
Total project costs for the renovation and acquisition of moveable equipment is estimated at $45,283,688, broken down as follows:

- New Construction $22,532,447
- Design Contingency 2,253,245
- Construction Contingency 1,126,622
- Fixed Equipment 5,412,621
- Planning Consultant Fees 745,811
- Architect/Engineering Fees 1,313,590
- Construction Manager Fees 562,967
- Movable Equipment 9,311,522
Telecommunications  741,176
Financing Costs  282,000
Interim Interest Expense  752,000
Application Fee  2,000
Processing Fee  247,687
Total Project Cost  $45,283,688

Total project costs are based on a start date of December 1, 2015, with a fourteen-month construction period.

The applicant’s financing plan for the project is as follows:

SMH's Accumulated Funds  $26,483,688
Bank Loan (25-year term, 4% interest rate)  $18,800,000
Total  $45,283,688

A letter of interest has been provided by Barclay Bank for the capital financing at the above stated terms. SMH has provided a letter stating that they will fund the entire project with accumulated funds in the event that the bank financing cannot be obtained.

**Operating Budget**

The applicant has submitted an incremental operating budget, in 2015 dollars, for the first and third years, as summarized below:

<table>
<thead>
<tr>
<th></th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicaid Fee-For-Service</td>
<td>$6,215,600</td>
<td>$6,260,680</td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>$16,870,916</td>
<td>$16,993,276</td>
</tr>
<tr>
<td>Commercial Fee-For-Service</td>
<td>$17,314,889</td>
<td>$17,440,469</td>
</tr>
<tr>
<td>Commercial Managed Care</td>
<td>$2,219,858</td>
<td>$2,235,958</td>
</tr>
<tr>
<td>Private Pay</td>
<td>$443,972</td>
<td>$447,192</td>
</tr>
<tr>
<td>Other Income</td>
<td>$1,331,915</td>
<td>$1,341,575</td>
</tr>
<tr>
<td><strong>Total Revenues:</strong></td>
<td>$44,397,150</td>
<td>$44,719,150</td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$25,697,000</td>
<td>$25,955,000</td>
</tr>
<tr>
<td>Capital</td>
<td>$13,998,000</td>
<td>$13,959,000</td>
</tr>
<tr>
<td><strong>Total Expenses:</strong></td>
<td>$39,695,000</td>
<td>$39,914,000</td>
</tr>
<tr>
<td><strong>Net Income:</strong></td>
<td>$4,702,150</td>
<td>$4,805,150</td>
</tr>
<tr>
<td>Utilization (Patient Days)</td>
<td>6,427</td>
<td>7,011</td>
</tr>
<tr>
<td>Cost Per Patient Day</td>
<td>$6,176.29</td>
<td>$5,693.05</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Payor:</th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Days</td>
<td>%</td>
</tr>
<tr>
<td>Medicaid Fee-For-Service</td>
<td>902 14%</td>
<td>902 13%</td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>2,447 38%</td>
<td>2,973 42%</td>
</tr>
<tr>
<td>Commercial Fee-For-Service</td>
<td>2,511 39%</td>
<td>2,511 36%</td>
</tr>
<tr>
<td>Commercial Managed Care</td>
<td>322 5%</td>
<td>322 5%</td>
</tr>
<tr>
<td>Private Pay</td>
<td>64 1%</td>
<td>78 1%</td>
</tr>
<tr>
<td>All other</td>
<td>181 3%</td>
<td>225 3%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>6,427 100%</td>
<td>7,011 100%</td>
</tr>
</tbody>
</table>
The following is noted with respect to the submitted budget:

- Expense assumptions are based upon SMH’s current experience operating the PICU beds.
- Utilization assumptions are based on the facility’s historical per day occupancy pattern for pediatric intensive care services. SMH is the regional provider of pediatric services for the sixteen counties that make up the primary and secondary service areas of the hospital. The applicant noted that their current occupancy rate for the twelve-bed PICU is 112%, requiring intensive care to be provided in co-located general pediatric beds. With the addition of the eight PICU beds, occupancy is expected to be at 88% in year one based on the current average length of stay (LOS) of their PICU patients.
- Revenue assumptions are based on the GCH’s actual 2014 payor mix experience for PICU care and the related net patient revenue, projected by a 1.5% increase in Year One (held constant for Year Three).

**Capability and Feasibility**

Total project cost of $45,283,688 will be satisfied via equity of $26,483,688 and a loan for $18,800,000 from Barclay Bank at the above stated terms. SMH has provided a letter stating that in the event that they are unable to obtain the desired financing, they will fund the project entirely with equity. Working capital requirements are estimated at $6,652,333 based upon two months of Year Three expenses. The applicant will provide working capital from operations. BFA Attachment A is SMH’s 2013-2014 certified financial statements, which indicates the availability of sufficient resources to fund the project’s equity and working capital requirements.

The submitted budget indicates an excess of revenues over expenses of $4,702,150 in Year One and $4,805,150 in Year Three. Revenues are projected based on current PICU experience and payor mix with a projected increase of 1.5% in Year One (held constant for Year Three). SMH indicated that it is part of Accountable Health Partners (AHP), a physician/hospital network organization participating in a shared savings arrangement with commercial payors, and has contracted to be part of Medicare’s Bundled Payment Incentive Program beginning July 1, 2015. In the PICU, care is highly specialized and they anticipate that patient volume will continue to grow based on the referral patterns from an expanding region in Upstate New York. They expect some impact of value based payment (VBP) methodologies on this population as it relates to reduced readmission rates and reduced hospital infections which can impact LOS, and note that while it is difficult to model the potential impact of VBP, their projections used for this application reflect a unit that is currently operating at 112% of capacity. The addition of eight PICU beds will result in an occupancy of almost 90%, which is considered optimal by SMH, and assumes minimal growth in volumes over the next three years.

As shown on BFA Attachment A, SMH has maintained an average working capital position of $440,561,906, average net asset position of $600,738,683, and generated an average income from operation of $119,799,875 for the 2013 - 2014 time period. BFA Attachment B is SMH’s internal financial summary as of April 30, 2015, which shows income from operations after clinical transfers of $78,851,409 and an increase in unrestricted net assets totaling $44,488,267.

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

**Recommendation**

From a financial perspective, contingent approval is recommended.

**Attachments**

<table>
<thead>
<tr>
<th>Attachment A</th>
<th>Financial Statement for 2013 and 2014, Strong Memorial Hospital</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attachment B</td>
<td>Internal Financial Summary for April 30, 2015, Strong Memorial Hospital</td>
</tr>
</tbody>
</table>
Executive Summary

Description
Columbia Memorial Hospital (CMH), a 192-bed, voluntary not-for-profit, Article 28 hospital located at 71 Prospect Avenue, Hudson (Columbia County), requests approval to establish Albany Medical Center (AMC) as the active parent and co-operator of CMH. AMC will be the sole corporate member of CMH, and its active parent.

On April 17, 2015, CMH and AMC entered into an Affiliation Agreement with the goal of creating a strong and effective long-term relationship between the two entities. The benefits and efficiencies that will result from the Affiliation include:

- Clinical and administrative integration, producing efficiencies and synergy through coordination and collaboration on strategic planning, budgeting, other administrative and management activities; and
- Integration of the health care delivery system in the region, resulting in access to a geographic distribution of health care services and cost savings.

There will be no change in authorized services or the number or type of beds as a result of approval of this CON. Also, there are no projected changes in utilization, revenues or expenses of CMH as a result of this project. The hospital will remain a separate not-for-profit corporation licensed under Article 28 of the Public Health Law, maintaining its separate operating certificate following completion of the project.

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

- Appointment of the members of the Board of Directors of CMH;
- Adoption or approval of any amendments to the Certification of Incorporation, Bylaws, and Medical Staff Bylaws of CMH;
- Appointment or dismissal of officers, managers and medical staff of CMH;
- Approval of the operating and capital budgets and strategic and operating plans of CMH;
- Approval of certificate of need applications filed by or on behalf of CMH;
- Approval of any indebtedness of CMH, where the total principal amount is in excess of $1,000,000 in the aggregate for all such debt or which is secured by a mortgage or security interest in CMH’s assets or property;
- Approval of any sale or transfer of CMH’s assets to a non-affiliated entity or third-party entity, if such assets have a value in excess of $250,000, other than as a component part of an approved budget;
- Approval of management or clinical service contracts, and contracts to provide covered healthcare services to beneficiaries of health insurance, managed care or payor contracts; and
- Approval of settlements of administrative proceedings or other litigation or proceedings to which CMH is a party

BFA Attachment A provides the organizational chart of CMH post-closing.
**OPCHSM Recommendation**
Contingent Approval

**Need Summary**
This project is the addition of a co-operator and is not expected to have an impact on services provided by the facility or the utilization of those services. The applicant believes that clinical and administrative integration between Columbia Memorial Hospital and Albany Medical Center will provide synergies, cost savings, and strategic planning opportunities that will make health care more efficient and stable in the affected counties.

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

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

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:
1. Submission of documentation of approval by the NYS Office of Mental Health. [PMU]
2. Submission of a photocopy of Albany Medical Center’s executed Articles of Incorporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of Columbia Memorial Hospital’s executed Restated Certificate of Incorporation, acceptable to the Department. [CSL]
4. Submission of a photocopy of Columbia Memorial Hospital’s bylaws, acceptable to the Department. [CSL]

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

Council Action Date
October 8, 2015
Need Analysis

Project Overview
Columbia Memorial Hospital, an existing voluntary non-profit 192-bed hospital located at 71 Prospect Ave, Hudson NY 12534 in Columbia County, with numerous extension clinics, is seeking approval to enter into an affiliation with Albany Medical Center, a hospital operator located at New Scotland Avenue, Albany NY 12208. Albany Medical Center will become the active parent and co-operator of Columbia Memorial Hospital.

No changes in services or beds are proposed.

Background
Columbia Medical Center’s bed chart and historical utilization is provided below for reference. This project is not expected to have an effect on beds or services at the Center.

<table>
<thead>
<tr>
<th>Category</th>
<th>Current Beds</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Med/Surg &amp; ICU</td>
<td>156</td>
<td>36.6%</td>
<td>38.7%</td>
<td>39.2%</td>
<td>36.0%</td>
<td>36.2%</td>
</tr>
<tr>
<td>Pediatric</td>
<td>4</td>
<td>6.5%</td>
<td>3.6%</td>
<td>3.5%</td>
<td>3.4%</td>
<td>3.1%</td>
</tr>
<tr>
<td>Maternity</td>
<td>10</td>
<td>42.1%</td>
<td>34.7%</td>
<td>32.4%</td>
<td>31.6%</td>
<td>25.4%</td>
</tr>
<tr>
<td>General Psychiatric</td>
<td>22</td>
<td>75.8%</td>
<td>81.8%</td>
<td>79.5%</td>
<td>78.8%</td>
<td>73.3%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>192</strong></td>
<td><strong>42.4%</strong></td>
<td><strong>44.3%</strong></td>
<td><strong>44.4%</strong></td>
<td><strong>41.5%</strong></td>
<td><strong>40.6%</strong></td>
</tr>
</tbody>
</table>

Recommendation
From a need perspective, approval is recommended.

Program Analysis

Program Proposal
Columbia Memorial Hospital (CMH), an existing not-for-profit health system which operates a 192-bed hospital at 71 Prospect Avenue in Hudson (Columbia County), as well as numerous extension clinics, requests approval to become an affiliated entity with Albany Medical Center (AMC), an existing hospital located on New Scotland Avenue in Albany (Albany County).

The agreement is structured so that Albany Medical Center will become the active parent and co-operator of Columbia Memorial Hospital. Both organizations shall have Board representation on one another’s boards.

Efficiencies produced through the coordination and centralization of activities will result in the preservation of health care for residents in the service area. The applicant does not anticipate any change in authorized services or number or type of beds.

Character and Competence
The proposed members of the board for Columbia Memorial Hospital are:

- Raimundo C. Archibold, Jr.
- James J. Barba
- Robert T. Cushing, Chairman
- Joyce M. DeFazio
- R. Wayne Diesel
- Sharon Duker
- Peter H. Elitzer
- Marc N. Fecteau, Vice-Chair
- Margaret Gillis
- David Golub
All proposed board members were subject to a character and competence review. Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant’s ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Mr. Barba disclosed a relationship with University Heights Association which, in 2006, filed in federal bankruptcy court to prevent the execution of a large judgment against it. The matter was later settled with all debts being fully paid.

Ms. Gillis disclosed three legal actions not naming her individually, but against the firm with which she is affiliated. One, a malpractice action, has been settled. Two actions remain pending (one malpractice claim, one foreclosure action where the firm holds a judgment lien on property).

Mr. Golub disclosed that, as a large supermarket retailer, his employer has been involved in routine civil litigation, none of which has had an adverse impact on his employer.

Mr. Nigro disclosed an affiliation with a real estate company which owned a shopping center. Due to severe economic market conditions and the recession of 2008, the company defaulted on their mortgage. A receiver was appointed to operate the property until the future of the property is resolved.

Mr. Pickett disclosed that a legal action had been initiated by a former employee over the terms and conditions of a stock option granted to the former employee in 2005. The matter was settled in 2013.

Ms. Weir disclosed three (3) legal matters. On October 10, 2011, she was named (as a director of a corporation) as a defendant and the matter was subsequently settled. On May 14, 2013, a former employee filed a civil lawsuit alleging constructive discharge in violation of the Dodd-Frank Act for providing information to the Securities and Exchange Commission (SEC). The civil suit was dismissed and the matter was settled through a subsequent arbitration claim filed with FINRA. In June 2014, Ms. Weir and an investment management corporation for which she is the Chief Investment Officer settled an administrative proceeding with the SEC. As part of the settlement, Ms. Weir agreed in the future to cease and desist from violating Section 203(6) of the Investment Advisers Act (relating to the requisite disclosures and consents regarding certain related-party transactions).

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

On March 8, 2009, a Stipulation and Order and a $6,000 fine were issued against Albany Medical Center Hospital – South Clinical Campus for wrong-sided surgery. A pediatric patient was admitted for a left side inguinal hernia, however, a right side inguinal hernia repair was performed. Further review of records...
identified multiple instances where the facility was out of compliance with internal policy and state guidelines for performing surgery involving laterality.

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

### Financial Analysis

**Capability and Feasibility**  
There are no project costs or budgets associated with this application.

BFA Attachment B is the 2013 and 2014 consolidated certified financial statements of Columbia Memorial Hospital. As shown, the hospital had an average positive working capital position and an average positive net asset position from 2013 through 2014. The hospital reported an operating loss for both 2013 and 2014. The applicant provided the following explanations for the losses:

- The 2013 loss from operations of $2,217,532 was due to significantly reduced inpatient discharges for the year, coupled with additional expenses associated with the acquisition of multiple local outpatient physician practices.
- The 2014 loss from operations of $549,590 represents an improvement from the prior year; however, operations continued to be negatively impacted by lower inpatient volumes in 2014 and operational inefficiencies in the outpatient departments which were identified and addressed.
- In 2015, both inpatient and outpatient service areas have experienced favorable improvements to their operational workflows, which has led to increased efficiencies and continues the trend toward a positive operating margin.

BFA Attachment C is the financial summaries of the 2013 and 2014 consolidated certified financial statements of AMCH and CMH, and the 2015 internal financial statements for CMH. As shown, AMCH had an average positive working capital position and an average positive net asset position from 2013 through 2014, and incurred an average positive operating net income for 2013 and 2014. CMH’s internal financial summary as of June 30, 2015 shows a positive working capital position, positive net assets and operating revenue at $80.4M, a $5M increase over the same period in 2014.

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

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

### Attachments

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>Organizational Chart</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Financial Statements – Columbia Memorial Hospital</td>
</tr>
<tr>
<td></td>
<td>Consolidating financials</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Financial Summaries – AMCH and CMH</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Albany Medical Center as the active parent/co-operator of Columbia Memorial Hospital, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: FACILITY/APPLICANT:

151216 E Columbia Memorial Hospital
APPROVAL CONTINGENT UPON:

1. Submission of documentation of approval by the NYS Office of Mental Health. [PMU]
2. Submission of a photocopy of Albany Medical Center’s executed Articles of Incorporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of Columbia Memorial Hospital’s executed Restated Certificate of Incorporation, acceptable to the Department. [CSL]
4. Submission of a photocopy of Columbia Memorial Hospital’s bylaws, 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]

   Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
Executive Summary

Description
Crystal Run Ambulatory Surgery Center of Middletown, LLC (the Center), an existing proprietary Article 28 Diagnostic and Treatment Center (D&TC) located at 95 Crystal Run Road, Middletown (Orange County), is requesting indefinite life. The D&TC is certified as a multi-specialty freestanding ambulatory surgery center (FASC) and provides services in the following areas: general surgery, gastroenterology, gynecology, orthopedics, otolaryngology, plastic surgery, urology, pain management, and dermatology. The facility was approved by the Public Health Council with a five-year limited life under CON #082080 and began operation effective April 19, 2010. The FASC’s limited life expired on April 18, 2015 and the Center notified the Department before their limited life expiration date requesting a stay pending submission of this application.

The Center is not proposing to add or change any services, or to expand or renovate the facility.

Crystal Run Ambulatory Surgery Center of Middletown, LLC consists of the following two members:
- Crystal Run Healthcare LLP (60%), a multi-specialty group practice currently comprised of 122 physician partners, with administrative offices at 155 Crystal Run Road, Middletown; and
- Orange Regional Medical Center (40%), a 383-bed non-profit hospital located at 707 East Main Street, Middletown.

BFA Attachment A provides an Organizational Chart of the FASC and a listing of the current physician partners of Crystal Run Healthcare LLP.

OPCHSM Recommendation
Contingent Approval

Need Summary
Based on CON 082080, Crystal Run projected 12,000 procedures in Year 1 (2010) and Year 3 (2012). Medicaid procedures was projected at four (4) percent and charity care was projected at two (2) percent. Based on the Annual Reports submitted by the applicant, the number of total procedures was 8,090 in Year 1 (2010) and 13,048 in Year 3 (2012). Actual charity care in Year 3 (2012) was 0.46 percent.

Upon approval of this project, Crystal Run projects 11,145 visits in Years 1 and 3 with 15.8 percent Medicaid visits and two (2) percent charity care. There will be no changes in services.

Program Summary
Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant’s character and competence or standing in the community.
Financial Summary
There are no project costs associated with this application.

Budget:

<table>
<thead>
<tr>
<th></th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$13,674,585</td>
<td>$3,674,585</td>
</tr>
<tr>
<td>Expenses</td>
<td>$11,631,017</td>
<td>$11,655,139</td>
</tr>
<tr>
<td>Net Income</td>
<td>$2,043,568</td>
<td>$2,019,446</td>
</tr>
</tbody>
</table>
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 affidavit, acceptable to the Department, attesting that there have been no changes to the legal documentation as originally approved by the Department. [CSL]

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

Council Action Date
October 8, 2015
**Need Analysis**

**Project Description**
Crystal Run Ambulatory Surgery Center of Middletown, LLC, an Article 28 Diagnostic and Treatment Center certified as a multi-specialty ambulatory surgery center, is requesting permission to convert to indefinite life following a five year limited life with an operating certificate dated April 19, 2010 to April 18, 2015 (CON 082080). This ambulatory surgery center provides gastroenterology, gynecology, orthopedic, otolaryngology, plastic surgery, urology, pain management, dermatology and general surgery services. It is located at 95 Crystal Run Road, Middletown, 10941, in Orange County. Crystal Run has five operating rooms and two procedure rooms.

**Analysis**
The primary service area is Orange County.

The table below provides procedures projections and utilization for Years 1 and 3 based on CON 082080.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>12,000</td>
<td>12,000</td>
<td>8,090</td>
<td>13,048</td>
</tr>
</tbody>
</table>

The table below provides Year 3 utilization, projections and actual, by payor, for CON 082080, actual for 2014 and projections for Years 1 and 3 following approval.

<table>
<thead>
<tr>
<th>Payor</th>
<th>CON 082080 Projected Year 3 (2012)</th>
<th>CON 082080 Actual Year 3 (2012)</th>
<th>CON 151201 Actual 2014</th>
<th>CON 151201 Projected Years 1 and 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid FFS/MC</td>
<td>4.0%</td>
<td>12.3%</td>
<td>15.2%</td>
<td>15.4%</td>
</tr>
<tr>
<td>Medicare FFS/MC</td>
<td>29.0%</td>
<td>16.3%</td>
<td>18.4%</td>
<td>18.7%</td>
</tr>
<tr>
<td>Commercial FFS/MC</td>
<td>60.0%</td>
<td>70.9%</td>
<td>33.0%</td>
<td>33.2%</td>
</tr>
<tr>
<td>Charity Care</td>
<td>2.0%</td>
<td>.5%</td>
<td>2.9%*</td>
<td>2.0%</td>
</tr>
<tr>
<td>Private Pay</td>
<td>5.0%</td>
<td>---</td>
<td>6.2%</td>
<td>6.4%</td>
</tr>
<tr>
<td>All Other</td>
<td>------</td>
<td>------</td>
<td>24.3%</td>
<td>24.4%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

*Includes a portion of bad-debt cases

The center has made a concerted effort to provide Charity Care and reduced fee care to the residents of Orange County. The center re-evaluated the amount of bad debt and determined that 120 cases in 2013 and 266 cases in 2014 could be labeled charity care. This increased the amount of charity care provided to 1.5% in 2013 and 2.9% in 2014.

Since the passage of the Affordable Care Act, access to healthcare coverage has improved in New York State, which means fewer people needing traditional Charity Care. Through February 2015, the number of uninsured in Orange County has dropped from 47,000 before passage of the Affordable Care Act to 15,500 after passage (represents a 67% drop). Approximately 65% of these newly insured people have been enrolled in Medicaid plans.

Early in 2014, it was identified that the center was not providing Charity Care at a level that met projections. The center developed an action plan to improve efforts to provide Charity Care which included the following steps:
- Designated one staff member to focus on Charity Care efforts.
- Initiated a free colonoscopy screening program with Middletown Community Health Center (a FQHC).
- Expanded the free colonoscopy program to include patients of The Greater Hudson Valley Family Health Center (another FQHC).
- Performed community outreach to patients with large outstanding balances to provide information and the criteria for inclusion in the Charity Care Program offered at the center.

Crystal Run is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

Conclusion
Although Crystal Run’s level of charity care has been modest, this has occurred in the midst of a major decline in the number of uninsured in Orange County. The facility’s relatively low level of charity care to date is also somewhat ameliorated by its absorption of bad debt that could be considered charity care, and by the ASC’s implementation of a strengthened action plan to reach uninsured individuals. Moreover, Crystal Run’s volume of services to Medicaid clients has reached over 3.5 times the facility’s original projection. These circumstances indicate a reasonable and sustained effort to extend services to the underserved in the Orange County area. Therefore, certification for indefinite life should be granted.

Recommendation
From a need perspective, approval is recommended.

Program Analysis

Program Proposal
Crystal Run Ambulatory Surgery Center of Middletown, LLC, an existing Article 28 Diagnostic and Treatment Center certified as a multi-specialty ambulatory surgery center, located at 95 Crystal Run Road in Middletown (Orange County), is requesting permission to convert to indefinite life following a five year conditional, limited life approval (initially approved in CON #082080).

The Center's two members are Orange Regional Medical Center, a 383-bed hospital located in Middletown with a 40% membership interest and Crystal Run Healthcare LLP, a multi-specialty group practice comprised of 123 physician partners, with a 60% membership interest.

The Center is not proposing to add any services, expand or renovate the facility. Stephen Cagliostro, M.D. will continue to serve as the Center's Medical Director.

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

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Recommendation
From a programmatic perspective, approval is recommended.
## Financial Analysis

### Operating Budget
The applicant has submitted operating budgets, in 2015 dollars, for the current year of operations and for year one and year three subsequent to approval of this application, as shown below:

<table>
<thead>
<tr>
<th></th>
<th>Current Year</th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicare Fee For Service</td>
<td>$1,786,513</td>
<td>$1,837,137</td>
<td>$1,837,137</td>
</tr>
<tr>
<td>Medicaid Fee For Service</td>
<td>80,085</td>
<td>83,332</td>
<td>83,332</td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>1,788,940</td>
<td>1,855,844</td>
<td>1,855,844</td>
</tr>
<tr>
<td>Commercial Fee For Service</td>
<td>5,065,592</td>
<td>5,213,417</td>
<td>5,213,417</td>
</tr>
<tr>
<td>Private Pay</td>
<td>967,647</td>
<td>1,070,439</td>
<td>1,070,439</td>
</tr>
<tr>
<td>Other/Government</td>
<td>3,807,657</td>
<td>3,614,416</td>
<td>3,614,416</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td>$13,496,434</td>
<td>$13,674,585</td>
<td>$13,674,585</td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$9,306,225</td>
<td>$9,803,676</td>
<td>$9,803,676</td>
</tr>
<tr>
<td>Capital</td>
<td>1,821,592</td>
<td>1,827,341</td>
<td>1,851,463</td>
</tr>
<tr>
<td><strong>Total Expenses</strong></td>
<td>$11,127,817</td>
<td>$11,631,017</td>
<td>$11,655,139</td>
</tr>
<tr>
<td><strong>Net Income</strong></td>
<td>$2,368,617</td>
<td>$2,043,568</td>
<td>$2,019,446</td>
</tr>
<tr>
<td>Utilization (Cases)</td>
<td>10,716</td>
<td>11,145</td>
<td>11,145</td>
</tr>
<tr>
<td><strong>Cost Per Case</strong></td>
<td>$1,038.43</td>
<td>$1,043.61</td>
<td>$1,045.77</td>
</tr>
</tbody>
</table>

Utilization broken down by payor source for the respective years is as follows:

<table>
<thead>
<tr>
<th>Payor Source</th>
<th>Current Year</th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cases</td>
<td>%</td>
<td>Cases</td>
</tr>
<tr>
<td>Commercial Fee For Service</td>
<td>3,623</td>
<td>33.8%</td>
<td>3,705</td>
</tr>
<tr>
<td>Medicare Fee For Service</td>
<td>2,026</td>
<td>18.9%</td>
<td>2,080</td>
</tr>
<tr>
<td>Medicaid Fee For Service</td>
<td>74</td>
<td>0.7%</td>
<td>77</td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>1,577</td>
<td>14.7%</td>
<td>1,635</td>
</tr>
<tr>
<td>Private Pay</td>
<td>684</td>
<td>6.4%</td>
<td>708</td>
</tr>
<tr>
<td>Charity</td>
<td>60</td>
<td>0.6%</td>
<td>223</td>
</tr>
<tr>
<td>Other/Government</td>
<td>2,672</td>
<td>24.9%</td>
<td>2,717</td>
</tr>
<tr>
<td><strong>Total Cases</strong></td>
<td>10,716</td>
<td>100.0%</td>
<td>11,145</td>
</tr>
</tbody>
</table>

Per the Center’s establishment CON, Medicaid and charity care utilization were projected to be 4% and 2%, respectively, of total procedures in the first and third years of operation. As documented in the AHCF cost reports filed with the Department, and supported by their SPARCS data submissions, the facility has experienced difficulty meeting the 2% charity care level to date. However, Medicaid utilization was 11.4% (2011), 12.4% (2012), and 12.9% (2013) of their total caseload, far exceeding their initial projections. The applicant indicated that this trend continues through to the present with Medicaid now comprising 15.4% of total cases.

The applicant provided documentation attesting to the declining number of uninsured persons in Orange County due to the impact of the Affordable Care Act and ongoing enrollments in insurance products, such as those available to individuals through the New York State of Health exchange marketplace. The applicant further indicated that, despite increased insurance coverage, many cases still result in bad debt (defined as an amount higher than $300 for which no payment is received) due to high deductibles and co-pays. By working with their collection agency they identified 120 cases in 2013 and 266 cases in 2014 they believe could fairly have been classified as charity care.
To improve charity care service delivery, the applicant created a Charity Care Team in 2014 devoted to enhancing services to the underserved. Highlights of their efforts include the following:

- A full-time Center employee (1.0 FTE) is dedicated specifically to charity care outreach.
- For patients with outstanding balances, outreach letters are sent to advise them of the Center’s Charity Care Program if it is determined they meet the Center’s charity care criteria. Follow-up contact is made for those that continue to have large balances.
- A process was created for contacting patients prior to the procedure date to explain and offer their Charity Care Program if it is determined they will have a large out-of-pocket amount and/or no insurance coverage.
- In 2012 the FASC initiated a free colonoscopy screening program with Middletown Community Health Center, a FQHC. The Center expanded this program to include another FQHC, Greater Hudson Valley Family Health Center located in Newburgh.

With these efforts and program changes, the applicant feels they can achieve a minimum charity care of 2% utilization by the end of year one.

**Capability and Feasibility**

There are no project costs associated with this application.

The submitted budgets indicate a net income of $2,043,568 and $2,019,446 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The budgets are reasonable.

BFA Attachment B is the 2013 and 2014 certified financial statements of Crystal Run ASC of Middletown, LLC. As shown, the facility had an average positive working capital position and an average positive net asset position for these years. Also, the entity achieved an average net income from operations of $2,710,314 from 2013 through 2014.

BFA Attachment C provides the internal financial statements of Crystal Run ASC of Middletown, LLC as of June 30, 2015. As shown, the entity had a positive working capital position and a positive net asset position for the period. Also, the entity achieved a net income from operations of $538,872 through June 30, 2015.

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

**Recommendation**

From a financial perspective, approval is recommended.

<table>
<thead>
<tr>
<th>Attachments</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
</tr>
<tr>
<td>BFA Attachment B</td>
</tr>
<tr>
<td>BFA Attachment C</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to request for indefinite life for CON #082080, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: 151201 E
FACILITY/APPLICANT: Crystal Run Ambulatory Surgery Center of Middletown
APPROVAL CONTINGENT UPON:

1. Submission of an affidavit, acceptable to the Department, attesting that there have been no changes to the legal documentation as originally approved by the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
Executive Summary

Description
Mid-Bronx Endoscopy Center, LLC (the Center), a recently formed New York limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to be certified as a single-specialty freestanding ambulatory surgery center (FASC) specializing in gastroenterology. The Center will be located in approximately 7,700 square feet of leased space on the ground floor of an existing building at 57 West Burnside Avenue, Bronx (Bronx County), New York. The FASC will include four gastroenterology procedure rooms and preoperative, recovery and support areas.

The proposed ownership of the Center includes six classes of members as follows:

1. Class A Members (23 Units): four participating independent physicians who are board-certified gastroenterologist practicing in the Bronx area, each of whom will own 5.75 units in the Center;
2. Class B Members (7.6 Units): three non-physician individuals, each of whom will own 2.53 units in the Center;
3. Class C Member (45 Units): Bronx-Lebanon Special Care Center, Inc., a New York not-for-profit corporation that operates a 240-bed nursing home in the Bronx;
4. Class D Member (10 Units): Harrison Circle Development Corp. (HCDC), a New York business corporation whose sole shareholder, Morris Heights Senior Housing Development Fund Company, Inc., is affiliated with the landlord;
5. Class E Members (2.4 Units): Advance Endoscopy Center, LLC, which is owned by fifteen individuals (three of which have ownership interest in the Administrative Service Agreement provider) and MMC Holdings West, Inc. whose sole passive member is Montefiore Medical Center; and
6. Class F Members (12 Units): four participating physician members who are board-certified gastroenterologist affiliated with and employed by Bronx-Lebanon Hospital Center.

Class A and F members are required to be licensed and registered physicians remaining in practice in the Bronx area and able to perform surgical services at the Center. Based on their percentage interest, all of the members generally have the same economic and voting rights. The business and affairs of the Center will be managed by a Board of Managers elected by each membership class, including three representatives elected by Class A members and one representative each from Class B, Class C, Class D and Class F members.

BFA Attachment A provides a list of the proposed members of the Center by class and units of ownership.

OPCHSM Recommendation
Contingent approval with an expiration of the operating certificate five years from the date of its issuance.
**Need Summary**
The number of projected procedures is 5,936 in Year 1, with 50 percent Medicaid and two percent charity care.

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

**Financial Summary**
Project costs of $3,918,239 will be met by $391,824 in members' equity and a $3,526,415 bank loan at 5.5% interest over a six-year term. A letter of interest has been provided by Wells Fargo.

**Budget:**

<table>
<thead>
<tr>
<th>Year Three</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$4,084,744</td>
</tr>
<tr>
<td>Expenses</td>
<td>$2,816,366</td>
</tr>
<tr>
<td>Net Income</td>
<td>$1,268,378</td>
</tr>
</tbody>
</table>
Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management
Approval with an expiration date of the operating certificate five 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. A copy of the check must be uploaded into NSECON. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for the construction, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed Development and Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
8. 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]
9. 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]
10. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
   a. Data showing actual utilization including procedures;
   b. Data showing breakdown of visits by payor source;
   c. Data showing number of patients who need 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]
11. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 for Outpatient Facilities. [AER]
12. Submission of the executed Articles of Organization of Mid- Bronx Endoscopy Center LLC., acceptable to the Department. [CSL]
Approval conditional upon:
1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
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. Construction must start on or before December 1, 2015 and construction must be completed by May 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date
October 8, 2015
Project Description
Mid-Bronx Endoscopy Center, LLC, a newly-formed New York limited liability company, is requesting approval to establish and construct an Article 28 Diagnostic and Treatment Center to provide single specialty gastroenterology ambulatory surgery services. The proposed location is 57 West Burnside Avenue, Bronx, 10453, in Bronx County.

Analysis
The service area includes Bronx County. Bronx County currently has a total of eight freestanding ambulatory surgery centers: five multi-specialty ASCs and three single specialty ASCs. The table below shows the number of patients utilizing Ambulatory Surgery Centers in Bronx County for 2013 & 2014.

<table>
<thead>
<tr>
<th>Specialty Type</th>
<th>Facility</th>
<th>Total Patients 2013</th>
<th>Total Patients 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>Eye Surgery Center of New York (opened 3/18/15)</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Multi</td>
<td>Surgicare Ambulatory Surgery Center of New York</td>
<td>3,147</td>
<td>2,702</td>
</tr>
<tr>
<td>Multi</td>
<td>Empire State Ambulatory Surgery Ctr (opened 2/19/15)</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Multi</td>
<td>Avicenna ASC, Inc. (opened 4/7/15)</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Multi</td>
<td>East Tremont Medical Center</td>
<td>3,385</td>
<td>3,267</td>
</tr>
<tr>
<td>Single</td>
<td>New York GI Center, LLC</td>
<td>7,305</td>
<td>9,608</td>
</tr>
<tr>
<td>Multi</td>
<td>Ambulatory Surgery Center of Greater New York</td>
<td>10,083</td>
<td>9,740</td>
</tr>
<tr>
<td>Single</td>
<td>Advanced Endoscopy Center</td>
<td>10,248</td>
<td>11,013</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>34,168</strong></td>
<td><strong>36,330</strong></td>
</tr>
</tbody>
</table>

(Source-SPARCS)

For Bronx County, the total number of patient visits for ASC’s was 34,168 in 2013 and 36,330 in 2014. This represents a 6.3% increase in the number of patients served by Ambulatory Surgery Centers in Bronx County from 2013 to 2014.

The population of Bronx County in 2010 was 1,385,108 with 484,998 individuals (34.9%) who are 45 and over, which is the primary population group utilizing Gastroenterology services. Per PAD projection data from the Cornell Program on Applied Demographics, this population group is estimated to grow to 529,060 by 2025, an increase of 6.7% in the population group of individuals 45 and over.

The number of projected procedures is 5,936 in Year 1 and 6,055 in Year 3 with 50 percent Medicaid and two percent charity care. These projections are based on the current case load of the participating physicians.

<table>
<thead>
<tr>
<th>Projections</th>
<th>Year 1 Procedures</th>
<th>Year 1 Percentage</th>
<th>Year 3 Procedures</th>
<th>Year 3 Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Ins</td>
<td>1,187</td>
<td>20%</td>
<td>1,211</td>
<td>20%</td>
</tr>
<tr>
<td>Medicare</td>
<td>1,662</td>
<td>28%</td>
<td>1,696</td>
<td>28%</td>
</tr>
<tr>
<td>Medicaid</td>
<td>2,968</td>
<td>50%</td>
<td>3,027</td>
<td>50%</td>
</tr>
<tr>
<td>Charity Care</td>
<td>119</td>
<td>2.0%</td>
<td>121</td>
<td>2.0%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>5,936</strong></td>
<td><strong>100.0%</strong></td>
<td><strong>6,055</strong></td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>

The applicant is committed to serving all persons without regard to their ability to pay or the source of payment.
Conclusion
The proposed project will improve access to ambulatory surgery services specializing in gastroenterology to the communities of Bronx County, including the Medicaid-eligible populations whom the applicant proposes to serve in significant numbers.

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

Program Analysis

Project Proposal
Mid-Bronx Endoscopy Center, LLC, is requesting approval to establish and construct a single-specialty ambulatory surgery center specializing in gastroenterological procedures at 57 West Burnside Avenue, Bronx (Bronx County), New York 10453.

This project consolidates the participating physicians’ separate private practices into a single, regulated Article 28 Center and will allow the operator to provide screening and other outreach programs to the community that were not feasible through the member physicians’ private practices.

<table>
<thead>
<tr>
<th>Proposed Operator</th>
<th>Mid-Bronx Endoscopy Center, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Address</td>
<td>57 West Burnside Avenue</td>
</tr>
<tr>
<td></td>
<td>Bronx, NY (Bronx County)</td>
</tr>
<tr>
<td>Surgical Specialties</td>
<td>Single Specialty: Endoscopy</td>
</tr>
<tr>
<td>Operating Rooms</td>
<td>0</td>
</tr>
<tr>
<td>Procedure Rooms</td>
<td>4</td>
</tr>
<tr>
<td>Hours of Operation</td>
<td>Monday through Friday from 7:00 a.m. to 5:00 p.m. (Weekend and/or evening procedures will be available, if needed, to accommodate patient scheduling issues.)</td>
</tr>
<tr>
<td>Staffing (1st / 3rd Year)</td>
<td>11.5 FTEs / 16.5 FTEs</td>
</tr>
<tr>
<td>Medical Director(s)</td>
<td>Prospere Remy, MD</td>
</tr>
<tr>
<td>Emergency, In-Patient and Backup Support Services Agreement and Distance</td>
<td>Will be provided by Bronx-Lebanon Hospital Center 1.3 miles/ 8 minutes</td>
</tr>
<tr>
<td>On-call service</td>
<td>24/7 service to refer the patient to the Center’s on-call physician</td>
</tr>
</tbody>
</table>

Character and Competence
The membership of the proposed project is divided into six (6) different classes and consists of 14 total members (i.e., physicians, non-physicians, not-for-profit corporations and an LLC). They proposed members are:

<table>
<thead>
<tr>
<th>Name</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class A Members (Physician Members)</td>
<td>23.00%</td>
</tr>
<tr>
<td>Prospere Remy, MD, Manager</td>
<td>5.75%</td>
</tr>
<tr>
<td>Carl Guillaume, MD</td>
<td>5.75%</td>
</tr>
<tr>
<td>Mohamad Erfani, MD</td>
<td>5.75%</td>
</tr>
<tr>
<td>Marie-Nirva Blaise, MD</td>
<td>5.75%</td>
</tr>
<tr>
<td>Class B Members (Non-Physician Members)</td>
<td>7.59%</td>
</tr>
<tr>
<td>Frank Principati</td>
<td>2.53%</td>
</tr>
<tr>
<td>W. Barry Tanner</td>
<td>2.53%</td>
</tr>
<tr>
<td>Karen Sabiyak</td>
<td>2.53%</td>
</tr>
<tr>
<td>Class C Member</td>
<td></td>
</tr>
<tr>
<td>----------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Bronx-Lebanon Special Care Center, Inc.</td>
<td>45.00%</td>
</tr>
<tr>
<td>Barbara Lowe, RN, <em>board member</em></td>
<td></td>
</tr>
<tr>
<td>Miguel Fuentes, <em>board member</em></td>
<td></td>
</tr>
<tr>
<td>John Colon, <em>board member</em></td>
<td></td>
</tr>
<tr>
<td>Victor DeMarco, <em>board member</em></td>
<td></td>
</tr>
</tbody>
</table>

| Class D Member |  
|----------------|----------------|
| Harrison Circle Development Corp. (HCDC) | 10.00% |
| Morris Heights Senior Housing Development Fund Company, Inc. |  
| Verona Greenland, *board member* |  
| Judith Fairweather, *board member* |  

| Class E Member |  
|----------------|----------------|
| Advanced Endoscopy Center, LLC | 2.40% |
| Michael Ader, MD | (0.11%) |
| Amnon Gotian, MD | (0.11%) |
| Isadore Gutwein, MD | (0.11%) |
| Jeremy Gutwein, MD | (0.11%) |
| Ian Harnik, MD | (0.11%) |
| Neil Herbsman, MD | (0.11%) |
| Henry Katz, MD | (0.11%) |
| Albert Kramer, MD | (0.11%) |
| Daniel Reich, MD | (0.11%) |
| Robert Sable, MD | (0.11%) |
| David Stein, MD | (0.11%) |
| Ira Tepler, MD | (0.11%) |
| MMC GI Holdings West, Inc. | (0.72%) |
| Patrick Haughey, *board member* |  
| Christopher Panczner, *board member* |  
| Karen Sablyak | (0.12%) |
| W. Barry Tanner | (0.12%) |
| Frank Principati | (0.12%) |

| Class F Members |  
|----------------|----------------|
| Ariyo Ihimoyan, MD | 3.00% |
| Anil Dev, MD | 3.00% |
| Bhavna Balar, MD | 3.00% |
| Myrta Daniel, MD | 3.00% |

All of the aforementioned proposed members were subject to Character and Competence Review. Each of the proposed Class A physician members are board-certified gastroenterologists. The proposed Class B members are also members of Physicians Endoscopy, LLC, who will provide development and administrative services to the Center. The proposed Class C member, Bronx-Lebanon Special Care Center, Inc., is a New York not-for-profit corporation. The proposed Class D member, Harrison Circle Development Corp., is a New York business corporation. HCDC's sole shareholder is Morris Heights Senior Housing Development Fund Company, Inc., a not-for-profit corporation whose sole, passive member is Morris Heights Health Center, Inc., a not-for-profit corporation and Federally Qualified Health Center (FQHC). The proposed Class E member, Advanced Endoscopy Center, LLC (AEC), is a New York limited liability company that operates an existing Article 28 FASC in Bronx County. The proposed Class F participating physician members are each board-certified gastroenterologists affiliated with Bronx-Lebanon Hospital Center.

Physicians Endoscopy, LLC (PELL), based in Jamison, Pennsylvania, owns, develops, manages and operates single-specialty endoscopic ambulatory surgery centers in partnership with practicing physicians.
and hospitals. PELL will provide development and administrative consultation regarding the day-to-day operation of 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.

*Dr. Reich disclosed a settled malpractice case. Dr. Herbsman disclosed three (3) settled malpractice cases. Dr. Isadore Gutwein and Dr. Sable each disclosed one (1) open/pending malpractice case.*

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

*In October 2005, the Office of Mental Health (OMH) fined Morris Heights Health Center, Inc. $40,000 for the establishment and operation of a mental health clinic and 7 satellites at various locations in Bronx County for a 14 year period without OMH’s prior approval. Morris Heights Health Center requested an administrative hearing and ultimately entered into settlement negotiations resulting in a Stipulation of Settlement and $20,000 fine.*

*In a Stipulation and Order dated November 19, 2007, Bronx-Lebanon Special Care Center, Inc. was fined $2,000 for its breach of the minimum standard requirements related to Quality of Care: Accidents.*

*In a Stipulation and Order dated August 16, 2010, Bronx Lebanon Hospital Center was fined $16,000 based on an investigation into the care rendered to a juvenile who was admitted for a left side hernia repair. A right repair was agreed to at "time out" but no hernia was found during surgery exposing the error.*

*In August 2011, the Department completed a survey at Bronx-Lebanon Highbridge-Woodycrest Center and issues a statement of deficiencies that the facility was not in substantial compliance with regulations which resulted in a denial of payment for new Medicare and Medicaid admissions during the period from August 26, 2011 through October 30, 2011.*

**Integration with Community Resources**

The Center plans to work closely with its patients to educate them regarding the availability of primary care services offered by local providers. The applicant will develop a formal outreach program directed at the local community, to include local physicians and other existing healthcare providers, particularly those who provide care to the underserved residents of the Center’s primary service area. Patients will not be excluded based on ability to pay. Charity care will be provided and the Center will utilize a sliding fee scale for those who are uninsured or unable to pay. The Center plans on utilizing an electronic medical record (EMR) and would consider participating in a Regional Health Information Organization (RHIO) with the capability for clinical referral and event notification.

**Recommendation**

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

Total Project Cost and Financing
The total project costs for renovation & demolition, moveable equipment, and construction are estimated at $3,918,239, broken down as follows:

- Renovation & Demolition $1,921,774
- Design Contingency 192,177
- Construction Contingency 192,177
- Architect/Engineering Fees 131,040
- Other Fees 52,000
- Moveable Equipment 1,304,521
- Financing Costs 36,478
- Interim Interest Expense 64,651
- Application Fee 2,000
- Additional Processing Fee 21,421
- Total Project Costs $3,918,239

Project costs will be financed as follows:
- Members’ Equity $391,824
- Bank Loan (six-year term, 5.5% interest) 3,526,415
- Total $3,918,239

A letter of interest has been provided by Wells Fargo.

Lease Rental Agreement
The applicant has submitted a letter of interest lease term sheet for the site to be occupied, the terms of which are summarized below:

<table>
<thead>
<tr>
<th>Date Signed:</th>
<th>March 12, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premises:</td>
<td>Approx. 7,800 sq. ft. (architect to confirm measurement prior to lease execution) located at 57 West Burnside Avenue, Bronx, NY 10453</td>
</tr>
<tr>
<td>Landlord:</td>
<td>Morris Height Health Center, Inc.</td>
</tr>
<tr>
<td>Lessee:</td>
<td>Mid-Bronx Endoscopy Center, LLC</td>
</tr>
<tr>
<td>Term:</td>
<td>12 years, two (2) five-year renewal options</td>
</tr>
<tr>
<td>Rent: $312,000 per year ($40.00 per square foot) with a 2% increase per year</td>
<td></td>
</tr>
<tr>
<td>Provisions:</td>
<td>Utilities and taxes</td>
</tr>
</tbody>
</table>

The applicant submitted an affidavit stating the lease agreement is an arm’s length transaction, except as follows: Mid-Bronx Endoscopy Center, LLC and Morris Heights Health Center, Inc. have common ownership. It is noted that Morris Heights Health Center, Inc. is affiliated with HCDC, the proposed Class D member, in that Morris Heights Health Center, Inc. is the sole passive member of HDCD’s sole shareholder, Morris Heights Senior Housing Development Fund Company, Inc.

The applicant submitted letters from two NYS licensed realtors attesting to the reasonableness of the square foot rental rate.
Development and Administrative Service Agreement
The applicant has submitted a draft development and administrative services agreement, the terms of which are summarized below:

<table>
<thead>
<tr>
<th>Date:</th>
<th>February 13, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility:</td>
<td>Mid-Bronx Endoscopy Center, LLC</td>
</tr>
<tr>
<td>Contractor:</td>
<td>Physicians Endoscopy, L.L.C.</td>
</tr>
<tr>
<td>Development Services Provided:</td>
<td>Coordination and assistance with: legal formation, site selection, facility set up, oversee construction, recommend facility policies, recruit initial support staff plus train subject to company’s approval, prepare applications and/or other documents for licenses &amp; contracts, assist in financing and obtaining business insurance. Establish management &amp; fiscal systems subject to company’s approval.</td>
</tr>
<tr>
<td>Administrative Services Provided:</td>
<td>Oversight of annual budget development &amp; reporting, administration, financial systems &amp; procedures, accounts receivables &amp; billing, purchasing &amp; inventories, manage care services and operational assistances including complying with governmental regulations. Assist in review of non-professional employees and assist in follow-up services reasonably request by the company.</td>
</tr>
<tr>
<td>Billing and Collection Services:</td>
<td>Oversight of revenue cycle activities and collection process. Deposits into company lock box, withdrawal only for company third party payables. Schedule patients, registration of patients, daily review, billing/claim submission, payment posting, and accounts receivable follow-up and correspondence.</td>
</tr>
<tr>
<td>Development Fee:</td>
<td>$126,000 in four installments of $31,500 each (ending with first patient)</td>
</tr>
<tr>
<td>Administrative Fee:</td>
<td>$120,000 ($12,000 per month, beginning with first patient) fee will increase by 2% per year after the first year</td>
</tr>
<tr>
<td>Billing &amp; Collection Fee:</td>
<td>First year at $17 per procedure and $34 per procedure after the first year</td>
</tr>
<tr>
<td>Administrative Term:</td>
<td>Seven years with automatic renewals, for an additional three years, effective on each anniversary date of the Expiration Date unless cancelled.</td>
</tr>
</tbody>
</table>

While Physicians Endoscopy, L.L.C. will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility and control for the operations.

Proposed applicant Class B members Frank Principati, Barry Tanner and Karen Sablyak have common membership with the administrative service agreement provider.

Operating Budget
The applicant has submitted an operating budget, in 2015 dollars, for years one and three, as summarized below:

<table>
<thead>
<tr>
<th>Revenues:</th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Fee For Service</td>
<td>$803,071</td>
<td>$819,134</td>
</tr>
<tr>
<td>Commercial Managed Care</td>
<td>267,691</td>
<td>273,044</td>
</tr>
<tr>
<td>Medicare Fee For Service</td>
<td>1,026,147</td>
<td>1,046,670</td>
</tr>
<tr>
<td>Medicare Managed Care</td>
<td>123,138</td>
<td>125,600</td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>1,784,604</td>
<td>1,820,296</td>
</tr>
<tr>
<td>Total Revenues</td>
<td>$4,004,651</td>
<td>$4,084,744</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenses:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating</td>
<td>$1,699,166</td>
<td>$1,910,571</td>
</tr>
<tr>
<td>Capital</td>
<td>956,853</td>
<td>905,795</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>$2,656,019</td>
<td>$2,816,366</td>
</tr>
<tr>
<td>Net Income</td>
<td>$1,348,632</td>
<td>$1,268,378</td>
</tr>
</tbody>
</table>
Total Visits 5,936 6,055  
Total Cost Per Procedure $447.44 $465.13  

Utilization by payor source is as follows:

<table>
<thead>
<tr>
<th>Payor</th>
<th>Year One</th>
<th></th>
<th>Year Three</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Procedures</td>
<td>%</td>
<td>Procedures</td>
<td>%</td>
</tr>
<tr>
<td>Commercial Fee For Service</td>
<td>890</td>
<td>15%</td>
<td>908</td>
<td>15%</td>
</tr>
<tr>
<td>Commercial Managed Care</td>
<td>297</td>
<td>5%</td>
<td>303</td>
<td>5%</td>
</tr>
<tr>
<td>Medicare Fee For Service</td>
<td>1,484</td>
<td>25%</td>
<td>1,514</td>
<td>25%</td>
</tr>
<tr>
<td>Medicare Managed Care</td>
<td>178</td>
<td>3%</td>
<td>182</td>
<td>3%</td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>2,968</td>
<td>50%</td>
<td>3,027</td>
<td>50%</td>
</tr>
<tr>
<td>Charity Care</td>
<td>119</td>
<td>2%</td>
<td>121</td>
<td>2%</td>
</tr>
<tr>
<td>Total</td>
<td>5,936</td>
<td>100%</td>
<td>6,055</td>
<td>100%</td>
</tr>
</tbody>
</table>

The following is noted with respect to the submitted budget:
- Expenses were projected based on the number and mix of staff as determined by the experience of the participating physicians in providing and administering gastroenterology services. The applicant projects an increase in operating expenses by year three due to anticipated increased purchased services and additional staffing needs related to increased utilization.
- Revenues by payor are based on the experience of participating providers in their private medical practices and the expected collection rate of the FASC. Reimbursement rates are based on current and projected Federal and State government rates, with commercial payers reflecting regional adjustments.
- Utilization is projected based upon the current caseload of the eight participating physicians. All of the physicians have medical practices within the Center’s service area and have provided letters of interest documenting the number of surgical procedures they currently perform and a commitment to perform the procedures at the FASC. All of the projected procedures are currently being done at Bronx-Lebanon Hospital Center or in the physicians’ private, office-based practices.
- The applicant will implement a formal Charitable Care Program including, but not limited to, patient and community outreach and a partnership with Morris Heights Health Center, Inc., a Federally Qualified Health Center D&TC located in the Bronx.

The budget appears reasonable.

**Capability and Feasibility**

The total project cost of $3,918,239 will be satisfied from $391,824 in members’ equity with the remaining $3,526,415 provided through a bank loan at the above stated terms. Wells Fargo has provided a letter of interest.

Working capital requirements are estimated at $469,394 based on two months of third year expenses. The applicant will provide $286,338 from members’ equity. The remaining will be satisfied through a five-year loan at 5.5% interest from Wells Fargo bank. BFA Attachment B is a summary of the net worth of the individual members, which shows sufficient liquid resources to meet both the project’s equity and working capital requirements. BFA Attachments C through F are the member entities’ 2014 certified financial statements, which show positive working capital and net assets sufficient to meet their share of the equity requirements.

BFA Attachment G is the pro-forma balance sheet for Mid-Bronx Endoscopy Center, LLC, which shows operations will start with $678,162 in members’ equity.

The submitted budget projects a net income of $1,348,632 and $1,268,378 during the first and third years of operations, respectively. Reimbursement rates based on current and projected Federal and State government rates. The budget appears reasonable.
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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**Supplemental Information**

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

<table>
<thead>
<tr>
<th>Facility</th>
<th>Facility Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jacobi Medical Center</td>
<td>---</td>
<td>No Response</td>
</tr>
<tr>
<td></td>
<td>1400 Pelham Bay Parkway</td>
<td>South Bronx, New York 10461</td>
</tr>
<tr>
<td>Montefiore Medical Center</td>
<td>Henry and Lucy Moses Division</td>
<td>No Response</td>
</tr>
<tr>
<td></td>
<td>111 East 210th Street</td>
<td>Bronx, NY 10467</td>
</tr>
<tr>
<td>Bronx-Lebanon Hospital Center</td>
<td>Concourse Division</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1650 Grand Concourse</td>
<td>Bronx, NY 10457</td>
</tr>
</tbody>
</table>

Bronx-Lebanon responded that it had no objections to this project and saw no adverse impact for the hospital or the community it serves.

**Supplemental Information from Applicant**

**Need and Source of Cases:** The applicant states that all of the projected caseload will come from office-based procedures currently performed in the private office-based practices of the applicant physicians. The applicant also cites data showing a continued growth in Bronx County in the number of persons 45 years and older, which is the primary service group for colorectal cancer screening. The applicant also refers to the relatively low number of gastroenterologists and of other freestanding ASCs specializing in gastroenterology in Bronx County, a jurisdiction of over 1.3 million people. The applicant also plans to develop a formal outreach program directed to members of the local community, including local physicians.

**Staff Recruitment and Retention:** The applicant states that, to the greatest extent possible, the proposed ASC will utilize existing staff currently employed by the member physicians in their office-based practices. Recruitment of any additional staff members will come through accredited schools, newspaper advertisements, training programs, local recruiters and, if needed, job fairs. Competitive salaries and benefits and continuing education opportunities are expected to aid in the recruitment and retention of skilled employees, as are a positive work environment and flexible working hours. Employees will also be rewarded for hard work and efficiency in a manner that recognizes their individual contributions to the effective operation of the ASC.

**Office-Based Cases:** The applicant states that all of the projected surgical procedures for the proposed ASC are currently performed in the private, office-based practices of the applicant physicians, or are not currently being provided (i.e., the patients are unserved).

**DOH Comment**
The absence of any comments in opposition to this application from hospitals in the proposed service area provides no basis for reversal or modification of the recommendation for five-year, limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

### Attachments

<table>
<thead>
<tr>
<th>Attachment Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BPN Attachment A</td>
<td>Map</td>
</tr>
<tr>
<td>BFA Attachment A</td>
<td>Proposed Members of Mid-Bronx Endoscopy Center, LLC</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Net Worth Summary, Proposed Members of Mid-Bronx Endoscopy Center, LLC</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Bronx-Lebanon Special Care, Inc. – The Bronx-Lebanon Highbridge Woodycrest Center 2013-2014 consolidated certified financial statement</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>Morris Heights Health Center, Inc. and Subsidiaries June 2014 consolidated certified financial statement</td>
</tr>
<tr>
<td>BFA Attachment E</td>
<td>Advanced Endoscopy Center, LLC 2013-2014 certified financial statement</td>
</tr>
<tr>
<td>BFA Attachment F</td>
<td>Montefiore Medical Center Consolidated 2013-2014 certified financial statement</td>
</tr>
<tr>
<td>BFA Attachment G</td>
<td>Pro Forma Balance Sheet, Mid-Bronx Endoscopy Center, LLC</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new single specialty ambulatory surgery center specializing in gastroenterology procedures to be located at 57 West Burnside Avenue, Bronx, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: FACILITY/APPLICANT:

151246 B Mid-Bronx Endoscopy Center
APPROVAL CONTINGENT UPON:

Approval with an expiration date of the operating certificate five 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. A copy of the check must be uploaded into NSECON. [PMU]

2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]

3. Submission of an executed bank loan commitment for the construction, acceptable to the Department of Health. [BFA]

4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]

5. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]

6. Submission of an executed Development and Administrative Services Agreement, acceptable to the Department. [HSP]

7. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]

8. 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]

9. 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]

10. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
   a. Data showing actual utilization including procedures;
   b. Data showing breakdown of visits by payor source;
   c. Data showing number of patients who need 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]
11. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 for Outpatient Facilities. [AER]

12. Submission of the executed Articles of Organization of Mid-Bronx Endoscopy Center LLC., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
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. Construction must start on or before December 1, 2015 and construction must be completed by May 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
Executive Summary

Description
Colonie ASC, LLC d/b/a Specialty Eye Surgery and Laser Center of the Capital Region, a New York limited liability company, is requesting to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be certified as a single-specialty, freestanding ambulatory surgery center specializing in ophthalmology. The D&TC will consist of approximately 6,773 square feet located in leased space in a single story building at 207 Troy-Schenectady Road, Latham (Albany County). The center will include seven pre-op/post-op bays, two operating rooms, a nurse’s station and support areas.

The proposed members of Colonie ASC, LLC are Edward Wladis, M.D., (33.333%), Andrew Robinson, MD, (33.333%) and Robert Eden, MD (33.334%), all board certified ophthalmologists. All three physicians will maintain their private practices.

OPCHSM Recommendation
Contingent Approval, with an expiration of the operating certificate five years from the date of its issuance.

Need Summary
Colonie ASC, LLC d/b/a Specialty Eye Surgery and Laser Center of the Capital Region proposes to establish a single specialty ambulatory surgery center specializing in Ophthalmology services.

The number of projected procedures is 2,073 in Year 1, with Medicaid at 4.0% 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 are $666,800 and will be met with $86,800 from proposed members’ equity and a $580,000 bank loan at 5% interest over a five-year term.

| Budget: | Revenues: | $2,216,463 |
| Expenses: | $1,602,864 |
| Gain: | $613,599 |
Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management
Approval with an expiration of the operating certificate five 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. A copy of the check must be uploaded into NYSECON. [PMU]
2. 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]
3. 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]
4. 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]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed bank loan commitment for equipment, acceptable to the Department of Health. [BFA]
7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
8. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03, including satisfactory responses to the following comments:
   a. Please confirm that an infection isolation room is provided in accord with the functional program and an Infection Control Risk Assessment (ICRA) as described in 2010 FGI.
   b. Please confirm that a Protective Environment room is provided in accord with the functional program and an Infection Control Risk Assessment (ICRA) as described in 2010 FGI.
   c. Please confirm the provision of a refrigerator as part of the Medication Distribution Station, and locate on SHC drawings.
   d. The Staff Toilets are labeled to indicate the provision of staff showers. Please indicate specific location and features of staff showers on SHC drawings.
   e. Please confirm the provision of Patient Changing facilities in accord with 2010 FGI.
   f. Please show specific location of soiled linen receptacles in the Soiled Workroom. [AER]
Approval conditional upon:
1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The 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 contacting the Regional Office to complete the project. [AER]

Council Action Date
October 8, 2015
Need Analysis

Project Description
Colonie ASC, LLC d/b/a Specialty Eye Surgery and Laser Center of the Capital Region is seeking approval to establish and construct a freestanding ambulatory surgery center to provide single specialty Ophthalmology surgery services at 207 Troy-Schenectady Road, Latham, 12210, in Albany County.

Analysis
The service area consists of the Capital District, which includes the counties of Albany, Rensselaer, Saratoga and Schenectady. The Capital District has a total of two freestanding multi-specialty ASCs and five freestanding single-specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in the Capital District for 2013 & 2014 (Source: SPARCS-2015).

<table>
<thead>
<tr>
<th>ASC Type</th>
<th>Name</th>
<th>County</th>
<th>Total Patients 2013</th>
<th>Total Patients 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>Albany Regional Eye Surgery Center</td>
<td>Albany</td>
<td>11,456</td>
<td>10,817</td>
</tr>
<tr>
<td>Single</td>
<td>Capital Region Ambulatory Surgery Center</td>
<td>Albany</td>
<td>8,983</td>
<td>9,282</td>
</tr>
<tr>
<td>Single</td>
<td>Executive Woods Ambulatory Surgery Center LLC</td>
<td>Albany</td>
<td>1,576</td>
<td>4,579</td>
</tr>
<tr>
<td>Multi</td>
<td>New England Laser &amp; Cosmetic Surgery Center</td>
<td>Albany</td>
<td>943</td>
<td>900</td>
</tr>
<tr>
<td>Single</td>
<td>Saratoga-Schenectady Endoscopy Center, LLC</td>
<td>Saratoga</td>
<td>10,538</td>
<td>10,519</td>
</tr>
<tr>
<td>Multi</td>
<td>St. Peter’s Surgery And Endoscopy Center</td>
<td>Albany</td>
<td>15,397</td>
<td>15,666</td>
</tr>
<tr>
<td>Single</td>
<td>The New York Eye Surgical Center (opened 7/31/13)</td>
<td>Saratoga</td>
<td>131</td>
<td>1,840</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>49,024</td>
<td>53,603</td>
</tr>
</tbody>
</table>

For the Capital District, the total number of patient visits was 49,024 in 2013 and 53,603 in 2014. This represents a 9.3% year to year increase in the number of patients served by ambulatory surgery centers in the Capital District. For ophthalmology services, the total number of visits was 11,587 in 2013 and 12,657 in 2014. This represents a 9.2% year to year increase in the number of patients served by Ophthalmology ambulatory services in the Capital District.

The population of the four counties included in the Capital District in 2010 was 837,967. Per the Cornell Program on Applied Demographics (PAD) projection data, the population is estimated to grow by approximately 3% to 862,052 by 2020.

The number of projected procedures is 2,073 in Year 1 and 2,197 in Year 3. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Specialty Eye Surgery and Laser Center for Years 1 and 3.

<table>
<thead>
<tr>
<th>Projections</th>
<th>Year 1</th>
<th>Year 1</th>
<th>Year 3</th>
<th>Year 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Ins</td>
<td>1,182</td>
<td>57.0%</td>
<td>1,230</td>
<td>56.0%</td>
</tr>
<tr>
<td>Medicare</td>
<td>767</td>
<td>37.0%</td>
<td>813</td>
<td>37.0%</td>
</tr>
<tr>
<td>Medicaid</td>
<td>83</td>
<td>4.0%</td>
<td>110</td>
<td>5.0%</td>
</tr>
<tr>
<td>Charity Care</td>
<td>41</td>
<td>2.0%</td>
<td>44</td>
<td>2.0%</td>
</tr>
<tr>
<td>Total</td>
<td>2,073</td>
<td>100.0%</td>
<td>2,197</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

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 expand the availability of ophthalmological surgery services in a regulated Article 28 setting to residents of the capital region.

Recommendation
From a need perspective, contingent approval is recommended.
**Program Analysis**

**Project Proposal**
Establish and construct a freestanding single-specialty ambulatory surgery center for ophthalmology to be located at 207 Troy-Schenectady Road, Latham.

<table>
<thead>
<tr>
<th>Proposed Operator</th>
<th>Colonie ASC, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doing Business As</td>
<td>Specialty Eye Surgery and Laser Center of the Capital Region</td>
</tr>
<tr>
<td>Site Address</td>
<td>207 Troy-Schenectady Road</td>
</tr>
<tr>
<td></td>
<td>Latham, NY 12110 (Albany County)</td>
</tr>
<tr>
<td>Surgical Specialties</td>
<td>Single Specialty Ophthalmology</td>
</tr>
<tr>
<td>Operating Rooms</td>
<td>2 (one Class B and one Class C)</td>
</tr>
<tr>
<td>Procedure Rooms</td>
<td>0</td>
</tr>
<tr>
<td>Hours of Operation</td>
<td>Monday through Friday from 7:00 am to 3:00 pm (Extended as necessary to accommodate patient needs)</td>
</tr>
<tr>
<td>Staffing (1st Year / 3rd Year)</td>
<td>5.8 FTEs / 5.8 FTEs</td>
</tr>
<tr>
<td>Medical Director(s)</td>
<td>Edward Wladis, M.D.</td>
</tr>
<tr>
<td>Emergency, In-Patient and Backup Support Services Agreement and Distance</td>
<td>Expected to be provided by Albany Medical Center Hospital</td>
</tr>
<tr>
<td></td>
<td>9 miles / 17 minutes</td>
</tr>
<tr>
<td>On-call service</td>
<td>Patients will be provided with surgeon’s service and will be directed to him/her or to another physician of the surgeon’s specialty on call.</td>
</tr>
</tbody>
</table>

**Character and Competence**
The members of Colonie ASC, LLC are:

<table>
<thead>
<tr>
<th>Member Name</th>
<th>Membership Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Edward Wladis, MD</td>
<td>1/3</td>
</tr>
<tr>
<td>Andrew Robinson, MD</td>
<td>1/3</td>
</tr>
<tr>
<td>Robert Eden, MD</td>
<td>1/3</td>
</tr>
</tbody>
</table>

The members of the LLC are all practicing physicians with extensive experience in ophthalmology.

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

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

**Integration with Community Resources**
The Center will require their patients, whenever possible, to have a medical clearance appointment with a primary care physician prior to surgery and will encourage the establishment of a primary care physician relationship if one does not exist. The facility plans to reach out to primary care physicians and physician groups in its service area to facilitate the coordination of care for common patients. The Center will be utilizing electronic medical records. In addition, the Center would consider joining a Regional Health Information Organization or Health Information Exchange as well as becoming a part of any Accountable Care Organization or Medical Homes if one were to develop in its service area.
Compliance with Applicable Codes, Rules and Regulations
The medical staff will ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements. The Center intends to review the list acceptable procedures annually and as needed to determine the appropriateness of adding new procedures consistent with individual physician expertise.

Recommendation
From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Agreement
The applicant has submitted an executed lease agreement, the terms of which are summarized below:

<table>
<thead>
<tr>
<th>Date</th>
<th>May 1, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premises</td>
<td>6,773 square feet located at 207 Troy-Schenectady Rd., Latham, New York, 12110</td>
</tr>
<tr>
<td>Landlord</td>
<td>Colonie Real Estate Holdings, LLC</td>
</tr>
<tr>
<td>Tenant</td>
<td>Colonie ASC, LLC</td>
</tr>
<tr>
<td>Rental</td>
<td>$272,840 per year for the first ten years with a 2% increase thereafter.</td>
</tr>
<tr>
<td>Term</td>
<td>15 years with two additional five-year renewals.</td>
</tr>
<tr>
<td>Provisions</td>
<td>Lessee shall be responsible for real estate taxes, maintenance, insurance and utilities.</td>
</tr>
</tbody>
</table>

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between landlord and tenant. Colonie ASC, LLC has submitted letters from two New York real estate brokers attesting to the reasonableness of the rent.

Total Project Cost and Financing
Total project cost for movable equipment is $666,800, broken down as follows:

| Other Fees (Consultants) | $ 20,000 |
| Movable Equipment        | 641,164  |
| CON Application Fee      | 2,000    |
| CON Processing Fee       | 3,636    |
| Total Project Cost       | $666,800 |

Project costs will be financed by $86,800 through proposed members' equity and the remaining $580,000 will be provided as a loan from First Niagara Bank over a five-year term at 5.0% interest.

Operating Budget

<table>
<thead>
<tr>
<th>Year One</th>
<th>Visits</th>
<th>Year Three</th>
<th>Visits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicare</td>
<td>$ 714,077</td>
<td>767</td>
<td>$ 756,903</td>
</tr>
<tr>
<td>Medicaid</td>
<td>70,052</td>
<td>83</td>
<td>92,840</td>
</tr>
<tr>
<td>Commercial</td>
<td>1,304,928</td>
<td>1,182</td>
<td>1,357,920</td>
</tr>
<tr>
<td>Private Pay*</td>
<td>8,200</td>
<td>0</td>
<td>8,800</td>
</tr>
<tr>
<td>Charity Care</td>
<td>0</td>
<td>41</td>
<td>0</td>
</tr>
<tr>
<td>Total Patient Revenues</td>
<td>$2,097,257</td>
<td></td>
<td>$2,216,463</td>
</tr>
</tbody>
</table>

Project Costs and Financing
Total project cost for movable equipment is $666,800, broken down as follows:

| Other Fees (Consultants) | $20,000 |
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<td>$756,903</td>
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<td>8,200</td>
<td>0</td>
<td>8,800</td>
<td>0</td>
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<tr>
<td>Charity Care</td>
<td>0</td>
<td>41</td>
<td>0</td>
<td>44</td>
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| Movable Equipment        | 641,164 |
| CON Application Fee      | 2,000   |
| CON Processing Fee       | 3,636   |
| Total Project Cost       | 666,800 |

Project costs will be financed by $86,800 through proposed members' equity and the remaining $580,000 will be provided as a loan from First Niagara Bank over a five-year term at 5.0% interest.
Expenses:
- Operating: $1,110,523 $1,178,570
- Rent: $401,073 $424,294
- Total Expenses: $1,511,596 $1,602,864

Net Income: $585,661 $613,599

Visits: 2,073 2,197
Cost/Visit: $729.18 $729.57

*Private Pay Revenue represents a sliding fee scale based on the patient’s eligibility under the financial assistance program and is the difference not covered under other carriers. Visits are represented within other revenue producing line items.

The slight increase in cost per visit in Year Three is due to a 1% increase in Medicaid utilization and a 1% decrease in commercial utilization.

Medicare reimbursement was based on the 2014 Medicare fee schedule which currently reimburses 58% of the Hospital Outpatient Department rate. Based on experience, the applicant estimated commercial reimbursement at around 118% of Medicare for ophthalmology cases, Medicaid Managed Care at around 90% of Medicare, and $200 per case for charity (sliding/discounted fee schedule) cases.

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

<table>
<thead>
<tr>
<th>Payor Source</th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicare Fee-For-Service</td>
<td>37.0%</td>
<td>37.0%</td>
</tr>
<tr>
<td>Medicaid Fee-For-Service</td>
<td>4.0%</td>
<td>5.0%</td>
</tr>
<tr>
<td>Commercial Fee-For-Service</td>
<td>57.0%</td>
<td>56.0%</td>
</tr>
<tr>
<td>Charity Care</td>
<td>2.0%</td>
<td>2.0%</td>
</tr>
</tbody>
</table>

Expense and utilization assumptions are based on historical experience of the physicians’ private practices.

**Capability and Feasibility**

Project costs are $666,800 and will be met with $86,800 from proposed members’ equity and a $580,000 bank loan over five years at 5%. A bank letter of interest has been provided by First Niagara Bank.

Working capital requirements are estimated at $267,144 based on two months of third year expenses and will be satisfied by a loan of $130,000 from First Niagara Bank at 5% over a five-year term with the remaining $137,144 from the proposed members’ equity. BFA Attachment A is the net worth of the proposed members, which indicates the availability of sufficient funds for stated levels of equity. BFA Attachment B, the pro forma balance sheet for the applicant, indicates that the facility will initiate operations with net assets of $223,944.

The submitted budget indicates the facility will generate net income of $585,611 and $613,599 in the first and third years, respectively. Revenues are based on prevailing reimbursement methodologies for FASC ophthalmology services.

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

Facility: Albany Memorial Hospital --- No Response
600 Northern Boulevard
Albany, NY 12204

Facility: Albany Medical Center Hospital --- No Response
43 New Scotland Avenue
Albany, NY 12208

Facility: St. Peter’s Health Partners --- No Response
St. Peter’s Hospital
315 South Manning Blvd.
Albany, NY 12208

Facility: St. Peter’s Health Partners --- No Response
St. Mary’s Hospital
1300 Massachusetts Avenue
Troy, NY 12180

Facility: St. Peter’s Health Partners
Samaritan Hospital
2215 Burdett Avenue
Troy, NY 12180

<table>
<thead>
<tr>
<th>Current OR Use (% of capacity)</th>
<th>Surgery Cases</th>
<th>Amb. Surg. Cases by Applicant Physicians</th>
<th>Reserved OR Time for Applicant Physicians</th>
</tr>
</thead>
<tbody>
<tr>
<td>24%¹</td>
<td>Inpatient 1,305</td>
<td>Ambulatory 3,928</td>
<td>Yes</td>
</tr>
</tbody>
</table>

The hospital opposes the application, stating that one of the three applicant surgeons performs approximately 700 procedures per year at the facility, which represents 12 percent of Samaritan’s operating room volume and constitutes an annual contribution margin of $625,000. The hospital states that the potential loss of the 700 cases would have a significant negative impact on Samaritan’s financial performance. The hospital does not describe any specific community-oriented services that would be adversely affected by that development.

In 2014, St. Peter’s Health Partners had current assets of $447.9 million on current liabilities of $176.7 million, for a ratio of 2.50. In 2014, St. Peter’s Health Partners had revenues of $1.185 billion on expenses of $1.167 billion, for an operating gain of $18 million. For its fiscal year ending 2015, Samaritan Hospital (combined with St. Mary’s) shows and operating loss of $2.1 million. Samaritan Hospital provided charity care in the amount of $1,347,902 and $4,102,485 for its fiscal years 2015 and 2014, respectively.

¹ Includes OR utilization at St. Mary’s Hospital, which was merged with Samaritan in 2011.
Samaritan Hospital incurred expenditures for bad debt in the amount of $9,770,924 and $11,632,049 for fiscal years 2015 and 2014.

Facility:  
Ellis Hospital  
1101 Nott Street  
Schenectady, NY 12308

<table>
<thead>
<tr>
<th>Current OR Use (% of capacity)</th>
<th>Surgery Cases</th>
<th>Amb. Surg. Cases by Applicant Physicians</th>
<th>Reserved OR Time for Applicant Physicians</th>
</tr>
</thead>
<tbody>
<tr>
<td>46% inpatient 55% ambulatory²</td>
<td>Inpatient Data not provided</td>
<td>Ambulatory Data not provided</td>
<td>No</td>
</tr>
</tbody>
</table>

Although Ellis Hospital acknowledges that none of the applicant physicians currently operate at its facility, the hospital speculates that the ASC will pull volume from Ellis, resulting in a loss of revenue. The hospital also states that it currently has capacity for more surgical volume.

In 2012, Ellis Hospital had current assets of $93.9 million on current liabilities of $62.1 million, for a ratio of 1.5. In 2013, Ellis Hospital had current assets of $97.7 million on current liabilities of $60.4 million, for a ratio of 1.6. In 2012, Ellis Hospital had revenues of $368.1 million on expenses of $366.0 million, for an operating gain of $2.1 million. In 2013, Ellis Hospital had revenues of $380.6 million on expenses of $378.3 million, for an operating gain of $2.3 million. In 2013, Ellis incurred $12.0 million in bad debt expense and $11.3 million in charity care. In 2014, the hospital incurred $8.5 million in bad debt expense and $8.5 million in charity care.

**Supplemental Information from Applicant**  
**Need and source of Cases:** The applicant states that the proposed ASC will provide ambulatory surgery services to patients of ophthalmologists on its medical staff who elect to use the facility to perform their outpatient surgeries; and that surgeries performed at the ASC would otherwise be performed at area hospitals. The applicant also expects that patients will prefer to have their surgeries performed at a new, convenient, patient-friendly, state-of-the-art ambulatory surgery center whose specialty is eye surgery, rather than in a hospital.

**Staff Recruitment and Retention:** The applicant states that employees will be recruited from accredited schools and training programs, as well as through advertisements in local newspapers and professional publications. The ASC plans to offer competitive salary and benefits and will maintain good resource and communication systems. In addition, the ASC will provide a positive work environment and flexible working hours.

**Office-Based Cases:** The applicant states that approximately 170 of the 2,073 procedures projected for the facility are currently performed in an office setting.

**DOH Comment**

Of the comments received from two area hospitals, Ellis Hospital stated that none of the physicians proposed to operate at the ASC currently practice at that facility. The Department therefore considers Ellis’s comments regarding a possible adverse impact of the ASC on Ellis’s revenues and operations to be entirely speculative. Although Samaritan Hospital documented a possible loss of revenues to the ASC, Samaritan is part of a larger system, St. Peter’s Health Partners, whose revenues exceed $1 billion and which has other robust financial indicators. Based on these considerations, the Department finds no basis for reversal or modification of the recommendation for limited life approval of the proposed ASC based on public need, financial feasibility and owner/operator character and competence.

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² Main hospital and off-site facility combined
## Attachments

<table>
<thead>
<tr>
<th>Attachment Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BPNR Attachment A</td>
<td>Map</td>
</tr>
<tr>
<td>BFA Attachment A</td>
<td>Net Worth of Proposed Members</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Pro Forma Balance Sheet, Colonie ASC, LLC</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a freestanding single-specialty ambulatory surgery center for ophthalmology to be located at 207 Troy-Schenectady Road, Latham, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: 151288 B
FACILITY/APPLICANT: Colonie ASC, LLC
d/b/a Specialty Eye Surgery and Laser Center of the Capital Region
APPROVAL CONTINGENT UPON:

Approval with an expiration of the operating certificate five 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. A copy of the check must be uploaded into NYSECON. [PMU]

2. 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]

3. 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]

4. 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]

5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

6. Submission of an executed bank loan commitment for equipment, acceptable to the Department of Health. [BFA]

7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]

8. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03, including satisfactory responses to the following comments:
   a. Please confirm that an infection isolation room is provided in accord with the functional program and an Infection Control Risk Assessment (ICRA) as described in 2010 FGI.
b. Please confirm that a Protective Environment room is provided in accord with the functional program and an Infection Control Risk Assessment (ICRA) as described in 2010 FGI.
c. Please confirm the provision of a refrigerator as part of the Medication Distribution Station, and locate on SHC drawings.
d. The Staff Toilets are labeled to indicate the provision of staff showers. Please indicate specific location and features of staff showers on SHC drawings.
e. Please confirm the provision of Patient Changing facilities in accord with 2010 FGI.
f. Please show specific location of soiled linen receptacles in the Soiled Workroom.

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 contacting the Regional Office to complete the project. [AER]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
AGCNY East, LLC d/b/a Endoscopy Center of Central New York (AGCNY), a New York proprietary Article 28 Diagnostic and Treatment Center (D&TC) located at 4000 Medical Center Drive, Fayetteville (Onondaga County), New York, is requesting indefinite life. The D&TC is certified as a single-specialty freestanding ambulatory surgery center (FASC) specializing in gastroenterology procedures. The facility was approved by the Public Health Council with a five-year limited life under CON #092006 and began operation effective December 14, 2010. The FASC’s initial five-year limited life will expire on December 14, 2015.

Upon approval of this project, Endoscopy Center of New York projects 4,946 visits in Year 1 and 5,047 visits in Year 3 with 4.0% Medicaid visits and 1.0 percent charity care. There will be no changes in services.

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

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

<table>
<thead>
<tr>
<th>Budget:</th>
<th>Year One</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$2,820,000</td>
</tr>
<tr>
<td>Expenses</td>
<td>$1,612,000</td>
</tr>
<tr>
<td>Net Income</td>
<td>$1,208,000</td>
</tr>
</tbody>
</table>

Based on CON 092006, Endoscopy Center of Central New York projected 4,052 procedures in Year 1 (2011) and 4,216 procedures in Year 3 (2013). Medicaid procedures were projected at four (4) percent and charity care was projected at two (2) percent. Based on the Annual Reports submitted by the applicant, the total number of procedures was 3,396 in Year 1 (2011) and 4,859 in Year 3 (2013). Actual charity care in Year 3 (2013) was 1.0 percent.
Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:
1. Submission of a photocopy of an executed and completed facility lease agreement between Cedar Bay Properties, LLC and AGCNY East, LLC, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant’s executed Certificate of Assumed Name, acceptable to the Department. [CSL]
3. Submission of a photocopy of the membership interest transfers and any additional transfer documents, which are acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant’s executed proposed operating agreement, which is acceptable to the Department. [CSL]
5. Submission of a statement from the applicant, acceptable to the Department, 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. [CSL]
6. Submission of a photocopy of the consulting and administrative services agreement, acceptable to the Department. [CSL]

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

Council Action Date
October 8, 2015
Need Analysis

Project Description
AGCNY East, LLC d/b/a Endoscopy Center of Central New York, an existing Article 28 Diagnostic and Treatment Center certified as a single specialty ambulatory surgery center providing gastroenterology services, is requesting permission to convert to indefinite life following a five year limited life with an Operating Certificate dated December 14, 2010 to December 14, 2015. The facility is located at 4000 Medical Center Drive, Fayetteville, 13066, in Onondaga County.

Analysis
The ASC’s primary service area is Onondaga County. The table below provides information on projections and utilization for Years 1 and 3 based on CON 092006.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>4,052</td>
<td>4,216</td>
<td>3,396</td>
<td>4,859</td>
</tr>
</tbody>
</table>

The table below shows, by payor, projected and actual utilization for Year 3 for CON 092006, as well as actual 2014 and Year 3 projected after approval.

<table>
<thead>
<tr>
<th>Payor</th>
<th>CON 092006 Projected Year 3 (2013)</th>
<th>CON 092006 Actual Year 3 (2013)</th>
<th>CON 152036 Actual 2014</th>
<th>CON 152036 Projected Year 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid FFS/MC</td>
<td>2.0%</td>
<td>3.5%</td>
<td>3.8%</td>
<td>4.5%</td>
</tr>
<tr>
<td>Medicare FFS/MC</td>
<td>22.1%</td>
<td>25.2%</td>
<td>26.9%</td>
<td>30.7%</td>
</tr>
<tr>
<td>Commercial FFS/MC</td>
<td>73.9%</td>
<td>70.0%</td>
<td>68.1%</td>
<td>63.9%</td>
</tr>
<tr>
<td>Charity Care</td>
<td>2.0%</td>
<td>0.9%</td>
<td>0.9%</td>
<td>0.9%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Since the passage of the Affordable Care Act, access to healthcare coverage has improved in New York State, which means fewer people in need of traditional Charity Care. Through February 2015, the number of uninsured individuals in Onondaga County has dropped from 41,600 before passage of the Affordable Care Act to approximately 5,000 (an 88% drop). Roughly 71% of these newly insured people have been enrolled in Medicaid plans. The likelihood of obtaining a significant volume of charity care cases has been severely diminished in light of this development.

In its effort to provide charity care, the center has taken the following actions:
- Established contracts with three Medicaid managed care plans.
- One of the center’s physician’s volunteers one day a month at Assumption Church’s Portello Health Center (staffed by volunteers and provides free medical care to the uninsured).
- The center receives Medicaid referrals from Syracuse Community Health Center (an FQHC) and has scheduled meetings to increase GI referrals and to participate in a Medicaid managed care plan associated with this FQHC.

Endoscopy Center of Central New York is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

Conclusion
Because the number of uninsured individuals has dropped by 88 percent in AGCNY’s service area, the facility’s attainment of a level of charity care that is still nearly one-half of its original target, together with a level of services to Medicaid clients that has reached nearly twice the ASC’s original target for that
population, indicate that AGCNY has made a reasonable and sustained effort to extend services to the underserved in the Onondaga County area. Therefore, certification for indefinite life should be granted.

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

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**Program Analysis**

**Program Proposal**
AGCNY East, LLC, d/b/a/ Endoscopy Center of Central New York, an existing Article 28 Diagnostic and Treatment Center certified as a single specialty (gastroenterology) ambulatory surgery center, located in Suite 308 of the Northeast Medical Building Condominium at 4000 Medical Center Drive in Fayetteville (Onondaga County), is requesting permission to convert to indefinite life following a five year conditional, limited life approval (approved under CON #092006).

The Center is not proposing to add any services, expand or renovate the facility. Staffing is expected to remain at current levels (14.1 FTEs) and Scott Edison, M.D. will serve as the Center's Medical Director.

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

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility’s enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

**Recommendation**
From a programmatic perspective, approval is recommended.
### Financial Analysis

#### Operating Budget
The applicant has submitted an operating budget, in 2015 dollars, for the current year of operations and for year one subsequent to receiving permanent life, as shown below:

<table>
<thead>
<tr>
<th></th>
<th>Current Year</th>
<th>Year One</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial Fee For Service</td>
<td>$2,204,573</td>
<td>$2,190,000</td>
</tr>
<tr>
<td>Medicare Fee For Service</td>
<td>$460,800</td>
<td>$521,000</td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>$101,500</td>
<td>$109,000</td>
</tr>
<tr>
<td>Private Pay</td>
<td>$7,300</td>
<td>$0</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td>$2,774,173</td>
<td>$2,820,000</td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$1,320,895</td>
<td>$1,375,000</td>
</tr>
<tr>
<td>Capital</td>
<td>231,027</td>
<td>237,000</td>
</tr>
<tr>
<td><strong>Total Expenses</strong></td>
<td>$1,551,922</td>
<td>$1,612,000</td>
</tr>
<tr>
<td><strong>Net Income or (Loss):</strong></td>
<td>$1,222,181</td>
<td>$1,208,000</td>
</tr>
<tr>
<td><strong>Utilization (cases):</strong></td>
<td>4,832</td>
<td>4,946</td>
</tr>
<tr>
<td><strong>Cost per case:</strong></td>
<td>$321.18</td>
<td>$325.92</td>
</tr>
</tbody>
</table>

Projected utilization, revenues and expenses are based on current operating experience.

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

<table>
<thead>
<tr>
<th>Payor Source</th>
<th>Current Year</th>
<th>Year One</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Fee For Service</td>
<td>3,291 68.11%</td>
<td>3,234 65.39%</td>
</tr>
<tr>
<td>Medicare Fee For Service</td>
<td>1,302 26.95%</td>
<td>1,470 29.72%</td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>182 3.77%</td>
<td>196 3.96%</td>
</tr>
<tr>
<td>Private Pay</td>
<td>12 0.25%</td>
<td>0 0.00%</td>
</tr>
<tr>
<td>Charity Care</td>
<td>45 0.93%</td>
<td>46 0.93%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>4,832 100%</td>
<td>4,946 100%</td>
</tr>
</tbody>
</table>

Per AGCNY’s establishment CON, Medicaid and charity care utilization were projected to be 2% and 2%, respectively, of total procedures in the first and third year of operation. As documented in AGCNY’s SPARCS data submissions, the facility has experienced difficulty meeting their charity care projections to date. However, Medicaid utilization was 1.3% (2011), 2.6% (2012), 3.5% (2013) and 3.8% (2014) of their total caseload, exceeding their initial projections in all but 2011.

AGCNY indicated that they have adopted a formal Charity and Financial Assistance Program, inclusive of a sliding fee scale to patients without insurance coverage, and provisions are made for those who cannot afford services. Their current efforts to treat underserved populations include participating with three Medicaid managed care plans and volunteering one day per month at the Poverello Health Center in Syracuse to provide free colon cancer screenings and GI diagnostic services. This Franciscan Northside Ministries clinic offers free medical care to the uninsured and is staffed by volunteers.

Going forward, their strategy includes improved outreach efforts by the physician group practice, Associated Gastroenterologists of Central New York, PC (Associated Gastro) and increasing AGCNY’s presence at the Poverello Health Center to obtain referrals. Associated Gastro has scheduled meetings with St Joseph’s Hospital Health Center to discuss providing services at the hospital’s Westside Clinic, and with Syracuse Community Health Center (SCHC), a Federally Qualified Health Center, to discuss referrals and participating in SCHC’s affiliated Total Care Medicaid Managed Care Plan.
With these efforts, the applicant believes they can improve their service delivery to underserved populations and sustain these efforts into the future.

**Capability and Feasibility**

There are no project costs associated with this application.

AGCNY’s submitted budget indicates a net income of $1,208,000 in year one. Revenues are based on current reimbursement methodologies. The budgets are reasonable.

BFA Attachment A is Endoscopy Center of Central New York’s 2012-2014 financial summary, which shows the FASC had an average positive working capital, an average positive equity position, and generated an average positive net income for each period.

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

**Recommendation**

From a financial perspective, approval is recommended.

<table>
<thead>
<tr>
<th>Attachments</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to request for permanent life for project #092006, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: FACILITY/APPLICANT:

152036 E AGCNY East, LLC
d/b/a Endoscopy Center of Central New York
APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of an executed and completed facility lease agreement between Cedar Bay Properties, LLC and AGCNY East, LLC, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant’s executed Certificate of Assumed Name, acceptable to the Department. [CSL]
3. Submission of a photocopy of the membership interest transfers and any additional transfer documents, which are acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant’s executed proposed operating agreement, which is acceptable to the Department. [CSL]
5. Submission of a statement from the applicant, acceptable to the Department, 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. [CSL]
6. Submission of a photocopy of the consulting and administrative services agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

   Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
Description
This CON amends and supersedes CON #142031, which was approved by the PHHPC in October 2014. Subsequent to approval, United Cerebral Palsy of Nassau County, Inc. withdrew from the project. Per this amended application, LISH, Inc. (LISH), a newly formed New York State not-for-profit corporation, requests approval to establish an Article 28 diagnostic and treatment center (D&TC) and five extension clinics in Suffolk County. The main clinic site and five extension clinics will be located at:

- Main Site: 159 Carleton Avenue, Central Islip;
- LISH at the Family Wellness Center: 120 Plant Street, Hauppauge;
- LISH at Smithtown: Landing Meadow Road, Smithtown;
- LISH at Manorville: 221 North Sunrise Highway Service Road, Manorville;
- LISH at Port Jefferson Station: 51-33 Terryville Road, Port Jefferson Station; and
- LISH at Riverhead: 883 E. Main Street, Riverhead.

All of the clinic sites are currently operated as Article 28 facilities by one of the following three human service agencies: Developmental Disabilities Institute, Inc. (DDI), Family Residences and Essential Enterprises, Inc. (FREE), and United Cerebral Palsy of Greater Suffolk, Inc. (UCP Suffolk). The entities provide primary and specialty medical and dental services at their respective clinics, and are joining together to form LISH to ensure the long-term financial sustainability of the health care services they provide to the at-risk populations they serve. The intent is to increase access to care, achieve efficiencies by placing currently fragmented operations under one comprehensive network, and effectuate positive net financial impact on the three human services organizations. LISH will serve all underserved populations throughout Long Island, with a primary focus on patients with developmental disabilities.

Upon approval of this CON, LISH intends to change its name to Long Island Select Healthcare, Inc. and become a sub-grantee of Hudson River HealthCare (HRHCare), a Federally Qualified Health Center (FQHC) that has a network of twenty-two health centers serving ten counties in the Hudson Valley and Long Island regions. HRHCare has provided a letter of interest in support of LISH becoming a FQHC sub-grantee.

OPCHSM Recommendation
Contingent Approval

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

The number of projected visits for all sites combined is 62,074 in Year 1, of which 38 percent are expected to be primary care visits.
**Program Summary**
Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant’s character and competence or standing in the community.

**Financial Summary**
Project costs of $840,649 will be met via cash through a subvention agreement between LISH and: DDI for $275,839.33, FREE for $237,961.33, and UCP Suffolk for $326,848.34.

<table>
<thead>
<tr>
<th>Budget</th>
<th>Revenues</th>
<th>$13,623,002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expenses</td>
<td>$12,749,849</td>
<td></td>
</tr>
<tr>
<td>Net Income</td>
<td>$873,153</td>
<td></td>
</tr>
</tbody>
</table>
Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:
1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSECON. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital for each of the six (6) sites. [HSP]
3. Submission of an executed acquisition agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed subvention agreement/certificate, acceptable to the Department of Health, between LISH, Inc. and Developmental Disabilities Institute, Inc., Family Residences and Essential Enterprises, Inc. and United Cerebral Palsy of Greater Suffolk, Inc. [BFA]
5. Submission of the executed building lease agreements for the Central Islip, Port Jefferson Station, Smithtown, Manorville, Riverhead, and Hauppauge LISH sites, acceptable to the Department of Health. [BFA]
6. Submission of an executed FQHC sub-grantee agreement between Hudson River HealthCare, Inc. and LISH, Inc. [BFA]
7. Submission of a photocopy of an executed and completed facility lease agreement between LISH, Inc. and United Cerebral Palsy Association of Greater Suffolk, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed and completed facility lease agreement between LISH, Inc. and Family Residence and Essential Enterprises, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed, completed and legible facility lease agreement between LISH, Inc. and Independent Group Home Living, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed, completed and legible facility lease agreement between LISH, Inc. and Mayhaven Center of Hope, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed and completed facility sublease agreement between LISH, Inc. and Developmental Disabilities Institute, Inc., acceptable to the Department. [CSL]
12. Submission of a photocopy of an executed and completed facility lease agreement between LISH, Inc. and Developmental Disabilities Institute, Inc., acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicant’s executed Restated Certificate of Incorporation of LISH, Inc., acceptable to the Department. [CSL]
14. Submission of a photocopy of the applicant’s executed and completed by-laws, which are acceptable to the Department. [CSL]

Approval conditional upon:
1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of documentation of receipt of Health Resources and Services Administration (HRSA) Section 330 Grant funding (as a sub-grantee), acceptable to the Department of Health. [BFA]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]
7. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, for record purposes prior to the applicant’s start of construction. [AES]
8. Construction must start on or before November 1, 2015 and construction must be completed by November 30, 2015, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AES]

Council Action Date
October 8, 2015
**Project Description**
LISH, Inc. is requesting approval to establish a diagnostic and treatment center (D&Tc) and five (5) extension clinics to serve Suffolk County. All sites are currently operated as Article 28 facilities by three different operators - three D&Tc’s and three extension clinics. The proposed location of the main site D&Tc is 159 Carleton Avenue, Central Islip, 11722, in Suffolk County.

**Analysis**
LISH will take over the operations of the sites, which are currently operated by three human services organizations, to provide primary and specialty medical care and dental services primarily to patients with developmental disabilities.

The table below identifies the service area for each site.

<table>
<thead>
<tr>
<th>Proposed Sites</th>
<th>City</th>
<th>Zip Code</th>
<th>Service Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>D&amp;Tc Main Site: LISH at Central Islip-159 Carleton Avenue</td>
<td>Central Islip</td>
<td>11722</td>
<td>11722, 11716, 11717, 11752</td>
</tr>
<tr>
<td>Extension Clinic: LISH at the Family Wellness Center- 120 Plant Street</td>
<td>Hauppauge</td>
<td>11788</td>
<td>11788, 11725, 11749, 11779</td>
</tr>
<tr>
<td>Extension Clinic: LISH at Smithtown-Landing Meadow Road</td>
<td>Smithtown</td>
<td>11787</td>
<td>11787, 11754, 11767, 11780</td>
</tr>
<tr>
<td>Extension Clinic: LISH at Manorville-221 North Sunrise Hwy Service Road</td>
<td>Manorville</td>
<td>11941</td>
<td>11941, 11949, 11940, 11977, 11978</td>
</tr>
<tr>
<td>Extension Clinic: LISH at Port Jefferson Station-51-33 Terryville Road</td>
<td>Port Jefferson Stn.</td>
<td>11776</td>
<td>11776, 11720, 11733, 11766, 11777, 11784</td>
</tr>
<tr>
<td>Extension Clinic: LISH at Riverhead-883 E Main Street</td>
<td>Riverhead</td>
<td>11901</td>
<td>11901, 11792, 11933, 11948</td>
</tr>
</tbody>
</table>

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

The number of projected visits for all sites combined is 62,074 in Year 1 and 65,217 in Year 3, 38 percent of which are primary care visits, as given below.

<table>
<thead>
<tr>
<th>Type</th>
<th>Proposed Sites</th>
<th>Year 1</th>
<th>Year 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Total Visits</td>
<td>% Primary Care</td>
</tr>
<tr>
<td>Main Site</td>
<td>Central Islip</td>
<td>12,060</td>
<td>32.7%</td>
</tr>
<tr>
<td>Ext. Clinic Hauppauge-Fam Wellness Ctr</td>
<td>19,904</td>
<td>37.2%</td>
<td>20,912</td>
</tr>
<tr>
<td>Ext. Clinic Manorville</td>
<td>1,500</td>
<td>56.2%</td>
<td>1,577</td>
</tr>
<tr>
<td>Ext. Clinic Port Jefferson Station</td>
<td>3,430</td>
<td>49.4%</td>
<td>3,604</td>
</tr>
<tr>
<td>Ext. Clinic Riverhead</td>
<td>14,597</td>
<td>35.5%</td>
<td>15,335</td>
</tr>
<tr>
<td>Ext. Clinic Smithtown</td>
<td>10,583</td>
<td>42.2%</td>
<td>11,118</td>
</tr>
<tr>
<td>Total Project</td>
<td>62,074</td>
<td>37.9%</td>
<td>65,217</td>
</tr>
</tbody>
</table>

**Prevention Quality Indicators-PQIs**
PQIs are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease.

The table below provides information on the 2013 PQI rates for major condition categories such as acute conditions and respiratory, as well as the overall total. The rates are presented for the zip codes of the six sites combined in Suffolk County and for the entire State. All numbers represent hospital admissions per 100,000 adults. PQI rates are significantly higher for the Suffolk County sites than for the State as a whole.
<table>
<thead>
<tr>
<th>PQI Rates-2013</th>
<th>Suffolk County Sites¹</th>
<th>NYS</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Acute</td>
<td>588</td>
<td>473</td>
</tr>
<tr>
<td>All Respiratory</td>
<td>378</td>
<td>312</td>
</tr>
<tr>
<td>Overall Total²</td>
<td>1,669</td>
<td>1,408</td>
</tr>
</tbody>
</table>

Source: NYSDOH-Health Data NY-PQI

¹ Suffolk County Sites Zip Codes: Main Site (11722) plus Five Extension Clinic Sites (11788, 11787, 11941, 11776, and 11901) Combined.
² Overall Total includes major condition categories such as acute conditions, circulatory, diabetes, and respiratory.

**Conclusion**

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

**Recommendation**

From a need perspective, approval is recommended.

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**Program Analysis**

**Project Proposal**

LISH, Inc., a newly-formed not-for-profit corporation, is submitting a project amendment seeking approval for the establishment of a diagnostic and treatment center (D&TC) and five extension clinic sites to be located throughout Suffolk County by taking over Article 28 sites operated by the three human services organizations (Developmental Disabilities Institute (DDI), Family Residences and Essential Enterprises, Inc. (FREE) and United Cerebral Palsy of Greater Suffolk, Inc. (UCP Suffolk)). LISH will provide primary and specialty medical and dental services primarily to the developmentally disabled.

LISH previously received contingent approval (under CON 142031) to establish a D&TC and six extension clinics throughout Nassau and Suffolk Counties. As part of that project, LISH was to have taken over four D&TCs and three extension clinics operated by four human service organizations, however, since the contingent approval, one of the agencies, United Cerebral Palsy of Nassau County (UCPN) has decided not to proceed with the three others in forming LISH.

By reorganizing their respective Article 28 clinic services into a comprehensive network of community health centers, the three entities believe they will increase access to primary and specialty medical and dental care, reduce the inefficiencies in fragmented services, achieve efficiencies of scale to ensure the long-term financial sustainability of the health services provided by LISH, and effectuate a positive net financial impact on the human services organizations, thereby preserving essential non-Article 28 developmental disability services (e.g., educational, residential, day habilitation and vocational services).

Construction is proposed for only two sites. The applicant does not anticipate any changes in hours or staffing from the current operators (other than the addition of centralized administrative staff to support the administrative, billing and IT functions of LISH). LISH will add hours and adjust staffing as volume and demand for services increases.

Upon approval, LISH, Inc. will change its name to Long Island Select Healthcare, Inc. and become a sub-grantee of Hudson River HealthCare, a Federally Qualified Health Center (FQHC).
The six sites to be operated by LISH (main D&TC site and five extension clinics) are:

<table>
<thead>
<tr>
<th>Proposed Name of Site</th>
<th>Address</th>
<th>Current Operator</th>
<th>PFI</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>LISH at Central Islip (Main Site)</td>
<td>159 Carleton Ave. Central Islip NY 11722</td>
<td>United Cerebral Palsy Assoc. of Greater Suffolk, Inc.</td>
<td>914</td>
<td>Suffolk</td>
</tr>
<tr>
<td>LISH at Port Jefferson Station (Extension Clinic)</td>
<td>51-33 Terryville Rd. Port Jefferson Station, NY 11776</td>
<td>United Cerebral Palsy Assoc. of Greater Suffolk, Inc.</td>
<td>5718</td>
<td>Suffolk</td>
</tr>
<tr>
<td>LISH at the Family Wellness Center (Extension Clinic)</td>
<td>120 Plant St. Hauppauge, NY 11788</td>
<td>Family Residences and Essential Enterprises, Inc.</td>
<td>6240</td>
<td>Suffolk</td>
</tr>
<tr>
<td>LISH at Smithtown (Extension Clinic)</td>
<td>Landing Meadow Rd, Smithtown, NY 11787</td>
<td>Developmental Disabilities Institute, Inc.</td>
<td>4940</td>
<td>Suffolk</td>
</tr>
<tr>
<td>LISH at Manorville (Extension Clinic)</td>
<td>221 North Sunrise Highway Service Rd, Manorville, NY 11941</td>
<td>Developmental Disabilities Institute, Inc.</td>
<td>4864</td>
<td>Suffolk</td>
</tr>
<tr>
<td>LISH at Riverhead (Extension Clinic)</td>
<td>883 East Main St. Riverhead, NY 11901</td>
<td>Developmental Disabilities Institute, Inc.</td>
<td>4862</td>
<td>Suffolk</td>
</tr>
</tbody>
</table>

**Character and Competence**
The proposed board membership is:

<table>
<thead>
<tr>
<th>Name</th>
<th>Affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert Budd</td>
<td>Family Residences and Essential Enterprises, Inc.</td>
</tr>
<tr>
<td>John Lessard</td>
<td>Developmental Disabilities Institute, Inc.</td>
</tr>
<tr>
<td>Stephen Friedman</td>
<td>United Cerebral Palsy of Greater Suffolk, Inc.</td>
</tr>
</tbody>
</table>

Staff from the Division of Certification & Surveillance previously reviewed (under CON 142031), and verified under this project, the disclosure information of the LISH members, as well as the proposed Medical Director, Dr. James Powell, regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant’s ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

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

**Recommendation**
From a programmatic perspective, contingent approval is recommended.
Financial Analysis

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

<table>
<thead>
<tr>
<th>Transferors:</th>
<th>DDI, FREE and UCP Suffolk</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transferee:</td>
<td>LISH, Inc.</td>
</tr>
<tr>
<td>Assets Transferred:</td>
<td>Article 28 D&amp;TC operating certificates for DDI, FREE and UCP Suffolk</td>
</tr>
<tr>
<td>Assets Excluded:</td>
<td>None</td>
</tr>
<tr>
<td>Liabilities Assumed:</td>
<td>None</td>
</tr>
<tr>
<td>Purchase Price:</td>
<td>$0</td>
</tr>
</tbody>
</table>

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

**Total Project Cost and Financing**
Total project cost for the renovation and demolition and acquisition of movable equipment for the entire project is estimated at $840,649 broken down as follows:

- Renovation & Demolition: $21,789
- Design Contingency: 2,179
- Construction Contingency: 2,179
- Movable Equipment: 807,915
- CON Fees: 2,000
- Additional Processing Fees: 4,587
- Total Project Cost: $840,649

Subproject costs broken down by site are shown on BFA Attachment C.

Financing of the $840,649 total project cost will be met via cash through a subvention agreement.

**Subvention Agreement**
The applicant has provided a draft subvention agreement for the project cost of $840,649 and the working capital of $5,000,000 summarized as follows:

<table>
<thead>
<tr>
<th>Date:</th>
<th>To be determined</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subvention Grantors:</td>
<td>DDI, FREE and UCP Suffolk</td>
</tr>
<tr>
<td>Subvention Grantee:</td>
<td>LISH, Inc.</td>
</tr>
<tr>
<td>Total Subvention Amounts:</td>
<td></td>
</tr>
<tr>
<td>Amount due from DDI</td>
<td>$840,649 total project cost and $5,000,000 total working capital</td>
</tr>
<tr>
<td>Amount due from FREE</td>
<td>$275,839.33 project cost and $1,666,666.67 working capital</td>
</tr>
<tr>
<td>Amount due from UCP Suffolk</td>
<td>$237,961.33 project cost and $1,666,666.67 working capital</td>
</tr>
<tr>
<td>Interest Charged:</td>
<td>0%</td>
</tr>
</tbody>
</table>

This agreement has no interest associated with it, and will be paid back to the Grantors only when the financial condition of LISH permits the required payment to be made without impairment of LISH’s operations or injury to its creditors.
Lease Rental Agreements
The applicant has submitted draft leases for all of the sites. The terms of each lease are summarized below:

**LISH at Central Islip:**
- **Premises:** 14,225 sq. ft. located at 159 Carleton Avenue, Central Islip, NY
- **Lessor:** UCP Suffolk
- **Lessee:** LISH, Inc.
- **Rental:** $697,648 for year 1 with a 2.5% annual increase ($49.04 per sq. ft.)
- **Term:** 10 Years with (1) 10 year renewal term
- **Provisions:** Triple net, Non-arm’s length

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

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

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

**LISH at Port Jefferson Station:**
- **Premises:** 1,200 sq. ft. located at 51-33 Terryville Road, Port Jefferson Station, NY
- **Lessor:** Mayhaven Center of Hope, Inc.
- **Lessee:** LISH, Inc.
- **Rental:** $13,024 for year 1, original term of lease ends 12/31/15. Starting 1/1/16 the new annual rent is $15,900 ($13.25 per sq. ft.) with a 3.75% annual increase.
- **Term:** Original Assignment of Lease expires 12/31/15, the applicant provided a draft renewal option for an additional 5 years.
- **Provisions:** Triple Net, arm’s length

**LISH at Riverhead:**
- **Premises:** 8,672 sq. ft. located at 883 E. Main Street, Riverhead, NY
- **Lessor:** East Riverhead Equities
- **Lessee/Sublessee:** DDI
- **Sublessee:** LISH, Inc.
- **Rental:** $494,220 for year 1 with a 2.5% annual increase ($56.99 per sq. ft.)
- **Term:** Expires with Prime lease on 6/30/23
- **Provisions:** Triple Net, Non-arm’s length
The applicant has provided confirmation that the leases with UCP Suffolk, FREE, and DDI will be pass through rates based on costs.

**Operating Budget**
The applicant has submitted an operating budget, in 2015 dollars, for the first and third years of operation of all the sites, as summarized below:

<table>
<thead>
<tr>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues*</td>
<td>$12,379,421</td>
</tr>
<tr>
<td>Expenses</td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$10,533,197</td>
</tr>
<tr>
<td>Capital</td>
<td>$1,678,354</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>$12,211,551</td>
</tr>
<tr>
<td>Excess of Revenues over Expenses</td>
<td>$167,870</td>
</tr>
<tr>
<td>Visits</td>
<td>62,074</td>
</tr>
<tr>
<td>Cost Per Visit</td>
<td>$196.73</td>
</tr>
</tbody>
</table>

*Revenues include: $75,000 in HRSA Federal 330 Grant Funds (both years); $176,501 in meaningful use incentives (both years); $491,653 in 340B net revenue (year three); $432,500 (year one) and $454,396 (year three) in Non-Mental Health Therapy MCR/MCD Revenue; and $404,312 in Other Revenue (both years).

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

<table>
<thead>
<tr>
<th>Years One and Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid MC</td>
</tr>
<tr>
<td>Medicare FFS</td>
</tr>
<tr>
<td>Medicare MC</td>
</tr>
<tr>
<td>Commercial FFS</td>
</tr>
<tr>
<td>Private Pay/Other*</td>
</tr>
<tr>
<td>Charity Care</td>
</tr>
</tbody>
</table>

*Other consists of visits classified as Non-Mental Health. Related revenues are included as other operating revenue under the Non-MH Therapy MCR/MCD classification.

Charity care utilization is projected to be less than 2% through Year 3 as the clinics currently focus on the developmentally disabled population, nearly all of whom are covered by Medicaid or Medicare. Once the facility becomes a FQHC sub-grantee, they will expand to provide services to a broader array of patients including the general public. As a FQHC sub-grantee, the facility will see all types of patients regardless of their ability to pay and anticipates an increase in charity care visits.

Revenue, expense and utilization assumptions are based on the historical experience of the six currently operating Article 28 clinics sites, along with the experience of the three human service entities that operate the clinics.

BFA Attachment D provides the respective operating budgets for each of the D&TC locations.

**Capability and Feasibility**
The total project cost and the working capital will be provided by a subvention agreement from DDI, FREE, and UCP Suffolk for $5,840,649 at the above stated terms. BFA Attachment B is the current certified financial statements for the three entities, which show sufficient resources to meet the project cost and working capital requirements.
Working capital requirements are estimated at $2,124,975 based on two months of Year 3 expenses, which appear reasonable. The applicant has provided a draft subvention agreement for the working capital in the amount of $5,000,000 at the above stated terms. The additional working capital provided through the subvention agreement is to minimize any cash flow concerns that may be encountered resulting from a delay in obtaining FQHC Medicaid rates due to the rate-setting process.

The submitted budget indicates a net income of $167,870 and $873,153 in Years 1 and 3 respectively, and assumes receipt of stated grant funds. Revenues are based on current reimbursement methodologies for FQHC diagnostic and treatment services. HRHCare has provided a letter of interest for LISH to become a sub-grantee and will submit a change in scope request on or about October 31, 2015, to add the LISH sites to its Federal scope of project. HRSA typically approves such changes in scope requests within approximately 120 days of submission of the request, at which point the LISH sites would be eligible for FQHC Medicaid rates. The D&TC is anticipated to go live on or about April 1, 2016, the same time that the FQHC sub-grantee recipient/change in scope of project approval is expected to be obtained. Hence, approvals will converge and the D&TC will never be operational without the FQHC rates. The budget appears reasonable.

BFA Attachment A is the pro forma balance sheet of LISH, Inc. as of the first day of operations, which indicates that the operations will begin with a breakeven members’ equity.

BFA Attachment B is the 2012-2014 certified financial summaries of DDI, FREE and UCP Suffolk, which indicates that DDI and UCP Suffolk experienced an average positive working capital, maintained an average positive member’s equity, and generated an average positive net income for the period. FREE experienced an average negative working capital position, maintained an average positive member’s equity position and generated an average positive net income for the period. FREE’s negative working capital in 2013 is a result of $3.4 million in deferred revenue and recoveries, primarily due to the following:

- In July 2011, OPWDD issued a draft rate adjustment in FREE’s Intermediate Care Facilities (ICF) program that was a reduction of about $1.2 million per year. They were not able to get final approval on that rate until 2014, and have now begun to recover the overpayments. FREE deferred the revenue on its financial statements.
- In 2013 FREE received retroactive payments via its Medicaid rate to pay for day rehab services for ICF patients. Since New York State had previously paid FREE directly for this service, the rate adjustment was deferred pending recovery by the State. A recoupment of approximately $1.2 million occurred in January and February 2014.

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

**Recommendation**

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

<table>
<thead>
<tr>
<th>Attachments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BFA Attachment A</strong></td>
</tr>
<tr>
<td><strong>BFA Attachment B</strong></td>
</tr>
<tr>
<td><strong>BFA Attachment C</strong></td>
</tr>
<tr>
<td><strong>BFA Attachment D</strong></td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish a diagnostic & treatment center to be located at 159 Carleton Avenue, Central Islip and five (5) extension clinics, all currently Article 28 facilities operated by 3 different operators (Amends and supercedes 142031) and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: 151250 B FACILITY/APPLICANT: LISH, Inc.
APPROVAL CONTINGENT UPON:

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

2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital for each of the six (6) sites. [HSP]

3. Submission of an executed acquisition agreement, acceptable to the Department of Health. [BFA]

4. Submission of an executed subvention agreement/certificate, acceptable to the Department of Health, between LISH, Inc. and Developmental Disabilities Institute, Inc., Family Residences and Essential Enterprises, Inc. and United Cerebral Palsy of Greater Suffolk, Inc. [BFA]

5. Submission of the executed building lease agreements for the Central Islip, Port Jefferson Station, Smithtown, Manorville, Riverhead, and Hauppauge LISH sites, acceptable to the Department of Health. [BFA]

6. Submission of an executed FQHC sub-grantee agreement between Hudson River HealthCare, Inc. and LISH, Inc. [BFA]

7. Submission of a photocopy of an executed and completed facility lease agreement between LISH, Inc. and United Cerebral Palsy Association of Greater Suffolk, Inc., acceptable to the Department. [CSL]

8. Submission of a photocopy of an executed and completed facility lease agreement between LISH, Inc. and Family Residence and Essential Enterprises, Inc., acceptable to the Department. [CSL]

9. Submission of a photocopy of an executed, completed and legible facility lease agreement between LISH, Inc. and Independent Group Home Living, Inc., acceptable to the Department. [CSL]

10. Submission of a photocopy of an executed, completed and legible facility lease agreement between LISH, Inc. and Mayhaven Center of Hope, Inc., acceptable to the Department. [CSL]

11. Submission of a photocopy of an executed and completed facility sublease agreement between LISH, Inc. and Developmental Disabilities Institute, Inc., acceptable to the Department. [CSL]

12. Submission of a photocopy of an executed and completed facility lease agreement between LISH, Inc. and Developmental Disabilities Institute, Inc., acceptable to the Department. [CSL]

13. Submission of a photocopy of the applicant’s executed Restated Certificate of Incorporation of LISH, Inc., acceptable to the Department. [CSL]

14. Submission of a photocopy of the applicant’s executed and completed by-laws, which are acceptable to the Department. [CSL]
APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of documentation of receipt of Health Resources and Services Administration (HRSA) Section 330 Grant funding (as a sub-grantee), acceptable to the Department of Health. [BFA]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]
7. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, for record purposes prior to the applicant’s start of construction. [AES]
8. Construction must start on or before November 1, 2015 and construction must be completed by November 30, 2015, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AES]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
Executive Summary

Description
Community Health Initiatives, Inc., a not-for-profit corporation, requests approval for the establishment and construction of an Article 28 diagnostic and treatment center (D&TC) to be located at 2882 West 15th Street, Brooklyn (Kings County). The applicant is currently a Federally Qualified Health Center and Health Resources Services Administration (HRSA) funded New Access Point (NAP) facility seeking to convert from a physician shared practice operation to a not-for-profit Article 28 D&TC. The Center will provide comprehensive primary care services in federally designated Medically Underserved Areas of the Coney Island section of Kings County. The proposed D&TC’s service area is also a federally designated Health Professional Shortage Area (HPSA) and the Article 28 D&TC will increase the HPSA’s physician capacity from 3.1 FTEs to 4.8 FTEs.

OPCHSM Recommendation
Contingent Approval

Need Summary
Community Health Initiative, Inc. proposes to establish an Article 28 Diagnostic and Treatment Center in Kings County. Proposed services to be provided are: Medical Services - Primary Care and Medical Services - Other Medical Specialties. The number of projected visits is 5,600 for Year 1.

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

Financial Summary
Total project cost of $278,725 will be met as follows: contributed equipment of $101,232 and a promissory note of $177,493 at an interest rate of 10% for a ten-year term.

Budget:
- Revenues $3,694,940
- Expenses $3,651,711
- Excess of Revenues over Expenses $43,229
Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:
1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of the executed Certificate of Incorporation of Community Health Initiatives, Inc. acceptable to the Department. [CSL]
4. Submission of the Lease Agreement between 2882 West 15th Street LLC, (“Landlord”), and Community Health Initiatives Inc., the “tenant”, 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 Bureau of Architecture and Engineering Review (BAER) Drawing Submission Guidelines DSG-05, prior to the applicant’s request for, and Department’s granting approval for the start of construction [AER]
7. Construction must start on or before November 1, 2015 and construction must be completed by January 15, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval to any changes to the start and completion dates. [AER]

Council Action Date
October 8, 2015
Need Analysis

Background and Analysis
The service area includes Coney Island, located in southwestern Kings County.

Areas of Kings County that are designated Health Care Professional Shortage Areas and Medically Underserved Areas/Populations are as follows (Source – HRSA):

Health Care Professional Shortage Areas for Primary Care Services:
- Medicaid Eligible – Coney Island/Gravesend

Medically Underserved Area:
- Kings Service Area

The number of projected visits is 5,600 for Year 1 and 10,500 for Year 3.

Prevention Quality Indicators - PQIs
PQIs are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease.

The table below provides information on the PQI rates for the major condition categories such as acute, circulatory, diabetes, and respiratory for zip code 11224 and for New York State. All of the rates for major categories of these conditions are significantly higher for the service area than those rates for New York State.

<table>
<thead>
<tr>
<th>PQI Rates: Hospital Admissions per 100,000 Adults</th>
<th>Service Area</th>
<th>New York State</th>
</tr>
</thead>
<tbody>
<tr>
<td>All †</td>
<td>2,267</td>
<td>1,408</td>
</tr>
<tr>
<td>All Acute</td>
<td>781</td>
<td>473</td>
</tr>
<tr>
<td>All Circulatory</td>
<td>812</td>
<td>401</td>
</tr>
<tr>
<td>All Diabetes</td>
<td>466</td>
<td>223</td>
</tr>
<tr>
<td>All Respiratory</td>
<td>608</td>
<td>312</td>
</tr>
</tbody>
</table>

Source: DOH Health Data, 2015
† Due to Rounding, individual conditions may not sum to total

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

Conclusion
Approval of this project will provide continued access to primary care services and specialty medical services to Coney Island and the surrounding communities of Kings County.

Recommendation
From a need perspective, approval is recommended.
Program Analysis

Project Proposal
Community Health Initiatives, Inc. (CHI), a Federally Qualified Health Center (FQHC) and New Access
Point entity, seeks to establish and construct a Diagnostic and Treatment Center at 2882 West 15th
Street in Brooklyn (Kings County).

Community Health Initiatives, Inc. is converting from a private two-physician shared practice (Drs. Yuri
Birbrayer and James Peri) to a non-profit D&TC that will provide comprehensive primary care services in
medically underserved areas of Coney Island. Specifically, CHI aims to develop a patient-centered model
of integrated care within a culturally and linguistically competent service environment by a primary care
focus on acute, chronic, and rehabilitative treatment to address the physical and mental health needs of
Coney Island residents.

<table>
<thead>
<tr>
<th>Proposed Operator</th>
<th>Community Health Initiatives, Inc.</th>
</tr>
</thead>
</table>
| Site Address      | 2882 West 15th Street, Lower Level
|                   | Brooklyn, NY 11224 (Kings County) |
| Services          | Medical Services – Primary Care
|                   | Medical Services – Other Medical Specialties |
| Hours of Operation| Monday through Friday from 9 am to 7 pm and
|                   | Saturday from 10 am to 2 pm |
| Staffing (1st Year / 3rd Year) | 34.0 FTEs / 43.0 FTEs |
| Medical Director(s) | Edouard J. Hazel, MD |
| Emergency, In-Patient and Backup Support Services Agreement and Distance | Will be provided by Maimonides Medical Center 6.1 miles / 20 minutes away |

Character and Competence
The proposed Board of Directors for Community Health Initiatives is a consumer-majority Governing
Board comprised of the following individuals:

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alex Movshovich</td>
<td>Executive Director (Ex-Officio)</td>
</tr>
<tr>
<td>Shirley Aikens</td>
<td>Chairperson</td>
</tr>
<tr>
<td>Julia Daniely</td>
<td>Treasurer</td>
</tr>
<tr>
<td>Joanne Kennedy</td>
<td>Secretary</td>
</tr>
<tr>
<td>Diana Felix</td>
<td>Board Member</td>
</tr>
<tr>
<td>Vicky Vanet</td>
<td>Board Member</td>
</tr>
<tr>
<td>Latasha Sutton</td>
<td>Board Member</td>
</tr>
<tr>
<td>Michael Kaplan</td>
<td>Board Member</td>
</tr>
<tr>
<td>James Malloy</td>
<td>Board Member</td>
</tr>
<tr>
<td>Timeka Garrison</td>
<td>Board Member</td>
</tr>
</tbody>
</table>

Mr. Movshovich holds a degree in business management with a concentration in finance. He is a health
care administrator/consultant with over seven years of management experience. Currently he manages
eight physicians in the proposed service area. He was involved in the development and subsequent
operation of Advance Operations, designing a service model that utilized community resources to
promote early medical intervention efforts. Mr. Movshovich is guiding the transformation of Advance
Operations from a physician management service model to a Federally Qualified Health Center.

Ms. Aikens is retired and currently serves on the board of the Carey Gardens Resident Association as
President. She is also a Community Board 13 member and the Secretary for the Police Council. She
feels her relationship with the community will help the center engage the most underserved in Coney
Island.
Ms. Daniely serves as the Vice-President on the board of the Carey Gardens Resident Association. She believes her position will facilitate access to and communication with New York City Housing Authority (NYCHA) residents to engage them in primary care.

Ms. Kennedy is retired and anticipates being a patient of the facility. In that role, she feels she can provide valuable feedback from a patient’s point of view.

Ms. Felix is a Carrier Assistant for the U.S. Postal Service. She is a long-time resident of Coney Island and also plans to be a patient of the center.

Ms. Vanet has owned and operated a laser hair removal spa since 2009. Prior to that, she was self-employed providing paralegal services. She is a long-time resident of Coney Island and feels she can be instrumental when it comes to cultural competency relating to the Russian population in the service area.

Ms. Sutton is a Credentialed Alcoholism and Substance Abuse Counselor Trainee (CASAC-T) pursuing a degree in Chemical Dependency Counseling. She has case management experience and has provided counseling and referral services to individuals in need, specifically to those with substance use disorders. As a Board Member, she feels she will be an asset in advising the center regarding their substance abuse component.

Mr. Kaplan has over 20 years of technical and managerial experience in information technology (IT) and feels his qualifications will allow him to effectively support all IT functions and be instrumental in efforts for full electronic health record (EHR) integration.

Mr. Malloy is a paraprofessional employed by the New York City Department of Education. Although he does not possess healthcare experience, Mr. Sutton is a long-time Coney Island resident and a NYCHA resident.

Ms. Garrison is a Field Representative for the U.S. Census Bureau. She has been an active community member and is committed to making a positive difference in the community by ensuring that the center addresses the population’s needs.

Disclosure information was similarly submitted and reviewed for the Medical Director. Edouard J. Hazel, M.D., a board-certified Internist with sub-certification in Infectious Disease. In his over 30 years of experience, Dr. Hazel has gained experience in the provision of medical care as well as hospital administration and public health issues. Currently, he is employed by Henry J. Carter Specialty Hospital overseeing the work of 10 physicians and PAs and four Infection Control nurses.

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.

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

Recommendation
From a programmatic perspective, approval is recommended.
Financial Analysis

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

<table>
<thead>
<tr>
<th>Premises:</th>
<th>5,111 square feet located at 2882 West 15th Street, Unit C5, Brooklyn, New York.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lessor:</td>
<td>2582 West 15th Street, LLC</td>
</tr>
<tr>
<td>Lessee:</td>
<td>Community Health Initiatives, Inc.</td>
</tr>
<tr>
<td>Term:</td>
<td>Ten years</td>
</tr>
<tr>
<td>Rental:</td>
<td>Year One - $86,952 ($17.01 per square foot) with a 3% increase per year thereafter.</td>
</tr>
<tr>
<td>Provisions:</td>
<td>The lessee shall be responsible for maintenance and insurance.</td>
</tr>
</tbody>
</table>

The applicant has submitted an affidavit indicating that the lease will be a non-arm’s length lease arrangement. They have submitted letters from two New York Licensed Real Estate Brokers attesting to the reasonableness of the per square foot rental amount.

Total Project Cost and Financing
Total project cost for renovations and the acquisition of moveable equipment is estimated at $278,725, broken down as follows:

<table>
<thead>
<tr>
<th>Renovation and Demolition</th>
<th>$125,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Contingency</td>
<td>12,500</td>
</tr>
<tr>
<td>Construction Contingency</td>
<td>12,500</td>
</tr>
<tr>
<td>Architect/Engineering Fees</td>
<td>25,000</td>
</tr>
<tr>
<td>Moveable Equipment</td>
<td>101,232</td>
</tr>
<tr>
<td>CON Fee</td>
<td>1,250</td>
</tr>
<tr>
<td>Additional Processing Fee</td>
<td>1,243</td>
</tr>
<tr>
<td>Total Project Cost</td>
<td>$278,725</td>
</tr>
</tbody>
</table>

Project costs are based on a construction start date of November 1, 2015, and a two-month construction period.

The applicant’s financing plan appears as follows:

| Contributed Equipment     | $101,232 |
| Promissory Note (10% interest rate for a ten-year term) | 177,493 |
| Total                    | $278,725 |

The executed Promissory Note provides for a principal amount of $180,000 to be credited to an account on the books of the applicant from which the applicant may draw down for use on the above project costs.

Operating Budget
The applicant has submitted an operating budget, in 2015 dollars, for the first and third year of operation, summarized below:

<table>
<thead>
<tr>
<th>Revenues:</th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid Managed Care/FFS</td>
<td>$964,591</td>
<td>$2,040,110</td>
</tr>
<tr>
<td>Medicare Fee-For-Service</td>
<td>201,556</td>
<td>426,291</td>
</tr>
<tr>
<td>Private Pay</td>
<td>172,763</td>
<td>365,393</td>
</tr>
<tr>
<td>Union</td>
<td>100,778</td>
<td>213,146</td>
</tr>
<tr>
<td>HRSA NAP Grant</td>
<td>650,000</td>
<td>650,000</td>
</tr>
<tr>
<td>Total Revenue</td>
<td>$2,089,688</td>
<td>$3,694,940</td>
</tr>
</tbody>
</table>
Expenses:

<table>
<thead>
<tr>
<th></th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating</td>
<td>$1,973,528</td>
<td>$3,524,592</td>
</tr>
<tr>
<td>Capital</td>
<td>103,200</td>
<td>127,119</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>$2,076,728</td>
<td>$3,651,711</td>
</tr>
</tbody>
</table>

Excess of Revenues over Expenses $12,960 $43,229

Utilization (visits) 10,730 23,550

Cost Per Visit $193.54 $155.06

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

<table>
<thead>
<tr>
<th>Payor Source</th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid Managed Care</td>
<td>56.95%</td>
<td>56.95%</td>
</tr>
<tr>
<td>Medicaid Fee-For-Service</td>
<td>10.05%</td>
<td>10.05%</td>
</tr>
<tr>
<td>Medicare Fee-For-Service</td>
<td>14.00%</td>
<td>14.00%</td>
</tr>
<tr>
<td>Private</td>
<td>12.00%</td>
<td>12.00%</td>
</tr>
<tr>
<td>Union</td>
<td>7.00%</td>
<td>7.00%</td>
</tr>
</tbody>
</table>

The following is noted with respect to the submitted budget:

- Revenues are based on current reimbursement methodologies by payor. Medicaid revenue was assessed based on APG reimbursement which the provider indicated is consistent with their cost for services. Revenue includes HRSA NAP program grant funding. The applicant indicated that they have received the grant funding for three years and can reapply for ongoing HRSA funding for subsequent years (open competition basis).
- Utilization assumptions are based on current historical experience of the physician shared practice.
- Expense assumptions are also based on the current historical experience of the physician shared practice.

The budget appears reasonable.

**Capability and Feasibility**

Project costs of $278,725 will be met as follows: Contributed Equipment valued at $101,232 and the balance of $177,493 via a Promissory Note at an interest rate of 10% for a ten-year term. The applicant has submitted an executed Promissory Note for $180,000 in regard to the financing, and the related amortization schedule. Interest accrues daily at a rate of 10% per annum on any outstanding principal balance used by the applicant. The Promissory Note indicates that principal and interest will be deferred for the first five years, however the Note may be prepaid, in whole or in part, at any time.

Working capital requirements are estimated at $608,619, which is equivalent to two months of third year expenses. The applicant will meet the working capital requirement via the HRSA NAP grant award approved at $650,000 per year for the three-year project period starting June 1, 2015 through May 31, 2018. The applicant has submitted the HRSA Notice of Award dated May 8, 2015, confirming receipt of HRSA NAP funding for this project for Year One, and the recommended future support of $650,000 per year for Year Two and Year Three. BFA Attachment A is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of $709,851.

The submitted budget indicates an excess of revenues over expenses of $12,960 and $43,229 during the first and third years, respectively. Revenues are based on current reimbursement rates for diagnostic and treatment centers. The submitted budget appears reasonable.

Subject to the noted contingency, 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 | Pro Forma Balance Sheet |
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a diagnostic and treatment center to be located at 2882 West 15th Street, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: 152015 B
FACILITY/APPLICANT: Community Health Initiatives, Inc.
APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]

2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]

3. Submission of the executed Certificate of Incorporation of Community Health Initiatives, Inc. acceptable to the Department. [CSL]

4. Submission of the Lease Agreement between 2882 West 15th Street LLC, (“Landlord”), and Community Health Initiatives Inc., the “tenant”, 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 Bureau of Architecture and Engineering Review (BAER) Drawing Submission Guidelines DSG-05, prior to the applicant’s request for, and Department’s granting approval for the start of construction [AER]

7. Construction must start on or before November 1, 2015 and construction must be completed by January 15, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval to any changes to the start and completion dates. [AER]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
Description
Schenectady Partners, LLC d/b/a Rotterdam-Schenectady Dialysis Center (the Center), an existing New York limited liability company, requests approval to establish and construct a 13-station Article 28 chronic renal dialysis center to be located at 1592-1594 State Street, Schenectady (Schenectady County), in 7,100 square feet of leased space. The Center will provide the following services: chronic renal dialysis, home hemodialysis training and support, and home peritoneal dialysis training and support.

The proposed members of the Center are: American Renal Associates, LLC (ARA) with 51% ownership interest, and Dr. Hani L. Shahata, a Board Certified Nephrologist, with 49% ownership interest. ARA is a subsidiary of American Renal Holdings, Inc. (ARH), a national provider of renal dialysis centers. ARH, a subsidiary of American Renal Associates Holding, Inc. (ARAH), owns and operates 154 dialysis clinics in 22 states and the District of Columbia. Attachment E provides an organizational chart of ARA.

ARA currently co-operates the following New York State (NYS) chronic renal dialysis centers:
- Mohawk Valley Dialysis Center, Inc. (opened 9/19/2012);
- Plattsburgh Associates, LLC d/b/a H.K. Freedman Renal Center (acquired 12/6/2013);
- Elizabethtown Center, LLC (acquired 4/1/2014);
- Plattsburgh Associates, LLC d/b/a Hastings Hemodialysis Center (acquired 8/1/2014); and
- Massena Center, LLC (acquired 1/1/2015).

Concurrently under review is CON 152025 in which Dr. Hani L. Shahata is seeking to purchase 19% stock ownership in Mohawk Valley Dialysis Center, Inc.

OPCHSM Recommendation
Contingent Approval

Need Summary
This project will result in 13 net new chronic dialysis stations in Schenectady County. These stations will be adequate to meet the remaining unmet need in the County. The proposed facility’s nutritional services and home dialysis training, as well as the proposed extended hours, will ensure that all residents have access to critical end stage renal disease treatment.

Program Summary
Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant’s character and competence or standing in the community.
Financial Summary
Total project costs of $1,616,687 will be met with $150,000 from the members' equity ($76,500 from ARA and $73,500 from Dr. Hani L. Shahata), and an intercompany loan from ARA of $1,466,687 at an interest rate of 5% for a five-year term.

<table>
<thead>
<tr>
<th></th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$861,600</td>
<td>$2,272,745</td>
</tr>
<tr>
<td>Expenses</td>
<td>1,070,612</td>
<td>1,666,541</td>
</tr>
<tr>
<td>Net Income</td>
<td>$(209,012)</td>
<td>$606,204</td>
</tr>
</tbody>
</table>
Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:
1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed intercompany loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed intercompany working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department. [HSP]
6. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
7. Submission of the executed Articles of Organization of Schenectady Partners, LLC acceptable to the Department. [CSL]

Approval conditional upon:
1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant’s start of construction for record purposes. [AES]
7. Construction must start on or before January 1, 2016 and construction must be completed by April 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates.

Council Action Date
October 8, 2015
Demographic Information
The population of Schenectady County in 2013 was 155,440. The population was 23.9% non-white and 15.4% over the age of 65. Those two demographics are the most at-risk for developing end stage renal disease.

<table>
<thead>
<tr>
<th></th>
<th>Schenectady County</th>
<th>New York State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ages 65 and over</td>
<td>15.4%</td>
<td>14.4%</td>
</tr>
<tr>
<td>Non-white</td>
<td>23.9%</td>
<td>42.8%</td>
</tr>
</tbody>
</table>

Source: U.S. Census 2013

Capacity
The Department’s methodology to estimate capacity for chronic dialysis stations is specified in Part 709.4 of Title 10 and is as follows:
- One free standing station represents 702 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 x 6) x 52 weeks] equals 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 x 6) x 52 weeks] equals 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 may treat fewer patients per year than do free-standing stations. Statewide, the majority of stations are free-standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free-standing stations.
- There are currently 36 free-standing chronic dialysis stations operating in Schenectady County and none in pipeline.
- Based upon DOH methodology, the 36 existing free standing stations in Schenectady County could treat a total of 162 patients annually.

Need Projections

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2015</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total Patients Treated</td>
<td>Total Residents Treated</td>
<td>Projected Total Patients Treated</td>
</tr>
<tr>
<td>Free-standing Stations Needed</td>
<td>203</td>
<td>228</td>
<td>236</td>
</tr>
<tr>
<td>Existing Stations</td>
<td>46</td>
<td>51</td>
<td>53</td>
</tr>
<tr>
<td>Pipeline Stations</td>
<td>36</td>
<td>36</td>
<td>36</td>
</tr>
<tr>
<td>Total stations with Pipeline</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>With Approval of this CON</td>
<td>49</td>
<td>49</td>
<td>49</td>
</tr>
<tr>
<td>Unmet Need with Approval</td>
<td>(3)</td>
<td>2</td>
<td>17</td>
</tr>
</tbody>
</table>

1Patient data is from 2014 and is projected out 5 years, assuming a 3% annual rate of increase.
2Resident data is from 2015 and is projected out 4 years, assuming a 3% annual rate of increase.
The data in the first row, “Free Standing Stations Needed,” comes from the DOH methodology of each station being able to treat 4.5 patients, and each hospital station being able to treat 3 patients annually. The data in the next row, “Existing Stations,” comes from the Department’s Health Facilities Information System (HFIS). "Unmet Need" comes from subtracting needed stations from existing stations. Patient and resident data are from IPRO.

The data presented above shows that with approval of this project Schenectady County will have excess capacity with regard to total patients treated. However, the chart below demonstrates that three counties contiguous to Schenectady County have a net unmet need for 11 dialysis stations, which will contribute to utilization of the added Schenectady County stations.

<table>
<thead>
<tr>
<th>County</th>
<th>2014 Residents</th>
<th>Free Standing Stations Needed</th>
<th>Existing Stations</th>
<th>Unmet Need</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albany</td>
<td>421</td>
<td>94</td>
<td>81</td>
<td>13</td>
</tr>
<tr>
<td>Fulton</td>
<td>50</td>
<td>12</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Montgomery</td>
<td>75</td>
<td>17</td>
<td>31</td>
<td>(14)</td>
</tr>
<tr>
<td>Saratoga</td>
<td>208</td>
<td>47</td>
<td>55</td>
<td>(8)</td>
</tr>
<tr>
<td>Schoharie</td>
<td>34</td>
<td>8</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>Total</td>
<td>788</td>
<td>178</td>
<td>167</td>
<td>11</td>
</tr>
</tbody>
</table>

Conclusion
This project will result in 13 net new chronic dialysis stations in Schenectady County. These stations will be adequate to meet the remaining unmet need in the County. The proposed facility’s nutritional services and home dialysis training, as well as the proposed extended hours, will help ensure that all county residents have access to critical end stage renal disease treatment.

Recommendation
From a need perspective, approval is recommended.

Program Analysis

Project Proposal
Schenectady Partners, LLC d/b/a Rotterdam-Schenectady Dialysis Center seeks approval to establish and construct a thirteen station Article 28 chronic renal dialysis center at 1592-1594 State Street in Schenectady (Schenectady County).

<table>
<thead>
<tr>
<th>Proposed Operator</th>
<th>Schenectady Partners, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doing Business As</td>
<td>Rotterdam-Schenectady Dialysis Center</td>
</tr>
<tr>
<td>Site Address</td>
<td>1592-1594 State Street</td>
</tr>
<tr>
<td></td>
<td>Schenectady, NY (Schenectady County)</td>
</tr>
<tr>
<td>Approved Services</td>
<td>Chronic Renal Dialysis (13 Stations) and</td>
</tr>
<tr>
<td></td>
<td>Home Hemodialysis Training &amp; Support</td>
</tr>
<tr>
<td></td>
<td>Home Peritoneal Dialysis Training &amp; Support</td>
</tr>
<tr>
<td>Shifts/Hours/Schedule</td>
<td>Initially, the Center will be open Monday, Wednesday &amp; Friday and, after the census has grown will be open Monday through Saturday 6:00 am to 5:00 pm</td>
</tr>
<tr>
<td>Staffing (1st Year / 3rd Year)</td>
<td>8.0 FTEs increasing by 1.5 FTEs by the third year of operation</td>
</tr>
<tr>
<td>Medical Director(s)</td>
<td>Hani L. Shahata, MD</td>
</tr>
<tr>
<td>Emergency, In-Patient and Backup Support Services Agreement and Distance</td>
<td>Expected to be provided by Ellis Hospital</td>
</tr>
<tr>
<td></td>
<td>3.91 miles / 8 minutes</td>
</tr>
</tbody>
</table>
Character and Competence
The members of the LLC are:

<table>
<thead>
<tr>
<th>Name</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Renal Associates, LLC (ARA)</td>
<td>51.0%</td>
</tr>
<tr>
<td>American Renal Holdings, Inc. (100%)</td>
<td></td>
</tr>
<tr>
<td>Hani L. Shahata, MD</td>
<td>49.0%</td>
</tr>
</tbody>
</table>

American Renal Associates is a subsidiary of American Renal Holdings, Inc. (ARH), a national provider of kidney dialysis services which owns and operates over 150 dialysis clinics treating nearly 9,000 patients in 23 states and the District of Columbia.

ARA currently co-operates the following New York State chronic renal dialysis centers:
- Mohawk Valley Dialysis Center, Inc. (opened 9/19/2012)
- Plattsburgh Associates, LLC d/b/a H.K. Freedman Renal Center (acquired 12/6/2013)
- Elizabethtown Center, LLC (acquired 4/1/2014)
- Plattsburgh Associates, LLC d/b/a Hastings Hemodialysis Center (acquired 8/1/2014) and
- Massena Center, LLC (acquired 1/1/2015)

Star Ratings of the New York facilities, and all other ARA-associated facilities are provided in HSP Attachment A - Dialysis Compare/STAR Ratings for ARA-affiliated facilities.

The Company’s operating model is based on shared ownership of its facilities with nephrologists practicing in the area served by the clinic. Each clinic is maintained as a separate joint venture in which the ARH owns a controlling interest.

Dr. Shahata is a local physician, board-certified in Internal Medicine and Nephrology. He completed a Nephrology Fellowship at the Mount Sinai School of Medicine and is an attending physician at Champlain Valley Physicians Hospital. He has extensive experience in the care and treatment of dialysis patients in high risk communities. (Concurrently under review is CON 152025 in which Dr. Hani Shahata seeks approval to purchase 19% stock ownership in Mohawk Valley Dialysis Center, Inc.)

The Managers for Schenectady Partners, LLC will be:

<table>
<thead>
<tr>
<th>Name</th>
<th>Title/Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joseph A. Carlucci</td>
<td>President/CEO of American Renal Assoc.</td>
</tr>
<tr>
<td>John McDonough</td>
<td>Executive VP/COO of American Renal Assoc.</td>
</tr>
<tr>
<td>Hani L. Shahata, MD</td>
<td>Physician/ Proposed Medical Director</td>
</tr>
</tbody>
</table>

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

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

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 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.

As stated above, the Star Ratings of all ARA-associated facilities are provided in HSP Attachment A - Dialysis Compare/STAR Ratings for ARA-affiliated facilities.

Recommendation
From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Administrative Services Agreement
The applicant has submitted an executed administrative services agreement, the terms of which are summarized below:

<table>
<thead>
<tr>
<th>Dated:</th>
<th>May 21, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility:</td>
<td>Schenectady Partners, LLC</td>
</tr>
<tr>
<td>Contractor:</td>
<td>American Renal Management, LLC</td>
</tr>
<tr>
<td>Services Provided:</td>
<td>Ensure proper maintenance/repair of Dialysis Center Facility; Maintain all licenses, permits, certifications and approvals required; provide drafts of all necessary manuals, policies and procedures; Establish and supervise all administrative and accounting functions; Develop training programs for all personnel; recommend/analyze purchases and leases of equipment; Develop/maintain quality control and compliance programs; Prepare all cost reports and other reports for Medicare/Medicaid programs; Develop yearly budget; Prepare monthly and yearly financial statements; Select and administer financial and clinical information systems; Advise and assist in negotiating and maintaining contracts; Procure insurance policies; Develop human resource policy manual and oversight; Provide marketing services; Prepare all tax filings.</td>
</tr>
<tr>
<td>Term:</td>
<td>5 years – renewable for one additional 5-year term</td>
</tr>
<tr>
<td>Fee:</td>
<td>Annual Fee $90,000 ($7,500/month)</td>
</tr>
</tbody>
</table>
Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the proposed site they will occupy, as summarized below:

<table>
<thead>
<tr>
<th>Date</th>
<th>June 12, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premises</td>
<td>1592-1594 State Street, Schenectady, NY 12304-1513</td>
</tr>
<tr>
<td>Landlord</td>
<td>Golden Gate Associates, LLC</td>
</tr>
<tr>
<td>Lessee</td>
<td>Schenectady Partners, LLC</td>
</tr>
<tr>
<td>Term</td>
<td>10 years with renewal option for two additional five-year periods.</td>
</tr>
</tbody>
</table>
| Rental     | Years 1-5: $80,230 annually ($11.30/sq. ft.)
Years 6-10: $88,253 ($12.43/sq. ft.) |

The applicant has submitted an affidavit indicating that the lease is an arm’s length agreement. The applicant has submitted a letter from a NYS licensed realtor who assessed multiple comparable sites and attested to the rent reasonableness of the lease.

Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of fixed and movable equipment, is estimated at $1,616,687, further broken down as follows:

New Construction $968,085
Design Contingency 8,627
Construction Contingency 47,925
Fixed Equipment 176,000
Planning Consultant Fees 11,250
Architect/Engineering Fees 67,095
Movable Equipment 326,873
Application Fee 2,000
Processing Fee 8,832
Total Project Cost $1,616,687

Project costs are based on a construction start date of January 1, 2016, and a three-month construction period. The applicant’s financing plan appears as follows:

Equity $150,000
Intercompany loan from ARA (5% interest, five-year term) $1,466,687
Total $1,616,687

Equity of $150,000 will be provided from the proposed members as follows: $76,500 from ARA and $73,500 from Dr. Hani L Shahata. A letter of interest has been provided by ARA attesting to the intercompany loan terms noted above for the new construction and the acquisition of fixed and movable equipment.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for years one and three of operations, as summarized below:

<table>
<thead>
<tr>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues:</td>
<td></td>
</tr>
</tbody>
</table>
Medicare Fee- For- Service $473,880 $1,022,735
Commercial Fee- For- Service 387,720 1,250,010
Total Revenues: $861,600 $2,272,745
| Expenses: |
Operating $727,444 $1,347,044
Capital 343,168 319,497
Total Expenses: $1,070,612 $1,666,541
Net Income: $(209,012)  $606,204
Utilization (Treatments):  2,154  5,682
Cost Per Treatment:  $497.03  $293.30

The applicant indicated that the first year loss is anticipated due to startup as the Center will initially be open only three days a week until patient census grows. Once fully operational, the Center will be open six days a week and the applicant anticipates providing 5,682 treatments by year three. Breakeven utilization is 73% or 4,166 treatments in year three.

Utilization broken down by payor source for years one and three are as follows:

<table>
<thead>
<tr>
<th>Treatment Category</th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicare Fee-For-Service</td>
<td>1934</td>
<td>5,102</td>
</tr>
<tr>
<td>Commercial Fee-For-Service</td>
<td>220</td>
<td>580</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>2,154</td>
<td>5,682</td>
</tr>
</tbody>
</table>

Expense and utilization projections are based on a combination of ARA’s historical experiences in operating end stage renal dialysis clinics, both nationally and in New York State, and Dr. Shahata’s experience as a practicing physician for Capital Care Medical Group, a Nephrology practice located in Albany, NY, where Dr. Shahata maintains his private practice.

**Capability and Feasibility**

Project costs of $1,616,687 will be met as follows: Equity of $150,000 from the members ($76,500 from American Renal Associates, LLC and $73,500 from Dr. Shahata) and an intercompany loan for $1,466,687 at an interest rate of 5% with a five-year term.

Working capital requirements are estimated at $277,756 which is equivalent to two months of year three expenses. The members will provide $193,100 via equity equivalent to their ownership percentages. ARA’s equity portion is $98,481 and will come from its existing operations. Dr. Shahata’s equity portion is $94,619 and will come from his personal net worth. The remaining working capital will be provided through an intercompany loan from ARA at an interest rate of 5% with a five-year term. A letter of interest has been provided by ARA for the proposed working capital financing.

BFA Attachment A is the net worth statement of the Dr. Hani L. Shahata, which shows sufficient liquid resources to cover his portion of both equity requirements for this CON.

BFA Attachment B is the certified financial statements of ARH for the years ended December 31, 2014 and 2013. As shown, ARH maintained positive working capital, net income and net assets for the period and has sufficient liquid assets to cover the equity requirements and both intercompany loans associated with this CON.

BFA Attachment C is the pro forma balance sheet of Schenectady Partners, LLC as of the first day of operations, which indicates that operations will begin with a positive members’ equity of $343,100.

The submitted budget projects a net profit (loss) of $(209,012) and $216,882 during the first and third years, respectively. Revenues reflect prevailing reimbursement methodologies. The first year loss is due to startup as the Center’s patient census grows. ARA will provide additional funding, if necessary, to fund any losses. The budget appears reasonable.
BFA Attachment D is a financial summary of ARA’s NYS affiliated dialysis centers as of December 31, 2014, which shows that the entities acquired prior to 2014 generated positive working capital and net asset positions, and had positive net income. The two entities acquired during 2014 show negative work capital attributable to startup costs. The applicant notes that ARA provided the facilities with needed working capital funds. Data is not available for Massena Center, LLC as the facility was newly acquired in 2015.

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

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

### Attachments

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>HSP Attachment A</td>
<td>Dialysis Compare/STAR Ratings for ARA-affiliated facilities</td>
</tr>
<tr>
<td>BFA Attachment A</td>
<td>Net Worth Statement of Dr. Hani L. Shahata</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Certified Financial Statements of American Renal Holdings Inc. and Subsidiaries for 2013-2014</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Pro-Forma Balance Sheet of Schenectady Partners, LLC</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>2014 Financial Summary of ARA Affiliated NYS Dialysis</td>
</tr>
<tr>
<td>BFA Attachment E</td>
<td>Organizational Chart</td>
</tr>
<tr>
<td>BPN Attachment A</td>
<td>Map</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a 13-station chronic renal dialysis center to be located at 1592-1594 State Street, Schenectady, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: FACILITY/APPLICANT:

151269 B Schenectady Partner, LLC
d/b/a Rotterdam-Schenectady Dialysis Center
APPROVAL CONTINGENT UPON:
1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed intercompany loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed intercompany working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department. [HSP]
6. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
7. Submission of the executed Articles of Organization of Schenectady Partners, LLC acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:
1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant’s start of construction for record purposes. [AES]
7. Construction must start on or before January 1, 2016 and construction must be completed by April 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates.

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
Executive Summary

Description
IHS of New York, Inc., an existing New York corporation whose sole member is Nelson R. Shaller, operates an Article 28 freestanding dialysis center with one extension clinic: Pelham Parkway Dialysis (25 stations) located at 1400 Pelham Parkway South, Bronx, NY (main clinic site); and Queens Dialysis at South Flushing (25 stations) located at 71-12 Park Avenue, Flushing, NY (extension clinic site). IHS of New York, Inc. requests approval for the transfer of 100% ownership (200 issued and outstanding shares) to the corporate parent company, IHS Dialysis, Inc., a Florida corporation whose sole member is Nelson R. Shaller, via a Contribution Agreement. There will be no change in services provided and all policies and procedures, staffing, and referral relationships will continue uninterrupted.

Mr. Shaller was the owner of 100% of the issued and outstanding shares of IHS of New York Inc. until, in an effort to obtain certain tax savings and assist in tax compliance, he transferred all of his shares via a Contribution Agreement to the corporate parent company, IHS Dialysis, Inc., a Florida corporation of which Mr. Shaller is also the sole member.

In order to comply with Section 2801-a(4)(c) of the New York State Public Health Law, the applicant now seeks the Public Health and Health Planning Council’s approval for the Contribution Agreement between Mr. Shaller and IHS Dialysis, Inc.

IHS Dialysis, Inc. has a 100% ownership interests in the following entities: IHS of Massachusetts, LLC; IHS of Georgia, LLC; IHS of Tennessee, LLC; IHS of New Jersey, LLC; IHS of South Florida, LLC; and IHS of New Hampshire, LLC. Presently, only IHS of Massachusetts, LLC is an operating entity, operating two end stage renal dialysis facilities in Massachusetts.

Related requests have been submitted for the transfer of ownership of the main site to USRC Pelham, LLC d/b/a U.S. Renal Care Pelham Parkway Dialysis (CON #151070), and the transfer of ownership of the extension clinic to USRC South Flushing, LLC d/b/a U.S. Renal Care South Flushing Dialysis (CON #151072). These two applications are currently under Department review for subsequent presentation to the Public Health and Health Planning Council.

OPCHSM Recommendation
Contingent Approval

Need Summary
The proposed transfer of ownership will not result in any changes in services being provided.

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

There are no project costs associated with this application.

Nelson R. Shaller is the owner of all issued and outstanding shares of stock of IHS of New York, Inc. and of IHS Dialysis, Inc. Per this CON application, Mr. Shaller proposes to contribute 100% of his shares in IHS of New York, Inc. to IHS Dialysis, Inc., without any payment for this contribution.
Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:
1. Submission of a photocopy of the bylaws of IHS Dialysis Inc., acceptable to the Department. [CSL]

Approval conditional upon:
1. Submission of documentation of the applicant’s contribution of shares of stock in IHS of New York, Inc. to IHS Dialysis, Inc, acceptable to the Department. [CSL]
2. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date
October 8, 2015
**Need Analysis**

**Background**
The primary service area for the facility is Bronx County, which had a population estimate of 1,438,159 in 2014. The percentage of the population aged 65 and over was 11.1%. The nonwhite population percentage was 54.2%, which is well above the statewide average of 29.1%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Bronx County and New York State are listed below.

| Ages 65 and Over: | 11.1% | State Average: 14.4% |
| Nonwhite:         | 54.2% | State Average: 29.1% |

*Source: U.S. Census 2015*

**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 \((2.5 \times 6) \times 52 \text{ weeks} = 780 \text{ treatments per year}\). 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 \((2 \times 6) \times 52 \text{ weeks} = 624 \text{ treatments per year}\). 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 calculating the need for additional stations, the Department bases the projected need on establishing additional free standing stations.

- There are currently 480 free standing chronic dialysis stations operating in Bronx County and 104 in pipeline.

- Based upon DOH methodology, the 480 existing free standing stations in Bronx County could treat a total of 2,160 patients annually. Including the 104 additional pipeline stations, the county could treat a total of 2,628 patients annually.

**Projected Need**

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total Patients Treated</td>
<td>Total Residents Treated</td>
</tr>
<tr>
<td>Free Standing Stations Needed</td>
<td>2,984</td>
<td>1,141</td>
</tr>
<tr>
<td>Existing Stations</td>
<td>664</td>
<td>698</td>
</tr>
<tr>
<td>Total Stations (Including Pipeline)</td>
<td>480</td>
<td>480</td>
</tr>
<tr>
<td>Total stations w/Approval of this CON</td>
<td>584</td>
<td>584</td>
</tr>
<tr>
<td>Unmet Need With Approval</td>
<td>80</td>
<td>114</td>
</tr>
</tbody>
</table>

*Based upon an estimate of a three percent annual increase.*
The data in the first row, "Free Standing Stations Needed," is 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 from 2014.

**Conclusion**
The 480 stations in Bronx County serve a population of 1,438,159 residents. There remains an unmet need of 114 stations for the 3,141 residents that need treatment. The retention of this facility will help maintain access to dialysis services in the area.

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

---

**Program Analysis**

**Project Proposal**
IHS of New York, Inc., an existing New York corporation whose sole member was Nelson Shaller, operates an Article 28 end stage renal dialysis centers with one extension clinic: Pelham Parkway Dialysis Center (main site, 25 stations), located at 1400 Pelham Parkway in the Bronx (Bronx County) and Queens Dialysis at South Flushing (extension site, 25 stations), located at 71-12 Park Avenue in Flushing (Queens County).

Mr. Shaller was the owner of 100% of the issued and outstanding shares of IHS of New York Inc. until, in an effort to obtain certain tax savings and assist in tax compliance, he transferred all of his shares via a Contribution Agreement to the corporate parent company, IHS Dialysis, Inc., a Florida corporation of which Mr. Shaller is also the sole member.

In order to comply with Section 2801-a(4)(c) of the New York State Public Health Law, the applicant now seeks the Public Health and Health Planning Council’s approval for the Contribution Agreement between Mr. Shaller and IHS Dialysis, Inc.

IHS Dialysis, Inc. is also the 100% owner of the interests in the following entities: IHS of Massachusetts, LLC, IHS of Georgia, LLC, IHS of Tennessee, LLC, IHS of New Jersey, LLC, IHS of South Florida, LLC, and IHS of New Hampshire, LLC. (Currently, only IHS of Massachusetts, LLC is an operating entity).

**Character and Competence**
As stated above, the sole member of IHS Dialysis, Inc. is Nelson R. Shaller.

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

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

On September 16, 2015, the Department issued a Stipulation and Order and a $2,000 fine to IHS of New York, Inc. as operator of Pelham Parkway Dialysis Center for violations of Article 28 of the Public Health
Law and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Title 10 NYCRR). As detailed in a Statement of Deficiencies issued in July 2015, the Department discovered that, on or about May 27, 2015, Nelson Shaller, the owner of 100% of shares of stock in IHS of New York, Inc., had transferred all of the shares he owned to another corporation (in which he is also 100% owner) without prior approval from the Public Health and Health Planning Council. The Department directed that an appropriate Certificate of Need Application be filed and that documentation be submitted (within Department specified time frames) to complete the application process. In addition to the monetary penalty, the Department has directed IHS/Mr. Shaller to submit quarterly reports for a one year period which detail the steps taken to implement the corrective action plan and to assess their effectiveness.

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 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.

The applicant disclosed that IHS Dialysis, Inc. operates the following dialysis centers:

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Address</th>
<th>Star Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pelham Parkway Dialysis Center</td>
<td>1400 Pelham Parkway South Bldg. 5 Dialysis Center Bronx, NY 10461</td>
<td>🟢🟢🟢🟢🟢</td>
</tr>
<tr>
<td>IHS Queens Dialysis d/b/a Queens Dialysis at South Flushing</td>
<td>71-12 Park Avenue Flushing, NY 11365</td>
<td>🟢🟢🟢🟢🟢</td>
</tr>
<tr>
<td>Advanced Directions Renal Care Center</td>
<td>1250 Hancock St., Ste. 204-N-B Quincy, MA 02169</td>
<td>🟢🟢🟢🟢🟢</td>
</tr>
<tr>
<td>Quincy Center Dialysis</td>
<td>1250 Hancock St., Ste. 110N Quincy, MA 02169</td>
<td>🟢🟢🟢🟢🟢</td>
</tr>
<tr>
<td>Advanced Kidney Therapies</td>
<td>3200 Cobb Galleria Pkwy Atlanta, GA 30339</td>
<td>🟢🟢🟢🟢🟢</td>
</tr>
</tbody>
</table>

Recommendation
From a programmatic perspective, approval is recommended.
Financial Analysis

Contribution Agreement
The applicant has submitted an executed contribution agreement, which is summarized as follows:

<table>
<thead>
<tr>
<th>Date:</th>
<th>December 31, 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>From (Contributor):</td>
<td>Nelson R. Shaller, IHS of New York, Inc.</td>
</tr>
<tr>
<td>To (Corporate Parent Company):</td>
<td>IHS Dialysis, Inc.</td>
</tr>
<tr>
<td>Contribution:</td>
<td>All of the issued and outstanding shares of stock of IHS of New York, Inc.</td>
</tr>
<tr>
<td>Purchase Price:</td>
<td>None</td>
</tr>
</tbody>
</table>

There is no consideration paid to Nelson R Shaller for this contribution.

Operating Budget
There are no operational expenses associated with the proposed transaction.

Capability and Feasibility
There are no issues of capability or feasibility, as there are no project costs or budgets associated with this application.

As previously mentioned, this is a stock transfer in which IHS Dialysis, Inc. will continue providing services at present operational levels with no change in operational revenues or expenses due to the transaction. BFA Attachment B is the internal financial statements of IHS Dialysis, Inc. as of December 31, 2014. As shown, the entity had a positive working capital position, positive net asset position and positive operating surpluses.

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

Recommendation
From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A  Ownership before and after the proposed transaction.
### IHS Dialysis, Inc - Consolidated
#### Balance Sheet
December 31, 2014

<table>
<thead>
<tr>
<th>December 2014</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$ 590,190</td>
</tr>
<tr>
<td>Net Accounts Receivable</td>
<td>$ 3,339,814</td>
</tr>
<tr>
<td>Other Current Assets</td>
<td>$ 4,011,830</td>
</tr>
<tr>
<td>Property, plant &amp; equipment</td>
<td>$ 7,305,337</td>
</tr>
<tr>
<td>Less: Accumulated depreciation</td>
<td>(4,649,230)</td>
</tr>
<tr>
<td>Net PP&amp;E</td>
<td>$ 2,656,107</td>
</tr>
<tr>
<td><strong>TOTAL ASSETS</strong></td>
<td>$ 10,597,941</td>
</tr>
<tr>
<td>Accounts Payable</td>
<td>$ 1,365,426</td>
</tr>
<tr>
<td>Accrued Payroll Liabilities</td>
<td>$ 504,857</td>
</tr>
<tr>
<td>Other Accrued Liabilities</td>
<td>$ 5,131,139</td>
</tr>
<tr>
<td><strong>TOTAL LIABILITIES</strong></td>
<td>$ 7,001,422</td>
</tr>
<tr>
<td>Owners' Equity</td>
<td>$ 3,596,519</td>
</tr>
<tr>
<td><strong>Total Liabilities &amp; Equity</strong></td>
<td>$ 10,597,941</td>
</tr>
</tbody>
</table>
IHS Dialysis, Inc - Consolidated
Income Statement
For the Twelve Months Ended December 31, 2014

<table>
<thead>
<tr>
<th></th>
<th>YTD</th>
<th>12/31/14</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chronic</td>
<td></td>
<td>17,506,079</td>
</tr>
<tr>
<td>Home</td>
<td></td>
<td>2,598,841</td>
</tr>
<tr>
<td><strong>Total treatment revenue</strong></td>
<td></td>
<td>20,104,920</td>
</tr>
<tr>
<td>Pharmaceutical &amp; other ancillary</td>
<td></td>
<td>3,331,939</td>
</tr>
<tr>
<td><strong>Total gross revenue</strong></td>
<td></td>
<td>23,436,859</td>
</tr>
<tr>
<td><strong>Revenue adjustments:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Write offs &amp; bad debts</td>
<td></td>
<td>(1,042,596)</td>
</tr>
<tr>
<td>Contractual allowances</td>
<td></td>
<td>(245,545)</td>
</tr>
<tr>
<td><strong>Total revenue adjustments</strong></td>
<td></td>
<td>(1,288,141)</td>
</tr>
<tr>
<td><strong>Net revenue</strong></td>
<td></td>
<td>22,148,718</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries, wages &amp; benefits:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Variable salaries &amp; wages</td>
<td></td>
<td>4,032,820</td>
</tr>
<tr>
<td>Fixed salaries &amp; wages</td>
<td></td>
<td>3,528,176</td>
</tr>
<tr>
<td>Biomed salaries &amp; wages</td>
<td></td>
<td>288,587</td>
</tr>
<tr>
<td>Contract</td>
<td></td>
<td>179,741</td>
</tr>
<tr>
<td><strong>Total salaries &amp; wages</strong></td>
<td></td>
<td>8,029,324</td>
</tr>
<tr>
<td>Benefits &amp; taxes</td>
<td></td>
<td>1,601,225</td>
</tr>
<tr>
<td><strong>Total salaries, wages &amp; benefits</strong></td>
<td></td>
<td>9,630,550</td>
</tr>
<tr>
<td>Pharmaceutical expenses</td>
<td></td>
<td>3,578,874</td>
</tr>
<tr>
<td>Other medical supplies</td>
<td></td>
<td>2,535,838</td>
</tr>
</tbody>
</table>

Project# 151298
BFA Attachment-B-Cont
IHS Dialysis, Inc - Consolidated
Income Statement
For the Twelve Months Ended December 31, 2014

<table>
<thead>
<tr>
<th>Item</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>12/31/14</td>
</tr>
<tr>
<td>Other clinic operating expenses:</td>
<td></td>
</tr>
<tr>
<td>Building rent</td>
<td>1,190,127</td>
</tr>
<tr>
<td>Depreciation</td>
<td>589,075</td>
</tr>
<tr>
<td>Machine maint &amp; repair</td>
<td>8,952</td>
</tr>
<tr>
<td>Facility maint &amp; repair</td>
<td>123,512</td>
</tr>
<tr>
<td>Utilities</td>
<td>391,342</td>
</tr>
<tr>
<td>Office supplies/minor equip</td>
<td>74,218</td>
</tr>
<tr>
<td>Travel &amp; entertainment</td>
<td>116,273</td>
</tr>
<tr>
<td>Medical director fees</td>
<td>758,302</td>
</tr>
<tr>
<td>Professional fees</td>
<td>1,310,234</td>
</tr>
<tr>
<td>Taxes &amp; licenses</td>
<td>48,408</td>
</tr>
<tr>
<td>Insurance</td>
<td>173,623</td>
</tr>
<tr>
<td>Other</td>
<td>1,474,933</td>
</tr>
<tr>
<td>Total other clinic operating expenses</td>
<td>6,259,000</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>22,004,262</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>144,457</td>
</tr>
<tr>
<td>Income taxes</td>
<td>20,500</td>
</tr>
<tr>
<td>Net Income (Loss)</td>
<td>$123,957</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer of 100% ownership interest to a new corporate parent, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: 151298 E

FACILITY/APPLICANT: Pelham Parkway Dialysis Center
APPROVAL CONTINGENT UPON:
1. Submission of a photocopy of the bylaws of IHS Dialysis Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:
1. Submission of documentation of the applicant’s contribution of shares of stock in IHS of New York, Inc. to IHS Dialysis, Inc, acceptable to the Department. [CSL]
2. The project must be completed within one year 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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
Executive Summary

Description
Brooklyn Gardens Dialysis Center, LLC (Brooklyn Gardens), a newly formed New York limited liability company, requests approval for the establishment and construction of a 15-station Article 28 end stage renal dialysis (ESRD) facility to be located at Brooklyn Gardens Nursing and Rehabilitation Center, a 240-bed, not-for-profit, Article 28 residential health care facility (RHCF) located at 835 Herkimer Street, Brooklyn (Kings County). The proposed dialysis center will be located in 8,005 sq. ft. of designated space on the first (1st) floor of the RHCF. Patients who are not residents of the RHCF will have access through a dedicated entrance located near the main entry of the nursing home.

The proposed members of Brooklyn Gardens Dialysis Center, LLC are Michael Melnicke with 75% membership interest and Leopold Friedman with 25%. On August 31, 2015, the members of Brooklyn Gardens entered into a licensing agreement with the operator of the RHCF, Providence Care, Inc. (Providence Care), for site control of the clinic. Under the terms of the licensing agreement, Providence Care will construct and equip the facility, inclusive of all required equipment necessary to operate an Article 28 ESRD facility, and license the space and equipment to Brooklyn Gardens. The applicant has submitted an affidavit attesting to a relationship with Providence Care in that the members of Brooklyn Gardens are Board Members of the nursing home facility.

OPCHSM Recommendation
Contingent Approval

Need Summary
Kings County has a large and diverse population that is 64% non-white, and has a significant unmet need for dialysis stations. Currently there is a need for 164 dialysis stations in the county; this project would reduce the unmet need to 149.

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

Financial Summary
The total project cost associated with this project is $77,413 and will be funded via $77,413 cash equity from the proposed members of Brooklyn Gardens Dialysis Center, LLC.

Budget:

<table>
<thead>
<tr>
<th></th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$1,579,878</td>
<td>$4,817,068</td>
</tr>
<tr>
<td>Expenses</td>
<td>$1,789,190</td>
<td>$3,508,667</td>
</tr>
<tr>
<td>Net Income</td>
<td>($209,312)</td>
<td>$1,308,401</td>
</tr>
</tbody>
</table>
Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:
1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed consulting agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed Consultative/Administrative Services Agreement, acceptable to the Department. [HSP]
6. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
7. Submission of a photocopy of the applicant’s executed Consulting Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant’s executed Operating Agreement, acceptable to the Department. [CSL]

Approval conditional upon:
1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity’s clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant’s start of construction. [AER]
7. Construction must start on or before November 1, 2015 and construction must be completed by April 30, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date
October 8, 2015
Need Analysis

Background
The population of Kings County in 2013 was 2,602,373. The population was 64.0% non-white and 12.0% over the age of 65. Those two demographics are the most at-risk for developing end stage renal disease.

<table>
<thead>
<tr>
<th>Ages 65 and over</th>
<th>Non-white</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kings County</td>
<td>12.0%</td>
</tr>
<tr>
<td>New York State</td>
<td>14.4%</td>
</tr>
<tr>
<td>Non-white</td>
<td>64.0%</td>
</tr>
<tr>
<td></td>
<td>42.8%</td>
</tr>
</tbody>
</table>

Source: U.S. Census 2013

Capacity
The Department’s methodology to estimate capacity for chronic dialysis stations is specified in Part 709.4 of Title 10 and is as follows:

- One free standing station represents 702 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 \((2.5 \times 6) \times 52 \text{ weeks}\) equals 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 \((2 \times 6) \times 52 \text{ weeks}\) equals 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 may treat fewer patients per year than do free-standing stations. Statewide, the majority of stations are free-standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free-standing stations.

- There are currently 718 free-standing chronic dialysis stations operating in Kings County and 195 in pipeline for a total of 913.

- Based upon DOH methodology, the 718 existing free standing stations in Kings County could treat a total of 3,231 patients annually. Including the additional 195 pipeline stations, the county could treat a total of 4,108 patients annually.

Need Projections

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2015</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total Patients Treated</td>
<td>Total Residents Treated</td>
<td>Projected Total Patients Treated(^1)</td>
</tr>
<tr>
<td>Free-standing Stations Needed</td>
<td>960</td>
<td>1,077</td>
<td>1,113</td>
</tr>
<tr>
<td>Existing Stations</td>
<td>718</td>
<td>718</td>
<td>718</td>
</tr>
<tr>
<td>Pipeline Stations</td>
<td>195</td>
<td>195</td>
<td>195</td>
</tr>
<tr>
<td>Total stations with Pipeline</td>
<td>913</td>
<td>913</td>
<td>913</td>
</tr>
<tr>
<td>With Approval of this CON</td>
<td>928</td>
<td>928</td>
<td>928</td>
</tr>
<tr>
<td>Unmet Need with Approval</td>
<td>32</td>
<td>149</td>
<td>153</td>
</tr>
</tbody>
</table>

\(^1\)Patient data is from 2014 and is projected out 5 years, assuming a 3% annual rate of increase.

\(^2\)Resident data is from 2015 and is projected out 4 years, assuming a 3% annual rate of increase.

The data in the first row, "Free Standing Stations Needed," comes from the DOH methodology of each station being able to treat 4.5 patients, and each hospital station being able to treat 3 patients annually. The data in the next row, "Existing Stations," comes from the Department’s Health Facilities Information
System (HFIS). “Unmet Need” comes from subtracting needed stations from existing stations. Patient and resident data are from IPRO.

The data presented above illustrates a clear need for dialysis stations in Kings County. More residents of the county receive treatment than patients; this indicates residents are leaving the county for treatment, which puts a burden on dialysis facilities in nearby counties and subjects patients to increased travel times.

**Conclusion**

This project will increase the number of approved dialysis stations in Kings County to 928. Upon approval, there will remain an unmet need for 149 dialysis stations in the County. This project should increase the number of residents of Kings County who receive dialysis treatment within the county; this will lower utilization in neighboring counties, improving access to care for residents of the New York City planning region.

**Recommendation**

From a need perspective, approval is recommended.

---

**Program Analysis**

**Project Proposal**

Brooklyn Gardens Dialysis Center, LLC seeks approval to establish and construct a new 15-station End Stage Renal Disease facility. The proposed facility will be located in a designated space at Brooklyn Gardens Nursing and Rehabilitation Center, an existing 240-bed residential health care facility (RHCF) located at 835 Herkimer Street, Brooklyn, (Kings County), 11223.

<table>
<thead>
<tr>
<th>Proposed Operator</th>
<th>Brooklyn Gardens Dialysis Center, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doing Business As</td>
<td>Brooklyn Gardens Dialysis Center</td>
</tr>
<tr>
<td>Site Address</td>
<td>835 Herkimer Street</td>
</tr>
<tr>
<td></td>
<td>Brooklyn (Kings County)</td>
</tr>
<tr>
<td>Approved Services</td>
<td>Chronic Renal Dialysis (15 Stations)</td>
</tr>
<tr>
<td>Shifts/Hours/Schedule</td>
<td>Will operate at least 12 hours per day, 6 days per week, with additional hours as indicated by demand.</td>
</tr>
<tr>
<td>Staffing (1st Year / 3rd Year)</td>
<td>11.5 FTEs / 23.6 FTEs</td>
</tr>
<tr>
<td>Medical Director(s)</td>
<td>William Shilkoff, MD</td>
</tr>
<tr>
<td>Emergency, In-Patient and Backup Support Services</td>
<td>Expected to be provided by Brooklyn Hospital</td>
</tr>
<tr>
<td>Agreement and Distance</td>
<td>3.2 miles / 14 minutes</td>
</tr>
</tbody>
</table>

**Character and Competence**

The members of the LLC are:

<table>
<thead>
<tr>
<th>Name</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael Melnicke, manager</td>
<td>75.0%</td>
</tr>
<tr>
<td>Leo Friedman</td>
<td>25.0%</td>
</tr>
</tbody>
</table>

The proposed members have extensive experience operating health related facilities and associated programs, including long-term care services and nursing home based dialysis programs. Mr. Melnicke, a licensed Nursing Home Administrator for the past 34 years, has owned nursing homes for the past 25 years. He is the Department-appointed receiver of three nursing homes (Park Nursing Home, Rockaway Care Center and Caton Park Nursing Home). Mr. Friedman is the Chief Executive Officer of a Nurse Staffing Agency and a part-owner/operator of a licensed home care services agency (LHCSA). Since January 2013, he has been the Receiver/Operator of Peninsula Nursing and Rehabilitation Center.
The applicant has identified William Shilkoff, MD to serve as the Medical Director of the proposed center. Dr. Shilkoff is board-certified in Internal Medicine and Nephrology with over 18 years of experience in the care and treatment of dialysis patients. Since 1997, Dr. Shilkoff has been employed by the Brooklyn Hospital Center. As an Attending Nephrologist, he has responsibility for inpatient and outpatient nephrology consults and follow-up as well as management of chronic and acute dialysis patients. Additionally, Dr. Shilkoff was involved in the development of a hemodialysis center from scratch (the Brooklyn Dialysis Center) which is now fully operational.

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

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

On April 18, 2009, a Stipulation and Order and $2,000 fine was issued to Regency Extended Care Center for issues related to Quality of Care.

On June 8, 2009, a Stipulation and Order and $6,000 fine was issued to Park Nursing Home for issues related to Quality of Care, Medical Services- Physicians Services, and Pharmacy Services.

On December 16, 2011, and again on January 6, 2012, a Stipulation and Order and fines of $8,000 and $10,000, respectively, was issued to Hempstead Park Nursing Home for issues related to Mistreatment/Neglect Policy and Procedures; Investigation/Reporting Allegations; Medically Related Social Services; and Administration.

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

---

**Financial Analysis**

**Total Project Cost and Financing**
The total project costs are broken down as follows:

<table>
<thead>
<tr>
<th>Fee Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consultant Fees</td>
<td>$75,000</td>
</tr>
<tr>
<td>Application Fees</td>
<td>$2,000</td>
</tr>
<tr>
<td>Additional Processing Fees</td>
<td>$413</td>
</tr>
<tr>
<td><strong>Total Project Cost</strong></td>
<td><strong>$77,413</strong></td>
</tr>
</tbody>
</table>

The applicant will finance the project via cash equity of $77,413.
License Agreement
The applicant has submitted an executed license agreement for the space and moveable equipment of the facility, which is summarized below:

<table>
<thead>
<tr>
<th>Date:</th>
<th>August 31, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premises:</td>
<td>8,005 sq. ft. on the 1st floor of Brooklyn Gardens Nursing and Rehabilitation Center located at 835 Herkimer Street, Brooklyn, New York</td>
</tr>
<tr>
<td>Movable Equipment:</td>
<td>Dialysis machines and other equipment needed for the operation of a 15-station Article 28 ESRD facility</td>
</tr>
<tr>
<td>Licensor:</td>
<td>Providence Care, Inc.</td>
</tr>
<tr>
<td>Licensee:</td>
<td>Brooklyn Gardens Dialysis Center, LLC</td>
</tr>
<tr>
<td>Term:</td>
<td>10 Years</td>
</tr>
<tr>
<td>Licensing Fee: (Rental)</td>
<td>Year 1: $425,160 ($35,430/month, $53.11/sq. ft.)</td>
</tr>
<tr>
<td></td>
<td>Year 2: $430,920 ($35,910/month, $53.83/sq. ft.)</td>
</tr>
<tr>
<td></td>
<td>Year 3: $436,853 ($36,404/month, $54.57/sq. ft.)</td>
</tr>
<tr>
<td></td>
<td>Years 4-10: 3% annual increase on prior year’s fee.</td>
</tr>
</tbody>
</table>

The applicant indicated that the license arrangement will be non-arm’s length as the applicant members are on the Board of the nursing home facility. The applicant submitted letters from two NYS licensed realtors attesting to the rent reasonableness of the clinic space. As the landlord will provide the leasehold improvements and movable equipment necessary for the operations of the business, the proposed per sq. ft. rental rate is reasonable.

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

<table>
<thead>
<tr>
<th>Date:</th>
<th>To Be Determined</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility:</td>
<td>Brooklyn Gardens Dialysis Center, LLC</td>
</tr>
<tr>
<td>Consultant:</td>
<td>Geripro Dialysis Consultants, LLC</td>
</tr>
<tr>
<td>Services Provided:</td>
<td>Administrative/Quality Management Services</td>
</tr>
<tr>
<td>Term:</td>
<td>two five-year terms with one automatic two-year renewal</td>
</tr>
<tr>
<td>Fee:</td>
<td>Annual Fee of $120,000 (payable at $10,000 per month)</td>
</tr>
</tbody>
</table>

The applicant has indicated that there is only a business contractual relationship between Geripro Dialysis Consultants, LLC and Brooklyn Gardens Dialysis Center, LLC.

Operating Budget
The applicant has submitted an operating budget, in 2015 dollars, for Years One and Three of operations, summarized below:

<table>
<thead>
<tr>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues:</td>
<td></td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>$137,920</td>
</tr>
<tr>
<td>Medicare Managed Care</td>
<td>$1,310,400</td>
</tr>
<tr>
<td>Commercial Managed Care</td>
<td>$163,800</td>
</tr>
<tr>
<td>Bad Debt</td>
<td>($32,242)</td>
</tr>
<tr>
<td>Total Revenues</td>
<td>$1,579,878</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenses:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating</td>
<td>$1,347,453</td>
</tr>
<tr>
<td>Capital</td>
<td>$441,737</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>$1,789,190</td>
</tr>
<tr>
<td>Net Income/(Loss)</td>
<td>($209,312)</td>
</tr>
<tr>
<td>Utilization (Treatments)</td>
<td>5,616</td>
</tr>
<tr>
<td>Cost Per Treatment</td>
<td>$318.59</td>
</tr>
</tbody>
</table>
Utilization broken down by payor source during year one and three is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year One</th>
<th></th>
<th>Year Three</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Treatments</td>
<td>%</td>
<td>Treatments</td>
<td>%</td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>468</td>
<td>8.33%</td>
<td>1,404</td>
<td>8.33%</td>
</tr>
<tr>
<td>Medicare Managed Care</td>
<td>4,680</td>
<td>83.34%</td>
<td>14,040</td>
<td>83.34%</td>
</tr>
<tr>
<td>Commercial Managed Care</td>
<td>468</td>
<td>8.33%</td>
<td>1,404</td>
<td>8.33%</td>
</tr>
<tr>
<td>Total</td>
<td>5,616</td>
<td>100.0%</td>
<td>16,848</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

The following is noted with respect to the submitted budget:
- Revenues are based upon review of other area ESRD providers and their average reimbursement rate for the various payor sources.
- Expense assumptions are based upon industry standards for operating a dialysis center.
- Utilization assumptions are based on the historical experience of other dialysis facilities in the area. Kings County currently has a significant unmet need for dialysis stations. The center anticipates that it will operate twelve hours per day and six days per week, with additional hours as indicated by demand.

The budget is reasonable.

**Capability and Feasibility**
The total project cost of $77,413 will be provided by the proposed members’ of Brooklyn Gardens Dialysis Center, LLC.

Working capital requirements are estimated at $584,778, which is equivalent to two months of year three expenses. The applicant will finance $292,389 at an interest rate of 6.5% for a three-year term. A letter of interest has been provided by Hudson Valley Bank for the working capital financing. The remaining $292,389 will be provided as equity from the proposed members’ of Brooklyn Gardens Dialysis Center, LLC.

BFA Attachment A is the personal net worth statement of the proposed members of Brooklyn Gardens Dialysis Center, LLC, which indicates that the proposed members have sufficient liquid resources to cover the both of the equity requirements.

BFA Attachment B is the pro forma balance sheet as of the first day of operation, which indicates they will begin with positive members’ equity of $292,389.

The submitted budget indicates a net loss of $209,312 in year one and a net income of $1,308,401 in year three. Revenues are based on the current reimbursement methodologies for dialysis services. The submitted budget is reasonable. The first year loss will be covered by the proposed operators via equity.

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

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

---

**Attachments**

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>Net Worth Statement for members of Brooklyn Gardens Dialysis Center, LLC</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Pro-Forma Balance Sheet of Brooklyn Gardens Dialysis Center, LLC</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a 15-station chronic renal dialysis center to be located in Brooklyn Gardens Nursing and Rehabilitation Center at 835 Herkimer Street, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: FACILITY/APPLICANT:

151308 B Brooklyn Gardens Dialysis Center
APPROVAL CONTINGENT UPON:
1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed consulting agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed Consultative/Administrative Services Agreement, acceptable to the Department. [HSP]
6. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEPF Drawing Submission Guidelines DSG-03. [AER]
7. Submission of a photocopy of the applicant’s executed Consulting Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant’s executed Operating Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:
1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEPF Drawing Submission Guidelines DSG-05, prior to the applicant’s start of construction. [AER]
7. Construction must start on or before November 1, 2015 and construction must be completed by April 30, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
Executive Summary

Description
Mohawk Valley Dialysis Center, Inc., an existing proprietary business corporation that operates a 15-station Article 28 chronic renal dialysis center located at 115 Towne Square Drive, Amsterdam (Montgomery County), requests approval for a net transfer of 19% stock ownership from current member, American Renal Associates, to Dr. Hani Shahata, a Board Certified Nephrologist. Membership of the operation before and after the requested change are as follows:

Current:
- American Renal Associates, LLC 51%
- Amsterdam Nephrology Holdings, LLC 49%

Proposed:
- American Renal Associates, LLC 51%
- Amsterdam Nephrology Holdings, LLC 30%
- Dr. Hani Shahata 19%

There will be no changes to services as a result of this transaction.

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

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

The total purchase price of $741,000 will be met with equity from Dr. Hani Shahata.

Incremental Revenues: $1,288,953
Budget: Expenses: 442,342
Net Income: $846,611

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no Need recommendation for this project.
Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management
Approval contingent upon:
1. Submission of a photocopy of the applicant’s Shareholder’s Agreement, dated February 22, 2011, amending Article V, Section 5.9, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant’s by-laws., amending Article II, Section 8, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant’s Medical Director Agreement, amending Section 11(a), acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant’s executed Shareholder Counterpart Signature page, acceptable to the Department. [CSL]

Approval conditional upon:
1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of documentation that the applicant’s Stock Purchase Agreement, dated July 2, 2015, was properly executed, acceptable to the Department. [CSL]

Council Action Date
October 8, 2015
Program Analysis

Project Proposal
Mohawk Valley Dialysis Center, Inc., an existing 15-station chronic renal dialysis center located at 115 Amsterdam Town Square, Route 30 in Amsterdam (Montgomery County), requests approval for the net transfer of 19% of stock ownership from American Renal Associates to Dr. Hani Shahata.

This transfer of membership interest requires three transactions: In the first transaction, 24.5% membership interest will transfer from Amsterdam Nephrology Holdings (ANH) to American Renal Associates (ARA). In Transactions #2 a 5.5% membership interest will transfer back from ARA to ANH. Simultaneously, in Transaction #3, ARA will transfer 19% membership interest to Dr. Hani Shahata.

There are no programmatic changes as a result of this request.

Character and Competence
Following the transactions noted above, the resulting ownership composition will be as follows:

<table>
<thead>
<tr>
<th>Member Name</th>
<th>Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Renal Associates, LLC</td>
<td>51.0%</td>
</tr>
<tr>
<td>[American Renal Holdings, Inc. -100%]</td>
<td></td>
</tr>
<tr>
<td>Amsterdam Nephrology Holdings, LLC</td>
<td>30.0%</td>
</tr>
<tr>
<td>[Soo Gil Lee, M.D. – 100%]</td>
<td></td>
</tr>
<tr>
<td>*Hani Shahata, M.D.</td>
<td>19.0%</td>
</tr>
</tbody>
</table>

*Subject to Character and Competence Review this project.

American Renal Holdings, Inc. (ARH) is a national provider of dialysis services that owns and operates over 170 dialysis clinics in more than 20 states. The company's operating model is based on shared ownership of its facilities with nephrologists in the area served by the clinic. Each clinic is maintained with a separate joint venture in which the ARH owns a controlling interest. Amsterdam Nephrology Holdings is wholly owned by Soo Gil Lee, M.D.

The proposed new member, Dr. Shahata, who was subject to review, is a local practicing physician who is board certified in Internal Medicine with sub-certification in Nephrology.

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

Recommendation
From a programmatic perspective, approval is recommended.
Financial Analysis

Stock Purchase Agreement
An executed stock purchase agreement has been submitted by the applicant summarized below:

<table>
<thead>
<tr>
<th>Date</th>
<th>July 2, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seller</td>
<td>American Renal Associates, LLC</td>
</tr>
<tr>
<td>Buyer</td>
<td>Dr. Hani Shahata</td>
</tr>
<tr>
<td>Purchase Price:</td>
<td>$741,000 ($39,000/share) for 19 shares.</td>
</tr>
<tr>
<td>Payment</td>
<td>Cash upon closing.</td>
</tr>
</tbody>
</table>

Assignment and Assumption of Lease
An executed assignment and assumption of lease has been submitted by the applicant, as summarized below:

<table>
<thead>
<tr>
<th>Date</th>
<th>May 22, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assignor</td>
<td>Mohawk Valley Property Holdings, LLC</td>
</tr>
<tr>
<td>Assignee</td>
<td>Mohawk Valley Dialysis Center, Inc.</td>
</tr>
<tr>
<td>Assignment</td>
<td>All rights, title, interest in and to the lease and Assignor’s rights are transferred to assignee.</td>
</tr>
</tbody>
</table>

Operating Budgets
The applicant has submitted an incremental operating budget in 2015 dollars for the first and third years of operation, summarized below:

<table>
<thead>
<tr>
<th></th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues:</td>
<td>$591,211</td>
<td>$1,288,953</td>
</tr>
<tr>
<td>Expenses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$215,201</td>
<td>$512,098</td>
</tr>
<tr>
<td>Capital*</td>
<td>(26,667)</td>
<td>(69,757)</td>
</tr>
<tr>
<td>Total Expenses:</td>
<td>$188,534</td>
<td>$442,342</td>
</tr>
<tr>
<td>Net Income:</td>
<td>$402,677</td>
<td>$846,611</td>
</tr>
<tr>
<td>Utilization(treatments)</td>
<td>792</td>
<td>2,341</td>
</tr>
<tr>
<td>Cost per treatment</td>
<td>$238.05</td>
<td>$188.95</td>
</tr>
</tbody>
</table>

*The decrease in capital expenditures is due to the pay down of the Mohawk Valley Dialysis Center’s term loan.

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

<table>
<thead>
<tr>
<th></th>
<th>Years One &amp; Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Fee-for-Service</td>
<td>6.4%</td>
</tr>
<tr>
<td>Commercial Managed Care</td>
<td>1.6%</td>
</tr>
<tr>
<td>Medicare Fee-for-Service</td>
<td>89.3%</td>
</tr>
<tr>
<td>Medicaid Fee-for-Service</td>
<td>2.7%</td>
</tr>
</tbody>
</table>

Expenses and utilization are based on the historical experience of Mohawk Valley Dialysis Center.

Capability and Feasibility
There are no project costs associated with this application.

The stock purchase price of $741,000 will be met with equity from Dr. Hani Shahata. BFA Attachment A shows sufficient equity for Dr. Shahata.
The submitted incremental budget indicates net incomes of $402,677 and $846,611 for the first and thirds years, respectively. Revenue is based on Mohawk Valley Dialysis’s experience in the operation of the dialysis center and on current reimbursement rates. The budget appears reasonable. BFA Attachment E is the pro forma balance sheet of Mohawk Valley Dialysis Center, LLC. As shown, the facility will initiate operation with $787,768 net equity.

BFA Attachment B, a financial summary of American Renal Holdings, Inc. and its subsidiaries, indicates that the corporation has maintained positive working capital, stockholders’ equity and net income of $29,224,000 and $32,249,000 for 2014 and as of March 31, 2015, respectively. BFA Attachment C, a financial summary of Mohawk Valley Dialysis Center, indicates the corporation has maintained positive working capital and stockholder’s equity and maintained a net income of $216,113 as of March 31, 2015.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

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

### Attachments

<table>
<thead>
<tr>
<th>BFA Attachment A</th>
<th>Financial Summary for Dr. Shahata</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment B</td>
<td>Financial Summary- American Renal Holdings Inc. and Subsidiaries, 2014, and March 2015</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Financial Summary-Mohawk Valley Dialysis Center, 2014 and March 31, 2015</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>Organizational Chart- Pre and Post stock transfer</td>
</tr>
<tr>
<td>BFA Attachment E</td>
<td>Pro Forma Balance Sheet</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8\textsuperscript{th} day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 19\% stock ownership of an existing 15-station chronic renal dialysis center to one (1) new shareholder, and multiple transfer of ownership between two (2) existing members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: 152025 E
FACILITY/APPLICANT: Mohawk Valley Dialysis Center
APPROVAL CONTINGENT UPON:
1. Submission of a photocopy of the applicant’s Shareholder’s Agreement, dated February 22, 2011, amending Article V, Section 5.9, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant’s by-laws., amending Article II, Section 8, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant’s Medical Director Agreement, amending Section 11(a), acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant’s executed Shareholder Counterpart Signature page, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:
1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of documentation that the applicant’s Stock Purchase Agreement, dated July 2, 2015, was properly executed, acceptable to the Department. [CSL]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
Description
ECRNC, LLC, d/b/a Evergreen Commons Rehabilitation and Nursing Center (ECRNC), a New York limited liability company, requests approval to be established as the operator of NYMED Rensselaer, LLC, d/b/a Evergreen Commons (Evergreen Commons). Evergreen Commons is a 240-bed, proprietary, Article 28 residential health care facility (RHCF) located at 1070 Luther Road, East Greenbush (Rensselaer County). The RHCF is also certified for outpatient therapy services. The facility is currently operated by NYMED Rensselaer, LLC. There will be no change in services provided.

On February 1, 2015, Titterton Properties, LLC (real estate seller), NYMED Rensselaer, LLC (operations seller), 1070 Luther Road, LLC (real estate buyer) and ECRNC, LLC (operations buyer) entered into a Master Asset Purchase Agreement for the sale of the property and operations associated with Evergreen Commons. The purchase price for the operations and real estate is $30,640,000 apportioned as follows: $14,140,000 for operations and $16,500,000 for real estate. ECRNC and 1070 Luther Road, LLC are separate, but related entities through common ownership as shown below. The applicant will lease the premises from 1070 Luther Road, LLC.

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

<table>
<thead>
<tr>
<th>Current Owner</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>NYMED Rensselaer, LLC</td>
<td></td>
</tr>
<tr>
<td>Lewis H. Titterton</td>
<td>50.0%</td>
</tr>
<tr>
<td>Anthony Scalera</td>
<td>32.0%</td>
</tr>
<tr>
<td>Kathyrn Romaguera</td>
<td>5.0%</td>
</tr>
<tr>
<td>Lois Bouren</td>
<td>13.0%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Proposed Owner</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>ECRNC, LLC, d/b/a Evergreen Commons Rehabilitation and Nursing Center</td>
<td></td>
</tr>
<tr>
<td>Efraim Steif</td>
<td>39.9%</td>
</tr>
<tr>
<td>Uri Koenig</td>
<td>60.0%</td>
</tr>
<tr>
<td>David Camerota</td>
<td>0.1%</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Current Owner</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Titterton Properties, LLC</td>
<td></td>
</tr>
<tr>
<td>Lewis H. Titterton</td>
<td>100%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Proposed Owner</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1070 Luther Road, LLC</td>
<td></td>
</tr>
<tr>
<td>Efraim Steif</td>
<td>40.00%</td>
</tr>
<tr>
<td>Uri Koenig</td>
<td>60.00%</td>
</tr>
</tbody>
</table>
OPCHSM Recommendation
Contingent Approval

Need Summary
This application will not result in a change to beds or services. Evergreen Commons’ occupancy was 96.6% in 2011, 95.5% in 2012 and 95.9% in 2013. For 2014 and thus far in 2015 occupancy averages to approximately 95.2% and 98.4%, respectively.

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

No changes in the program or physical environment are proposed in this application. The applicant will enter into an administrative services and consulting agreement.

Financial Summary
There are no project costs associated with this proposal. ECRNC will acquire the operating interest in the RHCF for $14,140,000, and 1070 Luther Road, LLC will acquire the real property for $16,500,000, for an overall total purchase price of $30,640,000. The purchase price will be paid as follows: $2,298,000 equity contribution from the members of 1070 Luther Road, LLC; a $24,512,000 mortgage for 30 years at 5% interest rate; and a loan from NYMED Rensselaer, LLC for $3,830,000 for 10 years at 8% interest rate.

The proposed Year One operating budget for the total facility operations (Inpatient and Outpatient) is as follows:

Budget: 

<table>
<thead>
<tr>
<th></th>
<th>Year One</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$23,629,950</td>
</tr>
<tr>
<td>Expenses</td>
<td>$23,423,620</td>
</tr>
<tr>
<td>Gain/(Loss)</td>
<td>$206,330</td>
</tr>
</tbody>
</table>
**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 and review of an acceptable consulting and services agreement. [LTC]

5. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by the Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. (BFA)

6. Submission of an executed loan commitment from NYMED Rensselaer, LLC, acceptable to the Department of Health. (BFA)

7. Submission of an executed building lease, acceptable to the Department of Health. (BFA)

8. Submission of the executed Operating Agreement of ECRNC, LLC., acceptable to the Department. [CSL]

9. Submission of the Lease Agreement between 1070 Luther Road LLC, the lessor, and ECRNC LLC, the lessee, acceptable to the Department. [CSL]

10. Submission of statement clarifying if the applicant intends to be managed by managers or members accompanied by the appropriate revisions to ECRNC, LLC's Operating Agreement or Articles of Organization as they conflict. [CSL]
Approval conditional upon:
1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.

[PMU]

Council Action Date
October 8, 2015
Need Analysis

Analysis
There is currently a surplus of 219 beds in Rensselaer County as indicated in Table 1 below:

Table 1: RHCF Need – Rensselaer County
<table>
<thead>
<tr>
<th></th>
<th>2016 Projected Need</th>
<th>Current Beds</th>
<th>Beds Under Construction</th>
<th>Total Resources</th>
<th>Unmet Need</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016 Projected Need</td>
<td>1,025</td>
<td>1,244</td>
<td>0</td>
<td>1,244</td>
<td>-219</td>
</tr>
</tbody>
</table>

The overall occupancy for Rensselaer County is 94.5%, as indicated in Chart 1 below:

Chart 1: Evergreen Commons Rehabilitation and Nursing Center’s Occupancy Rates

Evergreen Commons’ occupancy was 96.6% in 2011, 95.5% in 2012 and 95.9% in 2013. The facility’s historic occupancy has been near or has surpassed the Department’s planning optimum. For 2014 and thus far in 2015, occupancy averaged to approximately 95.2% and 98.4%, respectively.

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.
Evergreen Commons’ Medicaid admissions for 2012 and 2013 are 23.2% and 21.0%, respectively. This facility exceeded Rensselaer County’s 75% Medicaid admission threshold rates in 2012 and 2013 of 12.2% and 12.8%, respectively.

Conclusion
Approval of this application will help preserve a needed source of RHCF care for the Rensselaer County community.

Recommendation
From a need perspective, contingent approval is recommended.

Program Analysis

<table>
<thead>
<tr>
<th>Facility Information</th>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility Name</td>
<td>Evergreen Commons</td>
<td>Evergreen Commons Rehabilitation and Nursing Center</td>
</tr>
<tr>
<td>Address</td>
<td>1070 Luther Road East Greenbush, NY 12061</td>
<td>Same</td>
</tr>
<tr>
<td>RHCF Capacity</td>
<td>240</td>
<td>Same</td>
</tr>
<tr>
<td>ADHC Program Capacity</td>
<td>N/A</td>
<td>Same</td>
</tr>
<tr>
<td>Type of Operator</td>
<td>Limited Liability Company</td>
<td>Limited Liability Company</td>
</tr>
<tr>
<td>Class of Operator</td>
<td>Proprietary</td>
<td>Proprietary</td>
</tr>
<tr>
<td>Operator</td>
<td>NYMED Rensselaer LLC</td>
<td>ECRNC, LLC d/b/a Evergreen Commons</td>
</tr>
<tr>
<td></td>
<td>Members:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>*Uri Koenig 60.00%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>*Efraim Steif 39.90%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>David Camerota 0.10%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>100.00%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>*Managing Members</td>
<td></td>
</tr>
</tbody>
</table>

Character and Competence - Background

Facilities Reviewed

Nursing Homes
- Bridgewater Center for Rehabilitation & Nursing 02/2005 to present
- Pine Valley Center for Rehabilitation and Nursing 12/2004 to present
- Central Park Rehabilitation and Nursing Center 11/2008 to present
- Van Duyn Center for Rehabilitation and Nursing 12/2013 to present
- Westchester Center for Rehabilitation and Nursing 01/2003 to 12/2006
- Chestnut Park Rehabilitation and Nursing 06/2011 to present
- Cortland Park Rehabilitation and Nursing 06/2011 to present
- Colonial Park Rehabilitation and Nursing 06/2011 to present
- Highland Park Rehabilitation and Nursing & 06/2011 to present
- Hudson Park Rehabilitation and Nursing 06/2011 to present
- Vestal Park Rehabilitation and Nursing 06/2011 to present
- Riverside Center for Rehabilitation and Nursing 03/2012 to present
- Capstone Center for Rehabilitation and Nursing 03/2012 to present
- Beechtree Center for Rehabilitation and Nursing 09/2013 to present
- Folts Center for Rehabilitation and Nursing 10/2013 to present
- Northeast Center for Rehabilitation and Brain Injury 11/2013 to present
Diag nostic and Treatment Center:
   Bridgewater Center for Dialysis  03/2012 to present

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

Adult Home:
   The Pavilion at Claxton Manor (on Folts Campus)  10/2013 to present

Individual Background Review

Uri Koenig is a CPA in good standing and owner of JK Koenig & Co., an accounting firm located in Spring Valley, NY. He is a member of Upstate Services Group, LLC. Upstate Services Group is an administrative services organization providing administrative services to affiliated long term care facilities. Mr. Koenig discloses the following health facility interests:
- Bridgewater Center for Rehabilitation & Nursing  08/2006 to present
- Pine Valley Center for Rehabilitation and Nursing  01/2008 to present
- Central Park Rehabilitation and Nursing Center  03/2012 to present
- Van Duyn Center for Rehabilitation and Nursing  12/2013 to present
- Chestnut Park Rehabilitation and Nursing Center (Rec/Op)  06/2011 to present
- Cortland Park Rehabilitation and Nursing Center (Rec/Op)  06/2011 to present
- Colonial Park Rehabilitation and Nursing Center (Rec/Op)  06/2011 to present
- Highland Park Rehabilitation and Nursing (Rec/Op)  06/2011 to present
- Hudson Park Rehabilitation and Nursing Center (Rec/Op)  06/2011 to present
- Vestal Park Rehabilitation and Nursing Center (Rec/Op)  06/2011 to present
- Riverside Center for Rehabilitation and Nursing (Rec/Op)  03/2012 to present
- Capstone Center for Rehabilitation and Nursing (Rec/Op)  03/2012 to present
- Northeast Center for Rehabilitation and Brain Injury  11/2013 to present
- Northeast Center for Rehabilitation and Brain Injury  11/2013 to present
- Beechtree Center for Rehabilitation and Nursing (Rec/Op)  09/2013 to present
- Bridgewater Center for Dialysis  03/2012 to present

Receiverships:
- Folts Center for Rehabilitation and Nursing  10/2013 to 02/13/2015
- The Pavilion at Claxton Manor  10/2013 to 02/13/2015

Efrain Steif is a licensed Nursing Home Administrator in New York State. Mr. Steif is the President of FRS Healthcare Consultants, Inc., and formerly served as Administrator of Record at Forest View Center for Rehab and Nursing in Forest Hills from 2000 to 2005. He is a member of Upstate Services Group, LLC. Upstate Services Group is an administrative services organization providing administrative services to affiliated long term care facilities. Mr. Steif discloses the following health care facility interests:
- Bridgewater Center for Rehabilitation & Nursing (Rec/Op)  02/2005 to present
- Pine Valley Center for Rehabilitation and Nursing (Rec/Op)  12/2004 to present
- Central Park Rehabilitation and Nursing Center (Rec/Op)  11/2008 to present
- Van Duyn Center for Rehabilitation and Nursing (Rec/Op)  12/2013 to present
- Chestnut Park Rehabilitation and Nursing Center (Rec/Op)  06/2011 to present
- Cortland Park Rehabilitation and Nursing Center (Rec/Op)  06/2011 to present
- Colonial Park Rehabilitation and Nursing Center (Rec/Op)  06/2011 to present
- Highland Park Rehabilitation and Nursing (Rec/Op)  06/2011 to present
- Hudson Park Rehabilitation and Nursing Center (Rec/Op)  06/2011 to present
- Vestal Park Rehabilitation and Nursing Center (Rec/Op)  06/2011 to present
- Riverside Center for Rehabilitation and Nursing (Rec/Op)  03/2012 to present
- Capstone Center for Rehabilitation and Nursing (Rec/Op)  03/2012 to present
- Beechtree Center for Rehabilitation and Nursing (Rec/Op)  09/2013 to present
- Northeast Center for Rehabilitation and Brain Injury  11/2013 to present
- Bridgewater Center for Dialysis  03/2012 to present
- Riverside Manor Adult Care (closed)  09/2009 to 07/2010
Receiverships:
Westchester Center for Rehabilitation and Nursing  01/2003 to 12/2006
Folts Center for Rehabilitation and Nursing    10/2013 to 02/13/2015
The Pavillion at Claxton Manor     10/2013 to 02/13/2015

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

Pine Valley Center for Rehabilitation and Nursing  06/2011 to present
Central Park Rehabilitation and Nursing Center  02/2012 to present
Van Duyn Center for Rehabilitation and Nursing  12/2013 to present
Bridgewater Center for Rehabilitation and Nursing  03/2011 to present
Chestnut Park Rehabilitation and Nursing Center (Rec/Op) 06/2011 to present
Cortland Park Rehabilitation and Nursing Center (Rec/Op) 06/2011 to present
Colonial Park Rehabilitation and Nursing Center (Rec/Op) 06/2011 to present
Highland Park Rehabilitation and Nursing (Rec/Op) 06/2011 to present
Hudson Park Rehabilitation and Nursing Center (Rec/Op) 06/2011 to present
Vestal Park Rehabilitation and Nursing Center (Rec/Op) 06/2011 to present
Riverside Center for Rehabilitation and Nursing (Rec/Op) 03/2012 to present
Capstone Center for Rehabilitation and Nursing (Rec/Op) 03/2012 to present
Beechtree Center for Rehabilitation and Nursing (Rec/Op) 09/2013 to present
Northeast Center for Rehabilitation and Brain Injury 11/2013 to present
Bridgewater Center for Dialysis 03/2012 to present

Receiverships:
Folts Center for Rehabilitation and Nursing    10/2013 to 02/13/2015
The Pavillion at Claxton Manor     10/2013 to 02/13/2015

Character and Competence - Analysis
No negative information has been received concerning the character and competence of the above applicants.

A review of Bridgewater Center for Rehabilitation & Nursing, LLC for the period identified above reveals the following:
• The facility was fined $4,000 pursuant to a Stipulation and Order NH-13-016 issued May 29, 2013 for surveillance findings on July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters and 415.26(f)(3) Emergency Procedure/Drills.
• The facility incurred a Civil Monetary Penalty of $7,387.50 for the period of July 26, 2005 to August 11, 2005; and a Civil Monetary Penalty of $3,575.00 for the period of July 6, 2011 to July 6, 2011.

A review of Central Park Rehabilitation and Nursing Center for the period identified above reveals the following.
• The facility was fined $2,000 pursuant to a Stipulation and Order NH-10-064 issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.

A review of Highland Park Rehabilitation and Nursing Center for the period identified above reveals the following.
• The facility was fined $10,000 pursuant to a Stipulation and Order for surveillance findings on October 25, 2013. Deficiencies were found under 10 NYCRR 415.3e(2)(ii)(b) Notification of Significant Changes in Condition.
A review of Hudson Park Rehabilitation and Nursing Center for the period identified above reveals the following.

- The facility was fined $28,000 pursuant to a Stipulation and Order NH-15-020 for surveillance findings for surveys on March 20, 2012, February 1, 2013 and May 7, 2013. Deficiencies were cited on: March 30, 2012 for 10 NYCRR 415.15(b)(2)(iii) Physician Services: Physician Visits; March 1, 2013 for 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential, 10 NYCRR 415.12(m)(2) Quality of Care: Medication Errors, 10 NYCRR 415.26 Administration and 10 NYCRR 415.27(a-c) Administration: Quality Assessment and Assurance; May 7, 2013 for 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents.
- The facility incurred a Civil Monetary Penalty of $4,387.50 for the period of December 17, 2012 to February 1, 2013; and a Civil Monetary Penalty of $48,600 for the period of September 19, 2013 to October 28, 2013.

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

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

**Project Review**

This application proposes to establish ECRNC, LLC d/b/a Evergreen Commons as the new operator of Evergreen Commons. No changes in the program or physical environment are proposed in this application. The new operator of the facility intends to enter into an administrative services agreement with Upstate Services Group. The agreement will cover administrative services such as billing and other office support services. Upstate Services Group provides similar services to numerous affiliated long term care facilities across the state.

**Conclusion**

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

No changes in the program or physical environment are proposed in this application. A contingency for the submission of an acceptable consulting services agreement will be required.

**Recommendation**

From a programmatic perspective, contingent approval is recommended.
## Financial Analysis

**Asset Purchase Agreement**
ECRNC and 1070 Luther Road, LLC have submitted an executed Master Asset Purchase Agreement for the change in ownership of the operations and real estate related to Evergreen Commons. The agreement will become effectuated upon Public Health and Health Planning Council approval of this application. The terms of the agreement are summarized below:

<table>
<thead>
<tr>
<th>Date:</th>
<th>February 1, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seller (operations):</td>
<td>NYMED Rensselaer, LLC d/b/a Evergreen Commons</td>
</tr>
<tr>
<td>Seller (real estate):</td>
<td>Titterton Properties, LLC</td>
</tr>
<tr>
<td>Purchaser (operations):</td>
<td>ECRNC, LLC</td>
</tr>
<tr>
<td>Purchaser (real estate):</td>
<td>1070 Luther Road, LLC</td>
</tr>
</tbody>
</table>

**Purchased Assets (operations):**
All of Sellers’ rights, title and interest in the following assets: All assets owned by NYMED used in nursing home operations, including furniture, fixtures, equipment, material and supplies, contracts, leases and agreements, permits, licenses and other governmental approvals, inventory, drugs, food and other disposables or consumables, guarantees and warranties, telephone and fax numbers, e-mail addresses and internet domain names, sellers’ goodwill and business associated with the nursing home, personnel and employee records for current staff transferring to ECRNC, resident lists, files and medical records, all trade secrets, names, processes, procedures, advertising matter, sales material and correspondence, market research and surveys and marketing information, Medicaid and Medicare billing numbers and provider agreements, custody of all nursing home resident accounts including funds held in trust and any and all deposits for prepaid room and service charges.

**Excluded Assets (operations):**
Any litigation by sellers and proceeds relating to business prior to the effective date, accounts receivable generated for services provided prior to the effective date, sellers’ and nursing home’s cash on hand at effective date (other than trust funds and residents’ deposits), bank account, NYMED’s interest in moneys due from Titterton for moneys paid to Titterton for HUD reserves and escrows, HUD reserves and escrows of seller, sellers’ and nursing home’s 401(k) plan, seller’s minute books and records, tax records and tax returns, accounting records and general ledger or other books of account. All retroactive rate increases and/or lump sum payments resulting from services rendered before the effective date, all proceeds of any appeals (for rate revisions and PRI adjustments addressed to Medicare or Medicaid programs) relating to periods prior to the effective date.

**Liabilities Assumed (operations):**
N/A

**Purchased Assets (real estate):**
All seller’s right, title and interest in and to the real property, buildings and improvements located at and commonly known as 1070 Luther Road, East Greenbush, NY

**Liabilities Assumed (real estate):**
None

**Purchase Price (operations):**
$14,140,000

**Purchase Price (real estate):**
$16,500,000

**Payment of Purchase Price (operations and real estate):**
$1,000,000 Escrow deposit at execution of this agreement at closing, $25,810,000 due at closing, the remaining $3,830,000 will be paid in 120 equal monthly installments of $31,916.67 following the closing.
The purchase price inclusive of both the operations and real estate is proposed to be satisfied as follows:

- **Members' Equity (Cash)**: $2,298,000
- **Mortgage Loan for 30 years at 5.0% interest**: $24,512,000
- **Loan from NYMED Rensselaer, LLC for 10 years at 8.0% interest**: $3,830,000
- **Total**: $30,640,000

A letter of interest from Century Health Capital, Inc. for the mortgage loan at the above stated terms has been provided. A letter of interest from NYMED Rensselaer, LLC for financing at the above stated rates has been provided.

BFA Attachment A is the net worth summary for the proposed members' of ECRNC and 1070 Luther Road, LLC, which reveals sufficient resources to meet the equity requirements associated with the project.

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

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

<table>
<thead>
<tr>
<th>Premises:</th>
<th>A 240-bed RHCF located at 1070 Luther Road, East Greenbush, NY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lessor:</td>
<td>1070 Luther Road, LLC</td>
</tr>
<tr>
<td>Lessee:</td>
<td>ECRNC, LLC</td>
</tr>
<tr>
<td>Term:</td>
<td>40 years</td>
</tr>
<tr>
<td>Rental:</td>
<td>$3,239,123 annually or ($269,296.92 per month)</td>
</tr>
<tr>
<td>Provisions:</td>
<td>Lessee pays for all taxes, utilities, insurance and maintenance fees (Triple Net)</td>
</tr>
</tbody>
</table>

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

### Operating Budget
The applicant has provided an operating budget, in 2015 dollars, for year one subsequent to acquisition, summarized as follows:

<table>
<thead>
<tr>
<th>Revenues:</th>
<th>Per Diem</th>
<th>Year One</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid FFS(Inpatient)</td>
<td>$234.82</td>
<td>$14,926,777</td>
</tr>
<tr>
<td>Medicare FFS(Inpatient)</td>
<td>$378.99</td>
<td>$2,981,537</td>
</tr>
<tr>
<td>Private Pay/Other (Inpatient)</td>
<td>$344.22</td>
<td>$4,957,123</td>
</tr>
<tr>
<td>Medicare FFS(Outpatient)</td>
<td>$71.14</td>
<td>$242,648</td>
</tr>
<tr>
<td>Other (Outpatient)*</td>
<td>$521,865</td>
<td>$521,865</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$23,629,950</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenses:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating</td>
<td>$208.73</td>
<td>$17,916,465</td>
</tr>
<tr>
<td>Capital</td>
<td>$64.16</td>
<td>5,507,155</td>
</tr>
<tr>
<td>Total</td>
<td>$272.89</td>
<td>$23,423,620</td>
</tr>
</tbody>
</table>

Net income/(loss)                               | $206,330 |

Utilization (patient days)                      | 85,834   |
Occupancy 97.98%
Utilization:(PT visits) 3,411

*Other revenue consists of: cafeteria $7,681; phone/television $22,384; medical records $1,723; other misc. $56,789; physician revenue $404,775; and purchase discounts $28,513

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

- Revenue assumptions are based on the facility’s current payment rates. The applicant indicated that they embrace the concept of managed long term care and Value Based Payments and plan to enter into contracts with MLTCPs and other managed care insurers in the future. As the transition to Value Based reimbursement is projected to occur no sooner than 2020, they have based this project’s budget on the current operator’s 2015 Medicaid Regional Pricing rate and facility’s average 2014 per diem payment rates for the other payors.
- Expense assumptions are based on the historical experience of the current operator. The applicant expects to improve the facility’s bottom line going forward by reducing administrative expenses including eliminating management fees of $1,336,706 in year one and $1,329,583 in year three. The operating budget reflects a leaner, more efficient approach, due to this reduction.
- Utilization assumptions are based on historic experience plus a 3% annual increase.
- Utilization by payor source for Year One is expected as follows:

<table>
<thead>
<tr>
<th>Patient Days</th>
<th>Occupancy %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid FFS</td>
<td>63,566</td>
</tr>
<tr>
<td>Medicare FFS</td>
<td>7,867</td>
</tr>
<tr>
<td>Private Pay/Other</td>
<td>14,401</td>
</tr>
</tbody>
</table>

- Breakeven utilization is projected at 97.12% or 85,077 patient days. The facility provides outpatient physical therapy service which help to make the overall operations of the facility profitable.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price of $30,640,000 with be funded as follows: $2,298,000 equity contribution from the members of 1070 Luther Road, LLC; a $24,512,000 mortgage at the above stated terms and a loan from NYMED Rensselaer, LLC for $3,830,000 at the above stated terms. A letter of interest for the mortgage financing has been provided and a letter of interest for the seller loan financing has also been provided.

Working capital requirements for total operations are estimated at $3,903,937, based on two months of year one expenses, which appears reasonable. Working capital will be satisfied from the applicant members’ equity. BFA Attachment A is the net worth statement for the proposed operators of both ECRNC and 1070 Luther Road, LLC, which shows adequate resources to cover the working capital requirements and the equity requirements associated with this project.

BFA Attachment B is the pro-forma balance sheet of ECRNC, LLC and 1070 Luther Road, LLC, which indicates positive members’ equity of $3,903,937 for ECRNC, LLC and $2,298,000 for 1070 Luther Road, LLC.

The submitted budget projects a net income of $260,330 for year one. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment C is the 2012-2014 certified financial statements for NYMED Rensselaer, LLC, d/b/a Evergreen Commons, which shows that the facility generated an average net loss of $749,473, had an average positive net asset position, and average positive working capital position for the period. The
2012 and 2013 losses and the 2013 and 2014 negative working capital positions were due to management fees of $2,533,185 (2012), $4,046,122 (2013) and $1,852,742 (2014), respectively. Without the fees, the facility would have been profitable and would not have had a negative working capital position in 2013 and 2014. Going forward the management fee will be eliminated.

BFA Attachment E, Financial Summary of the proposed members’ affiliated nursing homes, shows that the facilities have maintained a positive net asset position and had net income from operations for the periods shown. Financial statements for the following facilities are not available as the facilities were newly acquired in 2014:

- CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center;
- RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center;
- ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center;
- JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center;
- RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing;
- CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing;
- NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury;
- HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center;
- BTRNC, LLC, d/b/a Beechtree Center for Rehabilitation and Nursing.

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

**Recommendation**

From a financial perspective, contingent approval is recommended.

---

**Attachments**

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BNHLC Attachment A</td>
<td>Quality Measures and Inspection Report</td>
</tr>
<tr>
<td>BFA Attachment A</td>
<td>Net Worth of ECRNC, LLC d/b/a Evergreen Commons Rehabilitation and Nursing Center and 1070 Luther Road, LLC Proposed Members</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Pro-forma Balance Sheet of ECRNC, LLC d/b/a Evergreen Commons Rehabilitation and Nursing Center and 1070 Luther Road, LLC</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>2012–2014 Certified Financial Summary for NYMED Rensselaer, LLC , d/b/a Evergreen Commons</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>Ownership interest proposed members’ affiliated Nursing Homes</td>
</tr>
<tr>
<td>BFA Attachment E</td>
<td>Financial Summary proposed members’ affiliated Nursing Homes</td>
</tr>
</tbody>
</table>
Evergreen Commons

The following table shows how this nursing home performs in key quality measure areas.

<table>
<thead>
<tr>
<th>Percentage of residents who...</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image" alt="Self-report moderate to severe pain (short stay)" /></td>
<td><img src="image" alt="3 out of 5 stars" /></td>
</tr>
</tbody>
</table>
| Reporting period: April 2014 to March 2015 | **8.9% This Facility**  
13.7% State average  
18.3% National average |
| ![Have pressure sores that are new or worsened](image) | ![1 out of 5 stars](image) |
| Reporting period: April 2014 to March 2015 | **2.3% This Facility**  
1.0% State average  
0.9% National average |
| ![Were given, appropriately, the seasonal influenza vaccine (short stay)](image) | ![5 out of 5 stars](image) |
| Reporting period: April 2014 to March 2015 | **97.0% This Facility**  
84.6% State average  
82.8% National average |
| ![Were given, appropriately, the pneumococcal vaccine](image) | ![4 out of 5 stars](image) |
| Reporting period: April 2014 to March 2015 | **94.3% This Facility**  
83.3% State average  
81.9% National average |
| ![Newly received an antipsychotic medication](image) | ![4 out of 5 stars](image) |
| Reporting period: April 2014 to March 2015 | **1.1% This Facility**  
2.3% State average  
2.4% National average |
| ![Needed increased help with daily activities (long stay)](image) | ![2 out of 5 stars](image) |
| Reporting period: July 2014 to March 2015 | **17.8% This Facility**  
14.4% State average  
15.6% National average |
| ![Self-report moderate to severe pain (long stay)](image) | ![3 out of 5 stars](image) |
| Reporting period: July 2014 to March 2015 | **4.5% This Facility**  
4.9% State average  
7.4% National average |
| ![Have pressure sores (long stay)](image) | ![4 out of 5 stars](image) |
| Reporting period: July 2014 to March 2015 | **4.8% This Facility**  
7.5% State average  
5.9% National average |

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Measure</th>
<th>Reporting Period: July 2014 to March 2015</th>
<th>This Facility %</th>
<th>State Average %</th>
<th>National Average %</th>
<th>Star Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lose too much weight (long stay)</td>
<td></td>
<td>7.0%</td>
<td>6.1%</td>
<td>7.0%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Lose control of their bowels or bladder (long stay, low risk)</td>
<td></td>
<td>56.7%</td>
<td>45.7%</td>
<td>45.0%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Had a catheter inserted and left in their bladder (long stay)</td>
<td></td>
<td>2.5%</td>
<td>2.6%</td>
<td>3.1%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Had a urinary tract infection (long stay)</td>
<td></td>
<td>5.5%</td>
<td>5.6%</td>
<td>5.7%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Have depressive symptoms (long stay)</td>
<td></td>
<td>1.3%</td>
<td>11.4%</td>
<td>6.0%</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Were physically restrained (long stay)</td>
<td></td>
<td>3.2%</td>
<td>1.5%</td>
<td>1.1%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Experienced one or more falls with major injury (long stay)</td>
<td></td>
<td>3.0%</td>
<td>2.7%</td>
<td>3.2%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the seasonal influenza vaccine (long stay)</td>
<td></td>
<td>99.3%</td>
<td>94.8%</td>
<td>92.6%</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the pneumococcal vaccine (long stay)</td>
<td></td>
<td>98.8%</td>
<td>96.7%</td>
<td>93.8%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Received an antipsychotic medication (long stay)</td>
<td></td>
<td>13.0%</td>
<td>17.6%</td>
<td>19.2%</td>
<td>4 out of 5 stars</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
Evergreen Commons

Inspection Report

PFI: 7268
Regional Office: Capital District Regional Office

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>57</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>63</td>
<td>35</td>
</tr>
<tr>
<td>Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>% of Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>3%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Bridgewater Center for Rehabilitation & Nursing, LLC

The following table shows how this nursing home performs in key quality measure areas. For important information on the meaning of quality measures or how rankings are determined, click the associated symbol.

<table>
<thead>
<tr>
<th>Percentage of residents who...</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>🎫Self-report moderate to severe pain (short stay)</td>
<td>🌟1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>26.7% This Facility</td>
<td></td>
</tr>
<tr>
<td>13.7% State average</td>
<td></td>
</tr>
<tr>
<td>18.3% National average</td>
<td></td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Event</th>
<th>Reporting Period</th>
<th>This Facility</th>
<th>State Average</th>
<th>National Average</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Have pressure sores that are new or worsened</td>
<td>April 2014 to March 2015</td>
<td>0.8%</td>
<td>1.0%</td>
<td>0.9%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the seasonal influenza vaccine (short stay)</td>
<td>April 2014 to March 2015</td>
<td>81.2%</td>
<td>84.6%</td>
<td>82.8%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the pneumococcal vaccine</td>
<td>April 2014 to March 2015</td>
<td>82.1%</td>
<td>83.3%</td>
<td>81.9%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Newly received an antipsychotic medication</td>
<td>April 2014 to March 2015</td>
<td>3.0%</td>
<td>2.3%</td>
<td>2.4%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Needed increased help with daily activities (long stay)</td>
<td>July 2014 to March 2015</td>
<td>14.2%</td>
<td>14.4%</td>
<td>15.6%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Self-report moderate to severe pain (long stay)</td>
<td>July 2014 to March 2015</td>
<td>9.3%</td>
<td>4.9%</td>
<td>7.4%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Have pressure sores (long stay)</td>
<td>July 2014 to March 2015</td>
<td>6.2%</td>
<td>7.5%</td>
<td>5.9%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Lose too much weight (long stay)</td>
<td>July 2014 to March 2015</td>
<td>10.1%</td>
<td>6.1%</td>
<td>7.0%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Lose control of their bowels or bladder (long stay, low risk)</td>
<td>July 2014 to March 2015</td>
<td>40.5%</td>
<td>45.7%</td>
<td>45.0%</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Had a catheter inserted and left in their bladder (long stay)</td>
<td>July 2014 to March 2015</td>
<td>5.0%</td>
<td>2.6%</td>
<td>3.1%</td>
<td>1 out of 5 stars</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
### Had a urinary tract infection (long stay)
Reporting period: July 2014 to March 2015
- **6.8% This Facility**
- **5.6% State average**
- **5.7% National average**

### Have depressive symptoms (long stay)
Reporting period: July 2014 to March 2015
- **0.2% This Facility**
- **11.4% State average**
- **6.0% National average**

### Were physically restrained (long stay)
Reporting period: July 2014 to March 2015
- **2.4% This Facility**
- **1.5% State average**
- **1.1% National average**

### Experienced one or more falls with major injury (long stay)
Reporting period: July 2014 to March 2015
- **5.9% This Facility**
- **2.7% State average**
- **3.2% National average**

### Were given, appropriately, the seasonal influenza vaccine (long stay)
Reporting period: July 2014 to March 2015
- **97.9% This Facility**
- **94.8% State average**
- **92.6% National average**

### Were given, appropriately, the pneumococcal vaccine (long stay)
Reporting period: July 2014 to March 2015
- **97.6% This Facility**
- **96.7% State average**
- **93.8% National average**

### Received an antipsychotic medication (long stay)
Reporting period: July 2014 to March 2015
- **28.0% This Facility**
- **17.6% State average**
- **19.2% National average**

---

**Bridgewater Center for Rehabilitation & Nursing, LLC**

**Inspection Report**

**Report Period: August 2011 to July 2015**

PFI: 0050
Regional Office: Central New York Regional Office

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

**Summary**

Source: NYS Department of Health website, Nursing Home Profile
This table summarizes the citations in the details section of this report and compares them against the statewide average.

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>37</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>48</td>
<td>35</td>
</tr>
<tr>
<td>Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>% of Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>0%</td>
<td>3%</td>
</tr>
</tbody>
</table>

**Pine Valley Center for Rehabilitation and Nursing**

The following table shows how this nursing home performs in key quality measure areas.

<table>
<thead>
<tr>
<th>Percentage of residents who...</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>🎓Self-report moderate to severe pain (short stay)</td>
<td>🌟🌟🌟</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>12.9% This Facility</td>
<td></td>
</tr>
<tr>
<td>13.7% State average</td>
<td></td>
</tr>
<tr>
<td>18.3% National average</td>
<td></td>
</tr>
</tbody>
</table>

| 🎓Have pressure sores that are new or worsened                      | 🌟🌟🌟🌟             |
| Reporting period: April 2014 to March 2015                          | 5 out of 5 stars    |
| 0.1% This Facility                                                  |                     |
| 1.0% State average                                                 |                     |
| 0.9% National average                                               |                     |

| 🎓Were given, appropriately, the seasonal influenza vaccine (short stay) | 🌟🌟🌟               |
| Reporting period: April 2014 to March 2015                          | 3 out of 5 stars    |
| 87.6% This Facility                                                 |                     |
| 84.6% State average                                                |                     |
| 82.8% National average                                             |                     |

| 🎓Were given, appropriately, the pneumococcal vaccine               | 🌟                  |
| Reporting period: April 2014 to March 2015                          | 1 out of 5 stars    |
| 62.8% This Facility                                                 |                     |
| 83.3% State average                                                |                     |
| 81.9% National average                                             |                     |

Source: NYS Department of Health website, Nursing Home Profile
| **Newly received an antipsychotic medication** | 3 out of 5 stars |
| Reporting period: April 2014 to March 2015 | |
| 1.8% This Facility | 2.3% State average | 2.4% National average |

| **Needed increased help with daily activities (long stay)** | |
| Reporting period: July 2014 to March 2015 | 3 out of 5 stars |
| 13.7% This Facility | 14.4% State average | 15.6% National average |

| **Self-report moderate to severe pain (long stay)** | |
| Reporting period: July 2014 to March 2015 | 3 out of 5 stars |
| 3.8% This Facility | 4.9% State average | 7.4% National average |

| **Have pressure sores (long stay)** | |
| Reporting period: July 2014 to March 2015 | 4 out of 5 stars |
| 5.3% This Facility | 7.5% State average | 5.9% National average |

| **Lose too much weight (long stay)** | |
| Reporting period: July 2014 to March 2015 | 4 out of 5 stars |
| 3.9% This Facility | 6.1% State average | 7.0% National average |

| **Lose control of their bowels or bladder (long stay, low risk)** | 2 out of 5 stars |
| Reporting period: July 2014 to March 2015 | |
| 60.1% This Facility | 45.7% State average | 45.0% National average |

| **Had a catheter inserted and left in their bladder (long stay)** | 1 out of 5 stars |
| Reporting period: July 2014 to March 2015 | |
| 4.8% This Facility | 2.6% State average | 3.1% National average |

| **Had a urinary tract infection (long stay)** | 2 out of 5 stars |
| Reporting period: July 2014 to March 2015 | |
| 8.2% This Facility | 5.6% State average | 5.7% National average |

| **Have depressive symptoms (long stay)** | 3 out of 5 stars |
| Reporting period: July 2014 to March 2015 | |
| 4.8% This Facility | 11.4% State average | 6.0% National average |

| **Were physically restrained (long stay)** | 3 out of 5 stars |
| Reporting period: July 2014 to March 2015 | |
| 0.2% This Facility | 1.5% State average | 1.1% National average |

| **Experienced one or more falls with major injury (long stay)** | |
| Reporting period: July 2014 to March 2015 | |

Source: NYS Department of Health website, Nursing Home Profile
Were given, appropriately, the seasonal influenza vaccine (long stay)
Reporting period: July 2014 to March 2015
- 94.8% This Facility
- 92.6% National average

Were given, appropriately, the pneumococcal vaccine (long stay)
Reporting period: July 2014 to March 2015
- 95.3% This Facility
- 93.8% National average

Received an antipsychotic medication (long stay)
Reporting period: July 2014 to March 2015
- 20.4% This Facility
- 19.2% National average

---

**Pine Valley Center for Rehabilitation and Nursing**

**Inspection Report**

**Report Period: August 2011 to July 2015**

PFI: 0778
Regional Office: MARO--New Rochelle Area Office

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

**Summary**

This table summarizes the citations in the details section of this report and compares them against the statewide average.

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>22</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>21</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>43</td>
<td>35</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
### Central Park Rehabilitation and Nursing Center

The following table shows how this nursing home performs in key quality measure areas.

<table>
<thead>
<tr>
<th>Percentage of residents who...</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image" alt="Self-report moderate to severe pain (short stay)" /> Reporting period: April 2014 to March 2015</td>
<td><img src="image" alt="4 out of 5 stars" /> 4 out of 5 stars</td>
</tr>
<tr>
<td><img src="image" alt="Have pressure sores that are new or worsened" /> Reporting period: April 2014 to March 2015</td>
<td><img src="image" alt="5 out of 5 stars" /> 5 out of 5 stars</td>
</tr>
<tr>
<td><img src="image" alt="Were given, appropriately, the seasonal influenza vaccine (short stay)" /> Reporting period: April 2014 to March 2015</td>
<td><img src="image" alt="3 out of 5 stars" /> 3 out of 5 stars</td>
</tr>
<tr>
<td><img src="image" alt="Were given, appropriately, the pneumococcal vaccine" /> Reporting period: April 2014 to March 2015</td>
<td><img src="image" alt="3 out of 5 stars" /> 3 out of 5 stars</td>
</tr>
<tr>
<td><img src="image" alt="Newly received an antipsychotic medication" /> Reporting period: April 2014 to March 2015</td>
<td><img src="image" alt="1 out of 5 stars" /> 1 out of 5 stars</td>
</tr>
<tr>
<td><img src="image" alt="Needed increased help with daily activities (long stay)" /> Reporting period: July 2014 to March 2015</td>
<td><img src="image" alt="2 out of 5 stars" /> 2 out of 5 stars</td>
</tr>
<tr>
<td><img src="image" alt="Self-report moderate to severe pain (long stay)" /> Reporting period: July 2014 to March 2015</td>
<td><img src="image" alt="4 out of 5 stars" /> 4 out of 5 stars</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Condition</th>
<th>This Facility %</th>
<th>State Average %</th>
<th>National Average %</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Have pressure sores (long stay)</td>
<td>1.2%</td>
<td>4.9%</td>
<td>7.4%</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>Lose too much weight (long stay)</td>
<td>4.9%</td>
<td>7.5%</td>
<td>5.9%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Lose control of their bowels or bladder (long stay, low risk)</td>
<td>7.5%</td>
<td>6.1%</td>
<td>7.0%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Had a catheter inserted and left in their bladder (long stay)</td>
<td>1.6%</td>
<td>2.6%</td>
<td>3.1%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Had a urinary tract infection (long stay)</td>
<td>2.7%</td>
<td>5.6%</td>
<td>5.7%</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>Have depressive symptoms (long stay)</td>
<td>11.6%</td>
<td>11.4%</td>
<td>6.0%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Were physically restrained (long stay)</td>
<td>0.5%</td>
<td>1.5%</td>
<td>1.1%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Experienced one or more falls with major injury (long stay)</td>
<td>1.4%</td>
<td>2.7%</td>
<td>3.2%</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the seasonal influenza vaccine (long stay)</td>
<td>99.1%</td>
<td>94.8%</td>
<td>92.6%</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the pneumococcal vaccine (long stay)</td>
<td>78.5%</td>
<td>79.2%</td>
<td>78.3%</td>
<td>3 out of 5 stars</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
Central Park Rehabilitation and Nursing Center

Inspection Report

PFI: 0654
Regional Office: Central New York Regional Office

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>40</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>50</td>
<td>35</td>
</tr>
<tr>
<td>Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>% of Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>4%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Van Duyn Center for Rehabilitation and Nursing

The following table shows how this nursing home performs in key quality measure areas.

Source: NYS Department of Health website, Nursing Home Profile
### Percentage of residents who...

<table>
<thead>
<tr>
<th>Event</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Self-report moderate to severe pain (short stay)</strong></td>
<td><img src="https://www.example.com/star-rating/1" alt="" /> 1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>24.4% This Facility</td>
<td></td>
</tr>
<tr>
<td>13.7% State average</td>
<td></td>
</tr>
<tr>
<td>18.3% National average</td>
<td></td>
</tr>
<tr>
<td><strong>Have pressure sores that are new or worsened</strong></td>
<td><img src="https://www.example.com/star-rating/1" alt="" /> 1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>2.1% This Facility</td>
<td></td>
</tr>
<tr>
<td>1.0% State average</td>
<td></td>
</tr>
<tr>
<td>0.9% National average</td>
<td></td>
</tr>
<tr>
<td><strong>Were given, appropriately, the seasonal influenza vaccine (short stay)</strong></td>
<td><img src="https://www.example.com/star-rating/3" alt="" /> 3 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>87.4% This Facility</td>
<td></td>
</tr>
<tr>
<td>84.6% State average</td>
<td></td>
</tr>
<tr>
<td>82.8% National average</td>
<td></td>
</tr>
<tr>
<td><strong>Were given, appropriately, the pneumococcal vaccine</strong></td>
<td><img src="https://www.example.com/star-rating/2" alt="" /> 2 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>80.8% This Facility</td>
<td></td>
</tr>
<tr>
<td>83.3% State average</td>
<td></td>
</tr>
<tr>
<td>81.9% National average</td>
<td></td>
</tr>
<tr>
<td><strong>Newly received an antipsychotic medication</strong></td>
<td><img src="https://www.example.com/star-rating/4" alt="" /> 4 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>0.6% This Facility</td>
<td></td>
</tr>
<tr>
<td>2.3% State average</td>
<td></td>
</tr>
<tr>
<td>2.4% National average</td>
<td></td>
</tr>
<tr>
<td><strong>Needed increased help with daily activities (long stay)</strong></td>
<td><img src="https://www.example.com/star-rating/2" alt="" /> 2 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>15.7% This Facility</td>
<td></td>
</tr>
<tr>
<td>14.4% State average</td>
<td></td>
</tr>
<tr>
<td>15.6% National average</td>
<td></td>
</tr>
<tr>
<td><strong>Self-report moderate to severe pain (long stay)</strong></td>
<td><img src="https://www.example.com/star-rating/1" alt="" /> 1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>11.1% This Facility</td>
<td></td>
</tr>
<tr>
<td>4.9% State average</td>
<td></td>
</tr>
<tr>
<td>7.4% National average</td>
<td></td>
</tr>
<tr>
<td><strong>Have pressure sores (long stay)</strong></td>
<td><img src="https://www.example.com/star-rating/4" alt="" /> 4 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>5.7% This Facility</td>
<td></td>
</tr>
<tr>
<td>7.5% State average</td>
<td></td>
</tr>
<tr>
<td>5.9% National average</td>
<td></td>
</tr>
<tr>
<td>** Lose too much weight (long stay)**</td>
<td><img src="https://www.example.com/star-rating/1" alt="" /> 1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>10.0% This Facility</td>
<td></td>
</tr>
<tr>
<td>6.1% State average</td>
<td></td>
</tr>
<tr>
<td>7.0% National average</td>
<td></td>
</tr>
<tr>
<td>** Lose control of their bowels or bladder (long stay, low risk)**</td>
<td><img src="https://www.example.com/star-rating/1" alt="" /> 1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td></td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
66.4% This Facility  
45.7% State average  
45.0% National average

Had a catheter inserted and left in their bladder (long stay)  
Reporting period: July 2014 to March 2015  
3.9% This Facility  
2.6% State average  
3.1% National average  
1 out of 5 stars

Had a urinary tract infection (long stay)  
Reporting period: July 2014 to March 2015  
4.3% This Facility  
5.6% State average  
5.7% National average  
3 out of 5 stars

Have depressive symptoms (long stay)  
Reporting period: July 2014 to March 2015  
5.6% This Facility  
11.4% State average  
6.0% National average  
3 out of 5 stars

Were physically restrained (long stay)  
Reporting period: July 2014 to March 2015  
4.5% This Facility  
1.5% State average  
1.1% National average  
1 out of 5 stars

Experienced one or more falls with major injury (long stay)  
Reporting period: July 2014 to March 2015  
2.2% This Facility  
2.7% State average  
3.2% National average  
3 out of 5 stars

Were given, appropriately, the seasonal influenza vaccine (long stay)  
Reporting period: July 2014 to March 2015  
97.6% This Facility  
94.8% State average  
92.6% National average  
3 out of 5 stars

Were given, appropriately, the pneumococcal vaccine (long stay)  
Reporting period: July 2014 to March 2015  
98.6% This Facility  
96.7% State average  
93.8% National average  
3 out of 5 stars

Received an antipsychotic medication (long stay)  
Reporting period: July 2014 to March 2015  
15.0% This Facility  
17.6% State average  
19.2% National average  
3 out of 5 stars

Van Duyn Center for Rehabilitation and Nursing  
Inspection Report  

Source: NYS Department of Health website, Nursing Home Profile
This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

**Summary**

This table summarizes the citations in the details section of this report and compares them against the statewide average.

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>89</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>13</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>102</td>
<td>35</td>
</tr>
<tr>
<td>Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>% of Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>4%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
Chestnut Park Rehabilitation and Nursing Center

The following table shows how this nursing home performs in key quality measure areas.

<table>
<thead>
<tr>
<th>Percentage of residents who...</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="https://example.com" alt="Self-report moderate to severe pain (short stay)" /> Reporting period: April 2014 to March 2015 14.4% This Facility 13.7% State average 18.3% National average</td>
<td><img src="https://example.com" alt="3 out of 5 stars" /></td>
</tr>
<tr>
<td><img src="https://example.com" alt="Have pressure sores that are new or worsened" /> Reporting period: April 2014 to March 2015 2.3% This Facility 1.0% State average 0.9% National average</td>
<td><img src="https://example.com" alt="1 out of 5 stars" /></td>
</tr>
<tr>
<td><img src="https://example.com" alt="Were given, appropriately, the seasonal influenza vaccine (short stay)" /> Reporting period: April 2014 to March 2015 86.3% This Facility 84.6% State average 82.8% National average</td>
<td><img src="https://example.com" alt="3 out of 5 stars" /></td>
</tr>
<tr>
<td><img src="https://example.com" alt="Were given, appropriately, the pneumococcal vaccine" /> Reporting period: April 2014 to March 2015 86.8% This Facility 83.3% State average 81.9% National average</td>
<td><img src="https://example.com" alt="3 out of 5 stars" /></td>
</tr>
<tr>
<td><img src="https://example.com" alt="Newly received an antipsychotic medication" /> Reporting period: April 2014 to March 2015 0.9% This Facility 2.3% State average 2.4% National average</td>
<td><img src="https://example.com" alt="4 out of 5 stars" /></td>
</tr>
<tr>
<td><img src="https://example.com" alt="Needed increased help with daily activities (long stay)" /> Reporting period: July 2014 to March 2015 15.3% This Facility 14.4% State average 15.6% National average</td>
<td><img src="https://example.com" alt="3 out of 5 stars" /></td>
</tr>
<tr>
<td><img src="https://example.com" alt="Self-report moderate to severe pain (long stay)" /> Reporting period: July 2014 to March 2015 4.3% This Facility 4.9% State average 7.4% National average</td>
<td><img src="https://example.com" alt="3 out of 5 stars" /></td>
</tr>
<tr>
<td><img src="https://example.com" alt="Have pressure sores (long stay)" /> Reporting period: July 2014 to March 2015 8.3% This Facility 7.5% State average 5.9% National average</td>
<td><img src="https://example.com" alt="2 out of 5 stars" /></td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Measure</th>
<th>Reporting Period</th>
<th>This Facility</th>
<th>State Average</th>
<th>National Average</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lose too much weight (long stay)</td>
<td>July 2014 to March 2015</td>
<td>11.1%</td>
<td>6.1%</td>
<td>7.0%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Lose control of their bowels or bladder (long stay, low risk)</td>
<td>July 2014 to March 2015</td>
<td>63.8%</td>
<td>45.7%</td>
<td>45.0%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Had a catheter inserted and left in their bladder (long stay)</td>
<td>July 2014 to March 2015</td>
<td>4.3%</td>
<td>2.6%</td>
<td>3.1%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Had a urinary tract infection (long stay)</td>
<td>July 2014 to March 2015</td>
<td>3.2%</td>
<td>5.6%</td>
<td>5.7%</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Have depressive symptoms (long stay)</td>
<td>July 2014 to March 2015</td>
<td>0.0%</td>
<td>11.4%</td>
<td>6.0%</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>Were physically restrained (long stay)</td>
<td>July 2014 to March 2015</td>
<td>1.6%</td>
<td>1.5%</td>
<td>1.1%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Experienced one or more falls with major injury (long stay)</td>
<td>July 2014 to March 2015</td>
<td>1.0%</td>
<td>2.7%</td>
<td>3.2%</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the seasonal influenza vaccine (long stay)</td>
<td>July 2014 to March 2015</td>
<td>89.5%</td>
<td>94.8%</td>
<td>92.6%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the pneumococcal vaccine (long stay)</td>
<td>July 2014 to March 2015</td>
<td>100.0%</td>
<td>96.7%</td>
<td>93.8%</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>Received an antipsychotic medication (long stay)</td>
<td>July 2014 to March 2015</td>
<td>21.9%</td>
<td>17.6%</td>
<td>19.2%</td>
<td>2 out of 5 stars</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
Chestnut Park Rehabilitation and Nursing Center

Inspection Report

PFI: 0743
Regional Office: Capital District Regional Office

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>29</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>9</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>38</td>
<td>35</td>
</tr>
<tr>
<td>Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>% of Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>0%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Cortland Park Rehabilitation and Nursing Center

The following table shows how this nursing home performs in key quality measure areas.

<table>
<thead>
<tr>
<th>Percentage of residents who...</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self-report moderate to severe pain (short stay)</td>
<td>🌟🌟🌟🌟</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>7.0% This Facility</td>
<td></td>
</tr>
<tr>
<td>13.7% State average</td>
<td></td>
</tr>
<tr>
<td>18.3% National average</td>
<td></td>
</tr>
<tr>
<td>4 out of 5 stars</td>
<td></td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Measure</th>
<th>Reporting Period</th>
<th>Facility Rate</th>
<th>State Average</th>
<th>National Average</th>
<th>Stars</th>
</tr>
</thead>
<tbody>
<tr>
<td>Have pressure sores that are new or worsened</td>
<td>April 2014 to March 2015</td>
<td>0.9%</td>
<td>1.0%</td>
<td>0.9%</td>
<td>3 out of 5</td>
</tr>
<tr>
<td>Were given, appropriately, the seasonal influenza vaccine (short stay)</td>
<td>April 2014 to March 2015</td>
<td>87.0%</td>
<td>84.6%</td>
<td>82.8%</td>
<td>3 out of 5</td>
</tr>
<tr>
<td>Were given, appropriately, the pneumococcal vaccine</td>
<td>April 2014 to March 2015</td>
<td>80.4%</td>
<td>83.3%</td>
<td>81.9%</td>
<td>2 out of 5</td>
</tr>
<tr>
<td>Newly received an antipsychotic medication</td>
<td>April 2014 to March 2015</td>
<td>1.3%</td>
<td>2.3%</td>
<td>2.4%</td>
<td>4 out of 5</td>
</tr>
<tr>
<td>Needed increased help with daily activities (long stay)</td>
<td>July 2014 to March 2015</td>
<td>20.0%</td>
<td>14.4%</td>
<td>15.6%</td>
<td>1 out of 5</td>
</tr>
<tr>
<td>Self-report moderate to severe pain (long stay)</td>
<td>July 2014 to March 2015</td>
<td>2.1%</td>
<td>4.9%</td>
<td>7.4%</td>
<td>4 out of 5</td>
</tr>
<tr>
<td>Have pressure sores (long stay)</td>
<td>July 2014 to March 2015</td>
<td>1.8%</td>
<td>7.5%</td>
<td>5.9%</td>
<td>5 out of 5</td>
</tr>
<tr>
<td>Lose too much weight (long stay)</td>
<td>July 2014 to March 2015</td>
<td>11.0%</td>
<td>6.1%</td>
<td>7.0%</td>
<td>1 out of 5</td>
</tr>
<tr>
<td>Lose control of their bowels or bladder (long stay, low risk)</td>
<td>July 2014 to March 2015</td>
<td>60.8%</td>
<td>45.7%</td>
<td>45.0%</td>
<td>2 out of 5</td>
</tr>
<tr>
<td>Had a catheter inserted and left in their bladder (long stay)</td>
<td>July 2014 to March 2015</td>
<td>0.5%</td>
<td>2.6%</td>
<td>3.1%</td>
<td>5 out of 5</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
Had a urinary tract infection (long stay)
Reporting period: July 2014 to March 2015
6.2% This Facility
5.6% State average
5.7% National average
2 out of 5 stars

Have depressive symptoms (long stay)
Reporting period: July 2014 to March 2015
2.9% This Facility
11.4% State average
6.0% National average
3 out of 5 stars

Were physically restrained (long stay)
Reporting period: July 2014 to March 2015
0.0% This Facility
1.5% State average
1.1% National average
5 out of 5 stars

Experienced one or more falls with major injury (long stay)
Reporting period: July 2014 to March 2015
3.3% This Facility
2.7% State average
3.2% National average
2 out of 5 stars

Were given, appropriately, the seasonal influenza vaccine (long stay)
Reporting period: July 2014 to March 2015
99.3% This Facility
94.8% State average
92.6% National average
5 out of 5 stars

Were given, appropriately, the pneumococcal vaccine (long stay)
Reporting period: July 2014 to March 2015
88.9% This Facility
96.7% State average
93.8% National average
1 out of 5 stars

Received an antipsychotic medication (long stay)
Reporting period: July 2014 to March 2015
14.7% This Facility
17.6% State average
19.2% National average
3 out of 5 stars

Cortland Park Rehabilitation and Nursing Center

Inspection Report

PFI: 0160
Regional Office: Central New York Regional Office

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

Source: NYS Department of Health website, Nursing Home Profile
This table summarizes the citations in the details section of this report and compares them against the statewide average.

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>32</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>42</td>
<td>35</td>
</tr>
<tr>
<td>Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>% of Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>0%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Colonial Park Rehabilitation and Nursing Center

The following table shows how this nursing home performs in key quality measure areas.

<table>
<thead>
<tr>
<th>Percentage of residents who...</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>🎆Self-report moderate to severe pain (short stay)</td>
<td>🟢🟦</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>12.5% This Facility</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>13.7% State average</td>
<td></td>
</tr>
<tr>
<td>18.3% National average</td>
<td></td>
</tr>
<tr>
<td>🎆Have pressure sores that are new or worsened</td>
<td>🟢</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>3.0% This Facility</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>1.0% State average</td>
<td></td>
</tr>
<tr>
<td>0.9% National average</td>
<td></td>
</tr>
<tr>
<td>🎆Were given, appropriately, the seasonal influenza vaccine (short stay)</td>
<td>🟢🟦🟦</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>98.7% This Facility</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>84.6% State average</td>
<td></td>
</tr>
<tr>
<td>82.8% National average</td>
<td></td>
</tr>
<tr>
<td>🎆Were given, appropriately, the pneumococcal vaccine</td>
<td>🟢🟦</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>98.9% This Facility</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>83.3% State average</td>
<td></td>
</tr>
<tr>
<td>81.9% National average</td>
<td></td>
</tr>
<tr>
<td>Issue</td>
<td>Reporting Period</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>Newly received an antipsyhcotic medication</td>
<td>April 2014 to March 2015</td>
</tr>
<tr>
<td>Needed increased help with daily activities (long stay)</td>
<td>July 2014 to March 2015</td>
</tr>
<tr>
<td>Self-report moderate to severe pain (long stay)</td>
<td>July 2014 to March 2015</td>
</tr>
<tr>
<td>Have pressure sores (long stay)</td>
<td>July 2014 to March 2015</td>
</tr>
<tr>
<td>Lose too much weight (long stay)</td>
<td>July 2014 to March 2015</td>
</tr>
<tr>
<td>Lose control of their bowels or bladder (long stay, low risk)</td>
<td>July 2014 to March 2015</td>
</tr>
<tr>
<td>Had a catheter inserted and left in their bladder (long stay)</td>
<td>July 2014 to March 2015</td>
</tr>
<tr>
<td>Had a urinary tract infection (long stay)</td>
<td>July 2014 to March 2015</td>
</tr>
<tr>
<td>Have depressive symptoms (long stay)</td>
<td>July 2014 to March 2015</td>
</tr>
<tr>
<td>Were physically restrained (long stay)</td>
<td>July 2014 to March 2015</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
Experienced one or more falls with major injury (long stay)
Reporting period: July 2014 to March 2015
0.9% This Facility
2.7% State average
3.2% National average

Were given, appropriately, the seasonal influenza vaccine (long stay)
Reporting period: July 2014 to March 2015
100.0% This Facility
94.8% State average
92.6% National average

Were given, appropriately, the pneumococcal vaccine (long stay)
Reporting period: July 2014 to March 2015
100.0% This Facility
96.7% State average
93.8% National average

Received an antipsychotic medication (long stay)
Reporting period: July 2014 to March 2015
16.1% This Facility
17.6% State average
19.2% National average

Colonial Park Rehabilitation and Nursing Center

Inspection Report

PFI: 0592
Regional Office: Central New York Regional Office

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>41</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>51</td>
<td>35</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>% of Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>2%</td>
<td>3%</td>
</tr>
</tbody>
</table>

**Highland Park Rehabilitation and Nursing Center**

The following table shows how this nursing home performs in key quality measure areas.

<table>
<thead>
<tr>
<th>Percentage of residents who...</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>🚫Self-report moderate to severe pain (short stay)</td>
<td>🏷️ 3 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>13.0% This Facility</td>
<td></td>
</tr>
<tr>
<td>13.7% State average</td>
<td></td>
</tr>
<tr>
<td>18.3% National average</td>
<td></td>
</tr>
<tr>
<td>🚫Have pressure sores that are new or worsened</td>
<td>🏷️ 4 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>0.4% This Facility</td>
<td></td>
</tr>
<tr>
<td>1.0% State average</td>
<td></td>
</tr>
<tr>
<td>0.9% National average</td>
<td></td>
</tr>
<tr>
<td>🚫Were given, appropriately, the seasonal influenza vaccine (short stay)</td>
<td>🏷️ 3 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>89.2% This Facility</td>
<td></td>
</tr>
<tr>
<td>84.6% State average</td>
<td></td>
</tr>
<tr>
<td>82.8% National average</td>
<td></td>
</tr>
<tr>
<td>🚫Were given, appropriately, the pneumococcal vaccine</td>
<td>🏷️ 4 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>95.3% This Facility</td>
<td></td>
</tr>
<tr>
<td>83.3% State average</td>
<td></td>
</tr>
<tr>
<td>81.9% National average</td>
<td></td>
</tr>
<tr>
<td>🚫Newly received an antipsychotic medication</td>
<td>🏷️ 1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>6.2% This Facility</td>
<td></td>
</tr>
<tr>
<td>2.3% State average</td>
<td></td>
</tr>
<tr>
<td>2.4% National average</td>
<td></td>
</tr>
<tr>
<td>🚫Needed increased help with daily activities (long stay)</td>
<td>🏷️ 3 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>12.6% This Facility</td>
<td></td>
</tr>
<tr>
<td>14.4% State average</td>
<td></td>
</tr>
<tr>
<td>15.6% National average</td>
<td></td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Quality Measure</th>
<th>Reporting Period</th>
<th>This Facility</th>
<th>State Average</th>
<th>National Average</th>
<th>Stars</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self-report moderate to severe pain (long stay)</td>
<td>July 2014 to March 2015</td>
<td>12.3%</td>
<td>4.0%</td>
<td>7.4%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Have pressure sores (long stay)</td>
<td>July 2014 to March 2015</td>
<td>7.2%</td>
<td>7.5%</td>
<td>5.9%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Lose too much weight (long stay)</td>
<td>July 2014 to March 2015</td>
<td>5.7%</td>
<td>6.1%</td>
<td>7.0%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Lose control of their bowels or bladder (long stay, low risk)</td>
<td>July 2014 to March 2015</td>
<td>52.9%</td>
<td>45.7%</td>
<td>45.0%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Had a catheter inserted and left in their bladder (long stay)</td>
<td>July 2014 to March 2015</td>
<td>1.6%</td>
<td>2.6%</td>
<td>3.1%</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Had a urinary tract infection (long stay)</td>
<td>July 2014 to March 2015</td>
<td>2.9%</td>
<td>5.6%</td>
<td>5.7%</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Have depressive symptoms (long stay)</td>
<td>July 2014 to March 2015</td>
<td>3.4%</td>
<td>11.4%</td>
<td>6.0%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Were physically restrained (long stay)</td>
<td>July 2014 to March 2015</td>
<td>0.0%</td>
<td>1.5%</td>
<td>1.1%</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>Experienced one or more falls with major injury (long stay)</td>
<td>July 2014 to March 2015</td>
<td>1.4%</td>
<td>2.7%</td>
<td>3.2%</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the seasonal influenza vaccine (long stay)</td>
<td>July 2014 to March 2015</td>
<td>87.3%</td>
<td>94.8%</td>
<td>92.6%</td>
<td>1 out of 5 stars</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
Were given, appropriately, the pneumococcal vaccine (long stay)
Reporting period: July 2014 to March 2015
100.0% This Facility
96.7% State average
93.8% National average
5 out of 5 stars

Received an antipsychotic medication (long stay)
Reporting period: July 2014 to March 2015
27.8% This Facility
17.6% State average
19.2% National average
1 out of 5 stars

Highland Park Rehabilitation and Nursing Center

Inspection Report

PFI: 0041
Regional Office: WRO--Buffalo Area Office

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>19</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>31</td>
<td>35</td>
</tr>
<tr>
<td>Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>% of Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>3%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
### Hudson Park Rehabilitation and Nursing Center

The following table shows how this nursing home performs in key quality measure areas.

<table>
<thead>
<tr>
<th>Percentage of residents who...</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>🔄Self-report moderate to severe pain (short stay)</td>
<td>🌟🌟🌟</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>13.4% This Facility</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>13.7% State average</td>
<td></td>
</tr>
<tr>
<td>18.3% National average</td>
<td></td>
</tr>
</tbody>
</table>

| 🔄Have pressure sores that are new or worsened | 🌟🌟 |
| Reporting period: April 2014 to March 2015 | |
| 1.4% This Facility | 2 out of 5 stars |
| 1.0% State average | |
| 0.9% National average | |

| 🔄Were given, appropriately, the seasonal influenza vaccine (short stay) | 🌟🌟🌟 |
| Reporting period: April 2014 to March 2015 | |
| 87.2% This Facility | 3 out of 5 stars |
| 84.6% State average | |
| 82.8% National average | |

| 🔄Were given, appropriately, the pneumococcal vaccine | 🌟🌟🌟 |
| Reporting period: April 2014 to March 2015 | |
| 86.7% This Facility | 3 out of 5 stars |
| 83.3% State average | |
| 81.9% National average | |

| 🔄Newly received an antipsychotic medication | 🌟🌟🌟 |
| Reporting period: April 2014 to March 2015 | |
| 1.6% This Facility | 3 out of 5 stars |
| 2.3% State average | |
| 2.4% National average | |

| 🔄Needed increased help with daily activities (long stay) | 🌟🌟 |
| Reporting period: July 2014 to March 2015 | |
| 16.9% This Facility | 2 out of 5 stars |
| 14.4% State average | |
| 15.6% National average | |

| 🔄Self-report moderate to severe pain (long stay) | 🌟🌟 |
| Reporting period: July 2014 to March 2015 | |
| 5.7% This Facility | 2 out of 5 stars |
| 4.9% State average | |
| 7.4% National average | |

| 🔄Have pressure sores (long stay) | 🌟🌟🌟 |
| Reporting period: July 2014 to March 2015 | |
| 6.7% This Facility | 3 out of 5 stars |
| 7.5% State average | |
| 5.9% National average | |

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Measure</th>
<th>Reporting Period</th>
<th>This Facility %</th>
<th>State Average %</th>
<th>National Average %</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lose too much weight (long stay)</td>
<td>July 2014 to March 2015</td>
<td>7.4%</td>
<td>6.1%</td>
<td>7.0%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Lose control of their bowels or bladder (long stay, low risk)</td>
<td>July 2014 to March 2015</td>
<td>39.4%</td>
<td>45.7%</td>
<td>45.0%</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Had a catheter inserted and left in their bladder (long stay)</td>
<td>July 2014 to March 2015</td>
<td>1.5%</td>
<td>2.6%</td>
<td>3.1%</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Had a urinary tract infection (long stay)</td>
<td>July 2014 to March 2015</td>
<td>9.2%</td>
<td>5.6%</td>
<td>5.7%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Have depressive symptoms (long stay)</td>
<td>July 2014 to March 2015</td>
<td>0.6%</td>
<td>11.4%</td>
<td>6.0%</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>Were physically restrained (long stay)</td>
<td>July 2014 to March 2015</td>
<td>0.6%</td>
<td>1.5%</td>
<td>1.1%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Experienced one or more falls with major injury (long stay)</td>
<td>July 2014 to March 2015</td>
<td>1.8%</td>
<td>2.7%</td>
<td>3.2%</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the seasonal influenza vaccine (long stay)</td>
<td>July 2014 to March 2015</td>
<td>94.4%</td>
<td>94.8%</td>
<td>92.6%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the pneumococcal vaccine (long stay)</td>
<td>July 2014 to March 2015</td>
<td>91.5%</td>
<td>96.7%</td>
<td>93.8%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Received an antipsychotic medication (long stay)</td>
<td>July 2014 to March 2015</td>
<td>28.3%</td>
<td>17.6%</td>
<td>19.2%</td>
<td>1 out of 5 stars</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
Hudson Park Rehabilitation and Nursing Center

Inspection Report

PFI: 0021
Regional Office: Capital District Regional Office

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>87</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>18</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>105</td>
<td>35</td>
</tr>
<tr>
<td>Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>% of Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>7%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Vestal Park Rehabilitation and Nursing Center

The following table shows how this nursing home performs in key quality measure areas.

<table>
<thead>
<tr>
<th>Percentage of residents who...</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>⚫ Self-report moderate to severe pain (short stay)</td>
<td>⭐️ 1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>33.3% This Facility</td>
<td></td>
</tr>
<tr>
<td>13.7% State average</td>
<td></td>
</tr>
<tr>
<td>18.3% National average</td>
<td></td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Measure</th>
<th>Reporting Period</th>
<th>This Facility</th>
<th>State Average</th>
<th>National Average</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Have pressure sores that are new or worsened</td>
<td>April 2014 to March 2015</td>
<td>0.7%</td>
<td>1.0%</td>
<td>0.9%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the seasonal influenza vaccine (short stay)</td>
<td>April 2014 to March 2015</td>
<td>73.5%</td>
<td>84.6%</td>
<td>82.8%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the pneumococcal vaccine</td>
<td>April 2014 to March 2015</td>
<td>76.2%</td>
<td>83.3%</td>
<td>81.9%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Newly received an antipsychotic medication</td>
<td>April 2014 to March 2015</td>
<td>5.1%</td>
<td>2.3%</td>
<td>2.4%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Needed increased help with daily activities (long stay)</td>
<td>July 2014 to March 2015</td>
<td>14.3%</td>
<td>14.4%</td>
<td>15.6%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Self-report moderate to severe pain (long stay)</td>
<td>July 2014 to March 2015</td>
<td>5.6%</td>
<td>4.9%</td>
<td>7.4%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Have pressure sores (long stay)</td>
<td>July 2014 to March 2015</td>
<td>8.1%</td>
<td>7.5%</td>
<td>5.9%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Lose too much weight (long stay)</td>
<td>July 2014 to March 2015</td>
<td>9.9%</td>
<td>6.1%</td>
<td>7.0%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Lose control of their bowels or bladder (long stay, low risk)</td>
<td>July 2014 to March 2015</td>
<td>53.7%</td>
<td>45.7%</td>
<td>45.0%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Had a catheter inserted and left in their bladder (long stay)</td>
<td>July 2014 to March 2015</td>
<td>4.0%</td>
<td>2.6%</td>
<td>3.1%</td>
<td>1 out of 5 stars</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Category</th>
<th>Reporting Period</th>
<th>This Facility</th>
<th>State Average</th>
<th>National Average</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Had a urinary tract infection (long stay)</td>
<td>July 2014 to March 2015</td>
<td>10.6%</td>
<td>5.6%</td>
<td>5.7%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Have depressive symptoms (long stay)</td>
<td>July 2014 to March 2015</td>
<td>13.2%</td>
<td>11.4%</td>
<td>6.0%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Were physically restrained (long stay)</td>
<td>July 2014 to March 2015</td>
<td>6.3%</td>
<td>1.5%</td>
<td>1.1%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Experienced one or more falls with major injury (long stay)</td>
<td>July 2014 to March 2015</td>
<td>4.6%</td>
<td>2.7%</td>
<td>3.2%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the seasonal influenza vaccine (long stay)</td>
<td>July 2014 to March 2015</td>
<td>90.5%</td>
<td>94.8%</td>
<td>92.6%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the pneumococcal vaccine (long stay)</td>
<td>July 2014 to March 2015</td>
<td>91.6%</td>
<td>96.7%</td>
<td>93.8%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Received an antipsychotic medication (long stay)</td>
<td>July 2014 to March 2015</td>
<td>16.9%</td>
<td>17.6%</td>
<td>19.2%</td>
<td>3 out of 5 stars</td>
</tr>
</tbody>
</table>

Vestal Park Rehabilitation and Nursing Center

Inspection Report

PFI: 9514
Regional Office: Central New York Regional Office

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

Source: NYS Department of Health website, Nursing Home Profile
This table summarizes the citations in the details section of this report and compares them against the statewide average.

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>46</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>53</td>
<td>35</td>
</tr>
<tr>
<td>Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>% of Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>0%</td>
<td>3%</td>
</tr>
</tbody>
</table>

**Riverside Center for Rehabilitation and Nursing**

The following table shows how this nursing home performs in key quality measure areas.

<table>
<thead>
<tr>
<th>Percentage of residents who...</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>![Self-report moderate to severe pain (short stay)]</td>
<td><img src="star_3.png" alt="3 out of 5 stars" /></td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td><img src="percent_11.9.png" alt="11.9% This Facility" /></td>
<td></td>
</tr>
<tr>
<td><img src="percent_13.7.png" alt="13.7% State average" /></td>
<td></td>
</tr>
<tr>
<td><img src="percent_18.3.png" alt="18.3% National average" /></td>
<td></td>
</tr>
</tbody>
</table>

| ![Have pressure sores that are new or worsened](impact.png) | ![5 out of 5 stars](star_5.png) |
| Reporting period: April 2014 to March 2015              |                     |
| ![0.0% This Facility](percent_0.0.png)                  |                     |
| ![1.0% State average](percent_1.0.png)                  |                     |
| ![0.9% National average](percent_0.9.png)               |                     |

| ![Were given, appropriately, the seasonal influenza vaccine (short stay)] | ![3 out of 5 stars](star_3.png) |
| Reporting period: April 2014 to March 2015               |                     |
| ![90.6% This Facility](percent_90.6.png)                |                     |
| ![84.6% State average](percent_84.6.png)                |                     |
| ![82.8% National average](percent_82.8.png)             |                     |

| ![Were given, appropriately, the pneumococcal vaccine](impact.png) | ![5 out of 5 stars](star_5.png) |
| Reporting period: April 2014 to March 2015                |                     |
| ![100.0% This Facility](percent_100.0.png)               |                     |
| ![83.3% State average](percent_83.3.png)                 |                     |
| ![81.9% National average](percent_81.9.png)              |                     |

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th><strong>Quality Measure</strong></th>
<th><strong>Facility</strong></th>
<th><strong>State Average</strong></th>
<th><strong>National Average</strong></th>
<th><strong>Rating</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Newly received an antipsychotic medication</td>
<td>5.0%</td>
<td>2.3%</td>
<td>2.4%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td>2.3%</td>
<td>14.4%</td>
<td>15.6%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Needed increased help with daily activities (long stay)</td>
<td>18.9%</td>
<td>14.4%</td>
<td>15.6%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td>4.9%</td>
<td>7.4%</td>
<td>7.4%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Self-report moderate to severe pain (long stay)</td>
<td>3.4%</td>
<td>9.9%</td>
<td>7.4%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td>8.3%</td>
<td>7.5%</td>
<td>5.9%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Have pressure sores (long stay)</td>
<td>9.1%</td>
<td>6.1%</td>
<td>7.0%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td>24.2%</td>
<td>45.7%</td>
<td>45.0%</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>Lose too much weight (long stay)</td>
<td>45.7%</td>
<td>45.0%</td>
<td>45.0%</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td>45.0%</td>
<td>45.0%</td>
<td>45.0%</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>Lose control of their bowels or bladder (long stay, low risk)</td>
<td>45.7%</td>
<td>45.0%</td>
<td>45.0%</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td>9.0%</td>
<td>5.6%</td>
<td>5.7%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Had a catheter inserted and left in their bladder (long stay)</td>
<td>9.0%</td>
<td>5.6%</td>
<td>5.7%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td>9.0%</td>
<td>5.6%</td>
<td>5.7%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Had a urinary tract infection (long stay)</td>
<td>9.0%</td>
<td>5.6%</td>
<td>5.7%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td>9.0%</td>
<td>5.6%</td>
<td>5.7%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Have depressive symptoms (long stay)</td>
<td>0.5%</td>
<td>11.4%</td>
<td>6.0%</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td>0.5%</td>
<td>11.4%</td>
<td>6.0%</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>Were physically restrained (long stay)</td>
<td>3.8%</td>
<td>1.5%</td>
<td>1.1%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td>3.8%</td>
<td>1.5%</td>
<td>1.1%</td>
<td>1 out of 5 stars</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
Experienced one or more falls with major injury (long stay)  
Reporting period: July 2014 to March 2015  
0.9% This Facility  
2.7% State average  
3.2% National average  
5 out of 5 stars

Were given, appropriately, the seasonal influenza vaccine (long stay)  
Reporting period: July 2014 to March 2015  
86.9% This Facility  
94.8% State average  
92.6% National average  
1 out of 5 stars

Were given, appropriately, the pneumococcal vaccine (long stay)  
Reporting period: July 2014 to March 2015  
100.0% This Facility  
96.7% State average  
93.8% National average  
5 out of 5 stars

Received an antipsychotic medication (long stay)  
Reporting period: July 2014 to March 2015  
13.2% This Facility  
17.6% State average  
19.2% National average  
4 out of 5 stars

Riverside Center for Rehabilitation and Nursing

Inspection Report  

PFI: 0767  
Regional Office: Capital District Regional Office

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>12</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>16</td>
<td>35</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
### Deficiencies Related to Actual Harm or Immediate Jeopardy

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>0% of Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>0%</td>
<td>3%</td>
</tr>
</tbody>
</table>

### Capstone Center for Rehabilitation and Nursing

The following table shows how this nursing home performs in key quality measure areas.

<table>
<thead>
<tr>
<th>Percentage of residents who...</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>🛑Self-report moderate to severe pain (short stay)</td>
<td>🌟🌟2 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td>18.0% This Facility 13.7% State average 18.3% National average</td>
</tr>
<tr>
<td>🛑Have pressure sores that are new or worsened</td>
<td>🌟🌟2 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td>1.1% This Facility 1.0% State average 0.9% National average</td>
</tr>
<tr>
<td>🛑Were given, appropriately, the seasonal influenza vaccine (short stay)</td>
<td>🌟🌟2 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td>78.9% This Facility 84.6% State average 82.8% National average</td>
</tr>
<tr>
<td>🛑Were given, appropriately, the pneumococcal vaccine</td>
<td>🌟🌟2 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td>83.2% This Facility 83.3% State average 81.9% National average</td>
</tr>
<tr>
<td>🛑Newly received an antipsychotic medication</td>
<td>⭐️1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td>5.8% This Facility 2.3% State average 2.4% National average</td>
</tr>
<tr>
<td>🛑Needed increased help with daily activities (long stay)</td>
<td>⭐️1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td>25.4% This Facility 14.4% State average 15.6% National average</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Quality Measure</th>
<th>Reporting Period</th>
<th>This Facility</th>
<th>State Average</th>
<th>National Average</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self-report moderate to severe pain (long stay)</td>
<td>July 2014 to March 2015</td>
<td>4.9%</td>
<td>4.9%</td>
<td>7.4%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Have pressure sores (long stay)</td>
<td>July 2014 to March 2015</td>
<td>7.2%</td>
<td>7.5%</td>
<td>5.9%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Lose too much weight (long stay)</td>
<td>July 2014 to March 2015</td>
<td>8.9%</td>
<td>6.1%</td>
<td>7.0%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Lose control of their bowels or bladder (long stay, low risk)</td>
<td>July 2014 to March 2015</td>
<td>37.4%</td>
<td>45.7%</td>
<td>45.0%</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Had a catheter inserted and left in their bladder (long stay)</td>
<td>July 2014 to March 2015</td>
<td>3.4%</td>
<td>2.6%</td>
<td>3.1%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Had a urinary tract infection (long stay)</td>
<td>July 2014 to March 2015</td>
<td>12.9%</td>
<td>5.6%</td>
<td>5.7%</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Have depressive symptoms (long stay)</td>
<td>July 2014 to March 2015</td>
<td>3.9%</td>
<td>11.4%</td>
<td>6.0%</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Were physically restrained (long stay)</td>
<td>July 2014 to March 2015</td>
<td>1.2%</td>
<td>1.5%</td>
<td>1.1%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Experienced one or more falls with major injury (long stay)</td>
<td>July 2014 to March 2015</td>
<td>3.1%</td>
<td>2.7%</td>
<td>3.2%</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the seasonal influenza vaccine (long stay)</td>
<td>July 2014 to March 2015</td>
<td>87.9%</td>
<td>94.8%</td>
<td>92.6%</td>
<td>1 out of 5 stars</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
Were given, appropriately, the pneumococcal vaccine (long stay)
Reporting period: July 2014 to March 2015
99.4% This Facility
96.7% State average
93.8% National average
4 out of 5 stars

Received an antipsychotic medication (long stay)
Reporting period: July 2014 to March 2015
43.7% This Facility
17.6% State average
19.2% National average
1 out of 5 stars

Capstone Center for Rehabilitation and Nursing

Inspection Report

PFI: 0488
Regional Office: Capital District Regional Office

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>25</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>8</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>33</td>
<td>35</td>
</tr>
<tr>
<td>Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>% of Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>0%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Beechtree Center for Rehabilitation and Nursing

Source: NYS Department of Health website, Nursing Home Profile
The following table shows how this nursing home performs in key quality measure areas.

<table>
<thead>
<tr>
<th>Percentage of residents who...</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>🎁 Self-report moderate to severe pain (short stay)</td>
<td></td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>18.3% This Facility</td>
<td></td>
</tr>
<tr>
<td>13.7% State average</td>
<td></td>
</tr>
<tr>
<td>18.3% National average</td>
<td></td>
</tr>
<tr>
<td>🎁 Have pressure sores that are new or worsened</td>
<td></td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>2.2% This Facility</td>
<td></td>
</tr>
<tr>
<td>1.0% State average</td>
<td></td>
</tr>
<tr>
<td>0.9% National average</td>
<td></td>
</tr>
<tr>
<td>🎁 Were given, appropriately, the seasonal influenza vaccine (short stay)</td>
<td></td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>73.8% This Facility</td>
<td></td>
</tr>
<tr>
<td>84.6% State average</td>
<td></td>
</tr>
<tr>
<td>82.8% National average</td>
<td></td>
</tr>
<tr>
<td>🎁 Were given, appropriately, the pneumococcal vaccine</td>
<td></td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>66.7% This Facility</td>
<td></td>
</tr>
<tr>
<td>83.3% State average</td>
<td></td>
</tr>
<tr>
<td>81.9% National average</td>
<td></td>
</tr>
<tr>
<td>🎁 Newly received an antipsychotic medication</td>
<td></td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>1.8% This Facility</td>
<td></td>
</tr>
<tr>
<td>2.3% State average</td>
<td></td>
</tr>
<tr>
<td>2.4% National average</td>
<td></td>
</tr>
<tr>
<td>🎁 Needed increased help with daily activities (long stay)</td>
<td></td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>32.4% This Facility</td>
<td></td>
</tr>
<tr>
<td>14.4% State average</td>
<td></td>
</tr>
<tr>
<td>15.6% National average</td>
<td></td>
</tr>
<tr>
<td>🎁 Self-report moderate to severe pain (long stay)</td>
<td></td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>8.4% This Facility</td>
<td></td>
</tr>
<tr>
<td>4.9% State average</td>
<td></td>
</tr>
<tr>
<td>7.4% National average</td>
<td></td>
</tr>
<tr>
<td>🎁 Have pressure sores (long stay)</td>
<td></td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>13.2% This Facility</td>
<td></td>
</tr>
<tr>
<td>7.5% State average</td>
<td></td>
</tr>
<tr>
<td>5.9% National average</td>
<td></td>
</tr>
<tr>
<td>🎁 Lose too much weight (long stay)</td>
<td></td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>11.1% This Facility</td>
<td></td>
</tr>
<tr>
<td>6.1% State average</td>
<td></td>
</tr>
<tr>
<td>7.0% National average</td>
<td></td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Topic</th>
<th>Percentage</th>
<th>Facility</th>
<th>State Average</th>
<th>National Average</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lose control of their bowels or bladder (long stay, low risk)</td>
<td>65.7%</td>
<td>45.7%</td>
<td>45.0%</td>
<td></td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Had a catheter inserted and left in their bladder (long stay)</td>
<td>1.8%</td>
<td>2.6%</td>
<td>3.1%</td>
<td></td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Had a urinary tract infection (long stay)</td>
<td>3.0%</td>
<td>5.6%</td>
<td>5.7%</td>
<td></td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Have depressive symptoms (long stay)</td>
<td>1.8%</td>
<td>11.4%</td>
<td>6.0%</td>
<td></td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Were physically restrained (long stay)</td>
<td>0.7%</td>
<td>1.5%</td>
<td>1.1%</td>
<td></td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Experienced one or more falls with major injury (long stay)</td>
<td>2.3%</td>
<td>2.7%</td>
<td>3.2%</td>
<td></td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the seasonal influenza vaccine (long stay)</td>
<td>96.7%</td>
<td>94.8%</td>
<td>92.6%</td>
<td></td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the pneumococcal vaccine (long stay)</td>
<td>93.1%</td>
<td>96.7%</td>
<td>93.8%</td>
<td></td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Received an antipsychotic medication (long stay)</td>
<td>16.9%</td>
<td>17.6%</td>
<td>19.2%</td>
<td></td>
<td>3 out of 5 stars</td>
</tr>
</tbody>
</table>

Beechtree Center for Rehabilitation and Nursing

Inspection Report

Source: NYS Department of Health website, Nursing Home Profile
This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>49</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>55</td>
<td>35</td>
</tr>
<tr>
<td>Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>% of Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>9%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Northeast Center for Rehabilitation and Brain Injury

The following table shows how this nursing home performs in key quality measure areas.

<table>
<thead>
<tr>
<th>Percentage of residents who...</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>![ ] Self-report moderate to severe pain (short stay)</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>28.6% This Facility</td>
<td></td>
</tr>
<tr>
<td>13.7% State average</td>
<td></td>
</tr>
<tr>
<td>18.3% National average</td>
<td></td>
</tr>
<tr>
<td>![ ] Have pressure sores that are new or worsened</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>1.2% This Facility</td>
<td></td>
</tr>
<tr>
<td>1.0% State average</td>
<td></td>
</tr>
<tr>
<td>0.9% National average</td>
<td></td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Topic</th>
<th>Reporting Period</th>
<th>Facility Percentage</th>
<th>State Average Percentage</th>
<th>National Average Percentage</th>
<th>Star Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Were given, appropriately, the seasonal influenza vaccine (short stay)</td>
<td>April 2014 to March 2015</td>
<td>79.1%</td>
<td>94.6%</td>
<td>82.8%</td>
<td>2/5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the pneumococcal vaccine</td>
<td>April 2014 to March 2015</td>
<td>75.3%</td>
<td>83.3%</td>
<td>81.9%</td>
<td>2/5 stars</td>
</tr>
<tr>
<td>Newly received an antipsychotic medication</td>
<td>April 2014 to March 2015</td>
<td>6.1%</td>
<td>2.3%</td>
<td>2.4%</td>
<td>1/5 stars</td>
</tr>
<tr>
<td>Needed increased help with daily activities (long stay)</td>
<td>July 2014 to March 2015</td>
<td>15.8%</td>
<td>14.4%</td>
<td>15.6%</td>
<td>2/5 stars</td>
</tr>
<tr>
<td>Self-report moderate to severe pain (long stay)</td>
<td>July 2014 to March 2015</td>
<td>8.0%</td>
<td>4.9%</td>
<td>7.4%</td>
<td>2/5 stars</td>
</tr>
<tr>
<td>Have pressure sores (long stay)</td>
<td>July 2014 to March 2015</td>
<td>14.9%</td>
<td>7.5%</td>
<td>5.9%</td>
<td>1/5 stars</td>
</tr>
<tr>
<td>Lose too much weight (long stay)</td>
<td>July 2014 to March 2015</td>
<td>4.8%</td>
<td>6.1%</td>
<td>7.0%</td>
<td>4/5 stars</td>
</tr>
<tr>
<td>Lose control of their bowels or bladder (long stay, low risk)</td>
<td>July 2014 to March 2015</td>
<td>18.4%</td>
<td>45.7%</td>
<td>45.0%</td>
<td>5/5 stars</td>
</tr>
<tr>
<td>Had a catheter inserted and left in their bladder (long stay)</td>
<td>July 2014 to March 2015</td>
<td>5.5%</td>
<td>2.6%</td>
<td>3.1%</td>
<td>1/5 stars</td>
</tr>
<tr>
<td>Had a urinary tract infection (long stay)</td>
<td>July 2014 to March 2015</td>
<td>2.9%</td>
<td>5.6%</td>
<td>5.7%</td>
<td>4/5 stars</td>
</tr>
</tbody>
</table>
### Have depressive symptoms (long stay)
- Reporting period: July 2014 to March 2015
- **6.8% This Facility**
- 11.4% State average
- 6.0% National average
- **3 out of 5 stars**

### Were physically restrained (long stay)
- Reporting period: July 2014 to March 2015
- **0.8% This Facility**
- 1.5% State average
- 1.1% National average
- **3 out of 5 stars**

### Experienced one or more falls with major injury (long stay)
- Reporting period: July 2014 to March 2015
- **2.0% This Facility**
- 2.7% State average
- 3.2% National average
- **3 out of 5 stars**

### Were given, appropriately, the seasonal influenza vaccine (long stay)
- Reporting period: July 2014 to March 2015
- **93.1% This Facility**
- 94.8% State average
- 92.6% National average
- **2 out of 5 stars**

### Were given, appropriately, the pneumococcal vaccine (long stay)
- Reporting period: July 2014 to March 2015
- **98.4% This Facility**
- 96.7% State average
- 93.8% National average
- **3 out of 5 stars**

### Received an antipsychotic medication (long stay)
- Reporting period: July 2014 to March 2015
- **43.1% This Facility**
- 17.6% State average
- 19.2% National average
- **1 out of 5 stars**

---

**Northeast Center for Rehabilitation and Brain Injury**

**Inspection Report**

**Report Period: August 2011 to July 2015**

PFI: 7758
Regional Office: MARO---New Rochelle Area Office

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

**Summary**

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Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>20</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>26</td>
<td>35</td>
</tr>
<tr>
<td>Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>% of Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>0%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
**Evergreen Commons**  
**Pro Forma Balance Sheet**

<table>
<thead>
<tr>
<th>Assets</th>
<th>ECRNC, LLC 1070 Luther Road, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$3,903,937</td>
</tr>
<tr>
<td>Patient Accounts</td>
<td>$68,922</td>
</tr>
<tr>
<td>Real Estate</td>
<td>$0</td>
</tr>
<tr>
<td>Operational Assets</td>
<td>$14,140,000</td>
</tr>
<tr>
<td>Due from Operating Co.</td>
<td>$0</td>
</tr>
<tr>
<td>Total Assets</td>
<td>$18,112,859</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>ECRNC, LLC 1070 Luther Road, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patient Accounts</td>
<td>$68,922</td>
</tr>
<tr>
<td>Mortgages</td>
<td>$28,342,000</td>
</tr>
<tr>
<td>Due to Realty Co.</td>
<td>$14,140,000</td>
</tr>
<tr>
<td>Total Liabilities</td>
<td>$14,208,922</td>
</tr>
<tr>
<td>Members' Equity</td>
<td>$3,903,937</td>
</tr>
</tbody>
</table>

Project # 151180  
BFA Attachment B
<table>
<thead>
<tr>
<th>Facility</th>
<th>2014</th>
<th>2013</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASSETS - CURRENT</td>
<td>$5,349,650</td>
<td>$5,044,952</td>
<td>$5,430,866</td>
</tr>
<tr>
<td>ASSETS - FIXED AND OTHER</td>
<td>$2,526,139</td>
<td>$2,583,694</td>
<td>$2,791,269</td>
</tr>
<tr>
<td>TOTAL ASSETS</td>
<td>$7,877,789</td>
<td>$7,628,646</td>
<td>$8,222,155</td>
</tr>
<tr>
<td>LIABILITIES - CURRENT</td>
<td>$5,784,106</td>
<td>$5,480,862</td>
<td>$4,238,020</td>
</tr>
<tr>
<td>LIABILITIES - LONG-TERM</td>
<td>$493,486</td>
<td>$646,561</td>
<td>$401,198</td>
</tr>
<tr>
<td>TOTAL LIABILITIES</td>
<td>$6,277,592</td>
<td>$6,127,423</td>
<td>$4,639,218</td>
</tr>
<tr>
<td>WORKING CAPITAL</td>
<td>($434,456)</td>
<td>($435,910)</td>
<td>$1,192,846</td>
</tr>
<tr>
<td>INCOME</td>
<td>$23,140,786</td>
<td>$22,919,657</td>
<td>$21,967,509</td>
</tr>
<tr>
<td>EXPENSE</td>
<td>$23,041,812</td>
<td>$25,001,371</td>
<td>$22,233,188</td>
</tr>
<tr>
<td>NET INCOME</td>
<td>$(98,974)</td>
<td>$(2,081,714)</td>
<td>$(265,679)</td>
</tr>
<tr>
<td>NET ASSET POSITION</td>
<td>$1,600,197</td>
<td>$1,501,223</td>
<td>$3,582,937</td>
</tr>
</tbody>
</table>

NYMED Rensselaer, LLC d/b/a Evergreen Commons Residential Healthcare
### Related Company Ownership

<table>
<thead>
<tr>
<th>Company</th>
<th>Efraim Steif</th>
<th>Uri Koenig</th>
<th>David Camerota</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bridgewater</td>
<td>44.90%</td>
<td>55.00%</td>
<td>0.10%</td>
</tr>
<tr>
<td>CPRNC</td>
<td>44.90%</td>
<td>27.50%</td>
<td>0.10%</td>
</tr>
<tr>
<td>Pine Valley</td>
<td>49.60%</td>
<td>17.71%</td>
<td>N/A</td>
</tr>
<tr>
<td>CRNC</td>
<td>39.90%</td>
<td>60.00%</td>
<td>0.10%</td>
</tr>
<tr>
<td>RRNC</td>
<td>39.90%</td>
<td>60.00%</td>
<td>0.10%</td>
</tr>
<tr>
<td>ORNC</td>
<td>39.90%</td>
<td>60.00%</td>
<td>0.10%</td>
</tr>
<tr>
<td>JBRNC</td>
<td>39.90%</td>
<td>60.00%</td>
<td>0.10%</td>
</tr>
<tr>
<td>RSRNC</td>
<td>39.90%</td>
<td>60.00%</td>
<td>0.10%</td>
</tr>
<tr>
<td>CSRNC</td>
<td>39.90%</td>
<td>60.00%</td>
<td>0.10%</td>
</tr>
<tr>
<td>NCRNC</td>
<td>39.90%</td>
<td>60.00%</td>
<td>0.10%</td>
</tr>
<tr>
<td>HRNC</td>
<td>39.90%</td>
<td>60.00%</td>
<td>0.10%</td>
</tr>
<tr>
<td>BTRNC</td>
<td>39.90%</td>
<td>60.00%</td>
<td>0.10%</td>
</tr>
<tr>
<td>VDRNC</td>
<td>39.90%</td>
<td>60.00%</td>
<td>0.10%</td>
</tr>
<tr>
<td></td>
<td>1/1/2014-</td>
<td>12/31/2014</td>
<td>Internal</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>-----------</td>
<td>------------</td>
<td>----------</td>
</tr>
<tr>
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<th>12/31/2014</th>
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<th>2013</th>
<th>2012</th>
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<tbody>
<tr>
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<tr>
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<th>1/1/2014-</th>
<th>12/31/2014</th>
<th>Internal</th>
<th>2013</th>
<th>2012</th>
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<tbody>
<tr>
<td><strong>ASSETS - CURRENT</strong></td>
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<td>$7,162,177</td>
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<tr>
<td><strong>ASSETS - FIXED AND OTHER</strong></td>
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<td><strong>TOTAL ASSETS</strong></td>
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<tr>
<td><strong>LIABILITIES - CURRENT</strong></td>
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<tr>
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<tr>
<td><strong>TOTAL LIABILITIES</strong></td>
<td>$13,411,854</td>
<td>$13,542,079</td>
<td>$14,337,931</td>
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</tr>
<tr>
<td><strong>WORKING CAPITAL</strong></td>
<td>$3,118,583</td>
<td>$4,187,838</td>
<td>$2,525,229</td>
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<tr>
<td><strong>INCOME</strong></td>
<td>$22,630,958</td>
<td>$20,624,682</td>
<td>$18,196,097</td>
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<td><strong>EXPENSE</strong></td>
<td>$20,917,816</td>
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<td><strong>NET INCOME</strong></td>
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<tr>
<td><strong>NET ASSET POSITION</strong></td>
<td>$4,005,331</td>
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<th><strong>Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing</strong></th>
<th>1/1/2014-</th>
<th>12/31/2014</th>
<th>Internal</th>
<th>2013</th>
<th>2012</th>
</tr>
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<tbody>
<tr>
<td><strong>ASSETS - CURRENT</strong></td>
<td>$7,097,527</td>
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<tr>
<td><strong>ASSETS - FIXED AND OTHER</strong></td>
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<td>$9,685,382</td>
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<tr>
<td><strong>TOTAL ASSETS</strong></td>
<td>$17,417,185</td>
<td>$17,607,095</td>
<td>$16,847,559</td>
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<tr>
<td><strong>LIABILITIES - CURRENT</strong></td>
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<td>$3,814,938</td>
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<tr>
<td><strong>LIABILITIES - LONG-TERM</strong></td>
<td>$9,432,910</td>
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<tr>
<td><strong>TOTAL LIABILITIES</strong></td>
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<tr>
<td><strong>WORKING CAPITAL</strong></td>
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<td>$4,187,838</td>
<td>$2,525,229</td>
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<tr>
<td><strong>INCOME</strong></td>
<td>$22,630,958</td>
<td>$20,624,682</td>
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<td><strong>NET ASSET POSITION</strong></td>
<td>$4,005,331</td>
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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish ECRNC, LLC d/b/a Evergreen Commons Rehabilitation and Nursing Center as the new operator of NYMED Rensselaer, LLC d/b/a Everygreen Commons, a 240-bed facility located in East Greenbush, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: FacILITY/APPLICANT:

151180 E ECRNC, LLC
d/b/a Evergreen Commons Rehabilitation and Nursing Center
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 and review of an acceptable consulting and services agreement. [LTC]

5. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by the Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. (BFA)

6. Submission of an executed loan commitment from NYMED Rensselaer, LLC, acceptable to the Department of Health. (BFA)

7. Submission of an executed building lease, acceptable to the Department of Health. (BFA)

8. Submission of the executed Operating Agreement of ECRNC, LLC., acceptable to the Department. [CSL]
9. Submission of the Lease Agreement between 1070 Luther Road LLC, the lessor, and ECRNC LLC, the lessee, acceptable to the Department. [CSL]

10. Submission of statement clarifying if the applicant intends to be managed by managers or members accompanied by the appropriate revisions to ECRNC, LLC’s Operating Agreement or Articles of Organization as they conflict. [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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
**Project # 151196-E**

**Daleview Care Center**

**Program:** Residential Health Care Facility

**County:** Nassau

**Purpose:** Establishment

**Acknowledged:** May 5, 2015

---

**Executive Summary**

**Description**

MMR Care Corp. d/b/a Daleview Care Center, a 142-bed Article 28 residential health care facility (RHCF) located at 574 Fulton Street, Farmingdale (Nassau County), requests approval for a change in ownership of 9% of the facility. The majority owner, Mr. Robert Ostreicher, proposes to sell 9% of his shares in three equal amounts of 3% to the three other members of Daleview Care Center, all of whom currently have 8% ownership interest. This transfer will bring the acquiring owners to a total of 11% of shares each, requiring approval by the Public Health and Health Planning Council (PHHPC). There will be no change in services provided, nor any change in management. BFA Attachment A presents the organizational chart of the RHCF, which will remain unchanged after the sale of the additional shares to the three acquiring shareholders.

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

<table>
<thead>
<tr>
<th></th>
<th>Current</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert Ostreicher</td>
<td>76%</td>
<td>67%</td>
</tr>
<tr>
<td>David Ostreicher</td>
<td>8%</td>
<td>11%</td>
</tr>
<tr>
<td>Jennifer Ostreicher Mittel</td>
<td>8%</td>
<td>11%</td>
</tr>
<tr>
<td>Michael Ostreicher</td>
<td>8%</td>
<td>11%</td>
</tr>
<tr>
<td><strong>Total Shares</strong></td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Each of the acquiring shareholders have ownership interest in the following three RHCFs:
- Central Island Healthcare, a 202-bed RHCF located in Plainview, NY; and
- Riverhead Care Center, a 181-bed RHCF located in Riverhead, NY.

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

There will be no Need review of this project.

**Program Summary**

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).

**Financial Summary**

The purchase price for each transferred interest is $88,636. Each purchaser will acquire these shares with equity and a Promissory Note of $68,636 that will accrue interest at the current mid-term Applicable Federal Rate (AFR) in effect on the date of the note. The Maturity Date will be eight years from the executed date of the note at closing.

<table>
<thead>
<tr>
<th>Budget</th>
<th>Revenues:</th>
<th>$17,370,200</th>
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</thead>
<tbody>
<tr>
<td></td>
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<tr>
<td></td>
<td>Gain:</td>
<td>$ 1,066,174</td>
</tr>
</tbody>
</table>

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Project #151196-E Exhibit Page 1
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 promissory note for each member acquiring shares, acceptable to the Department of Health. [BFA]
2. Submission of a resolution of members authorizing the project that is acceptable to the Department. [CSL]
3. Submission of site control that is acceptable to the Department. [CSL]
4. Submission of stockholder affidavits from each stockholder that is acceptable to the Department. [CSL]
5. Submission of a sample stock certificate that is acceptable to the Department. [CSL]
6. Submission of an executed amended Certificate of Incorporation that is acceptable to the Department. [CSL]
7. Submission of Bylaws that are acceptable to the Department. [CSL]
8. Submission of an executed Medicaid Affidavit 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]

Council Action Date
October 8, 2015
Program Analysis

Program Description
This application is proposing to redistribute 9% of MMR Care Corp from an existing member to the three other existing members. The 9% will be distributed equally between the other members. 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.

Facility Information

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Existing</th>
<th>Proposed</th>
<th>RHCF Capacity</th>
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<th>Proposed</th>
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<td>MMR Care Corp</td>
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<tr>
<td></td>
<td>Robert Ostreicher</td>
<td>Robert Ostreicher</td>
<td>11%</td>
<td>David Ostreicher</td>
<td>8%</td>
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<td></td>
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<td>8%</td>
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<tr>
<td></td>
<td>Jennifer Mittel</td>
<td>Jennifer Mittel</td>
<td>11%</td>
<td>Michael Ostreicher</td>
<td>8%</td>
</tr>
</tbody>
</table>

Character and Competence - Background

Facilities Reviewed

| Nursing Homes | Central Island Healthcare | 09/2009 to present |
|              | Riverhead Care Center     | 03/2013 to present |
|              | Daleview Care Center      | 07/2013 to present |

Individual Background Review

David Ostreicher is a New York State licensed attorney, considered to be in good standing. He lists his employment as the owner of Brooklyn Real Estate Group, LLC, a real estate company located in Uniondale, New York. Prior to starting his own business in June, 2013, Mr. Ostreicher was employed as an attorney at Westerman Ball, LLP. David Ostreicher discloses the following ownership interests in health facilities:

| Central Island Healthcare | 09/2009 to present |
| Riverhead Care Center     | 03/2013 to present |
| Daleview Care Center      | 07/2013 to present |

Jennifer (Ostreicher) Mittel holds an expired New York State public school teacher certification, but was considered to be in good standing. She is currently unemployed and is the primary caregiver at her home. In 2010, she was briefly employed at Bright Smile Center, a contract agency for special education teachers located in Brooklyn, New York. Jennifer Mittel discloses the following ownership interests in health facilities:

| Central Island Healthcare | 09/2009 to present |
| Riverhead Care Center     | 03/2013 to present |
| Daleview Care Center      | 07/2013 to present |
Michael Ostreicher is a New York State licensed nursing home administrator and is considered to be in good standing. He lists his employment for the last ten years as the owner of Central Island Healthcare, a skilled nursing facility located in Plainview, New York. Michael Ostreicher discloses the following ownership interests in health facilities:

- Central Island Healthcare: 09/2009 to present
- Riverhead Care Center: 03/2013 to present
- Daleview Care Center: 07/2013 to present

**Character and Competence - Analysis**

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

The review of Riverhead Care Center reveals the following:

- The facility was fined $4000 pursuant to a Stipulation and Order dated September 1, 2015 issued for surveillance findings on July 26, 2013. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: Medication Errors and 415.26 Administration: Effective Administration.

A review of operations for Riverhead Care Center for the period identified above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for Central Island Healthcare, and Daleview Care Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

**Recommendation**

From a programmatic perspective, approval is recommended.

---

**Financial Analysis**

**Share Acquisition Agreement**

The purchase price of each Transferred Interest (TI) is $88,636 to be paid by the purchaser to the seller as follows: $5,000 down payment on execution of SAA, $15,000 at closing, and a $68,636 Promissory Note at closing. The total purchase price for all shares is $265,908.

The applicant has submitted an executed SAA for the transfer of 9% ownership interest from Robert Ostreicher to the three other members of Daleview Care Center, to be effectuated upon PHHPC approval, summarized as follows:

<table>
<thead>
<tr>
<th>Date:</th>
<th>January 8, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose:</td>
<td>The sale of 9% ownership of the RHCF (18 shares of the corporation)</td>
</tr>
<tr>
<td>Seller:</td>
<td>Robert Ostreicher, 67-42 180th Street, Flushing NY 11365</td>
</tr>
<tr>
<td>Purchasers:</td>
<td>David Ostreicher (3%)</td>
</tr>
<tr>
<td></td>
<td>Michael Ostreicher (3%)</td>
</tr>
<tr>
<td></td>
<td>Jennifer Ostreicher Mittel (3%),</td>
</tr>
<tr>
<td>Purchase Price:</td>
<td>$88,636 per each TI of 3%</td>
</tr>
<tr>
<td>Payment of Purchase Price:</td>
<td>$5,000 deposit</td>
</tr>
<tr>
<td></td>
<td>$15,000 due at closing</td>
</tr>
<tr>
<td></td>
<td>Promissory Note of $68,636 issued at closing, 8-year maturity date, interest determined at closing at current mid-term AFR rate in effect on that day.</td>
</tr>
</tbody>
</table>
Operating Budget
The applicant has provided an operating budget, in 2015 dollars, for the first year summarized as follows:

<table>
<thead>
<tr>
<th></th>
<th>Per Diem</th>
<th>Year One</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicare</td>
<td>$658.38</td>
<td>$7,763,600</td>
</tr>
<tr>
<td>Medicaid</td>
<td>$268.94</td>
<td>$8,172,400</td>
</tr>
<tr>
<td>Private Pay/Other</td>
<td>$400.09</td>
<td>$1,434,200</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td></td>
<td>$17,370,200</td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$348.31</td>
<td>$15,797,500</td>
</tr>
<tr>
<td>Capital</td>
<td>$ 11.17</td>
<td>$506,526</td>
</tr>
<tr>
<td><strong>Total Expenses</strong></td>
<td></td>
<td>$16,304,026</td>
</tr>
<tr>
<td><strong>Net Income</strong></td>
<td></td>
<td>$1,066,174</td>
</tr>
<tr>
<td>Utilization (patient days)</td>
<td>45,355</td>
<td></td>
</tr>
<tr>
<td>Occupancy</td>
<td></td>
<td>87.51%</td>
</tr>
</tbody>
</table>

The following is noted with respect to the submitted budget:
- The Medicaid rate is projected based on the facility’s current 2015 Medicaid Fee-for-Service rate.
- The Medicare rate is projected based on the full federal rates for the Medicare Prospective Payment System in effect for 2013 and are increased by 2.5% per annum for inflation to reflect 2015 dollars.
- Private Pay and Other rates are projected based on similar facilities in the same geographical area increased by 2.5% per annum for inflation to reflect 2015 dollars.
- Expense and utilization assumptions are based on the current experience of the facility.
- Utilization by payor source for the first year is anticipated as follows:
  - Medicare: 26.0%
  - Medicaid: 67.0%
  - Private Pay/Other: 7.0%

The projected budget appears reasonable.

Capability and Feasibility
There are no project costs associated with this application.

The total purchase price for all shares is $265,908. The TI total for each purchasing member is $88,636. The TI purchase price will be funded with $20,000 in equity and a Promissory Note of $68,636 issued at closing, with an 8-year maturity date and interest determined at closing at the current mid-term AFR rate in effect on that day. BFA Attachment B is the summary net worth statement for the members, which shows sufficient resources to cover the equity funding of the purchase price.

BFA Attachment C is the pro forma balance sheet of the RHCF after the change in ownership interest for the existing members, which indicates a positive members’ equity of $1,463,000.

The submitted budget indicated an excess of revenues over expenses of $1,066,174 during the first year of the change in ownership. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the “Transition of Nursing Home Benefit and Population into Managed Care Policy Paper,” provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the
benchmark FFS rate remains a viable basis for assessing Medicaid NH revenues through the transition period.

BFA Attachment D is a 2012 through 2014 financial summary of the combined operations of the members’ affiliated RHCFs which shows the following:

- Central Island Healthcare had average positive working capital of $3,249,300, average net assets of $8,805,365, and generated an average net income of $1,848,539 during the period.
- Riverhead Care Center, LLC had average positive working capital of $4,135,780, average net assets of $5,559,871, and generated an average net income of $21,101 during the period. The 2014 financials are internal only, as the requested 2014 audited financials have not been received to date.
- Daleview Care Center had average working capital of $2,619,233, average net assets of $6,502,616, and generated an average net income during the period 2012 through 2014 of $85,974. The applicant indicated that the operating net loss of $790,193 in 2013 was due to a management fee.

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

Recommendation
From a financial perspective, contingent approval is recommended.

Attachments

<table>
<thead>
<tr>
<th>BNHLC Attachment A</th>
<th>Quality Measures and Inspection Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>Organizational Chart</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Net Worth Statement of the Members Purchasing Shares</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Pro Forma for Daleview Care Center</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>Financial Summary - Affiliated Residential Health Care Facilities</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer of 9% ownership interest from one (1) existing shareholder to three (3) existing shareholders bringing each of the three shareholders to a total interest of 11%, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: 151196 E
FACILITY/APPLICANT: Daleview Care Center
APPROVAL CONTINGENT UPON:

1. Submission of an executed promissory note for each member acquiring shares, acceptable to the Department of Health. [BFA]
2. Submission of a resolution of members authorizing the project that is acceptable to the Department. [CSL]
3. Submission of site control that is acceptable to the Department. [CSL]
4. Submission of stockholder affidavits from each stockholder that is acceptable to the Department. [CSL]
5. Submission of a sample stock certificate that is acceptable to the Department. [CSL]
6. Submission of an executed amended Certificate of Incorporation that is acceptable to the Department. [CSL]
7. Submission of Bylaws that are acceptable to the Department. [CSL]
8. Submission of an executed Medicaid Affidavit 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]

    Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
Executive Summary

Description
NYU Hospitals Center (NYUHC), a 1,069-bed not-for-profit hospital located in Kings County, requests approval to acquire and certify NYU Lutheran Medical Center (NYU Lutheran), a 450-bed not-for-profit hospital also located in Kings County, as a division of NYUHC via a merger agreement. Effective April 1, 2015, NYU Langone Health System, Inc., a New York not-for-profit corporation, became the active parent of NYU Lutheran and the passive parent of NYUHC. After approval of this application, NYU Lutheran will cease to exist as a separate corporate entity, and its operations (including all assets and liabilities) will merge into NYUHC, which will continue to have NYU Langone Health System, Inc. as its sole member and passive parent.

NYUHC anticipates that a full-asset merger will result in substantial savings to NYUHC that would accrue through efficiencies in IT, patient care management, revenue cycle management, and managed care contracting. The merger would bring to the combined operations discounted pharmacy benefits from 340B programs; improved Medicare and Medicaid rates; a potentially improved credit rating due to key performance indicator improvements; and reduced costs of malpractice premiums through the use of NYUHC’s wholly owned captive insurance company. Subsequent to the merger, NYUHC will refinance NYU Lutheran’s outstanding HUD insured bonds through a draw under an existing line of credit, with permanent financing for that debt to be included in NYUHC’s next public bond offering. Repaying the HUD debt will provide substantial operational flexibility for NYU Lutheran by removing HUD’s relatively stringent financial and operational covenants. This merger will preserve the health care services provided by NYU Lutheran, preserve needed jobs for current NYU Lutheran employees, and ensure that the health care needs of the community are met. There will be no change in authorized services or the number or type of beds as a result of this project.

OPCHSM Recommendation
Contingent Approval

Need Summary
Merger of these facilities will help to expand services in the region and allow improvement through an influx of cash to be provided by NYU Hospitals Center. Modernization and growth in services is an anticipated and expected result of this project.

Program Summary
Based on the results of this review, a favorable recommendation can be made for the proposal.

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

The applicant has submitted an incremental operating budget, in 2015 dollars, for the first year subsequent to the change in operator.
The budget is summarized below:

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incremental Revenues</td>
<td>$669,329,248</td>
</tr>
<tr>
<td>Incremental Expenses:</td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$618,705,862</td>
</tr>
<tr>
<td>Capital</td>
<td>27,727,850</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>$646,433,712</td>
</tr>
<tr>
<td>Excess of Revenues over</td>
<td>$22,895,536</td>
</tr>
<tr>
<td>Expenses</td>
<td></td>
</tr>
<tr>
<td>Enterprise Budget:</td>
<td></td>
</tr>
<tr>
<td>Revenues</td>
<td>$2,897,054,574</td>
</tr>
<tr>
<td>Expenses</td>
<td>2,743,559,734</td>
</tr>
<tr>
<td>Excess of Revenues over</td>
<td>$153,494,840</td>
</tr>
<tr>
<td>Expenses</td>
<td></td>
</tr>
</tbody>
</table>
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 merger agreement that is acceptable to the Department of Health. (BFA).
2. Submission of a photocopy of the fully executed Certificate of Merger of NYU Lutheran Medical Center into NYU Hospitals Center, acceptable to the Department. [CSL]
3. Submission of a photocopy of the fully executed Plan of Merger between NYU Hospitals Center and NYU Lutheran Medical Center, acceptable to the Department. [CSL]
4. Submission of a photocopy of the fully executed Certificate of Amendment of the Certificate of Incorporation of NYU Langone Health System, acceptable to the Department. [CSL]
5. Submission of the fully executed Amendment to Certificate of Incorporation of NYU Hospitals Center, acceptable to the Department. [CSL]
6. Submission of the fully executed bylaws of the NYU Hospitals 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
October 8, 2015
Need Analysis

Background
NYU Hospitals Center is an 844-bed hospital located at 550 First Avenue, New York 10016. The Center is seeking approval to acquire and certify NYU Lutheran Medical Center (NYU Lutheran), a 450-bed not-for-profit hospital also located in Kings County, as a division of NYUHC via a merger agreement.

Analysis
Through this merger, comprehensive care will be more accessible to residents in the service area. Care and services may be expanded and updated through the creation of a larger network, which will better serve patients via the use of state of the art equipment and the latest procedures available as well as an expanded pool of physicians. This merger will provide support to NYU Lutheran MC’s Federally Qualified Health Centers (FQHC’s) and allow a transformation so the facility can provide necessary services to Brooklyn residents. NYU Lutheran plans to enhance cardiac catheterization and upgrade the emergency and ambulatory departments.

Conclusion
Merger of these facilities will help to expand services in the region and allow improvement through an influx of cash to be provided by NYU Hospitals Center. Modernization and growth in services is an anticipated and expected result of this project.

Recommendation
From a need perspective, approval is recommended.

Program Analysis

Project Proposal
NYU Hospitals Center (NYUHC) requests approval for the proposed merger of NYU Lutheran Medical Center (NYU Lutheran) with and into NYU Hospitals Center, with NYU Hospitals Center being the surviving corporation.

Previously, PHHPC had approved Lutheran’s affiliation with NYUHC whereby NYUHC and NYU Lutheran would come under the common control of a single parent. The affiliation was completed on April 1, 2015 and NYU Langone Health System became the active parent of NYU Lutheran and the passive parent of NYUHC. Pursuant to the Affiliation Agreement, NYUHC made commitments to NYU Lutheran consisting of cash grants for capital and clinical improvement projects and loans to implement an electronic medical records system and certain infrastructure projects.

As efforts to integrate clinical programs and corporate services progressed, it became evident that the most optimal way to expedite the growth of NYU Lutheran and to address the increasing financial challenges it faces is to pursue a full-asset merger. NYUHC anticipates that a full-asset merger will result in approximately $56.9 million in savings to NYUHC annually that would accrue through efficiencies in IT, patient care management, revenue cycle and managed care contracting. The merger would bring to the combined operations discounted pharmacy benefits; improved Medicare and Medicaid rates; potential improved credit rating due to key performance indicator improvement; and reduced costs of malpractice premiums.

NYUHC has 1,069 licensed beds and has received recognition for clinical excellence and quality as evidenced by being awarded the Gold Seal of Approval by The Joint Commission; a #1 ranking for patient safety and quality by the University Health System Consortium in 2013 and 2014; and Magnet Designation for nursing excellence.
NYU Lutheran is the principal provider of health care for the residents of southwest Brooklyn with 450 licensed beds and an emergency department that has been designated a Level I trauma center and a regional stroke center.

In addition to the inpatient facility, NYU Lutheran is the co-operator with Sunset Park Health Council, Inc. of Lutheran Family Health Centers, one of the largest federally qualified health center (FQHC) networks in the country, with 9 primary care sites, 28 school-based health/dental clinics and social support services. Currently, Sunset Park has been the licensed co-operator of all of NYU Lutheran’s outpatient extension clinics as well as the clinics located at NYU Lutheran’s main facility, all of which are operated as FQHCs sites. Accordingly, NYUHC is hereby requesting that co-operator status of the FQHC outpatient clinics be maintained following the merger, and that co-operator status be noted on the new operating certificate issued to NYUHC.

NYU Lutheran is also the sole passive member of Lutheran Augustana Center, a 240-bed nursing home located on NYU Lutheran’s main campus at 150 55th Street in Brooklyn, and indirectly controls a certified home health agency (Lutheran CHHA, Inc.) and a licensed home health agency (Community Care Organization, Inc.). The Bylaws of the two stand-alone entities require that their directors be officers, directors or employees of NYU Lutheran or, in the case of Community Care, NYU Lutheran or a related entity. As NYU Lutheran is a passive parent, Augustana is not included in this proposal. Furthermore, the certified home health agency and the licensed home health agency, both stand-alone corporations without any members, are licensed under Article 36 of the Public Health Law and thus not a part of this application.

Upon approval, NYU Lutheran will cease to exist as a separate corporate entity and its operations (including all assets and liabilities) will merge into NYU Hospitals Center, which will continue to have NYU Langone Health System as its sole member and passive parent. In connection with the proposed transaction, NYU Lutheran is developing an advisory board that will provide input on local issues directly to the NYUHC Board of Trustees and senior management team.

**Compliance with Applicable Codes, Rules and Regulations**
The facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility’s enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

**Conclusion**
Based on the results of this review, a favorable recommendation can be made for the proposal.

**Recommendation**
From a programmatic perspective, approval is recommended.
Financial Analysis

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

| Purpose | The merger of NYU Lutheran Medical Center into NYU Hospitals Center. |
| Terms: | All assets and liabilities of NYU Lutheran, as well as all pension plan and other liabilities, will be transferred to and assumed by NYUHC; NYUHC will develop and maintain NYU Lutheran’s premises and maintain commitment to its mission; NYUHC’s existing, more generous, charity care policy will apply to NYU Lutheran; all existing employment and union agreements will be honored; the management of the two organizations will be integrated, with Senior Executive responsible for operations at the NYU Lutheran site. |
| Governance: | The members of the Board of Trustees of NYU Hospitals Center immediately prior to the Effective Date shall continue to be the Trustees of the Surviving Corporation upon consummation of the Merger. |
| Closing: | Closing is contingent upon approval or waiver of approval from: NYS Attorney General, NYS Department of Health, Justice of the Supreme Court of New York County, and HUD |

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

Operating Budget
The applicant has submitted an operating budget, in 2015 dollars, for the first year of operation, as summarized below:

| Revenues: | $2,639,013,665 |
| Operating Revenues | 2,639,013,665 |
| Other Operating Revenues | 258,040,909 |
| Total Revenues | $2,897,054,574 |
| Expenses: | $2,743,559,734 |
| Operating | 2,571,101,308 |
| Capital | 172,458,426 |
| Total Expenses | $2,743,559,734 |

Excess of Revenues over Expenses $153,494,840

Utilization:
| Inpatient (Discharges) | 64,652 |
| Outpatient (Visits) | 1,634,401 |

Other operating revenues includes grants and affiliations, return on short term investments, contributions, parking lot and space rental, EHR incentive payments, payments from offshore medical schools to train medical students, and income from Calvary Hospital within a hospital program.
Utilization for the combined NYUHC/NYU Lutheran operations by payor source for inpatient and outpatient services is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Inpatient</th>
<th>Outpatient</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid Fee For Service</td>
<td>5.97%</td>
<td>8.40%</td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>20.65%</td>
<td>28.55%</td>
</tr>
<tr>
<td>Medicare Fee For Service</td>
<td>23.42%</td>
<td>15.85%</td>
</tr>
<tr>
<td>Medicare Managed Care</td>
<td>8.61%</td>
<td>6.01%</td>
</tr>
<tr>
<td>Commercial Fee For Service</td>
<td>32.85%</td>
<td>25.17%</td>
</tr>
<tr>
<td>Commercial Managed Care</td>
<td>4.42%</td>
<td>6.21%</td>
</tr>
<tr>
<td>Private Pay</td>
<td>4.08%</td>
<td>9.81%</td>
</tr>
</tbody>
</table>

Expense and utilization assumptions are based on the historical experience of NYU Hospital Center and NYU Lutheran Medical Center.

**Capability and Feasibility**

There are no issues of capability associated with this application.

The submitted budget indicates an excess of revenues over expenses of $153,494,840 during the first year for the combined operations. Revenues are based on current reimbursement methodologies.

BFA Attachment A is the certified financial statements of NYU Hospital Center as of August 31, 2013, and August 31, 2014. As shown, the entity had an average positive working capital position and an average positive net asset position for the period shown. Also, the entity achieved an average income of operations of $131,299,500 during the period shown.

BFA Attachment B is the 2013 and 2014 certified financial statements of Lutheran Healthcare. As shown, the entity had an average positive working capital position and an average positive net asset position from 2013 through 2014. Also, the entity incurred average losses of $14,256,500 from 2013 through 2014. The applicant indicated that the losses were attributed to supporting the operating losses that the physician group (Professional Corporation) and Lutheran Augustana Center for Extended Care and Rehabilitation incurred.

BFA Attachment C is the internal financial statements of NYU Hospitals Center as of May 31, 2015. As shown, the entity had a positive working capital position and a positive net asset position for the period ending May 31, 2015. Also, the entity incurred an income from operations of $167,596,000 through May 31, 2015.

BFA Attachment D is the internal financial statements of NYU Lutheran Medical and Family Health Centers as of May 31, 2015. As shown, the entity had a positive working capital position and a positive net asset position through May 31, 2015. Also, the entity incurred a loss of $2,500,187 through May 31, 2015. The applicant indicated that the losses were the result of the following: decreases in volume and case mix during January through March as a result of the extreme weather patterns experienced during these months; an increase in observation cases; and Lutheran Medical Center’s focus on decreasing readmissions especially from Lutheran Augustana Center for Extended Care and Rehabilitation. The applicant indicated that they implemented the following steps to improve operations: negotiated contracts expiring after April 1, 2015, with significant increases in payment rates; augmented staff and resources to critical areas such as HIM, CDI and Revenue Management; evaluated purchase agreements and leases to drive lower prices and better value through combining purchasing power; and evaluated opportunities to lower insurance premiums by consolidating policies.

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

**Recommendation**

From a financial perspective, contingent approval is recommended.
### Attachments

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>Financial Summary - August 31, 2013 and August 31, 2014 certified financial statements of NYU Hospital Center.</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Financial Summary - 2013 and 2014 certified financial statements of Lutheran Healthcare</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Financial Summary - May 31, 2015 internal financial statements of NYU Hospitals Center.</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>Financial Summary - May 31, 2015 internal financial statements of NYU Lutheran Medical and Family Health Centers.</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to certify NYU Lutheran Medical Center as a division of NYU Hospitals Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: 152008 E
FACILITY/APPLICANT: NYU Hospitals Center
APPROVAL CONTINGENT UPON:

1. Submission of an executed merger agreement that is acceptable to the Department of Health. (BFA).
2. Submission of a photocopy of the fully executed Certificate of Merger of NYU Lutheran Medical Center into NYU Hospitals Center, acceptable to the Department. [CSL]
3. Submission of a photocopy of the fully executed Plan of Merger between NYU Hospitals Center and NYU Lutheran Medical Center, acceptable to the Department. [CSL]
4. Submission of a photocopy of the fully executed Certificate of Amendment of the Certificate of Incorporation of NYU Langone Health System, acceptable to the Department. [CSL]
5. Submission of the fully executed Amendment to Certificate of Incorporation of NYU Hospitals Center, acceptable to the Department. [CSL]
6. Submission of the fully executed bylaws of the NYU Hospitals 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]

    Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
MEMORANDUM

To: Members of the Establishment and Project Review Committee
   Public Health and Health Planning Council

From: Christopher Delker
      Director
      Division of Planning and Licensure

Date: September 15, 2015

Subject: CON #151008 Pittsford Pain Center, LLC

This application first came before the full Council at its meeting of June 11, 2015, following earlier review by the Establishment and Project Review Committee, whose members were unable to agree on a recommendation.

The proposed ASC was the subject of considerable discussion at the PHHPC meeting, mainly because of the recommendation of the Finger Lakes Health Systems Agency (HSA) for disapproval (see attached memo). With two members recusing, 14 of the 16 members in attendance were eligible to vote on the application. By a tally of 11 in favor and three opposed, the motion to accept the Department’s recommendation for approval of the proposed ASC fell two votes short of the required 13.

Rather than entertain an alternate motion for disapproval of the application, members noted the absence of six members and elected to defer further consideration of the proposal until a PHHPC meeting with fuller attendance. Because it was anticipated that the PHHPC’s August meeting would also have the low attendance typical of the summer vacation season, the Department has scheduled the application for consideration in this September/October cycle.
MEMORANDUM

To: Members of the Public Health and Health Planning Council

From: Charles P. Abel
       Acting Director
       Center for Health Care Facility Planning, Licensure and Finance

Date: May 14, 2015

Subject: CON #151008 Pittsford Pain Center, LLC - Revised

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 proposedASC.

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 ASC's, 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.

- **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.
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:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$6,231,234</td>
</tr>
<tr>
<td>Expenses</td>
<td>4,827,355</td>
</tr>
<tr>
<td>Net Income</td>
<td>$1,403,879</td>
</tr>
</tbody>
</table>
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
May 21, 2015 EPRC – No Recommendation
June 11, 2015 PHHPC – No Recommendation

October 8, 2015
**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).

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

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.

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

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.

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

Character and Competence
The members of Pittsford Pain Center, LLC are:

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

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:

<table>
<thead>
<tr>
<th>Facility:</th>
<th>Pittsford Pain Center, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor:</td>
<td>Heritage Ambulatory Surgery Center Alliance, LLC</td>
</tr>
<tr>
<td>Term:</td>
<td>Two years with automatic renewal of successive terms of one year</td>
</tr>
<tr>
<td>Services Provided:</td>
<td>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.</td>
</tr>
<tr>
<td>Fee:</td>
<td>Year One - $190,000</td>
</tr>
<tr>
<td></td>
<td>Year Two - $250,000</td>
</tr>
<tr>
<td></td>
<td>Year Three - $250,000</td>
</tr>
<tr>
<td></td>
<td>Year Four - $257,500</td>
</tr>
<tr>
<td></td>
<td>Year Five - $265,225</td>
</tr>
</tbody>
</table>

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:

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

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: 2,203
- 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:

<table>
<thead>
<tr>
<th></th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td>$5,149,780</td>
<td>$6,231,234</td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$3,628,574</td>
<td>$4,397,380</td>
</tr>
<tr>
<td>Capital</td>
<td>431,585</td>
<td>429,975</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>$4,060,159</td>
<td>$4,827,355</td>
</tr>
<tr>
<td><strong>Net Income</strong></td>
<td>$1,089,621</td>
<td>$1,403,879</td>
</tr>
<tr>
<td><strong>Utilization (Procedures)</strong></td>
<td>6,000</td>
<td>7,260</td>
</tr>
<tr>
<td><strong>Cost Per Procedure</strong></td>
<td>$676.70</td>
<td>$664.92</td>
</tr>
</tbody>
</table>
Utilization broken down by payor source during the first and third years is as follows:

<table>
<thead>
<tr>
<th>Payor Source</th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid Managed Care</td>
<td>3.53%</td>
<td>3.53%</td>
</tr>
<tr>
<td>Medicare Fee For Service</td>
<td>10.03%</td>
<td>10.03%</td>
</tr>
<tr>
<td>Medicare Managed Care</td>
<td>26.37%</td>
<td>26.37%</td>
</tr>
<tr>
<td>Commercial Managed Care</td>
<td>34.40%</td>
<td>34.40%</td>
</tr>
<tr>
<td>Private Pay</td>
<td>3.83%</td>
<td>3.83%</td>
</tr>
<tr>
<td>Workers Compensation</td>
<td>19.78%</td>
<td>19.78%</td>
</tr>
<tr>
<td>Charity Care</td>
<td>2.00%</td>
<td>2.00%</td>
</tr>
<tr>
<td>Other</td>
<td>.06%</td>
<td>.06%</td>
</tr>
<tr>
<td>Total</td>
<td>100.00%</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

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
601 Elmwood Avenue
Rochester, New York 14642

<table>
<thead>
<tr>
<th>Current OR Use (% of capacity)</th>
<th>Surgery Cases¹</th>
<th>Amb. Surg. Cases by Applicant Physicians</th>
<th>Reserved OR Time for Applicant Physicians</th>
</tr>
</thead>
<tbody>
<tr>
<td>53% Main site 62% Off-site</td>
<td>Ambulatory 54%</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>Inpatient 46%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Strong Memorial Hospital opposes this application based on existing operating room capacity within the Strong system, the low volume of pain procedures provided in an operating room setting and concerns over the quality and management of pain cases that would be treated at the proposed ASC.

In 2012 Strong Memorial had operating expenses of $1,083,726,520 on revenue of $1,179,855,300 for a gain of $96,128,780. In 2013, operating expenses totaled $1,163,324,922 and revenue was $1,286,605,893, for a gain of $123,280,971. Current assets in 2012 were $538,431,207 and current liabilities were $231,840,446 for a working capital ratio of 2.3 to 1.0. In 2013, current assets were $644,356,490, and current liabilities were $220,328,133, for a working capital ratio of 2.9 to 1.0. In its fiscal year 2013, Strong Memorial incurred bad debt of $19.3 million and provided charity care in the amount of $37.5 million. In fiscal year 2014, the hospital incurred $22.9 million in bad debt and provided $37.8 million in charity care.

Facility: Highland Hospital
1000 South Avenue
Rochester, New York 14620

<table>
<thead>
<tr>
<th>Current OR Use (% of capacity)</th>
<th>Surgery Cases</th>
<th>Ambulatory Surgery Cases by Applicant Physicians</th>
<th>Reserved OR Time for Applicant Physicians</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Rms. 63.8%</td>
<td>49.0%</td>
<td>51.0%</td>
<td>Yes²</td>
</tr>
<tr>
<td>Procedure Ctr. 42.1%</td>
<td>78.9%</td>
<td>21.1%</td>
<td>No</td>
</tr>
</tbody>
</table>

Highland Hospital opposes the application on the grounds that there is sufficient OR capacity at Highland and elsewhere in the community to obviate the need for an additional ASC, especially in a time of growing consolidation and affiliation among providers. The hospital also states that approval of the proposed ASC

¹ Main site and off-site combined.
² Four cases in 2014
could potentially reduce current OR utilization. Highland does not quantify what effect such a reduction would have on its surgical revenues or on its community-oriented services.

In 2012 Highland Hospital had operating expenses of $280,395,263 on revenue of $294,378,157 for a gain of $13,982,894. In 2013, operating expenses totaled $297,751,531 and revenue was $312,863,256, for a gain of $15,111,725. Current assets in 2012 were $112,366,882, and current liabilities were $28,059,340 for a working capital ratio of 4.0 to 1.0. In 2013, current assets were $127,086,005, and current liabilities were $30,448,992, for a working capital ratio of 4.2 to 1.0. In 2012, Highland Hospital incurred bad debt of $3.2 million and provided charity care in the amount of $4.9 million. In 2013, the hospital incurred $4.1 million in bad debt and provided $5.7 million in charity care.

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 comments from the responding hospitals do not describe a specific adverse impact of the proposed ASC on the facilities’ surgical revenues or community-oriented programs. Nor does any such adverse impact seem likely, given that virtually all the procedures projected for the ASC are currently performed in office-based settings and that the applicant physicians have performed only a negligible number of cases at one of the responding hospitals. The Department conduces that the comments from area hospitals provide 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

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\(^3\). 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.

---

\(^3\) 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

<table>
<thead>
<tr>
<th>CPT</th>
<th>Description</th>
<th>Projected Volume Y1</th>
<th>Projected Volume Y3</th>
</tr>
</thead>
<tbody>
<tr>
<td>64483</td>
<td>Injection(s), anesthetic agent and/or steroid transformaminal epidural, with imaging guidance (fluoro or CT); lumbar or sacral, single level</td>
<td>2,449</td>
<td>2,964</td>
</tr>
<tr>
<td>62311</td>
<td>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)</td>
<td>928</td>
<td>1,123</td>
</tr>
<tr>
<td>64493</td>
<td>Injection(s), diagnostic or therapeutic agent, paravertebral facet joint with image guidance, lumbar or sacral; single level</td>
<td>891</td>
<td>1,078</td>
</tr>
<tr>
<td>64635</td>
<td>Destruction by neurolytic agent, paravertebral facet joint nerve(s), with imaging guidance; lumbar or sacral, single facet joint</td>
<td>450</td>
<td>544</td>
</tr>
<tr>
<td>62310</td>
<td>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</td>
<td>944</td>
<td>1,142</td>
</tr>
</tbody>
</table>

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. 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.

---

4 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\(^5\) 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\(^6\).

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.”\(^7\) 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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\(^6\) 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

\(^7\) 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 reallocated or repurposed for the new facility.

<table>
<thead>
<tr>
<th>Table 2. Project Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current Year</strong></td>
</tr>
<tr>
<td>Project Capital Cost</td>
</tr>
<tr>
<td>Operating Cost</td>
</tr>
<tr>
<td>Operating Revenue</td>
</tr>
</tbody>
</table>

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>
<thead>
<tr>
<th>Table 3. Medicare Proposed Payments by Setting</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2015 Medicare Proposed Total Payment Per Procedure</strong></td>
</tr>
<tr>
<td>CPT Code</td>
</tr>
<tr>
<td>64483</td>
</tr>
<tr>
<td>62311</td>
</tr>
<tr>
<td>64493</td>
</tr>
<tr>
<td>64635</td>
</tr>
<tr>
<td>62310</td>
</tr>
</tbody>
</table>
Table 4. Estimated Revenue Increase due to Change in Place of Service

<table>
<thead>
<tr>
<th>CPT Code</th>
<th>Expected Office Reimbursement</th>
<th>Expected ASC Reimbursement</th>
<th>Difference</th>
<th>Proposed Number of Procedures</th>
<th>Estimated Difference in Total Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>64483</td>
<td>$202</td>
<td>$566</td>
<td>$364</td>
<td>2,449</td>
<td>$891,436</td>
</tr>
<tr>
<td>62311</td>
<td>$231</td>
<td>$728</td>
<td>$497</td>
<td>928</td>
<td>$461,216</td>
</tr>
<tr>
<td>64493</td>
<td>$181</td>
<td>$566</td>
<td>$385</td>
<td>891</td>
<td>$343,035</td>
</tr>
<tr>
<td>64635</td>
<td>$399</td>
<td>$943</td>
<td>$544</td>
<td>450</td>
<td>$244,800</td>
</tr>
<tr>
<td>62310</td>
<td>$214</td>
<td>$561</td>
<td>$347</td>
<td>944</td>
<td>$327,568</td>
</tr>
</tbody>
</table>

**TOTAL DIFFERENCE IN REVENUE**  **$2,268,055**

**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
## Attachments

<table>
<thead>
<tr>
<th>BFA Attachment A</th>
<th>Personal Net Worth Statement</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment B</td>
<td>Pro Forma Balance Sheet</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single specialty ambulatory surgery center to provide pain management services at 727 Linden Avenue, Pittsford, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: FACILITY/APPLICANT:

151008 B Pittsford Pain Center LLC
APPROVAL CONTINGENT UPON:

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
Description
South Shore Surgery Center, LLC (South Shore), a New York proprietary Article 28 diagnostic and treatment center (D&TC) located at 53 Brentwood Road, Suite F, Bay Shore (Suffolk County), requests approval to extend its limited life for two years and to transfer 50.1% of the overall ownership interest in the facility to North Shore-LIJ Multi-Specialty Ventures, LLC through a membership interest purchase agreement. South Shore is certified as a multi-specialty freestanding ambulatory surgery center (FASC) and provides the following services: ear, nose and throat surgery, pain management, orthopedic surgery, ophthalmology, and general surgery. The facility was approved by the Public Health Council with a five-year limited life under CON #042011 and began operation effective December 17, 2010. The FASC's initial five-year limited life will expire on December 17, 2015. The applicant is not proposing to add or change any services, or to expand or renovate the facility.

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

<table>
<thead>
<tr>
<th>Class A Members</th>
<th>Current %</th>
<th>Proposed %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eric Bergson, M.D.</td>
<td>3.75%</td>
<td>1.8713%</td>
</tr>
<tr>
<td>Joseph Bonafede, M.D.</td>
<td>3.75%</td>
<td>1.8713%</td>
</tr>
<tr>
<td>Todd Campbell, M.D.</td>
<td>3.75%</td>
<td>1.8713%</td>
</tr>
<tr>
<td>Edward Cussatti, M.D.</td>
<td>3.75%</td>
<td>1.8713%</td>
</tr>
<tr>
<td>Robert Gargano, M.D.</td>
<td>3.75%</td>
<td>1.8713%</td>
</tr>
<tr>
<td>Thomas O'Donnell, M.D.</td>
<td>3.75%</td>
<td>1.8713%</td>
</tr>
<tr>
<td>Steven Litman, M.D.</td>
<td>3.75%</td>
<td>1.8713%</td>
</tr>
<tr>
<td>Charles Ruotolo, M.D.</td>
<td>3.75%</td>
<td>1.8713%</td>
</tr>
<tr>
<td>Luis Fandos, M.D.</td>
<td>8.00%</td>
<td>3.9920%</td>
</tr>
<tr>
<td>Sanford Ratzan, M.D.</td>
<td>8.00%</td>
<td>3.9920%</td>
</tr>
<tr>
<td>Craig Shalmi, M.D.</td>
<td>8.00%</td>
<td>3.9920%</td>
</tr>
<tr>
<td>James Marzec, M.D.</td>
<td>8.00%</td>
<td>3.9920%</td>
</tr>
<tr>
<td>Steven Simonsen, M.D.</td>
<td>8.00%</td>
<td>3.9920%</td>
</tr>
<tr>
<td>Class B Members</td>
<td>9.00%</td>
<td>4.4910%</td>
</tr>
<tr>
<td>Tom Bombardier, M.D.</td>
<td>9.00%</td>
<td>4.4910%</td>
</tr>
<tr>
<td>Brent B. Lambert, M.D.</td>
<td>3.00%</td>
<td>1.4970%</td>
</tr>
<tr>
<td>Luke L. Lambert</td>
<td>9.00%</td>
<td>4.4910%</td>
</tr>
<tr>
<td>George Violin, M.D.</td>
<td>0.00%</td>
<td>50.1%</td>
</tr>
</tbody>
</table>

North Shore-LIJ Multispecialty Ventures, LLC’s sole member is North Shore University Hospital, a voluntary not-for-profit, 804-bed tertiary care hospital located at 300 Community Drive, Manhasset, NY. North Shore University Hospital is a member of the North Shore-Long Island Jewish Health System, Inc. (NS-LIJ). NS-LIJ is a comprehensive integrated delivery system formed to ensure the delivery of a broad range of quality healthcare services to the
community it serves and to achieve economies of scale through consolidation, cooperation and joint planning among its members. The hospital is also a member of the NS-LIJ obligated group, formed to provide its members an enhanced credit position and expanded access to capital markets.

**OPCHSM Recommendation**
Contingent Approval with an expiration of the operating certificate two years from the date of the Public Health and Health Planning Council recommendation letter.

**Need Summary**
Data submission by the applicant, as a contingency of CON 042011, is completed.

Based on CON 042011, South Shore Surgery Center projected Medicaid to be 5.65 percent and charity care at 5.64 percent for Year 3. According to AHCF cost reports, actual charity care in Year 3 (2013) was 0.40 percent and Medicaid was 5.8 percent.

Upon approval of this CON, South Shore projects 6,614 procedures in Year 1, with 11.8 percent Medicaid and 1.5 percent charity care.

There will be no changes in services.

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

**Financial Summary**
North Shore-LIJ Multispecialty Ventures, LLC will acquire 50.1% interest in the operations of South Shore Surgery Center, LLC via $5,261,965 cash equity as provided for in the membership interest purchase agreement. The payment will be made by NS-LIJ from their current operations.

There are no project costs associated with this application.

| Budget | Revenues | $5,768,419 |
| Budget | Expenses  | $4,607,606 |
| Budget | Net Income/(Loss) | $1,160,813 |
Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management
Approval with an expiration of the operating certificate two years from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide quarterly reports to the DOH. Said reports should include:
   a. Data showing actual utilization including procedures
   b. Data showing breakdown of visits by payor 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]

2. Submission of a photocopy of the applicant’s Restated and Amended Articles of Organization, acceptable to the Department. [CSL]

3. Submission of a photocopy of the applicant’s filing with the Secretary of State of the Restated and Amended Articles of Organization, acceptable to the Department. [CSL]

4. Submission of a photocopy of the applicant’s Development and Administrative Service Agreement, acceptable to the Department. [CSL]

5. Submission of a photocopy of the applicant’s First Amendment to the Amended and Restated Development and Administrative Service Agreement, acceptable to the Department. [CSL]

6. Submission of a photocopy of the applicant’s Amended and Restated Operating Agreement acceptable to the Department. [CSL]

7. Submission of a photocopy of the applicant’s Purchase Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date
October 8, 2015
Need Analysis

Project Description
South Shore Surgery Center, LLC, an Article 28 Diagnostic and Treatment Center certified as a multi-specialty ambulatory surgery center, is requesting a two-year extension of its five year limited life, set to expire December 17, 2015 (CON 042011). The facility is located at 53 Brentwood Road, Bay Shore, 11706, in Suffolk County. The center provides ear, nose and throat (ENT), orthopedic, pain management, ophthalmologic, and general surgery services. The center has three operating rooms and two procedure rooms. South Shore Surgery Center is also seeking to transfer 50.1% membership interest in the center to North Shore-LIJ Multispecialty Ventures, LLC.

Analysis
The primary service area is Suffolk County.

The table below provides information on projected and actual procedures for Year 3 of the original CON 042011.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4,950</td>
<td>4,770</td>
</tr>
</tbody>
</table>

The table below provides information on projected and actual utilization, by payor for Year 3 of the original CON 042011, as well as actual 2014 and projected Year 1 after approval utilization.

<table>
<thead>
<tr>
<th>CON 042011 Projections Year 3 (2013)</th>
<th>CON 042011 Actual Year 3 (2013)</th>
<th>CON 151200 Actual 2014</th>
<th>CON 151200 Projections Years 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicare FFS/MC</td>
<td>23.59%</td>
<td>7.0%</td>
<td>8.7%</td>
</tr>
<tr>
<td>Medicaid FFS/MC</td>
<td>5.65%</td>
<td>5.8%</td>
<td>12.0%</td>
</tr>
<tr>
<td>Commercial</td>
<td>14.16%</td>
<td>37.9%</td>
<td>32.6%</td>
</tr>
<tr>
<td>Private Pay/Other</td>
<td>50.96%</td>
<td>48.9%</td>
<td>46.6%</td>
</tr>
<tr>
<td>Charity Care</td>
<td>5.65%</td>
<td>0.4%</td>
<td>0.1%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Since the passage of the Affordable Care Act, access to healthcare coverage has improved in New York State, which means fewer people needing traditional charity care. Through February 2015, the number of uninsured individuals in Suffolk County has dropped from 168,000 before passage of the Affordable Care Act to approximately 21,600 after passage (an 87% drop). Approximately 59% of these newly insured people enrolled in Medicaid.

South Shore Surgery Center has engaged in an outreach effort to the Vietnam Veterans and the LI Immigrant Alliance to provide charity care. So far, the center has not received any referrals from these organizations. The center established a Charity Care policy which established guidelines under which the center will provide care for free or at a reduced cost to patients who are unable to pay.

In recognition of the need for the center to improve its charity care, the center has developed a detailed action plan going forward. The center, upon approval of the membership transfer request, will become part of the North Shore-LIJ organization, and will participate in North Shore-LIJ’s robust charity program. The center has contacted the Dolan Family Health Center to provide charity care to its patients. The Dolan Family Health Center is part of Huntington Hospital, and it has committed to work diligently to refer underserved and uninsured patients to South Shore for treatment.
With these efforts, the applicant feels it can achieve a charity care level of 1.5% in the next two years. South Shore Surgery Center is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

**Conclusion**

Even though the number of uninsured individuals in New York State and Suffolk County has dropped sharply since the implementation of the ACA and New York State’s health insurance exchange, South Shore’s charity care level has been unduly modest. However, it is reasonable to expect that under its proposed more detailed action plan for reaching uninsured individuals, and its connection with the North Shore-LIJ organization, South Shore will be able to achieve its newly proposed level of 1.5 percent charity care within the proposed two-year period of limited life extension.

**Recommendation**

From a need perspective, contingent approval is recommended.

---

### Program Analysis

#### Program Proposal

South Shore Surgery Center, LLC requests approval for a two-year extension following a five-year conditional limited life approval (granted on March 14, 2008 in Project Number 042011). Additionally, the Center requests approval to transfer 50.1% membership interest to North Shore-LIJ Multispecialty Ventures, LLC.

The Center is not proposing to add any services, expand or renovate the facility.

#### Character and Competence

The Center’s current membership is comprised of 13 individual physician members (70.00%) and four individuals (30.00%) who are members of Cataract and Laser Center Partners, LLC d/b/a Ambulatory Surgical Centers of America (ASCOA). Upon approval, the Center’s membership would be: 13 Class A individual physician members (34.93%); four Class B individual ASCOA members (14.97%); and Class C member North Shore-LIJ Multispecialty Ventures, LLC (50.1%).

The proposed managers of South Shore Surgery Center are:

<table>
<thead>
<tr>
<th>Name</th>
<th>Affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>*Luke Lambert</td>
<td>ASCOA</td>
</tr>
<tr>
<td>*Sanford Ratzan, MD</td>
<td>Physician Member</td>
</tr>
<tr>
<td>*James Marzec, MD</td>
<td>Physician Member, Medical Director</td>
</tr>
<tr>
<td>*Joseph Bonafede, MD</td>
<td>Physician Member</td>
</tr>
<tr>
<td>*Charles Ruotolo, MD</td>
<td>Physician Member</td>
</tr>
<tr>
<td>John McGovern</td>
<td>North Shore-LIJ Multispecialty Ventures, LLC</td>
</tr>
<tr>
<td>Dennis Dowling</td>
<td>North Shore-LIJ Multispecialty Ventures, LLC</td>
</tr>
<tr>
<td>Laurence A. Kraemer</td>
<td>North Shore-LIJ Multispecialty Ventures, LLC</td>
</tr>
<tr>
<td>Robert Power</td>
<td>North Shore-LIJ Multispecialty Ventures, LLC</td>
</tr>
</tbody>
</table>

*existing members/managers and not subject to review under this CON*

The sole member of North Shore-LIJ Multispecialty Ventures, LLC is North Shore University Hospital (NSUH), an existing voluntary, not-for-profit tertiary care hospital located in Manhasset (Nassau County). NSUH is a member of the North Shore-Long Island Jewish Health System (NSLIJHS). The Board of Trustees for NSLIJHS is comprised of 131 members, all of whom were subject to Character and Competence review.
Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant’s ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Mr. Michael Ashner disclosed two settled civil legal matters involving allegations of breach of fiduciary duty, abuse of control, mismanagement, waste of corporate assets and unjust enrichment on the part of the board.

Mr. Alan Chopp disclosed affiliation with several long-term care health facilities, some of which had been subjected to enforcement actions. In Stipulation and Orders (S&Os) dated April 21, 2009 and July 16, 2009, the Department cited Avalon Gardens Rehabilitation and fined the facility a total of $6,000 for Quality of Care issues. On September 29, 2005, June 13, 2007, and December 16, 2011, S&Os were issued to Bayview Nursing & Rehabilitation Center and the facility was fined a total of $19,000 for problems with Comprehensive Care Plans, and Quality of Life/Quality of Care issues. Civil money penalties (CMPs) were collected in the amount of $74,658.64 and a Denial of Payment for new admissions was imposed between November 24, 2004 and January 10, 2005. Four S&Os (dated June 12, 2007, June 1, 2009, December 6, 2010, and May 24, 2011) revealed the Hamptons Center for Rehabilitation and Nursing had been cited several times by the Department for issues related to Quality of Care, Administration and Facility Practices and CMPs totaling $13,353 were collected.

Mr. Epstein disclosed that the Jewish Board of Family and Children’s Services with which he is affiliated had recently entered into a settlement with the NY Office of Medicaid Inspector General to reconcile excess payments received relative to Office of Mental Health’s reimbursement methodology.

Mr. Richard Goldstein disclosed that he had been both a director and shareholder of corporation which filed for bankruptcy protection in 2009 then subsequently sold their assets.

Mr. Hiltz disclosed that, as a registered broker dealer, his firm is regulated by NASD and FINRA and is subject to regular examinations. On two occasions, the firm agreed to the imposition of regulatory fines (each under $5,000) for routine business claims rather than pursue a dispute resolution process.

Mr. Richard Horowitz disclosed that he had been named as a defendant (among other Members of the Board of Trustees and employees of the Children’s Medical Fund (CMF)) in a pending lawsuit filed by an individual for employment discrimination and sexual harassment. Mr. Horowicz stated he has no personal involvement and is named by virtue of his professional association with CMF.

Mr. Seth Horowitz disclosed that, in June 2012, a company he is affiliated with entered into a settlement with the Securities and Exchange Commission (SEC) and agreed to a Consent Judgment to settle the civil action filed by the SEC.

Mr. Charles Merinoff disclosed that he had been named in an employment action involving a company that he was affiliated with in 2009. The matter was settled at arbitration in July 2012.

Dr. Peress disclosed one open malpractice case pending trial in Putnam County.

Mr. Ranieri disclosed that a company with which he was affiliated had entered into a settlement agreement in March 2013 with the SEC for failure to adequately oversee a third party’s activities in 2008 related to marketing a particular fund.

Mr. Rosenthal disclosed that, in 2005, a shareholder lawsuit involving governance issues was brought against a company with which he was affiliated and all Directors were sued. The matter was subsequently settled.

Mr. Sahn disclosed a settled malpractice action that had been initiated in 2012 against a firm in which he was a Senior Partner.
Ms. Schlissel disclosed one pending and two settled civil legal matters related to unpaid legal fees involving the law firm in which she is a Managing Attorney.

**Compliance with Applicable Codes, Rules and Regulations**

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility’s enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

*In a Stipulation and Order (S&O) dated October 16, 2006, Southside Hospital was fined $14,000 when a complaint investigation revealed a physician performed a right ovarian cystectomy on a patient who was admitted and signed consent for removal of a large dermoid cyst on her left ovary.*

*In an S&O dated December 8, 2006, Forest Hills Hospital was fined $12,000 after an investigation revealed that surgery was performed on the patient’s right side although the patient entered the hospital for hernia repair on the left side.*

*In an S&O dated February 6, 2007, Staten Island University Hospital was fined $8,000 based on the investigation of a patient admitted for a left sided mediastinotomy (insertion of a tube into the chest). The procedure was begun on the right side of the chest and an anesthesiologist noticed the error ten minutes into the procedure. In another S&O dated July 23, 2007, the hospital was fined $12,000 due to an overdose of a controlled substance which caused a patient’s death. Nursing administered a drug at a higher rate than was ordered and continued administration even after the medication had been discontinued by a surgical resident.*

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

*In an S&O dated December 11, 2008, North Shore University Hospital- Manhasset was fined $18,000 based on post-operative care rendered to an elderly patient. Following surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed resulting in a dislocated femur and developed renal failure. It was determined that follow-up care was delayed or inadequate.*

*In an S&O dated July 8, 2010, Syosset Hospital was fined $42,000 based on an investigation of the care a child received related to an adenotonsillectomy. The patient was improperly cleared for surgery and, despite multiple comorbidities, was not kept for observation post-operatively. The patient expired after discharge.*

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

*In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital’s clinical documentation improvement program were issued by the US Attorney’s Office for the Southern District. The Health System complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.*
In December 2010, the Civil Division of The United States Department of Justice (DOJ) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. When the government’s review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model.

In October 2011, the US Attorney’s Office for the Western District of New York initiated a review of Southside Hospital’s inpatient admissions for atherectomy procedures. And, in June 2012, the US Attorney’s Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital’s inpatient specialized burn unit. To date, the government has not indicated whether there is any potential liability in either matter.

In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that, for many of the cases reviewed, documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure and requested that LHH undertake a self-audit and voluntary disclosure. While the Contractor agreed with LHH’s conclusions regarding many of the cases submitted, a demand for payment was issued with respect to those disallowed. LHH is appealing those claims through the administrative review process.

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

**Membership Interest Purchase Agreement**

The applicant has submitted an executed Membership Interest Purchase Agreement for the change of 50.1% membership interest of South Shore Surgery Center, LLC to be effectuated upon Public Health and Health Planning Council approval of this application request. The terms of the agreement are summarized below:

<table>
<thead>
<tr>
<th>Date:</th>
<th>December 19, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose:</td>
<td>The sale of 50.1% membership interest in South Shore Surgery Center, LLC.</td>
</tr>
<tr>
<td>Sellers:</td>
<td>All current South Shore Surgery, LLC members as follows:</td>
</tr>
<tr>
<td></td>
<td>• Selling 1.88% interest: Drs. Bergson, Bonafede, Campbell, Cussatti, Gargano, O’Donnell, Litman and Ruotolo;</td>
</tr>
<tr>
<td></td>
<td>• Selling 4.01% interest: Drs. Fandos, Ratzan, Shalmi, Marzec and Simonsen:</td>
</tr>
<tr>
<td></td>
<td>• Selling 4.51% interest: Drs. Bombardier, Lambert and Violin; and</td>
</tr>
<tr>
<td></td>
<td>• Selling 1.50% interest: Mr. Luke Lambert.</td>
</tr>
<tr>
<td>Purchaser:</td>
<td>North Shore-LIJ Multispecialty Ventures, LLC</td>
</tr>
<tr>
<td>Purchase Price:</td>
<td>$5,261,965 ($105,029.24 per percent)</td>
</tr>
<tr>
<td>Payment of Purchase Price:</td>
<td>Due at closing</td>
</tr>
</tbody>
</table>
Operating Budget
The applicant has submitted operating budgets for the current year of operations (2014) and for Year One (2015 dollars) subsequent to receiving a two-year limited life extension, as shown below:

<table>
<thead>
<tr>
<th></th>
<th>Current Year</th>
<th>Year One</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$5,762,282</td>
<td>$5,762,282</td>
</tr>
<tr>
<td>Non-Operating</td>
<td>$6,137</td>
<td>$6,137</td>
</tr>
<tr>
<td>Total Revenues</td>
<td>$5,768,419</td>
<td>$5,768,419</td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$3,440,279</td>
<td>$3,488,804</td>
</tr>
<tr>
<td>Capital</td>
<td>$1,118,802</td>
<td>$1,118,802</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>$4,559,081</td>
<td>$4,607,606</td>
</tr>
<tr>
<td><strong>Net Income/(Loss)</strong></td>
<td>$1,209,338</td>
<td>$1,160,813</td>
</tr>
</tbody>
</table>

Utilization (procedures) 6,526 6,614
Cost per procedure $698.60 $696.64

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

<table>
<thead>
<tr>
<th>Payor Source:</th>
<th>Current Year</th>
<th>Year One</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Procedures</td>
<td>%</td>
</tr>
<tr>
<td>Medicare FFS</td>
<td>440</td>
<td>6.7%</td>
</tr>
<tr>
<td>Medicare MC</td>
<td>131</td>
<td>2.0%</td>
</tr>
<tr>
<td>Medicaid FFS</td>
<td>6</td>
<td>0.1%</td>
</tr>
<tr>
<td>Medicaid MC</td>
<td>774</td>
<td>11.9%</td>
</tr>
<tr>
<td>Commercial MC</td>
<td>2,126</td>
<td>32.6%</td>
</tr>
<tr>
<td>Private Pay/Other</td>
<td>3,039</td>
<td>46.6%</td>
</tr>
<tr>
<td>Charity Care</td>
<td>10</td>
<td>0.1%</td>
</tr>
<tr>
<td>Total</td>
<td>6,526</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Per South Shore’s establishment CON, Medicaid and Charity Care utilization were projected to be 5.65% and 5.65%, respectively, of total procedures in the first and third year of operation. As documented in the AHCF cost reports filed with the Department, and supported by their SPARCS data submissions, the facility has experienced difficulty meeting a modest charity care level to date. However, Medicaid utilization was 2.3% (2011), 2.9% (2012), and 5.8% (2013) of their total caseload. The applicant indicated that they achieved 12.0% Medicaid in 2014 and this trend continues through to the present with Medicaid now comprising 12.77% of total cases.

The applicant provided documentation attesting to the declining number of uninsured persons in Suffolk County due to the impact of the Affordable Care Act and ongoing enrollments in insurance products, such as those available to individuals through the New York State of Health exchange marketplace.

To improve their efforts to treat underserved populations, South Shore has implemented an action plan, the main part of which revolves around tapping into NS-LIJ’s robust charity care program. Also, to increase charity care referrals, the facility has reached out to the Dolan Family Health Center, which is operated by Huntington Hospital and is part of NS-LIJ, and will reach out to Hudson River Healthcare, a Federally Qualified Health Center that is in the process of acquiring the operations of Suffolk County clinics. South Shore has provided a letter of understanding from the Dolan Center committing to refer appropriate uninsured and underinsured patients to the Center for treatment.

With these efforts and program changes, the applicant feels they can achieve a minimum charity care of 1.5% utilization by the end of Year One.
Capability and Feasibility
There are no project costs associated with this application.

North Shore-LIJ Multispecialty Ventures, LLC will acquire 50.1% of the operations of South Shore Surgery Center, LLC for $5,261,965 which will be funded via cash equity from North Shore-LIJ. BFA Attachment B is North Shore-LIJ’s 2012-2014 certified financial statements, which shows the entity has sufficient liquid assets to cover the purchase price associated with this project.

The submitted budget indicates an excess of revenues over expenses of $1,160,813 during Year One. Revenues are based on current reimbursement methodologies for FASC services. The budget appears reasonable.

BFA Attachment A is South Shore's financial summary for 2012-2014, which shows the entity had an average negative working capital of $85,338, an average positive equity position of $300,184 and an average net income of $1,386,679 for the period. The negative working capital position is due to standard operations of the facility. The members have an agreement in place whereby they agree to contribute equity as needed to cover any working capital shortfalls.

BFA Attachment B is the 2012-2014 financial summary for North Shore-LIJ, which shows a positive working capital position of $1,411,464,000, a positive equity position of $2,750,799,000 and a positive net income of $234,918,000 for the period.

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

Recommendation
From a financial perspective, approval is recommended.

Attachments

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>South Shore Surgery Center, LLC 2012-2014 financial statements</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>North Shore-LIJ 2012-2014 financial statements</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Organization Chart</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to request for indefinite life for CON #042011 and transfer 50.1% membership interest to North Shore – LIJ Multi-Specialty Ventures, LLC as a Class C member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: 151200 E
FACILITY/APPLICANT: South Shore Surgery Center
APPROVAL CONTINGENT UPON:

Approval with an expiration of the operating certificate two years from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide quarterly reports to the DOH. Said reports should include:
   a. Data showing actual utilization including procedures
   b. Data showing breakdown of visits by payor 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]

2. Submission of a photocopy of the applicant’s Restated and Amended Articles of Organization, acceptable to the Department. [CSL]

3. Submission of a photocopy of the applicant’s filing with the Secretary of State of the Restated and Amended Articles of Organization, acceptable to the Department. [CSL]

4. Submission of a photocopy of the applicant’s Development and Administrative Service Agreement, acceptable to the Department. [CSL]

5. Submission of a photocopy of the applicant’s First Amendment to the Amended and Restated Development and Administrative Service Agreement, acceptable to the Department. [CSL]

6. Submission of a photocopy of the applicant’s Amended and Restated Operating Agreement acceptable to the Department. [CSL]

7. Submission of a photocopy of the applicant’s Purchase Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within one year 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]

   Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
Description
DHCH, LLC, an existing NY limited liability company, is requesting to become the new operator of an existing New York proprietary Article 28 freestanding ambulatory surgical center (FASC) located at 195 East Main Street, Suite A, Huntington (Suffolk County). Digestive Health Center of Huntington, Inc. will transfer 100% of the Center’s assets and liabilities to DHCH, LLC in exchange for 100% of the membership interest of DHCH, LLC. Simultaneously upon closing, Digestive Health Center of Huntington, Inc. will transfer 51% of its ownership interest in DHCH, LLC, to North Shore-LIJ Endoscopy Ventures, LLC through a Membership Interest Purchase Agreement. The Center’s current lease agreement will be assigned to the newly established entity, DHCH, LLC. There will be no change or disruption in services.

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

<table>
<thead>
<tr>
<th>Current Operator</th>
<th>Proposed Operator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Digestive Health Center of Huntington, Inc.</td>
<td>DHCH, LLC d/b/a Digestive Health Center of Huntington</td>
</tr>
<tr>
<td>Members:</td>
<td>Members:</td>
</tr>
<tr>
<td>Paul Bermanski</td>
<td>Digestive Health Center of Huntington, Inc. 49%</td>
</tr>
<tr>
<td>Richard Fried</td>
<td>Members:</td>
</tr>
<tr>
<td>Zvi Alpern</td>
<td>Paul Bermanski</td>
</tr>
<tr>
<td>David Purow</td>
<td>37.25%</td>
</tr>
<tr>
<td>Michael Moseson</td>
<td>Richard Fried</td>
</tr>
<tr>
<td>Mark Dobriner</td>
<td>37.25%</td>
</tr>
<tr>
<td>North Shore-LIJ Endoscopy Ventures, LLC 51%</td>
<td>Zvi Alpern</td>
</tr>
<tr>
<td>Member:</td>
<td>9.90%</td>
</tr>
<tr>
<td>North Shore University Hospital, Inc.</td>
<td>David Purow</td>
</tr>
<tr>
<td></td>
<td>7.60%</td>
</tr>
<tr>
<td></td>
<td>Michael Moseson</td>
</tr>
<tr>
<td></td>
<td>4.00%</td>
</tr>
<tr>
<td></td>
<td>Mark Dobriner</td>
</tr>
<tr>
<td></td>
<td>4.00%</td>
</tr>
<tr>
<td></td>
<td>North Shore-LIJ Endoscopy Ventures, LLC 51%</td>
</tr>
<tr>
<td></td>
<td>Member:</td>
</tr>
<tr>
<td></td>
<td>North Shore University Hospital, Inc. 100%</td>
</tr>
</tbody>
</table>

The sole member of North Shore-LIJ Endoscopy Ventures, LLC is North Shore University Hospital, Inc., a voluntary not-for-profit 804-bed tertiary care hospital located at 300 Community Drive, Manhasset. North Shore University Hospital is a member of the North Shore-Long Island Jewish Health System, Inc. (NS-LIJ). NS-LIJ is a comprehensive integrated delivery system formed to ensure the delivery of a broad range of quality healthcare services to the community it serves and to achieve economies of scale through consolidation, cooperation and joint planning among its members. Also, the hospital is a member of the NS-LIJ obligated group, formed to provide its members an enhanced credit position and expanded access to capital markets.
**OPCHSM Recommendation**
Contingent Approval

**Need Summary**
There will not be any changes in services as a result of the proposed change in ownership.

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

**Financial Summary**
North Shore-LIJ Endoscopy Ventures, LLC will acquire 51% interest in the operations of the Center via $4,768,500 cash equity as provided for in the membership interest purchase agreement. The payment will be made by NS-LIJ from their current operations.

There are no project costs associated with this application.

<table>
<thead>
<tr>
<th>Budget:</th>
<th>Year One</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$3,615,485</td>
</tr>
<tr>
<td>Expenses</td>
<td>2,703,950</td>
</tr>
<tr>
<td>Net Income</td>
<td>$911,535</td>
</tr>
</tbody>
</table>
Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management
Approval contingent upon:
1. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
2. Submission of an executed lease assignment agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed contribution/asset transfer agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed administrative service agreement, acceptable to the Department of Health. [BFA]
5. Submission of the executed Articles of Organization of DHCH, LLC acceptable to the Department. [CSL]
6. Submission of the executed Operating Agreement of DHCH, LLC acceptable to the Department. [CSL]

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

Council Action Date
October 8, 2015
**Need Analysis**

**Project Description**
DHCH, LLC is requesting approval to become the operator of Digestive Health Center of Huntington, Inc., an existing ambulatory surgery center specializing in gastroenterology ambulatory surgery services. The center is located at 195 East Main St, Huntington, 11743, in Suffolk County.

**Background and Analysis**
Digestive Health Center of Huntington, Inc. has been providing gastroenterology surgery services to the residents of Suffolk County since 2003. The center performed a total of 3,813 procedures in 2011; 4,443 procedures in 2012; and 4,708 procedures in 2013. (Source: AHCF cost reports) The applicant reports that physicians at the center performed 61 endoscopic procedures at no charge for patients at Huntington Hospital in 2014.

**Conclusion**
There will not be any changes in services as a result of the proposed change in ownership.

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

**Program Analysis**

**Program Proposal**
DHCH, LLC is requesting approval to become the operator of Digestive Health Center of Huntington, Inc., an existing Article 28 Diagnostic and Treatment Center certified as a single (gastroenterology) specialty ambulatory surgery center, located at 195 East Main Street, Suite A in Huntington (Suffolk County). The current operator will convey assets and certain liabilities to DHCH, LLC in exchange for 100% of the membership interests of DHCH, LLC. Additionally, Digestive Health Center of Huntington, Inc. seeks to transfer 51.0% of its membership interest in DHCH, LLC to North Shore-LIJ Endoscopy Ventures, LLC.

The Center is not proposing to add any services, expand or renovate the facility or change anything about the Center (other than its ownership structure) in this application. Paul Bermanski, M.D., an existing founding member of the Center will continue to serve as the Center's Medical Director.

**Character and Competence**
Following this transaction, DHCH, LLC’s ownership composition will be as follows:

<table>
<thead>
<tr>
<th>Member Name</th>
<th>Current</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Digestive Health Center of Huntington, Inc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>*Paul Bermanski, MD</td>
<td>(37.25%)</td>
<td>49.0%</td>
</tr>
<tr>
<td>*Richard Fried, MD</td>
<td>(37.25%)</td>
<td></td>
</tr>
<tr>
<td>*Zvi Alpern, MD</td>
<td>(9.90%)</td>
<td></td>
</tr>
<tr>
<td>*David Purow, MD</td>
<td>(7.60%)</td>
<td></td>
</tr>
<tr>
<td>*Michael Moseson, MD</td>
<td>(4.00%)</td>
<td></td>
</tr>
<tr>
<td>*Mark Dobriner, MD</td>
<td>(4.00%)</td>
<td></td>
</tr>
<tr>
<td>North Shore LIJ Endoscopy Ventures, LLC</td>
<td>-----</td>
<td>51.0%</td>
</tr>
<tr>
<td>Managers: Dennis Dowling</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Laurence A. Kraemer, Esq.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>John McGovern</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Not subject to a Character and Competence Review for this project.
The sole member of North Shore-LIJ Endoscopy Ventures, LLC is North Shore University Hospital (NSUH), an existing voluntary, not-for-profit tertiary care hospital located in Manhasset (Nassau County). NSUH is a member of the North Shore-Long Island Jewish Health System (NS-LIJ). The Board of Trustees for NS-LIJ is comprised of 131 members who were subject to Character and Competence review.

The existing, approved stockholders (6 individual physician members) of Digestive Health Center of Huntington, Inc. will not change as a result of this project. The proposed Managing Director of DHCH, LLC will be David Purow, M.D.

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. Michael Ashner disclosed two settled civil legal matters involving allegations of breach of fiduciary duty, abuse of control, mismanagement, waste of corporate assets and unjust enrichment on the part of the board.

Mr. Alan Chopp disclosed affiliation with several long-term care health facilities, some of which had been subjected to enforcement actions. In Stipulation and Orders (S&Os) dated April 21, 2009 and July 16, 2009, the Department cited Avalon Gardens Rehabilitation and fined the facility a total of $6,000 for Quality of Care issues. On September 29, 2005, June 13, 2007, and December 16, 2011, S&Os were issued to Bayview Nursing & Rehabilitation Center and the facility was fined a total of $19,000 for problems with Comprehensive Care Plans, and Quality of Life/Quality of Care issues. Civil money penalties (CMPs) were collected in the amount of $74,658.64 and a Denial of Payment for new admissions was imposed between November 24, 2004 and January 10, 2005. Four S&Os (dated June 12, 2007, June 1, 2009, December 6, 2010, and May 24, 2011) revealed the Hamptons Center for Rehabilitation and Nursing had been cited several times by the Department for issues related to Quality of Care, Administration and Facility Practices and CMPs totaling $13,353 were collected.

Mr. Epstein disclosed that the Jewish Board of Family and Children’s Services with which he is affiliated had recently entered into a settlement with the NY Office of Medicaid Inspector General to reconcile excess payments received relative to Office of Mental Health’s reimbursement methodology.

Mr. Richard Goldstein disclosed that he had been both a director and shareholder of corporation which filed for bankruptcy protection in 2009 then subsequently sold their assets.

Mr. Hiltz disclosed that, as a registered broker dealer, his firm is regulated by NASD and FINRA and is subject to regular examinations. On two occasions, the firm agreed to the imposition of regulatory fines (each under $5,000) for routine business claims rather than pursue a dispute resolution process.

Mr. Richard Horowitz disclosed that he had been named as a defendant (among other Members of the Board of Trustees and employees of the Children’s Medical Fund (CMF)) in a pending lawsuit filed by an individual for employment discrimination and sexual harassment. Mr. Horowicz stated he has no personal involvement and is named by virtue of his professional association with CMF.

Mr. Seth Horowitz disclosed that, in June 2012, a company he is affiliated with entered into a settlement with the Securities and Exchange Commission (SEC) and agreed to a Consent Judgment to settle the civil action filed by the SEC.

Mr. Charles Merinoff disclosed that he had been named in an employment action involving a company that he was affiliated with in 2009. The matter was settled at arbitration in July 2012.

Dr. Peress disclosed one open malpractice case pending trial in Putnam County.
Mr. Ranieri disclosed that a company with which he was affiliated had entered into a settlement agreement in March 2013 with the SEC for failure to adequately oversee a third party’s activities in 2008 related to marketing a particular fund.

Mr. Rosenthal disclosed that, in 2005, a shareholder lawsuit involving governance issues was brought against a company with which he was affiliated and all Directors were sued. The matter was subsequently settled.

Mr. Sahn disclosed a settled malpractice action that had been initiated in 2012 against a firm in which he was a Senior Partner.

Ms. Schlissel disclosed one pending and two settled civil legal matters related to unpaid legal fees involving the law firm in which she is a Managing Attorney.

**Compliance with Applicable Codes, Rules and Regulations**

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility’s enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

*In a Stipulation and Order (S&O) dated October 16, 2006,* Southside Hospital was fined $14,000 when a complaint investigation revealed a physician performed a right ovarian cystectomy on a patient who was admitted and signed consent for removal of a large dermoid cyst on her left ovary.

*In an S&O dated December 8, 2006,* Forest Hills Hospital was fined $12,000 after an investigation revealed that surgery was performed on the patient’s right side although the patient entered the hospital for hernia repair on the left side.

*In an S&O dated February 6, 2007,* Staten Island University Hospital was fined $8,000 based on the investigation of a patient admitted for a left sided mediastinotomy (insertion of a tube into the chest). The procedure was begun on the right side of the chest and an anesthesiologist noticed the error ten minutes into the procedure. In another S&O dated July 23, 2007, the hospital was fined $12,000 due to an overdose of a controlled substance which caused a patient's death. Nursing administered a drug at a higher rate than was ordered and continued administration even after the medication had been discontinued by a surgical resident.

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

*In an S&O dated December 11, 2008,* North Shore University Hospital- Manhasset was fined $18,000 based on post-operative care rendered to an elderly patient. Following surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed resulting in a dislocated femur and developed renal failure. It was determined that follow-up care was delayed or inadequate.

*In an S&O dated July 8, 2010,* Syosset Hospital was fined $42,000 based an investigation of the care a child received related to an adenotonsillectomy. The patient was improperly cleared for surgery and, despite multiple comorbidities, was not kept for observation post-operatively. The patient expired after discharge.
In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the U.S. Attorney’s Office. The $2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.

In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital’s clinical documentation improvement program were issued by the US Attorney’s Office for the Southern District. The Health System complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.

In December 2010, the Civil Division of The United States Department of Justice (DOJ) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. When the government’s review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model.

In October 2011, the US Attorney’s Office for the Western District of New York initiated a review of Southside Hospital’s inpatient admissions for atherectomy procedures. And, in June 2012, the US Attorney’s Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital’s inpatient specialized burn unit. To date, the government has not indicated whether there is any potential liability in either matter.

In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that, for many of the cases reviewed, documentation did not support inpatient admission and/or the medical necessity of the cardiac stent procedure and requested that LHH undertake a self-audit and voluntary disclosure. While the Contractor agreed with LHH’s conclusions regarding many of the cases submitted, a demand for payment was issued with respect to those disallowed. LHH is appealing those claims through the administrative review process.

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

---

**Financial Analysis**

**Lease Assignment Agreement:**
The applicant has submitted a draft Lease Assignment Agreement for the site, the terms of which are summarized below:

<table>
<thead>
<tr>
<th>Premises:</th>
<th>4,856 sq. ft. clinic space, plus 205 sq. ft. of storage, located at 195 East Main Street, Huntington, NY 11743</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landlord:</td>
<td>Chavrusa Realty, LLC</td>
</tr>
<tr>
<td>Lessee:</td>
<td>Digestive Center of Huntington, Inc.</td>
</tr>
<tr>
<td>Assignor:</td>
<td>Digestive Center of Huntington, Inc.</td>
</tr>
<tr>
<td>Assignee:</td>
<td>DHCH, LLC</td>
</tr>
<tr>
<td>Term:</td>
<td>Current term expires January 31, 2018.  There is one three-year renewal term remaining on the current lease, plus two subsequent five-year term renewal options.</td>
</tr>
<tr>
<td>Rental:</td>
<td>$160,248 per year ($13,354 per month) with 5% increase in rent per term.</td>
</tr>
<tr>
<td>Provisions:</td>
<td>Tenant is responsible for maintenance, utilities, proportionate share of real estate taxes, and insurance.</td>
</tr>
</tbody>
</table>
The applicant has submitted an affidavit stating the lease agreement is a non-arm’s length arrangement in that there is a common ownership as Paul Bermanski, M.D. is 50% owner of the landlord entity, Chavrusa Realty, LLC. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental rate.

**Contribution/Asset Transfer Agreement**

The applicant has submitted a draft Contribution/Asset Transfer Agreement for transferring the assets and liabilities of Digestive Health Center of Huntington, Inc. for 100% ownership interest in DHCH, LLC. The terms are summarized below:

| Transferor: | Digestive Health Center of Huntington, Inc. |
| Transferee: | DHCH, LLC |

**Assets Transferred:**

Contributes, conveys, transfers, assign and delivers to its successors all right, title and interest in the assets used or held for use in connection with the ownership and operation of the Center. All cash, cash equivalents and marketable securities, all accounts, notes, refunds, other account receivables, assumed contracts, all rights under the equipment leases, all furniture fixtures & equipment, inventory, all books/records, all patient records, claims, cause of actions, the name of the company, all telephones, faxes, all intellectual properties, software used, all assets, properties, claims, rights and interest of company.

**Excluded Assets:**

All permits of company, to the extent not transferable; all benefit plans, all contracts other than the assumed contracts; personal items belonging to the owners; all rights and interest of company.

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 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 ability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities or assessments.

**Membership Interest Purchase Agreement**

The applicant has submitted an executed Membership Interest Purchase Agreement for the transfer of 51% membership interest in DHCH, LLC to North Shore-LIJ Endoscopy Ventures, LLC to be effectuated upon Public Health and Health Planning Council approval of this application request. The terms of the agreement are summarized below:

| Date: | January 21, 2015 |
| Seller: | Digestive Health Center of Huntington, Inc. and DHCH, LLC |
| Buyer: | North Shore-LIJ Endoscopy Ventures, LLC |

**Assumption of Assets:**

51% membership interest in administrative service agreement, amended lease, license agreement, bank accounts, Managing director agreement, books/records, permits, company assets, intellectual property & software, furniture/fixtures and equipment, real property used in operation of the Center; all water oil, gas, electrical, telecommunications, sewer storm and waste water systems, other utilities services; all contracts, employees, employee benefits plans, insurance; Seller's right, title and interest in all assets and properties owned/used by Seller in the business whether tangible, intangible, real, personal and mixed located on premises including fixed assets and inventories; all supplies, equipment, vehicles, machinery, furniture, fixtures, leasehold improvements and other tangible personal property; all proprietary knowledge, trade secrets, patient, physician and referral lists, technical information, quality control data, processes, methods or rights; customer and vendor lists, assigned contracts; all physical and electronic data relating to the business; all other tangible and intangible property, other than the excluded assets.
Assumption of Liabilities: 51% Interest in all debts, obligations or liabilities of the business, arising and whatever type of nature, accrued or un-accrued, fixed or contingent. All liabilities listed in asset purchase agreement as per membership interest.

Lease Assigned: Lease associated with premises located at 195 Main Street, Huntington, NY 11743

Purchase Price: $4,768,500 (subject to change based on working capital balance prior to closing and long term debt balance at closing).

Hold Back Amount: $476,850 in escrow on signing for working capital and long term debt adjustment.

Payment of Purchase Price: $50,000 in escrow on signing $4,718,500 balance minus hold back amount of $476,850 at the closing.

**Administrative Services Agreement**

The applicant has submitted a draft Administrative Services Agreement with North Shore LIJ Health Care Inc., which is summarized as follows:

<table>
<thead>
<tr>
<th>Facility/Operator</th>
<th>DHCH, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrator:</td>
<td>North Shore Long Island Jewish Health Care, Inc.</td>
</tr>
<tr>
<td>Administrator Fee</td>
<td>$18,500 per month</td>
</tr>
</tbody>
</table>

Service Provided: Administrator will oversee collection of accounts, payments of accounts and indebtedness, accounting and financial records, internal audit, depositories for funds, purchases and leases, insurance, managed care contracting, legal support, IT support service, health care analytics, credentialing services, recruitment and expansion, human resources services, payroll, partner distribution, project development, budgets and financial planning and contracts for services.

While North Shore Long Island Jewish Health care, Inc. will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility and control for the operations.

There is a common ownership between the applicant and the administrative service agreement provider as shown on BFA Attachment B, post-closing organizational chart.

**Operating Budget**

The applicant has submitted the facility’s year one operating budget, in 2015 dollars, as shown below:

Revenues:
- Medicaid Managed Care: $204,798
- Medicare Fee For Service: $417,911
- Commercial Managed Care: $2,760,044
- Private Pay: $5,683
- Government/Veterans Affairs: $227,049

Total Revenue: $3,615,485

Expenses:
- Operating: $2,405,327
- Capital: $298,623

Total Expense: $2,703,950

Net Income: $911,535

Utilization (Procedures): 4,708

Cost Per Treatment: $574.33
Utilization by payor source for the first year after the proposed change is as follows:

<table>
<thead>
<tr>
<th>Payor</th>
<th>Visits</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid MC</td>
<td>282</td>
<td>5.99%</td>
</tr>
<tr>
<td>Medicare FFS</td>
<td>1153</td>
<td>24.49%</td>
</tr>
<tr>
<td>Commercial MC</td>
<td>2,971</td>
<td>63.11%</td>
</tr>
<tr>
<td>Private Pay</td>
<td>12</td>
<td>0.25%</td>
</tr>
<tr>
<td>Charity</td>
<td>95</td>
<td>2.02%</td>
</tr>
<tr>
<td>Government/Veterans Affairs</td>
<td>195</td>
<td>4.14%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>4,708</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

Revenue, expense and utilization assumptions are based on the applicant’s actual 2013 experience operating the Center projected forward. Utilization is expected to remain at the current year level of 4,708 procedures. The breakeven utilization is approximately 75% or 3,521 procedures.

The applicant indicated that the Center’s physicians have been performing endoscopic procedures at no charge for patients of Huntington Hospital’s Dolan Family Health Center since the Center opened in 2002. These charity care procedures are not included in Center’s AHCF cost reports filings with the Department, as they were performed at Huntington Hospital. Effective May 1, 2015, the Center’s physicians began providing charity care to Huntington Hospital patients at the FASC. The applicant is projecting to achieve a 2% charity care level by year one and expects to maintain a minimum 2% charity care going forward through year three. Medicaid utilization is anticipated to be approximately 6% annually.

**Capability and Feasibility**

There are no project costs associated with this application.

North Shore-LIJ Endoscopy Ventures, LLC will acquire 51% of the operations of DHCH, LLC d/b/a Digestive Health Center of Huntington for $4,768,500 which will be satisfied from accumulated funds. BFA Attachment D is the 2013-2014 certified financial statements of North Shore-University Hospital, Inc., which shows the entity has sufficient liquid resources to meet the project’s equity requirements.

Working capital requirements are estimated at $450,658 based on two months of year one expenses. The proposed members will provide the working capital from accumulated funds. BFA Attachments C and D are the members’ certified financial statements and summaries, which indicate sufficient liquid resources to meet the equity and working capital requirements.

BFA Attachment E is DHCH, LLC’s pro forma balance sheet, which shows operations will start off with $4,774,000 in members’ equity.

The submitted budget indicates an excess of revenues over expenses of $911,535 during the first year. Revenues are based on the Center’s actual reimbursement rates by payor, except for Medicaid which is based on other similar facilities in region. The budget appears reasonable.

BFA Attachment C is the 2011-2014 financial summary for Digestive Health Center of Huntington, Inc., which shows an average working capital position of $153,092, an average equity position of $14,608 and an average net income of $953,182 for the period.

BFA Attachment D is North Shore University Hospital, Inc.’s certified financial summary for 2013 through 2014 which shows an average working capital of $1,494,764,500, an average equity position of $2,911,158,500 and an average net income of $85,735,000 for the period.

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

**Recommendation**

From a financial perspective, contingent approval is recommended.
<table>
<thead>
<tr>
<th>Attachment A</th>
<th>Pre Closing Organizational Chart</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attachment B</td>
<td>Post Closing Organizational Chart</td>
</tr>
<tr>
<td>Attachment D</td>
<td>North Shore-University Hospital, Inc. 2013-2014 Certified Financial Statements</td>
</tr>
<tr>
<td>Attachment E</td>
<td>DHCH, LLC’s-Pro Forma Balance Sheet</td>
</tr>
</tbody>
</table>
RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish DHCH, LLC as the new operator of the Digestive Health Center of Huntington, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: 151226 E  
FACILITY/APPLICANT: DHCH, LLC  
d/b/a Digestive Health Center of Huntington
APPROVAL CONTINGENT UPON:

1. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
2. Submission of an executed lease assignment agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed contribution/asset transfer agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed administrative service agreement, acceptable to the Department of Health. [BFA]
5. Submission of the executed Articles of Organization of DHCH, LLC acceptable to the Department. [CSL]
6. Submission of the executed Operating Agreement of DHCH, LLC acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
Executive Summary

Description
Suffolk Surgery Center, LLC (SSC), an existing Article 28 Diagnostic and Treatment Center (D&T C) located at 1500 William Floyd Parkway, Shirley (Suffolk County), requests approval to add North Shore-LIJ Multispecialty Ventures, LLC as a 70% member. The D&T C is certified as a multi-specialty freestanding ambulatory surgery center (FASC). There will be no change in services as a result of this proposed change in ownership.

The current and proposed ownership interest in SSC are as follows:

<table>
<thead>
<tr>
<th>Members</th>
<th>Current</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>*John Passarelli, MD</td>
<td>39.62%</td>
<td>7.0%</td>
</tr>
<tr>
<td>*Timothy Groth, MD</td>
<td>17.67%</td>
<td>4.0%</td>
</tr>
<tr>
<td>*Brian McGuiness, MD</td>
<td>14.32%</td>
<td>4.0%</td>
</tr>
<tr>
<td>*Pamela Weber, MD</td>
<td>13.37%</td>
<td>4.0%</td>
</tr>
<tr>
<td>*Dhiren Mehta, MD</td>
<td>6.68%</td>
<td>4.0%</td>
</tr>
<tr>
<td>*Masoon Qadeer, MD</td>
<td>3.34%</td>
<td>2.0%</td>
</tr>
<tr>
<td>Aaron Avni, MD</td>
<td>2.00%</td>
<td>2.0%</td>
</tr>
<tr>
<td>Frank Sconzo, MD</td>
<td>1.00%</td>
<td>1.0%</td>
</tr>
<tr>
<td>Paul Choinski, MD</td>
<td>2.00%</td>
<td>2.0%</td>
</tr>
<tr>
<td>North Shore-LIJ Multispecialty Ventures, LLC</td>
<td>0.00%</td>
<td>70.0%</td>
</tr>
<tr>
<td>Total</td>
<td>100.00%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

* Physician members selling membership interest to North Shore-LIJ Multispecialty Ventures, LLC.

The sole member of North Shore-LIJ Multispecialty Ventures, LLC is North Shore University Hospital, a 764-bed, voluntary not-for-profit, Article 28 hospital located at 300 Community Drive, Manhasset (Nassau County), New York. North Shore University Hospital is a member of, and co-operated by, North Shore-Long Island Jewish Health Care Inc.

OPCHSM Recommendation
Contingent Approval

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

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

Financial Summary
There are no project costs associated with this application and no budgeted incremental operating expenses or revenues.

North Shore-LIJ Multispecialty Ventures, LLC will purchase 70% ownership for $7,615,000 via equity payable to the six physician members selling ownership interest based on the proportionate share of membership interest being conveyed.
Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:
1. Submission of an executed Administrative Services Agreement (ASA) acceptable to the Department. [HSP]
2. Submission of an updated and fully completed Schedule 1, acceptable to the Department. [CSL]
3. Submission of an updated and fully completed Schedule 3, acceptable to the Department. [CSL]
4. Submission of a photocopy of the fully executed Certificate of Amendment of the Articles of Organization of Suffolk Surgery Center, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of the fully executed Landlord’s Consent and Estoppel Certificate, acceptable to the Department. [CSL]
6. Submission of a photocopy of the fully executed Assignment and Assumption of Membership Interest, acceptable to the Department. [CSL]
7. Submission of a legible copy of the Agreement of Lease between AMCare Realty, LLC and Long Island Eye Surgery Center, dated June 19, 1998, acceptable to the Department. [CSL]
8. Submission of a photocopy of the fully executed Amended and Restated Operating Agreement of the Suffolk Surgery Center, LLC. [CSL]

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

Council Action Date
October 8, 2015
**Need Analysis**

**Project Description**
Suffolk Surgery Center, LLC, an existing multi-specialty ambulatory surgery center, requests approval for the transfer of 70% membership interest to North-Shore-LIJ Multispecialty Ventures, LLC. The center is located at 1500 William Floyd Parkway, Shirley, 11967, in Suffolk County.

**Background and Analysis**
Suffolk Surgery Center, LLC has been providing multi-specialty surgery services to the residents of Suffolk County since 2004. The center provided a total of 17,232 procedures in 2012, 12,902 procedures in 2013. (Source: AHCF cost reports).

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

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

---

**Program Analysis**

**Program Description**
Suffolk Surgery Center, LLC, an existing Article 28 Diagnostic and Treatment Center certified as a multi-specialty ambulatory surgery center located at 1500 William Floyd Parkway in Shirley (Suffolk County) requests approval to add North Shore-LIJ Multispecialty Ventures, LLC as a 70% member of the Center.

The Center is not proposing to add any services, expand or renovate the facility or change anything about the Center (other than its ownership structure). Internist Dhiren C. Mehta, M.D. will serve as the Center's Medical Director.

**Character and Competence**
The table below illustrates the current and proposed ownership structure of Suffolk Surgery Center.

<table>
<thead>
<tr>
<th>Member Name</th>
<th>Current Membership Interest</th>
<th>Membership Interest Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>*John Passarelli, MD</td>
<td>39.62%</td>
<td>7.00%</td>
</tr>
<tr>
<td>*Timothy Groth, MD</td>
<td>17.67%</td>
<td>4.00%</td>
</tr>
<tr>
<td>*Brian McGuiness, MD</td>
<td>14.32%</td>
<td>4.00%</td>
</tr>
<tr>
<td>*Pamela Weber, MD</td>
<td>13.37%</td>
<td>4.00%</td>
</tr>
<tr>
<td>*Dhiren Mehta, MD</td>
<td>6.68%</td>
<td>4.00%</td>
</tr>
<tr>
<td>*Masoom Qadeer, MD</td>
<td>3.34%</td>
<td>2.00%</td>
</tr>
<tr>
<td>*Aaron Avni, MD</td>
<td>2.00%</td>
<td>2.00%</td>
</tr>
<tr>
<td>*Frank Sconzo, MD</td>
<td>1.00%</td>
<td>1.00%</td>
</tr>
<tr>
<td>*Paul Choinski, MD</td>
<td>2.00%</td>
<td>2.00%</td>
</tr>
<tr>
<td>North Shore LIJ Multispecialty Ventures, LLC</td>
<td>70.0%</td>
<td></td>
</tr>
<tr>
<td>Managers: Dennis Dowling</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Laurence A. Kraemer, Esq.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>John McGovern</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Not subject to a Character and Competence Review for this project.*
The sole member of North Shore-LIJ Multispecialty Ventures, LLC, is North Shore University Hospital (NSUH), a voluntary, not-for-profit hospital located at 300 Community Drive in Manhasset (Nassau County). NSUH is the sole member of North Shore-Long Island Jewish Health Care Inc. and a member of North Shore-Long Island Jewish Health System (NSLIJHS).

The Board of Trustees for NSLIJHS is comprised of 131 members, all of whom were subject to Character and Competence review.

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

Mr. Michael Ashner disclosed two settled civil legal matters involving allegations of breach of fiduciary duty, abuse of control, mismanagement, waste of corporate assets and unjust enrichment on the part of the board.

Mr. Alan Chopp disclosed affiliation with several long-term care health facilities, some of which had been subjected to enforcement actions. In Stipulation and Orders (S&Os) dated April 21, 2009 and July 16, 2009, the Department cited Avalon Gardens Rehabilitation and fined the facility a total of $6,000 for Quality of Care issues. On September 29, 2005, June 13, 2007, and December 16, 2011, S&Os were issued to Bayview Nursing & Rehabilitation Center and the facility was fined a total of $19,000 for problems with Comprehensive Care Plans, and Quality of Life/Quality of Care issues. Civil money penalties (CMPs) were collected in the amount of $74,658.64 and a Denial of Payment for new admissions was imposed between November 24, 2004 and January 10, 2005. Four S&Os (dated June 12, 2007, June 1, 2009, December 6, 2010, and May 24, 2011) revealed the Hamptons Center for Rehabilitation and Nursing had been cited several times by the Department for issues related to Quality of Care, Administration and Facility Practices and CMPS totaling $13,353 were collected.

Mr. Epstein disclosed that the Jewish Board of Family and Children’s Services with which he is affiliated had recently entered into a settlement with the NY Office of Medicaid Inspector General to reconcile excess payments received relative to Office of Mental Health’s reimbursement methodology.

Mr. Richard Goldstein disclosed that he had been both a director and shareholder of corporation which filed for bankruptcy protection in 2009 then subsequently sold their assets.

Mr. Hiltz disclosed that, as a registered broker dealer, his firm is regulated by NASD and FINRA and is subject to regular examinations. On two occasions, the firm agreed to the imposition of regulatory fines (each under $5,000) for routine business claims rather than pursue a dispute resolution process.

Mr. Richard Horowitz disclosed that he had been named as a defendant (among other Members of the Board of Trustees and employees of the Children’s Medical Fund (CMF)) in a pending lawsuit filed by an individual for employment discrimination and sexual harassment. Mr. Horowicz stated he has no personal involvement and is named by virtue of his professional association with CMF.

Mr. Seth Horowicz disclosed that, in June 2012, a company he is affiliated with entered into a settlement with the Securities and Exchange Commission (SEC) and agreed to a Consent Judgment to settle the civil action filed by the SEC.

Mr. Charles Merinoff disclosed that he had been named in an employment action involving a company that he was affiliated with in 2009. The matter was settled at arbitration in July 2012.

Dr. Peress disclosed one open malpractice case pending trial in Putnam County.
Mr. Ranieri disclosed that a company with which he was affiliated had entered into a settlement agreement in March 2013 with the SEC for failure to adequately oversee a third party’s activities in 2008 related to marketing a particular fund.

Mr. Rosenthal disclosed that, in 2005, a shareholder lawsuit involving governance issues was brought against a company with which he was affiliated and all Directors were sued. The matter was subsequently settled.

Mr. Sahn disclosed a settled malpractice action that had been initiated in 2012 against a firm in which he was a Senior Partner.

Ms. Schlissel disclosed one pending and two settled civil legal matters related to unpaid legal fees involving the law firm in which she is a Managing Attorney.

Compliance with Applicable Codes, Rules and Regulations
This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility’s enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

In a Stipulation and Order (S&O) dated October 16, 2006, Southside Hospital was fined $14,000 when a complaint investigation revealed a physician performed a right ovarian cystectomy on a patient who was admitted and signed consent for removal of a large dermoid cyst on her left ovary.

In an S&O dated December 8, 2006, Forest Hills Hospital was fined $12,000 after an investigation revealed that surgery was performed on the patient's right side although the patient entered the hospital for hernia repair on the left side.

In an S&O dated February 6, 2007, Staten Island University Hospital was fined $8,000 based on the investigation of a patient admitted for a left sided mediastinotomy (insertion of a tube into the chest). The procedure was begun on the right side of the chest and an anesthesiologist noticed the error ten minutes into the procedure. In another S&O dated July 23, 2007, the hospital was fined $12,000 due to an overdose of a controlled substance which caused a patient’s death. Nursing administered a drug at a higher rate than was ordered and continued administration even after the medication had been discontinued by a surgical resident.

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

In an S&O dated December 11, 2008, North Shore University Hospital- Manhasset was fined $18,000 based on post-operative care rendered to an elderly patient. Following surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed resulting in a dislocated femur and developed renal failure. It was determined that follow-up care was delayed or inadequate.

In an S&O dated July 8, 2010, Syosset Hospital was fined $42,000 based on an investigation of the care a child received related to an adenotonsillectomy. The patient was improperly cleared for surgery and, despite multiple comorbidities, was not kept for observation post-operatively. The patient expired after discharge.
In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the U.S. Attorney’s Office. The $2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.

In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital’s clinical documentation improvement program were issued by the US Attorney’s Office for the Southern District. The Health System complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.

In December 2010, the Civil Division of The United States Department of Justice (DOJ) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. When the government’s review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model.

In October 2011, the US Attorney’s Office for the Western District of New York initiated a review of Southside Hospital’s inpatient admissions for atherectomy procedures. And, in June 2012, the US Attorney’s Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital’s inpatient specialized burn unit. To date, the government has not indicated whether there is any potential liability in either matter.

In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that, for many of the cases reviewed, documentation did not support inpatient admission and/or the medical necessity of the cardiac stent procedure and requested that LHH undertake a self-audit and voluntary disclosure. While the Contractor agreed with LHH’s conclusions regarding many of the cases submitted, a demand for payment was issued with respect to those disallowed. LHH is appealing those claims through the administrative review process.

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

Recommendation
From a programmatic perspective, contingent approval is recommended.
Financial Analysis

Total Project Costs and Financing
There are no project costs associated with this application. There are no budgeted incremental operating expenses or revenues associated with this project, since patient care services will not be affected.

Membership Interest Purchase Agreement
The applicant has submitted an executed membership interest purchase agreement for the change of 70% membership interest in SSC, the terms of which are summarized below:

<table>
<thead>
<tr>
<th>Date:</th>
<th>April 9, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose:</td>
<td>The sale of 70% membership interests of Suffolk Surgery Center, LLC</td>
</tr>
<tr>
<td>Sellers:</td>
<td>*Six Physician Members of Suffolk Surgery Center, LLC (noted below)</td>
</tr>
<tr>
<td>Purchaser:</td>
<td>North Shore-LIJ Multispecialty Ventures, LLC</td>
</tr>
<tr>
<td>Purchase Price:</td>
<td>$7,615,000</td>
</tr>
<tr>
<td>Payment of Purchase Price:</td>
<td>$50,000 deposit paid and held in escrow. $7,565,000 to be paid at closing.</td>
</tr>
</tbody>
</table>

The proposed new member will purchase membership into SSC with equity, payable to the physician sellers per the conveyance of membership interests and purchase price agreement as follows:

<table>
<thead>
<tr>
<th>Physician Members:</th>
<th>Current Interest % Owned</th>
<th>Interest % Being Conveyed To Purchaser</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>*John Passarelli, M.D.</td>
<td>39.62%</td>
<td>32.62%</td>
<td>$3,548,590.10</td>
</tr>
<tr>
<td>*Timothy Groth, M.D.</td>
<td>17.67%</td>
<td>13.67%</td>
<td>$1,487,100.71</td>
</tr>
<tr>
<td>*Brian McGuiness, M.D.</td>
<td>14.32%</td>
<td>10.32%</td>
<td>$1,122,668.57</td>
</tr>
<tr>
<td>*Pamela Weber, M.D.</td>
<td>13.37%</td>
<td>9.37%</td>
<td>$1,019,322.14</td>
</tr>
<tr>
<td>*Dhiren Mehta, M.D.</td>
<td>6.68%</td>
<td>2.68%</td>
<td>$291,545.60</td>
</tr>
<tr>
<td>*Masoom Qadeer, M.D.</td>
<td>3.34%</td>
<td>1.34%</td>
<td>$145,772.88</td>
</tr>
<tr>
<td>Aaron Avni, M.D.</td>
<td>2.00%</td>
<td>0.00%</td>
<td>$0.00</td>
</tr>
<tr>
<td>Frank Sconzo, M.D.</td>
<td>1.00%</td>
<td>0.00%</td>
<td>$0.00</td>
</tr>
<tr>
<td>Paul Choinski, M.D.</td>
<td>2.00%</td>
<td>0.00%</td>
<td>$0.00</td>
</tr>
<tr>
<td>Total</td>
<td>100.00%</td>
<td>70.00%</td>
<td>$7,615,000.00</td>
</tr>
</tbody>
</table>

* Physician members selling membership interest.

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

Capability and Feasibility
There are no project costs associated with this application.

North Shore-LIJ Multispecialty Ventures, LLC’s sole member is North Shore University Hospital. BFA Attachment A presents the 2014 financial statements and financial summary for North Shore University Hospital. As shown, the entity had positive net assets, positive working capital position, and an excess of revenue over operating expenses of $66,841,000 for 2014, which indicates the availability of sufficient funds.

BFA Attachment B provides the 2013 and 2014 certified financial statements of Suffolk Surgery Center, LLC and a summary of their internal financial statements as of June 30, 2015. As shown, the entity maintained positive working capital and positive members’ equity, and achieved an average net income of $1,771,770 for the 2013 to 2014 audited period.
Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

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

### Attachments

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>2014 Financial Statements &amp; Summary for North Shore University Hospital</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>2013 &amp; 2014 Certified and June 30, 2015 Internal Financial Statements &amp; Summary for Suffolk Surgery Center, LLC</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Organizational Chart after proposed member change</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer of ownership interest of North Shore-LIJ Multispecialty Ventures, LLC to become a 70% member of Suffolk Surgery Center, LLC, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: FACILITY/APPLICANT:

151258 E Suffolk Surgery Center, LLC
APPROVAL CONTINGENT UPON:

1. Submission of an executed Administrative Services Agreement (ASA) acceptable to the Department. [HSP]
2. Submission of an updated and fully completed Schedule 1, acceptable to the Department. [CSL]
3. Submission of an updated and fully completed Schedule 3, acceptable to the Department. [CSL]
4. Submission of a photocopy of the fully executed Certificate of Amendment of the Articles of Organization of Suffolk Surgery Center, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of the fully executed Landlord’s Consent and Estoppel Certificate, acceptable to the Department. [CSL]
6. Submission of a photocopy of the fully executed Assignment and Assumption of Membership Interest, acceptable to the Department. [CSL]
7. Submission of a legible copy of the Agreement of Lease between AMCare Realty, LLC and Long Island Eye Surgery Center, dated June 19, 1998, acceptable to the Department. [CSL]
8. Submission of a photocopy of the full executed Amended and Restated Operating Agreement of the Suffolk Surgery Center, LLC. [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]

   Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
Executive Summary

Description
Latta Road Nursing Home West, LLC, a to-be-formed New York limited liability company, requests approval to be established as the operator of Latta Road Nursing Home, a 40-bed, proprietary, Article 28 residential health care facility (RHCF) located at 2100 Latta Road, Rochester (Monroe County). The applicant will enter into a services agreement with ROHM Services Corporation for the provision of general financial related services. There will be no change in services provided as a result of this application.

On March 19, 2015, Robert W. Hurlbut, on behalf of Latta Road Nursing Home West, LLC, entered into an asset purchase agreement with Morris E. Richardson for the sale and acquisition of the operating interests of Latta Road Nursing Home. On March 20, 2015, Robert W. Hurlbut, on behalf of the to-be formed Latta Road Nursing Home Realty, LLC, also purchased the real estate from M.E. & E.E. Richardson, Inc. Robert W. Hurlbut is the proposed owner and sole member of both the operating entity and the real estate entity.

It is noted that the proposed member of Latta Road Nursing Home West, LLC is seeking to acquire two other nursing facilities, Latta Road Nursing Home A under CON #151133 and Hamilton Manor Nursing Home under CON #151134. These two applications are being reviewed concurrently with this application.

The current and proposed operator are as follows:

Current
Morris E. Richardson 100%

Proposed
Latta Road Nursing Home West, LLC
Robert W. Hurlbut 100%

Robert W. Hurlbut has ownership interest in twelve NYS skilled nursing facilities and one skilled nursing facility in Florida.

OPCHSM Recommendation
Contingent Approval

Need Summary
Latta Road Nursing Home's utilization was 97.1% in 2011, and 98.4% in 2012, and 96.3% in 2013. Current utilization, as of March 18, 2015 is 95.0%, with two vacant beds. While current utilization is near the Department’s planning optimum, historic utilization has typically met or exceeded the Department’s planning optimum, and this is expected to continue going forward.

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 identified as new members.
No changes in the program or physical environment are proposed in this application. The applicant will enter into a consulting and administrative services agreement with Rohm Services Corporation for financial services.

**Financial Summary**
The purchase price for the acquisition of the operating interest of Latta Road Nursing Home is $721,000 and will be paid as follows: Equity of $180,250 from the proposed member and a bank loan of $540,750 at an interest rate of 4.66% for a twenty-year term. The purchase price for the acquisition of the real estate interest is $524,500 and will be paid as follows: Equity of $131,125 from the proposed member and a bank loan of $393,375 at an interest rate of 4.66% for a twenty-year term.

**Budget:**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$3,718,714</td>
</tr>
<tr>
<td>Expenses</td>
<td>3,693,730</td>
</tr>
<tr>
<td>Net Income</td>
<td>$24,984</td>
</tr>
</tbody>
</table>
Recommendations

Health Systems Agency
The Finger Lakes HSA recommendations Contingent Approval of the project.

Office of Primary Care and Health Systems Management
Approval contingent upon:
1. Submission of an executed loan commitment for the operating portion, acceptable to the Department. [BFA]
2. Submission of an executed loan commitment for the real estate portion, acceptable to the Department. [BFA]
3. Submission of an executed services agreement, acceptable to the Department. [BFA]
4. Submission of an executed building lease, acceptable to the Department. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
6. The sponsor signs the State's Medicaid Access Agreement. [HSA]
7. 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]
8. 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]
9. 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]
10. Submission of a photocopy of the applicant’s executed proposed Operating Agreement, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant’s executed proposed Articles of Organization, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant’s executed proposed Lease Agreement, which 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]

Council Action Date
October 8, 2015
Project Description
Latta Road Nursing Home West, LLC seeks approval to become the established operator of Latta Road Nursing Home, a 40-bed Article 28 residential health care facility (RHCF) located at 2100 Latta Road, Rochester, 14612, in Monroe County.

Analysis
There is currently a surplus of 908 beds in Monroe County as indicated in Table 1 below. The overall occupancy for Monroe County is 92.5% for 2013 as indicated in Chart 1.

Table 1: RHCF Need – Monroe County

<table>
<thead>
<tr>
<th></th>
<th>2016 Projected Need</th>
<th>Current Beds</th>
<th>Beds Under Construction</th>
<th>Total Resources</th>
<th>Unmet Need</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016 Projected Need</td>
<td>4,167</td>
<td>5,142</td>
<td>-67</td>
<td>5,075</td>
<td>-908</td>
</tr>
</tbody>
</table>

Chart 1: Latta Road Nursing Home/Monroe County Occupancy

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.
Latta Road Nursing Home’s Medicaid admissions for 2012 was 4.2% and did not exceed Monroe County 75% rate of 13.3%. In 2013, Latta Road Nursing Home’s Medicaid admissions for 2013 was 15.6% and exceeded Monroe County 75% rate of 12.8%.

**Conclusion**
Approval of this application will result in providing a needed resource for the residents it serves.

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

### Program Analysis

<table>
<thead>
<tr>
<th>Facility Information</th>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility Name</td>
<td>Latta Road Nursing Home</td>
<td>Latta Road Nursing Home West, LLC</td>
</tr>
<tr>
<td>Address</td>
<td>2100 Latta Road Rochester, NY 14626</td>
<td>Same</td>
</tr>
<tr>
<td>RHCF Capacity</td>
<td>40</td>
<td>Same</td>
</tr>
<tr>
<td>ADHC Program Capacity</td>
<td>N/A</td>
<td>Same</td>
</tr>
<tr>
<td>Type of Operator</td>
<td>Corporation</td>
<td>Limited Liability Company</td>
</tr>
<tr>
<td>Class of Operator</td>
<td>Sole Proprietorship</td>
<td>Proprietary</td>
</tr>
<tr>
<td>Operator</td>
<td>Eleanor E. Richardson d/b/a</td>
<td>Latta Nursing Home West, LLC</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Member</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Robert W. Hurlbut</td>
</tr>
</tbody>
</table>

### Character and Competence - Background

**Facilities Reviewed**

**Nursing Homes**
- Avon Nursing Home, LLC 04/2007 to present
- The Brightonian, Inc. 09/2005 to present
- Conesus Lake Nursing Home, LLC 04/2007 to present
- Elm Manor Nursing Home, Inc. 09/2005 to present
- Hornell Gardens, LLC 04/2007 to present
- The Hurlbut, LLC 09/2005 to present
- Newark Manor Nursing Home, Inc. 09/2015 to present
- Penfield Place, LLC 04/2007 to present
- Seneca Nursing & Rehabilitation Center, LLC 09/2005 to present
- The Shore Winds, LLC 09/2005 to present
- Wedgewood Nursing Home, Inc. 09/2005 to present
- Woodside Manor Nursing Home, Inc. 04/2007 to present

**Individual Background Review**

Robert Hurlbut lists his profession as nursing home owner. Mr. Hurlbut discloses the following nursing home ownership interests:
- Avon Nursing Home, LLC 04/2007 to present
- The Brightonian, Inc. 02/1997 to present
- Conesus Lake Nursing Home, LLC 04/2007 to present
- Elm Manor Nursing Home, Inc. 1/1994 to present
- Hornell Gardens, LLC 04/2007 to present
The Hurlbut, LLC      01/2003 to present
Newark Manor Nursing Home, Inc.    07/1998 to present
Penfield Place, LLC      04/2007 to present
Seneca Nursing & Rehabilitation Center     03/2003 to present
The Shore Winds, LLC     03/2003 to present
Wedgewood Nursing Home, Inc.     01/1994 to present
Woodside Manor Nursing Home, Inc.     04/2007 to present

Character and Competence - Analysis
No negative information has been received concerning the character and competence of the above applicants.

A review of The Brightonian, Inc. for the period identified above reveals the following:
• The facility was fined $2,000 pursuant to a Stipulation and Order NH-11-006 issued March 3, 2011 for surveillance findings on February 12, 2010. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.

A review of Elm Manor Nursing Home, Inc. for the period identified above reveals the following:
• The facility has been fined $10,000 pursuant to a pending Stipulation and Order for surveillance findings on July 30, 2012. Deficiencies were found under 10 NYCRR 415.12(l)(1) Quality of Care Unnecessary Drugs.

A review of Hornell Gardens, LLC for the period identified above reveals the following:
• The facility was fined $8,000 pursuant to a Stipulation and Order NH-15-015 issued September 1, 2015 for surveillance findings on July 12, 2013. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 415.12(h)(1).

A review of The Shore Winds LLC for the period identified above reveals the following:
• The facility was fined $4,000 pursuant to a Stipulation and Order NH-15-016 issued September 1, 2015 for surveillance findings on February 8, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 10NYCRR 415.12(h)(1) Quality of Care: Accidents.

A review of operations of for the nursing homes identified above for the periods specified results in a conclusion of a consistently high level of care as there were no repeat enforcements.

A review of Avon Nursing Home, LLC, Conesus Lake Nursing Home, Newark Manor Nursing Home, Inc., Penfield Place, LLC, Seneca Nursing & Rehabilitation Center, Wedgewood Nursing Home and Woodside Manor Nursing Home, Inc. for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review
No changes in the program or physical environment are proposed in this application. The applicant will enter into a consulting and administrative services agreement with Rohm Services Corporation for financial services.

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

Recommendation
From a programmatic perspective, approval is recommended.
**Financial Analysis**

**Asset Purchase Agreement**
The applicant has submitted an executed asset purchase agreement for the sale of the operation, as summarized below:

<table>
<thead>
<tr>
<th>Date:</th>
<th>March 19, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seller:</td>
<td>Morris E. Richardson</td>
</tr>
<tr>
<td>Purchaser:</td>
<td>Robert W. Hurlbut</td>
</tr>
<tr>
<td>Assets Acquired:</td>
<td>Seller’s rights under any third party programs, excluding amounts due but not yet paid for services rendered by Seller for periods prior to the Closing Date; all equipment, furniture, appliances, tools, supplies and other personal property owned by Seller; all leases, contracts and other agreements, which Buyer expressly elects to assume; all rights to the telephone and facsimile numbers of the Facility; the name “Latta Road Nursing Home”; any and all policy and procedure manuals, intellectual property and/or software used by the Facility; all residents’ funds held in trust and all security deposits held by Seller and all retroactive rate increases and/or lump sum payments from any source for services rendered by the Facility prior to the Closing Date.</td>
</tr>
<tr>
<td>Excluded Assets:</td>
<td>Seller’s rights to any income tax, sales tax, usage tax, franchise tax, special assessments, revenue assessments required by the New York State Department of Health and any other refunds due to the Seller prior to the Effective Date; any non-transferable or non-assignable governmental or regulatory licenses; Seller’s cash on hand; Seller’s bank accounts and records, deferred investments, stocks, bonds and any other securities that exist on the date of Closing and Seller’s account receivable prior to the Closing Date.</td>
</tr>
<tr>
<td>Assumed Liabilities:</td>
<td>Resident funds held in trust.</td>
</tr>
<tr>
<td>Purchase Price:</td>
<td>$721,000</td>
</tr>
<tr>
<td>Payment of Purchase Price:</td>
<td>Cash at Closing</td>
</tr>
</tbody>
</table>

The applicant’s financing plan appears as follows:

- Equity via proposed member: $180,250
- Bank Loan (4.66% for a twenty-year term): 540,750

A bank letter of interest for the financing has been provided.

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

**Real Estate Agreement**
The applicant has submitted an executed real estate purchase agreement for Latta Road Nursing Home and Latta Road Nursing Home A (jointly), which is summarized below:

<table>
<thead>
<tr>
<th>Date:</th>
<th>March 20, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premises:</td>
<td>Real property identified as tax map account number 045.12-2-43.1 consisting of approximately 32.5 acres of land and existing improvements located at 2100 Latta Road in the Town of Greece, New York.</td>
</tr>
<tr>
<td>Seller:</td>
<td>M.E. &amp; E.E. Richardson, Inc.</td>
</tr>
<tr>
<td>Buyer:</td>
<td>Robert W. Hurlbut, on behalf of Latta Road Nursing Home Realty, LLC</td>
</tr>
</tbody>
</table>
Purchase Price: $1,049,000 total allocated as follows:
- $524,500 for Latta Road Nursing Home
- $524,500 for Latta Road Nursing Home A

Payment of Purchase Price: Cash at Closing

The applicant's financing plan appears as follows:

<table>
<thead>
<tr>
<th>Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity via proposed member</td>
<td>$131,125</td>
</tr>
<tr>
<td>Bank Loan (4.66% for a twenty-year term)</td>
<td>393,375</td>
</tr>
<tr>
<td></td>
<td>$524,500</td>
</tr>
</tbody>
</table>

A bank letter of interest for the financing has been provided.

**Administrative Services Agreement**

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

<table>
<thead>
<tr>
<th>Provider</th>
<th>ROHM Services Corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility</td>
<td>Latta Road Nursing Home West, LLC</td>
</tr>
<tr>
<td>Services</td>
<td>The provider shall provide the following services: general financial services including preparation of resident statements, invoicing all payors, processing of all payments received, review of invoices and preparation of bank deposits, preparation and negotiation of purchasing bids subject to final approval of Latta Road Nursing Home West, review of audit reports, and debt collection services.</td>
</tr>
<tr>
<td>Term</td>
<td>The agreement shall continue until December 31, 2017. Unless either party gives notice to the other party of its intent not to renew this agreement at least thirty days prior to the end of the term, or any renewal thereof, this agreement will be automatically renewed for additional one year term.</td>
</tr>
<tr>
<td>Compensation</td>
<td>The compensation shall be $120,000 per year.</td>
</tr>
</tbody>
</table>

While ROHM Services Corporation will provide the above services, the Licensed Operator retains ultimate authority, responsibility, and control for the operations. This agreement specifically does not delegate to ROHM the following responsibilities: authority to hire or fire the administrator or other key management employees, maintenance and control of the books and records of the Facility, authority over disposition of assets and incurring liabilities on behalf of the Facility, and the adoption and enforcement of policies regarding the operation of Latta Road Nursing Home West.

**Lease Rental Agreement**

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

<table>
<thead>
<tr>
<th>Premises</th>
<th>The site located at 2100 Latta Road, Rochester, New York</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lessor</td>
<td>Latta Road Nursing Home Realty, LLC</td>
</tr>
<tr>
<td>Lessee</td>
<td>Latta Road Nursing Home West, LLC</td>
</tr>
<tr>
<td>Term</td>
<td>20 years</td>
</tr>
<tr>
<td>Rental</td>
<td>$76,500 annually (paid in equal monthly installments of $6,375)</td>
</tr>
<tr>
<td>Provisions</td>
<td>Lessee shall be responsible for real estate taxes, maintenance and utilities.</td>
</tr>
</tbody>
</table>

The lease agreement will be a non-arm's length lease arrangement. There is common ownership between the landlord and tenant in that the proposed owner is the sole member of both the operating entity and the real estate entity.
Operating Budget
The applicant has submitted an operating budget, in 2015 dollars, during the first year after the change in ownership, summarized below:

<table>
<thead>
<tr>
<th></th>
<th>Per Diem</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>$196.49</td>
<td>$1,886,885</td>
</tr>
<tr>
<td>Medicare Fee For Service</td>
<td>506.12</td>
<td>711,610</td>
</tr>
<tr>
<td>Private Pay</td>
<td>354.77</td>
<td>955,754</td>
</tr>
<tr>
<td>Other</td>
<td>336.33</td>
<td>164,465</td>
</tr>
<tr>
<td>Total Revenues</td>
<td></td>
<td>$3,718,714</td>
</tr>
</tbody>
</table>

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Expenses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$252.59</td>
<td>$3,584,709</td>
</tr>
<tr>
<td>Capital</td>
<td>7.68</td>
<td>109,021</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>$260.27</td>
<td>$3,693,730</td>
</tr>
</tbody>
</table>

|                      |          |         |
| Net Income           |          | $24,984 |
| Utilization: (patient days) | 14,192 |  |
| Occupancy            | 97.21%   |         |
| Breakeven Occupancy  | 96.58%   |         |

Utilization broken down by payor source during the first year after the change in ownership is summarized:

- Medicaid Managed Care 67.66%
- Medicare Fee For Service 9.91%
- Private Pay 18.98%
- Other 3.45%

The following is noted with respect to the submitted budget:
- Medicaid and Medicare revenue assumptions are based on the facility's current payment rates for the respective payors. The Medicaid Fee-For-Service rate serves as the benchmark rate for the Medicaid Managed Care payments. For Medicare, the applicant has incorporated a conservative increase in Medicare Part A and Part B based on his ownership experience with the other NYS facilities he operates.
- Private pay rates are anticipated to increase by 10% to remain at market levels.
- Expense and utilization assumptions are based on the facility's 2014 historical experience.
- Breakeven occupancy is projected at 96.58% or 14,100 patient days.

The budget appears reasonable.

Capability and Feasibility
The purchase price for the acquisition of the operating interest is $721,000. The purchase price will be met as follows: Equity of $180,250 via the proposed member and $540,750 via a bank loan at an interest rate of 4.66% for a twenty-year term. The purchase price for the real estate interest is $524,500 and will be met as follows: Equity of $131,125 via the proposed member and $324,500 via a bank loan at an interest rate of 4.66% for a twenty-year term. The applicant has submitted bank letters of interest in regard to the financing.

Working capital requirements are estimated at $615,621, which is equivalent to two months of first year expenses. The applicant will finance $307,810 at an interest rate of 3.25% for a five-year term. The remaining $307,811 will be met via equity from the proposed member. BFA Attachment A is the personal net worth statement for the proposed member of Latta Road Nursing Home West, LLC, which indicates the availability of sufficient funds to meet the working capital requirement and purchase price equity portion. BFA Attachment B is the pro forma balance sheet for the first day of operation, which indicates a positive net asset position of $431,435. Assets include $517,000 in goodwill, which is not a liquid
The submitted budget indicates a net income of $24,984 during the first year after the change in operator. The submitted budget appears reasonable.

BFA Attachment C is the financial summary of Latta Road Nursing Home for the period 2012 through 2014. As shown, the entity had an average positive working capital position, an average positive net asset position, and incurred an average loss of $351,899 from 2012 through 2104. The applicant has indicated that the reason for the annual historical losses shown was due to the facility having little Part A and Part B residents.

The following is a comparison of the facility’s 2014 historical performance to projected revenue and expenses for year one following the change in ownership:

<table>
<thead>
<tr>
<th></th>
<th>Annual 2014</th>
<th>Year 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$3,201,109</td>
<td>$3,718,714</td>
</tr>
<tr>
<td>Expenses</td>
<td>3,529,751</td>
<td>3,693,730</td>
</tr>
<tr>
<td>Net Income</td>
<td>($328,672)</td>
<td>$24,984</td>
</tr>
<tr>
<td>Incremental Net Income:</td>
<td></td>
<td>$353,656</td>
</tr>
</tbody>
</table>

To improve operations, the applicant is proposing to implement the following corrective actions when they begin operating the facility:

- Currently facility has little or no Medicare Part A and Part B. The buyer plans to add on staff for PT and OT services and improve the therapy programs.
- Dietary service and food costs are currently double the other comparable facilities benchmarked. The facility also has an employee benefit whereby all employees eat free of charge. The dietary service and food costs will be brought in line to benchmarked facilities, and the employee plan will be modified to require a small charge for one meal per shift.
- All nursing personnel will be employee staff. No contract nurses will be used.
- Nursing supplies are greatly in excess of the other comparable facilities and will be brought in line as well.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented state-wide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the “Transition of Nursing Home Benefit and Population into Managed Care Policy Paper,” provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D is the 2012 through 2014 financial summary of the NYS facilities the proposed member has ownership interest in. The facilities and summary of operations for the period are as follows:

- Woodside Manor Nursing Home (44 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $384,785.
- Wedgewood Nursing Home (29 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $19,632. The applicant indicated that the loss in 2012 was due to bad debt write-offs in 2012.
- The Shore Winds (229 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $804,990.
- Seneca Nursing & Rehabilitation Center (20 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $746,604.
- Penfield Place (48 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $358,440.
- Newark Manor Nursing Home (60 beds): The entity had an average negative working capital position, an average negative net asset position, and had an average net loss of $24,290 for the period. The applicant indicated that the reason for the average negative working capital position is due to past historical losses. The entity had a loss in 2012 due to low occupancy. They worked hard in 2013 and 2014 to strengthen their relationship with Newark Wayne Hospital to better manage their costs.
- The Hurlbut (160 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $638,044.
- Hornell Gardens (114 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $595,542.
- Elm Manor Nursing Home (46 beds): The entity had an average positive working capital position, an average positive net asset position, and had an average net loss of $202,196 for the period. The entity had a loss in 2012 due to the following: an occupancy decrease from 2011, and a one-time bad debt expense write-off. The entity implemented the following steps to improve operations: improved occupancy in 2013 and 2014.
- Conesus Lake Nursing Home (48 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $711,230.
- The Brightonian (54 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $761,346.
- Avon Nursing Home (40 beds): The entity had an average positive working capital position, an average negative net asset position, and achieved an average net income of $257,723. The reason for the average negative net asset position was due to prior year historical losses. The applicant improved operations in 2013.

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

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

**Attachments**

<table>
<thead>
<tr>
<th>Attachment Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BNHLC Attachment A</td>
<td>Quality Measures and Inspection Report</td>
</tr>
<tr>
<td>BFA Attachment A</td>
<td>Personal Net Worth Statement of Proposed Member</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Pro Forma Balance Sheet</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>2012 - 2014 Financial Summary - Latta Road Nursing Home</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>2012 - 2014 Financial Summary - Other Owned Facilities</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Latta Road Nursing Home West, LLC as the new operator of Latta Road Nursing Home, a 40-bed facility located at 2100 Latta Road, Rochester, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: FACILITY/APPLICANT:

151131 E Latta Road Nursing Home West, LLC
APPROVAL CONTINGENT UPON:

1. Submission of an executed loan commitment for the operating portion, acceptable to the Department. [BFA]
2. Submission of an executed loan commitment for the real estate portion, acceptable to the Department. [BFA]
3. Submission of an executed services agreement, acceptable to the Department. [BFA]
4. Submission of an executed building lease, acceptable to the Department. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
6. The sponsor signs the State’s Medicaid Access Agreement. [HSA]
7. 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]
8. 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]
9. 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]
10. Submission of a photocopy of the applicant’s executed proposed Operating Agreement, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant’s executed proposed Articles of Organization, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant’s executed proposed Lease Agreement, which 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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
Description
Latta Road Nursing Home East, LLC, a to-be-formed New York limited liability company, requests approval to be established as the operator of Latta Road Nursing Home A, a 40-bed, proprietary, Article 28 residential healthcare facility (RHCF) located at 2102 Latta Road, Rochester (Monroe County). The applicant will enter into a services agreement with ROHM Services Corporation for the provision of general financial services. There will be no change in services as a result of this application.

On March 19, 2015, Robert W. Hurlbut, on behalf of Latta Road Nursing Home East, LLC, entered into an Asset Purchase Agreement with Morris E. Richardson for the sale and acquisition of the operating interests of Latta Road Nursing Home A. On March 20, 2015, Robert W. Hurlbut, on behalf of the to-be-formed Latta Road Nursing Home Realty, LLC, also purchased the real estate from M.E. & E.E. Richardson, Inc. Robert W. Hurlbut is the proposed owner and sole member of both the operating entity and the real estate entity.

It is noted that the proposed member of Latta Road Nursing Home East, LLC is seeking to acquire two other nursing facilities, Latta Road Nursing Home under CON #151131 and Hamilton Manor Nursing Home under CON #151134. These two applications are being reviewed concurrently with this one.

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

- **Current**
  - Morris E. Richardson 100%

- **Proposed**
  - Latta Road Nursing Home East, LLC
    - Robert W. Hurlbut 100%

Robert W. Hurlbut has ownership interest in twelve NYS skilled nursing facilities and one skilled nursing facility in Florida.

OPCHSM Recommendation
Contingent Approval

Need Summary
Latta Road Nursing Home A’s utilization was 95.7% in 2011, 94.4% in 2012, and 94.9% in 2013. Current utilization, as of March 18, 2015 is 97.5%, with one vacant bed. While historic utilization is near the Department’s planning optimum, in 2014 and thus far in 2015 utilization has exceeded the Department’s planning optimum.

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 identified as new members.
**Financial Summary**

The purchase price for the acquisition of the operating interests of Latta Road Nursing Home A is $776,000 and will be paid as follows: Equity of $194,000 from the proposed member and a bank loan of $582,000 at an interest rate of 4.66% for a twenty-year term. The purchase price for the acquisition of the real estate interest is $524,500 and will be paid as follows: Equity of $131,125 from the proposed member and a bank loan of $393,375 at an interest rate of 4.66% for a twenty-year term.

**Budget:**

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$3,763,243</td>
</tr>
<tr>
<td>Expenses</td>
<td>3,525,757</td>
</tr>
<tr>
<td>Net Income</td>
<td>$237,486</td>
</tr>
</tbody>
</table>
Recommendations

Health Systems Agency
The Finger Lakes Health Systems Agency recommends Contingent Approval of 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:
   - Reach out to hospital discharge planners to make them aware of the facility’s Medicaid Access Program;
   - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
   - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility’s Medicaid Access policy. [RNR]

3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
   - Describing how the applicant reached out to hospital discharge planners to make them aware of the facility’s Medicaid Access Program;
   - Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   - Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility’s Medicaid Access policy.
   - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
   - Other factors as determined by the applicant to be pertinent.
The DOH reserves the right to require continued reporting beyond the two year period. [RNR]

4. Submission of an executed loan commitment for the operating portion, acceptable to the Department. [BFA]

5. Submission of an executed loan commitment for the real estate portion, acceptable to the Department. [BFA]

6. Submission of an executed services agreement, acceptable to the Department. [BFA]

7. Submission of an executed building lease, acceptable to the Department. [BFA]

8. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]

9. The sponsor signs the State’s Medicaid Access Agreement and submits annual performance reports to the NYS Department of Health. [FLA]

10. Submission of a photocopy of the applicant’s executed proposed Operating Agreement, which is acceptable to the Department. [CSL]

11. Submission of a photocopy of the applicant’s executed proposed Articles of Organization, which is acceptable to the Department. [CSL]

12. Submission of a photocopy of the applicant’s executed proposed Lease Agreement, which 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.

Council Action Date
October 8, 2015
**Need Analysis**

**Analysis**
There is currently a surplus of 908 beds in Monroe County as indicated in Table 1 below. The overall occupancy for Monroe County was 92.5% in 2013 as indicated in Chart 1.

<table>
<thead>
<tr>
<th>Table 1: RHCF Need – Monroe County</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2016 Projected Need</strong></td>
</tr>
<tr>
<td><strong>Current Beds</strong></td>
</tr>
<tr>
<td><strong>Beds Under Construction</strong></td>
</tr>
<tr>
<td><strong>Total Resources</strong></td>
</tr>
<tr>
<td><strong>Unmet Need</strong></td>
</tr>
</tbody>
</table>

**Chart 1: Latta Road Nursing Home A/Monroe County Occupancy**

<table>
<thead>
<tr>
<th>Year</th>
<th>Facility</th>
<th>Monroe Co.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>93.0%</td>
<td>93.7%</td>
</tr>
<tr>
<td>2010</td>
<td>96.7%</td>
<td>92.5%</td>
</tr>
<tr>
<td>2011</td>
<td>95.7%</td>
<td>90.3%</td>
</tr>
<tr>
<td>2012</td>
<td>94.4%</td>
<td>98.1%</td>
</tr>
<tr>
<td>2013</td>
<td>94.9%</td>
<td>92.5%</td>
</tr>
</tbody>
</table>

**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.

Latta Road Nursing Home A’s Medicaid admissions for 2012 was 12.1% and exceeded Monroe County 75% rate of 13.3%. In 2013, Latta Road Nursing Home A’s Medicaid admissions for 2013 was 10.6% and did not exceed Monroe County 75% rate of 12.8% and will be required to follow the contingency plan as noted.
Conclusion
Approval of this application will result in providing a needed resource for the residents it serves.

Recommendation
From a need perspective, contingent approval is recommended.

Program Analysis

Program Description
No changes in the program or physical environment are proposed in this application. The applicant will enter into a consulting and administrative services agreement with ROHM Services Corporation for financial services.

Facility Information

<table>
<thead>
<tr>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility Name</td>
<td>Latta Road Nursing Home A</td>
</tr>
<tr>
<td>Address</td>
<td>Latta Road Nursing Home East, LLC</td>
</tr>
<tr>
<td>2102 Latta Road</td>
<td>Same</td>
</tr>
<tr>
<td>Rochester, NY 14612</td>
<td>Same</td>
</tr>
<tr>
<td>RHCF Capacity</td>
<td>40</td>
</tr>
<tr>
<td>Same</td>
<td></td>
</tr>
<tr>
<td>ADHC Program Capacity</td>
<td>N/A</td>
</tr>
<tr>
<td>Same</td>
<td></td>
</tr>
<tr>
<td>Type of Operator</td>
<td>Corporation</td>
</tr>
<tr>
<td>Same</td>
<td>Limited Liability Company</td>
</tr>
<tr>
<td>Class of Operator</td>
<td>Sole Proprietorship</td>
</tr>
<tr>
<td>Operator</td>
<td>Proprietary</td>
</tr>
<tr>
<td>Eleanor E. Richardson d/b/a</td>
<td>Latta Nursing Home West, LLC</td>
</tr>
<tr>
<td></td>
<td>Member: Robert W. Hurlbut 100.00%</td>
</tr>
</tbody>
</table>

Character and Competence - Background

Facilities Reviewed
Nursing Homes
Avon Nursing Home, LLC 04/2007 to present
The Brightonian, Inc. 09/2005 to present
Conesus Lake Nursing Home, LLC 04/2007 to present
Elm Manor Nursing Home, Inc. 09/2005 to present
Hornell Gardens, LLC 04/2007 to present
The Hurlbut, LLC 09/2005 to present
Newark Manor Nursing Home, Inc. 09/2015 to present
Penfield Place, LLC 04/2007 to present
Seneca Nursing & Rehabilitation Center, LLC 09/2005 to present
The Shore Winds, LLC 09/2005 to present
Wedgewood Nursing Home, Inc. 09/2005 to present
Woodside Manor Nursing Home, Inc. 04/2007 to present

Individual Background Review
Robert Hurlbut lists his profession as nursing home owner. Mr. Hurlbut discloses the following nursing home ownership interests:
Avon Nursing Home, LLC 04/2007 to present
The Brightonian, Inc. 02/1997 to present
Conesus Lake Nursing Home, LLC 04/2007 to present
Elm Manor Nursing Home, Inc. 01/1994 to present
Hornell Gardens, LLC 04/2007 to present
The Hurlbut, LLC 01/2003 to present
Newark Manor Nursing Home, Inc. 07/1998 to present
Penfield Place, LLC 04/2007 to present
Seneca Nursing & Rehabilitation Center 03/2003 to present
Character and Competence - Analysis
No negative information has been received concerning the character and competence of the above applicants.

A review of The Brightonian, Inc. for the period identified above reveals the following:
- The facility was fined $2,000 pursuant to a Stipulation and Order NH-11-006 issued March 3, 2011 for surveillance findings on February 12, 2010. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.

A review of Elm Manor Nursing Home, Inc. for the period identified above reveals the following:
- The facility has been fined $10,000 pursuant to a pending Stipulation and Order for surveillance findings on July 30, 2012. Deficiencies were found under 10 NYCRR 415.12(l)(1) Quality of Care: Unnecessary Drugs.

A review of Hornell Gardens, LLC for the period identified above reveals the following:
- The facility was fined $8,000 pursuant to a Stipulation and Order NH-15-015 issued September 1, 2015 for surveillance findings on July 12, 2013. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 415.12(h)(1).

A review of The Shore Winds LLC for the period identified above reveals the following:
- The facility was fined $4,000 pursuant to a Stipulation and Order NH-15-016 issued September 1, 2015 for surveillance findings on February 8, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 10NYCRR 415.12(h)(1) Quality of Care: Accidents.

A review of operations of for the nursing homes identified above for the periods specified results in a conclusion of a consistently high level of care as there were no repeat enforcements.

A review of Avon Nursing Home, LLC, Conesus Lake Nursing Home, Newark Manor Nursing Home, Inc., Penfield Place, LLC, Seneca Nursing & Rehabilitation Center, Wedgewood Nursing Home and Woodside Manor Nursing Home, Inc. for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

Recommendation
From a programmatic perspective, approval is recommended.

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Financial Analysis

Asset Purchase Agreement
The applicant has submitted an executed asset purchase agreement for the sale of the operation, as summarized below:

<table>
<thead>
<tr>
<th>Date:</th>
<th>March 19, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seller:</td>
<td>Morris E. Richardson</td>
</tr>
<tr>
<td>Purchaser:</td>
<td>Robert W. Hurlbut</td>
</tr>
<tr>
<td>Assets Acquired:</td>
<td>Seller’s rights under any third party programs, excluding amounts due but not yet paid for services rendered by Seller for periods prior to the Closing Date; all equipment, furniture, appliances, tools, supplies and other personal property owned by Seller; all leases, contracts and other agreements, which Buyer expressly elects to assume; all rights to the telephone and facsimile numbers of</td>
</tr>
</tbody>
</table>
the Facility; the name “Latta Road Nursing Home A”; any and all policy and procedure manuals, intellectual property and/or software used by the Facility; all residents’ funds held in trust and all security deposits held by Seller and all retroactive rate increases and/or lump sum payments from any source for services rendered by the Facility prior to the Closing Date.

Excluded Assets: Seller’s rights to any income tax, sales tax, usage tax, franchise tax, special assessments, revenue assessments required by the New York State Department of Health and any other refunds due to the Seller prior to the Effective Date; any non-transferable or non-assignable governmental or regulatory licenses; Seller’s cash on hand; Seller’s bank accounts and records, deferred investments, stocks, bonds and any other securities that exist on the date of Closing and Seller’s account receivable prior to the Closing Date.

Assumed Liabilities: Resident funds held in trust.

Purchase Price: $776,000

Payment of Purchase Price: Cash at Closing

The applicant’s financing plan appears as follows:

Equity via proposed member $194,000
Bank Loan (4.66% for a twenty-year term) 582,000

A bank letter of interest for the financing has been provided.

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.

Real Estate Agreement
The applicant has submitted an executed real estate purchase and sale agreement for Latta Nursing Home and Latta Nursing Home A (jointly), which is summarized below:

<table>
<thead>
<tr>
<th>Date</th>
<th>March 20, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premises</td>
<td>Real property identified as tax map account number 045.12-2-43.1 consisting of approximately 32.5 acres of land and existing improvements located at 2100 Latta Road in the Town of Greece, New York.</td>
</tr>
<tr>
<td>Seller</td>
<td>M.E. &amp; E.E. Richardson, Inc.</td>
</tr>
<tr>
<td>Buyer</td>
<td>Robert W. Hurlbut, on behalf of Latta Road Nursing Home Realty, LLC</td>
</tr>
<tr>
<td>Purchase Price:</td>
<td>$1,049,000 total allocated as follows:</td>
</tr>
<tr>
<td></td>
<td>$524,500 for Latta Nursing Home</td>
</tr>
<tr>
<td></td>
<td>$524,500 for Latta Nursing Home A</td>
</tr>
<tr>
<td>Payment of Purchase Price:</td>
<td>Cash at Closing</td>
</tr>
</tbody>
</table>

The applicant’s financing plan appears as follows:

Equity via the proposed member $131,125
Bank Loan (4.66% for a twenty-year term) 393,375
$524,500

A bank letter of interest for the financing has been provided.
**Administrative Services Agreement**

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

| Provider: | ROHM Services Corporation |
| Facility: | Latta Road Nursing Home East, LLC |
| Services: | The provider shall perform the following services: general financial services including preparation of resident statements, invoicing all payors, processing of all payments received, review of invoices and preparation of bank deposits, preparation and negotiation of purchasing bids subject to final approval of Latta Road Nursing Home East, review of audit reports, and debt collection services. |
| Term: | The agreement shall continue until December 31, 2017. Unless either party gives notice to the other party of its intent not to renew this agreement at least thirty days prior to the end of the term, or any renewal thereof, this agreement will be automatically renewed for additional one year term. |
| Compensation: | The compensation shall be $120,000 per year. |

While ROHM Services Corporation will provide the above services, the Licensed Operator retains ultimate authority, responsibility, and control for the operations. This agreement specifically does not delegate to ROHM the following responsibilities: authority to hire or fire the administrator or other key management employees, maintenance and control of the books and records of the Facility, authority over disposition of assets and incurring liabilities on behalf of the Facility, and the adoption and enforcement of policies regarding the operation of Latta Road Nursing Home East.

**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 2102 Latta Road, Rochester, New York |
| Lessor: | Latta Road Nursing Home Realty, LLC |
| Lessee: | Latta Road Nursing Home East, LLC |
| Term: | 20 years |
| Rental: | $76,500 annually (paid in equal monthly installments of $6,375) |
| Provisions: | Lessee shall be responsible for real estate taxes, maintenance and utilities. |

The lease agreement will be a non-arm’s length lease arrangement. There is common ownership between the landlord and tenant in that the proposed owner is the sole member of both the operating entity and the real estate entity.

**Operating Budget**

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

<table>
<thead>
<tr>
<th>Per Diem</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues:</td>
<td></td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>$183.92</td>
</tr>
<tr>
<td>Medicare Fee For Service</td>
<td>498.94</td>
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<tr>
<td>Private Pay</td>
<td>363.14</td>
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<tr>
<td>Other</td>
<td>350.06</td>
</tr>
<tr>
<td>Total Revenues</td>
<td>$3,763,243</td>
</tr>
<tr>
<td>Expenses:</td>
<td></td>
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<tr>
<td>Operating</td>
<td>$240.86</td>
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<tr>
<td>Capital</td>
<td>7.14</td>
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<tr>
<td>Total Expenses</td>
<td>$248.00</td>
</tr>
<tr>
<td>Net Income</td>
<td></td>
</tr>
</tbody>
</table>
Utilization (Patient Days)  14,217  
Occupancy  97.38%  
Breakeven Occupancy  91.55%  

Utilization by payor source during the first year after the change in ownership:

- Medicaid Managed Care  62.75%  
- Medicare Fee-For-Service  11.00%  
- Private Pay  19.22%  
- Other  7.03%  

The following is noted with respect to the submitted budget:
- Medicaid and Medicare revenue assumptions are based on the facility’s current payment rates for the respective payors. The Medicaid Fee-For-Service rate serves as the benchmark rate for the Medicaid Managed Care payments. For Medicare, the applicant has incorporated a conservative increase in Medicare Part A and Part B based on his ownership experience with the other NYS facilities he operates.
- Private pay rates are anticipated to increase by 10% to remain at market levels.
- Expense and utilization assumptions are based on the facility’s 2014 historical experience.
- Breakeven utilization is projected at 91.55% or 13,366 patient days.

The budget appears reasonable.

**Capability and Feasibility**

The purchase price for the acquisition of the operating interest is $776,000. The purchase price will be met as follows: Equity of $194,000 via the proposed member and $582,000 via a bank loan at an interest rate of 4.66% for a twenty-year term. The purchase price for the real estate interest is $524,000 and will be met as follows: Equity of $131,125 via the proposed member and $393,375 via a bank loan at an interest rate of 4.66% for a twenty-year term. The applicant has submitted bank letters of interests in regard to the financing.

Working capital requirements are estimated at $587,626, which is equivalent to two months of first year expenses. The applicant will finance $293,813 at an interest rate of 3.25% for a five-year term. The remaining $293,813 will be met via equity from the proposed member. BFA Attachment A is the personal net worth statement for the proposed member of Latta Road Nursing Home East, LLC, which indicates the availability of sufficient funds to meet the working capital requirement and the purchase price equity portion. BFA Attachment B is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of $471,438. Assets include $571,000 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 be a negative $99,562.

The submitted budget indicates a net income of $237,486 during the first year after the change in operator. The submitted budget appears reasonable.

BFA Attachment C is the financial summary of Latta Road Nursing Home A for the period 2012 through 2014. As shown, the entity had an average positive working capital position, an average positive net asset position, and incurred an average loss of $299,305 from 2012 through 2014. The applicant has indicated that the reason for the annual historical losses shown was due to the facility having little Part A and Part B residents.
The following is a comparison of the facility’s 2014 historical performance to projected revenue and expenses for year one following the change in ownership:

<table>
<thead>
<tr>
<th></th>
<th>Annual 2014</th>
<th>Year 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues:</td>
<td>$3,262,440</td>
<td>$3,763,243</td>
</tr>
<tr>
<td>Expenses:</td>
<td>3,685,013</td>
<td>3,525,757</td>
</tr>
<tr>
<td>Net Income:</td>
<td>($422,573)</td>
<td>$237,486</td>
</tr>
</tbody>
</table>

Incremental Net Income: $660,059

To improve operations, the applicant is proposing to implement the following corrective actions when they begin operating the facility:

- **Currently facility has little or no Medicare Part A and Part B.** The buyer plans to add on staff for PT and OT services and improve the therapy programs.
- **Dietary service and food costs are currently double the other comparable facilities benchmarked.** The facility also has an employee benefit whereby all employees eat free of charge. The dietary service and food costs will be brought in line to benchmarked facilities, and the employee plan will be modified to require a small charge for one meal per shift.
- **All nursing personnel will be employee staff.** No contract nurses will be used.
- **Nursing supplies are greatly in excess of the other comparable facilities and will be brought in line as well.**

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the “Transition of Nursing Home Benefit and Population into Managed Care Policy Paper,” provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D presents the 2012 through 2014 financial summary of the NYS facilities the proposed member has ownership interest in. The facilities and summary of operations for the period are as follows:

- **Woodside Manor Nursing Home (44 beds):** The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $384,785.
- **Wedgewood Nursing Home (29 beds):** The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $19,632. The applicant indicated that the loss in 2012 was due to bad debt write-offs in 2012.
- **The Shore Winds (229 beds):** The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $804,990.
- **Seneca Nursing & Rehabilitation Center (20 beds):** The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $746,604.
- **Penfield Place (48 beds):** The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $358,440.
- **Newark Manor Nursing Home (60 beds):** The entity had an average negative working capital position, an average negative net asset position, and had an average net loss of $24,290 for the period. The applicant indicated that the reason for the average negative working capital position is due to past historical losses. The entity had a loss in 2012 due to low occupancy. They worked hard in 2013 and 2014 to strengthen their relationship with Newark Wayne Hospital to better manage their costs.
- **The Hurlbut (160 beds):** The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $638,044.
- **Hornell Gardens (114 beds):** The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $595,542.
- **Elm Manor Nursing Home (46 beds):** The entity had an average positive working capital position, an average positive net asset position, and had an average net loss of $202,196 for the period. The entity had a loss in 2012 due to the following: an occupancy decrease from 2011, and a one-time bad debt expense write-off. The entity implemented the following steps to improve operations: improved occupancy in 2013 and 2014.
Conesus Lake Nursing Home (48 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $711,230.

The Brightonian (54 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $761,346.

Avon Nursing Home (40 beds): The entity had an average positive working capital position, an average negative net asset position, and achieved an average net income of $257,723. The reason for the average negative net asset position was due to prior year historical losses. The applicant improved operations in 2013.

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

Recommendation
From a financial perspective, contingent approval is recommended.

Attachments

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BNHLC Attachment A</td>
<td>Quality Measures and Inspection Report</td>
</tr>
<tr>
<td>BFA Attachment A</td>
<td>Personal Net Worth Statement</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Pro Forma Balance Sheet</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>2012 - 2014 Financial Summary - Latta Road Nursing Home A</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>2012 - 2014 Financial Summary - Other Owned Facilities.</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Latta Road Nursing Home East, LLC as the new operator of Latta Road Nursing Home, a 40-bed facility located at 2102 Latta Road, Rochester, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: FACILITY/APPLICANT:

151133 E Latta Road Nursing Home East, LLC
APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility’s case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]

2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   - Reach out to hospital discharge planners to make them aware of the facility’s Medicaid Access Program;
   - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
   - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility’s Medicaid Access policy. [RNR]

3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
   - Describing how the applicant reached out to hospital discharge planners to make them aware of the facility’s Medicaid Access Program;
   - Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   - Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility’s Medicaid Access policy.
   - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
   - Other factors as determined by the applicant to be pertinent.
   The DOH reserves the right to require continued reporting beyond the two year period. [RNR]

4. Submission of an executed loan commitment for the operating portion, acceptable to the Department. [BFA]

5. Submission of an executed loan commitment for the real estate portion, acceptable to the Department. [BFA]

6. Submission of an executed services agreement, acceptable to the Department. [BFA]

7. Submission of an executed building lease, acceptable to the Department. [BFA]

8. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]

9. The sponsor signs the State’s Medicaid Access Agreement and submits annual performance reports to the NYS Department of Health. [FLA]

10. Submission of a photocopy of the applicant’s executed proposed Operating Agreement, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant’s executed proposed Articles of Organization, which is acceptable to the Department. [CSL]

12. Submission of a photocopy of the applicant’s executed proposed Lease Agreement, which 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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*. 
Hamilton Manor Nursing Home, LLC, a to-be-formed New York limited liability company, requests approval to be established as the operator of Hamilton Manor Nursing Home, a 40-bed, sole proprietor, Article 28 residential health care facility (RHCF) located at 1172 Long Pond Road, Rochester (Monroe County). The applicant will enter into a services agreement with ROHM Services Corporation for the provision of general financial services. There will be no change in services provided as a result of this application.

On March 19, 2015, Robert W. Hurlbut, on behalf of Hamilton Manor Nursing Home, LLC, entered into an asset purchase agreement with Morris E. Richardson, executor of the estate of Eleanor E. Richardson, for the sale and acquisition of the operating interest of Hamilton Manor Nursing Home. On March 20, 2015, Robert W. Hurlbut, on behalf of the to-be-formed Hamilton Manor Nursing Home Realty, LLC, also purchased the real estate from Eleven Seventy Two Long Pond Road, Inc. and Morris Richardson. Robert Hurlbut is the proposed owner and sole member of both the operating entity and the real estate entity.

The proposed member of Hamilton Manor Nursing Home, LLC is also seeking to acquire two other nursing facilities, Latta Road Nursing Home under CON #151131 and Latta Road Nursing Home A under CON #151133. These two applications are being reviewed concurrent with this application request.

The current and proposed operators are as follows:

**Current**
Morris E. Richardson, Executor of the Estate of Eleanor E. Richardson 100%

**Proposed**
Hamilton Manor Nursing Home, LLC
Robert Hurlbut 100%

Robert W. Hurlbut has ownership interest in twelve NYS skilled nursing facilities and one skilled nursing facility in Florida.

**OPCHSM Recommendation**
Contingent Approval

**Need Summary**
Hamilton Manor Nursing Home’s utilization was 95.2% in 2011, 94.9% in 2012, and 95.2% in 2013. Current utilization, as of March 18, 2015 is 92.5%, with 3 vacant beds. In 2014, and overall in 2015, utilization at this facility has increased to 97.6% and 96.1%, respectively, which closely coincide with the Department’s planning optimum.

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 identified as new members.
No changes in the program or physical environment are proposed in this application. The applicant will enter into a consulting and administrative services agreement with Rohm Services Corporation for financial services.

Financial Summary
The purchase price for the acquisition of the operating interest of Hamilton Manor Nursing Home is $773,000 and will be paid as follows: Equity of $193,250 from the proposed member and a bank loan of $579,750 at an interest rate of 4.66% for a twenty-year term. The purchase price for the acquisition of the real estate interest is $481,000 and will be paid as follows: Equity of $120,250 from the proposed member and a bank loan of $360,750 at an interest rate of 4.66% for a twenty-year term.

<table>
<thead>
<tr>
<th>Budget:</th>
<th>Revenues</th>
<th>$3,877,748</th>
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<tbody>
<tr>
<td></td>
<td>Expenses</td>
<td>3,587,575</td>
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<tr>
<td></td>
<td>Net Income</td>
<td>$290,173</td>
</tr>
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</table>
Recommendations

Health Systems Agency
The Finger Lakes HSA recommends Contingent Approval of 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 loan commitment for the operating portion, acceptable to the Department. [BFA]
5. Submission of an executed loan commitment for the real estate portion, acceptable to the Department. [BFA]
6. Submission of an executed services agreement, acceptable to the Department. [BFA]
7. Submission of an executed building lease, acceptable to the Department. [BFA]
8. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
9. Submission of a photocopy of the applicant's executed proposed Operating Agreement, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant’s executed proposed Articles of Organization, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant’s executed proposed Lease Agreement, which is acceptable to the Department. [CSL]
12. The sponsor signs the State’s Medicaid Access Agreement and submits annual performance reports to the NYS Department of Health. [HSA]
Approval conditional upon:
1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date
October 8, 2015
Need Analysis

Project Description
Hamilton Manor Nursing Home, LLC, seeks approval to become the established operator of Hamilton Manor Nursing Home, a 40-bed Article 28 residential health care facility (RHCF) located at 1172 Long Pond Road, Rochester, 14626, in Monroe County.

Analysis
There is currently a surplus of 908 beds in Monroe County as indicated in Table 1 below. The overall occupancy for Monroe County is 92.5% for 2013, as indicated in Chart 1.

<table>
<thead>
<tr>
<th>Table 1: RHCF Need – Monroe County</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2016 Projected Need</strong></td>
</tr>
<tr>
<td><strong>Current Beds</strong></td>
</tr>
<tr>
<td><strong>Beds Under Construction</strong></td>
</tr>
<tr>
<td><strong>Total Resources</strong></td>
</tr>
<tr>
<td><strong>Unmet Need</strong></td>
</tr>
</tbody>
</table>

Chart 1: Hamilton Manor Nursing Home/Monroe County Occupancy

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.
Hamilton Manor Nursing Home’s Medicaid admissions for both 2012 and 2013 was 0.0% which did not exceed Monroe County 75% rates in 2012 and 2013 of 13.3% and 12.8%, respectively. The new operator will be required to follow the contingency plan as noted on the green sheet.

**Conclusion**
Approval of this application will result in retaining a needed resource for the residents it serves.

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

### Program Analysis

<table>
<thead>
<tr>
<th>Facility Information</th>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility Name</td>
<td>Hamilton Manor Nursing Home</td>
<td>Hamilton Manor Nursing Home, LLC</td>
</tr>
<tr>
<td>Address</td>
<td>1172 Long Pond Road Rochester, NY 14626</td>
<td>Same</td>
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<tr>
<td>RHCF Capacity</td>
<td>40</td>
<td>Same</td>
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<td>ADHC Program Capacity</td>
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<tr>
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<td>Limited Liability Company</td>
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<td>Sole Proprietorship</td>
<td>Proprietary</td>
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<tr>
<td>Operator</td>
<td>Eleanor E. Richardson d/b/a</td>
<td>Hamilton Manor Nursing Home, LLC</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Member</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Robert W. Hurlbut 100.00%</td>
</tr>
</tbody>
</table>

### Character and Competence - Background

#### Facilities Reviewed

**Nursing Homes**
- Avon Nursing Home, LLC 04/2007 to present
- The Brightonian, Inc. 09/2005 to present
- Conesus Lake Nursing Home, LLC 04/2007 to present
- Elm Manor Nursing Home, Inc. 09/2005 to present
- Hornell Gardens, LLC 04/2007 to present
- The Hurlbut, LLC 09/2005 to present
- Newark Manor Nursing Home, Inc. 09/2015 to present
- Penfield Place, LLC 04/2007 to present
- Seneca Nursing & Rehabilitation Center, LLC 09/2005 to present
- The Shore Winds, LLC 09/2005 to present
- Wedgewood Nursing Home, Inc. 09/2005 to present
- Woodside Manor Nursing Home, Inc. 04/2007 to present

**Individual Background Review**
Robert Hurlbut lists his profession as nursing home owner. Mr. Hurlbut discloses the following nursing home ownership interests:
- Avon Nursing Home, LLC 04/2007 to present
- The Brightonian, Inc. 02/1997 to present
- Conesus Lake Nursing Home, LLC 04/2007 to present
- Elm Manor Nursing Home, Inc. 01/1994 to present
- Hornell Gardens, LLC 04/2007 to present
The Hurlbut, LLC 01/2003 to present
Newark Manor Nursing Home, Inc. 07/1998 to present
Penfield Place, LLC 04/2007 to present
Seneca Nursing & Rehabilitation Center 03/2003 to present
The Shore Winds, LLC 03/2003 to present
Wedgewood Nursing Home, Inc. 01/1994 to present
Woodside Manor Nursing Home, Inc. 04/2007 to present

Character and Competence - Analysis
No negative information has been received concerning the character and competence of the above applicants.

A review of The Brightonian, Inc. for the period identified above reveals the following:
• The facility was fined $2,000 pursuant to a Stipulation and Order NH-11-006 issued March 3, 2011 for surveillance findings on February 12, 2010. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.

A review of Elm Manor Nursing Home, Inc. for the period identified above reveals the following:
• The facility has been fined $10,000 pursuant to a pending Stipulation and Order for surveillance findings on July 30, 2012. Deficiencies were found under 10 NYCRR 415.12(l)(1) Quality of Care Unnecessary Drugs.

A review of Hornell Gardens, LLC for the period identified above reveals the following:
• The facility was fined $8,000 pursuant to a Stipulation and Order NH-15-015 issued September 1, 2015 for surveillance findings on July 12, 2013. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 415.12(h)(1).

A review of The Shore Winds LLC for the period identified above reveals the following:
• The facility was fined $4,000 pursuant to a Stipulation and Order NH-15-016 issued September 1, 2015 for surveillance findings on February 8, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 10NYCRR 415.12(h)(1) Quality of Care: Accidents.

A review of operations of for the nursing homes identified above for the periods specified results in a conclusion of consistent high level of care since there were no repeat enforcements.

A review of Avon Nursing Home, LLC, Conesus Lake Nursing Home, Newark Manor Nursing Home, Inc., Penfield Place, LLC, Seneca Nursing & Rehabilitation Center, Wedgewood Nursing Home and Woodside Manor Nursing Home, Inc. for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review
No changes in the program or physical environment are proposed in this application. The applicant will enter into a consulting and administrative services agreement with Rohm Services Corporation for financial services.

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

Recommendation
From a programmatic perspective, approval is recommended.
Financial Analysis

Asset Purchase Agreement
The applicant has submitted an executed asset purchase agreement for the sale of the operation, as summarized below:

<table>
<thead>
<tr>
<th>Date:</th>
<th>March 19, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seller:</td>
<td>Morris E. Richardson, as Executor of the Estate of Eleanor E. Richardson</td>
</tr>
<tr>
<td>Purchaser:</td>
<td>Robert W. Hurlbut</td>
</tr>
<tr>
<td>Assets Acquired:</td>
<td>Seller’s rights under any third party payor programs, excluding amounts due but not yet paid for services rendered by Seller for periods prior to the Closing Date; all equipment, furniture, appliances, tools, supplies and other personnel property owned by Seller; all leases, contracts and other agreements which Buyer expressly elects to assume; all rights to the telephone and facsimile numbers of the Facility; the name “Hamilton Manor Nursing Home”; any and all policy and procedure manuals, intellectual property and/or software used by the Facility; all resident funds held in trust and all security deposits held by Seller and all retroactive rate increases and/or lump sum payments from any source for services rendered by the Facility prior to the Closing Date.</td>
</tr>
<tr>
<td>Excluded Assets:</td>
<td>Seller’s rights to any income tax, sales tax, usage tax, franchise tax, special assessment, revenue assessments required by the New York State Department of Health and any other refunds due to Seller prior to the Closing Date; any non-transferable or non-assignable governmental or regulatory licenses; Seller’s cash on hand; Seller’s bank accounts and records, deferred income taxes, stocks, bonds on the date of Closing and Seller’s accounts receivable prior to the Closing Date.</td>
</tr>
<tr>
<td>Assumed Liabilities:</td>
<td>Resident funds held in trust</td>
</tr>
<tr>
<td>Purchase Price:</td>
<td>$773,000</td>
</tr>
<tr>
<td>Payment of Purchase Price:</td>
<td>Cash at Closing</td>
</tr>
</tbody>
</table>

The applicant’s financing plan appears as follows:

| Equity via the proposed member | $193,250 |
| Bank Loan (4.66% interest rate for a twenty-year term) | 579,750 |

A bank letter of interest for the financing has been provided.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, there are no outstanding liabilities or assessments.
**Real Estate Agreement**
The applicant has submitted an executed real estate purchase agreement for the real estate associated with Hamilton Manor Nursing Home, which is summarized below:

<table>
<thead>
<tr>
<th>Date:</th>
<th>March 20, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premises:</td>
<td>1172 Long Pond Road in the Town of Greece, New York</td>
</tr>
<tr>
<td>Seller:</td>
<td>Eleven Seventy Two Long Pond Road, Inc. and Morris E. Richardson</td>
</tr>
<tr>
<td>Buyer:</td>
<td>Robert W. Hurlbut</td>
</tr>
<tr>
<td>Purchase Price</td>
<td>$481,000</td>
</tr>
<tr>
<td>Payment of Purchase Price</td>
<td>Cash at Closing</td>
</tr>
</tbody>
</table>

The applicant’s financing plan appears as follows:

- Equity via the proposed member $120,250
- Bank Loan (4.66% interest rate for a twenty-year term) 360,750

A bank letter of interest for the financing has been provided.

**Administrative Services Agreement**
The applicant has submitted a draft services agreement, which is summarized below:

<table>
<thead>
<tr>
<th>Provider:</th>
<th>ROHM Services Corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility:</td>
<td>Hamilton Manor Nursing Home, LLC</td>
</tr>
<tr>
<td>Services Provided:</td>
<td>The provider shall provide the following services: general financial services including preparation of resident statements, invoicing all payors, processing of all payments received, review of invoices and preparation of bank deposits, preparation and negotiation of purchasing bids subject to final approval of Hamilton Manor Nursing Home and review of audit reports and debt collection services.</td>
</tr>
<tr>
<td>Term:</td>
<td>The agreement shall continue until December 31, 2017. Unless either party gives notice to the other party of its intent not to renew this agreement at least thirty days prior to the end of the term, or any renewal thereof, this agreement will be automatically renewed for additional one year term.</td>
</tr>
<tr>
<td>Compensation:</td>
<td>The compensation shall be $120,000 per year.</td>
</tr>
</tbody>
</table>

While ROHM Services Corporation will provide the above services, the licensed operator retains ultimate authority, responsibility, and control for the operations. This agreement specifically does not delegate to ROHM the following responsibilities: authority to hire or fire the administrator or other key management employees, maintenance and control of the books and records of the facility, authority over disposition of assets and incurring liabilities on behalf of the facility, and the adoption and enforcement of policies regarding the operation of Hamilton Manor Nursing Home.

**Lease Rental Agreement**
The applicant has submitted a draft lease rental agreement, which is summarized below:

<table>
<thead>
<tr>
<th>Premises:</th>
<th>The site located at 1172 Long Pond Road, Rochester, New York</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lessor:</td>
<td>Hamilton Manor Nursing Home Realty, LLC</td>
</tr>
<tr>
<td>Lessee:</td>
<td>Hamilton Manor Nursing Home, LLC</td>
</tr>
<tr>
<td>Term:</td>
<td>20 years</td>
</tr>
<tr>
<td>Rental:</td>
<td>$75,000 annually</td>
</tr>
<tr>
<td>Provisions:</td>
<td>The lessee shall be responsible for insurance, utilities, maintenance and real estate taxes.</td>
</tr>
</tbody>
</table>

The lease arrangement will be a non-arm’s length lease arrangement. There is common ownership between the landlord and tenant in that the proposed owner is the sole member of both the operating entity and the real estate entity.
Operating Budget

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

<table>
<thead>
<tr>
<th></th>
<th>Per Diem</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicaid Managed Care</td>
<td>$180.08</td>
<td>$1,469,772</td>
</tr>
<tr>
<td>Medicare Fee For Service</td>
<td>505.13</td>
<td>720,310</td>
</tr>
<tr>
<td>Private Pay</td>
<td>357.06</td>
<td>1,411,462</td>
</tr>
<tr>
<td>Other</td>
<td>386.84</td>
<td>276,204</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td></td>
<td>$3,877,748</td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$246.36</td>
<td>$3,511,806</td>
</tr>
<tr>
<td>Capital</td>
<td>5.32</td>
<td>75,769</td>
</tr>
<tr>
<td><strong>Total Expenses</strong></td>
<td></td>
<td>$3,587,575</td>
</tr>
<tr>
<td><strong>Net Income</strong></td>
<td></td>
<td>$290,173</td>
</tr>
</tbody>
</table>

Utilization (Patient Days) 14,255
Occupancy 97.64%
Breakeven Occupancy 90.30%

Utilization broken down by payor source during the first year after the change in ownership is summarized below:

<table>
<thead>
<tr>
<th>Payor Source</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid Managed Care</td>
<td>57.0%</td>
</tr>
<tr>
<td>Medicare Fee For Service</td>
<td>10.0%</td>
</tr>
<tr>
<td>Private Pay</td>
<td>28.0%</td>
</tr>
<tr>
<td>Other</td>
<td>5.0%</td>
</tr>
</tbody>
</table>

The following is noted with respect to the submitted budget:

- Medicaid and Medicare revenue assumptions are based on the facility’s current payment rates for the respective payors. The Medicaid Fee-For-Service rate serves as the benchmark rate for the Medicaid Managed Care payments. For Medicare, the applicant has incorporated a conservative increase in Medicare Part A and Part B based on his ownership experience with the other NYS facilities he operates.
- Private pay rates are anticipated to increase by 10% to remain at market levels.
- Expense and utilization assumptions are based on the facility’s 2014 historical experience.
- Breakeven utilization is projected at 90.30% or 13,183 patient days.

The budget appears reasonable.

Capability and Feasibility

The purchase price for the acquisition of the operating interest of Hamilton Manor Nursing Home is $773,000 and will be paid as follows: Equity of $193,250 from the proposed member and a bank loan of $579,750 at an interest rate of 4.66% for a twenty-year term. The purchase price for the acquisition of the real estate interest is $481,000 and will be paid as follows: Equity of $120,250 from the proposed member and a bank loan of $360,750 at an interest rate of 4.66% for a twenty-year term. The applicant has submitted bank letters of interests in regard to the financing.

Working capital requirements are estimated at $597,930, which is equivalent to two months of first year expenses. The applicant will finance $298,965 at an interest rate of 3.25% for a five-year term. The remaining $298,965 will be met via equity from the proposed member. BFA Attachment A is the personal net worth statement for the proposed member of Hamilton Manor Nursing Home, LLC, which indicates the availability of sufficient funds to meet the working capital requirement and the purchase price equity portion. BFA Attachment B is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of $348,215. Assets include $629,000 in goodwill, which is not a liquid
nor is it recognized for Medicaid reimbursement. If goodwill is eliminated from the equation, the total net assets would be a negative $280,785.

The submitted budget indicates a net income of $290,173 during the first year after the change in operator. The submitted budget appears reasonable.

BFA Attachment C is the financial summary of Hamilton Manor Nursing Home for the period 2012 through 2014. As shown, the entity had an average positive working capital position and an average positive net asset position from 2012 through 2014. Also, the entity achieved an average operating net income of $40,847 from 2012 through 2014. The entity incurred a loss in 2012 due to food costs that were double comparable market costs. The entity improved operations through 2014 due to improved occupancy.

The following is a comparison of the facility’s 2014 historical performance to projected revenue and expenses for year one following the change in ownership:

<table>
<thead>
<tr>
<th></th>
<th>Annual 2014</th>
<th>Year 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$3,426,118</td>
<td>$3,877,748</td>
</tr>
<tr>
<td>Expenses</td>
<td>3,399,198</td>
<td>3,587,575</td>
</tr>
<tr>
<td>Net Income</td>
<td>$26,920</td>
<td>$290,173</td>
</tr>
<tr>
<td>Incremental Net Income:</td>
<td></td>
<td>$263,253</td>
</tr>
</tbody>
</table>

To further improve operations, the applicant is proposing to implement the following corrective actions when they begin operating the facility:

- Currently facility has little or no Medicare Part A and Part B. The buyer plans to add on staff for PT and OT services and improve the therapy programs.
- Dietary service and food costs are currently double the other comparable facilities benchmarked. The facility also has an employee benefit whereby all employees eat free of charge. The dietary service and food costs will be brought in line to benchmarked facilities, and the employee plan will be modified to require a small charge for one meal per shift.
- All nursing personnel will be employee staff. No contract nurses will be used.
- Nursing supplies are greatly in excess of the other comparable facilities and will be brought in line as well.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the “Transition of Nursing Home Benefit and Population into Managed Care Policy Paper,” provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D is the 2012 through 2014 financial summary of the NYS facilities the proposed member has ownership interest in. The facilities and summary of operations for the period are as follows:

- Woodside Manor Nursing Home (44 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $384,785.
- Wedgewood Nursing Home (29 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $19,632. The applicant indicated that the loss in 2012 was due to bad debt write-offs in 2012.
- The Shore Winds (229 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $804,990.
- Seneca Nursing & Rehabilitation Center (20 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $746,604.
- Penfield Place (48 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $358,440.
• Newark Manor Nursing Home (60 beds): The entity had an average negative working capital position, an average negative net asset position, and had an average net loss of $24,290 for the period. The applicant indicated that the reason for the average negative working capital position is due to past historical losses. The entity had a loss in 2012 due to low occupancy. They worked hard in 2013 and 2014 to strengthen their relationship with Newark Wayne Hospital to better manage their costs.

• The Hurlbut (160 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $638,044.

• Hornell Gardens (114 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $595,542.

• Elm Manor Nursing Home (46 beds): The entity had an average positive working capital position, an average positive net asset position, and had an average net loss of $202,196 for the period. The entity had a loss in 2012 due to the following: an occupancy decrease from 2011, and a one-time bad debt expense write-off. The entity implemented the following steps to improve operations: improved occupancy in 2013 and 2014.

• Conesus Lake Nursing Home (48 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $711,230.

• The Brightonian (54 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of $761,346.

• Avon Nursing Home (40 beds): The entity had an average positive working capital position, an average negative net asset position, and achieved an average net income of $257,723. The reason for the average negative net asset position was due to prior year historical losses. The applicant improved operations in 2013.

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**

<table>
<thead>
<tr>
<th>Attachment A</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BNHLC Attachment A</td>
<td>Quality Measures and Inspection Report</td>
</tr>
<tr>
<td>BFA Attachment A</td>
<td>Personal Net Worth Statement</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Pro Forma Balance Sheet</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>2012 - 2014 Financial Summary - Hamilton Manor Nursing Home</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>2012 - 2014 Financial Summary - Other Owned Nursing Facilities</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Hamilton Manor Nursing Home, LLC as the new operator of Hamilton Manor Nursing Home, a 40-bed facility located at 1172 Long Pond Road, Rochester, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: 151134 E

FACILITY/APPLICANT: Hamilton Manor Nursing Home, LLC
APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility’s case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]

2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will: Reach out to hospital discharge planners to make them aware of the facility’s Medicaid Access Program; Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility’s Medicaid Access policy. [RNR]

3. Submission of 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.
   Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
   Other factors as determined by the applicant to be pertinent.
   The DOH reserves the right to require continued reporting beyond the two year period. [RNR]

4. Submission of an executed loan commitment for the operating portion, acceptable to the Department. [BFA]

5. Submission of an executed loan commitment for the real estate portion, acceptable to the Department. [BFA]

6. Submission of an executed services agreement, acceptable to the Department. [BFA]

7. Submission of an executed building lease, acceptable to the Department. [BFA]

8. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]

9. Submission of a photocopy of the applicant’s executed proposed Operating Agreement, which is acceptable to the Department. [CSL]

10. Submission of a photocopy of the applicant’s executed proposed Articles of Organization, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant’s executed proposed Lease Agreement, which is acceptable to the Department. [CSL]
12. The sponsor signs the State’s Medicaid Access Agreement and submits annual performance reports to the NYS Department of Health. [HSA]

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]

   Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON.*
Executive Summary

Description
L. Woerner, Inc. d/b/a HCR is an existing Article 36 certified home health agency (CHHA) whose main office is located in Rochester (Monroe County). In 2006, HCR established an Employee Stock Ownership Plan (ESOP) and Trust applicable to all facilities operated at the time, as well as all subsequent facility/program acquisitions. Per this application, HCR requests Public Health and Health Planning Council approval to add Mr. Duane Tolander as an Independent Trustee. BFA Attachment A is the organizational chart of HCR before and after the addition of the new trustee.

Trustees of the ESOP have the authority to:
- Establish fair market value of the trust fund, to include use of qualified independent appraisers;
- Subject to any required regulatory approvals, purchase and sell stock or other plan assets and otherwise manage and invest trust assets.
- Hold the trust assets and render accounts or their administration of the trust;
- Vote the trust’s shares of the company if and as provided in the plan and consistent with ERISA;
- Determine the amount of the trust’s income or loss;
- Appoint and delegate investment duties to an investment manager;
- Determine the trust’s investment policy in light of the plan’s funding policy and method; and
- Employ advisors, agents and counsel to fulfill these duties.

OPCHSM Recommendation
Contingent Approval

Program Summary
A review of the personal qualifying information indicates there is nothing in the background of the stockholders, trustees, board members, and officers to adversely affect their positions with L. Woerner, Inc. d/b/a HCR / HCR Home Care. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Financial Summary
There are no total project costs or operating budgets associated with this application.
Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:
1. Submission of a photocopy of the executed Written Consent of Directors and Shareholders to the Amendment to the Certificate of Incorporation. [CSL]
2. Submission of a photocopy of the executed Amendment to the Certificate of Incorporation. [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. Proper notice must be given to all employees participating in the employee stock ownership plan (ESOP) of the potential for an audit risk due to the lack of a legal separation between the CHHA and the LHCSA as it relates to payment structures. [CHA]
3. No employee or any other individual or entity may own/control 10% or more of the corporation’s stock without first obtaining Department of Health and/or Public Health and Health Planning Council approval, as required. [CHA]

Council Action Date
October 8, 2015
Program Analysis

Review Summary
L. Woerner, Inc. d/b/a HCR / HCR Home Care currently operates seven Article 36 CHHAs and five Article 36 LTHHCPs in New York State as follows:

1. HCR / HCR Home Care in Canastota – CHHA serving Madison, Cayuga, Jefferson, Onondaga, and Oswego Counties, and LTHHCP serving Madison County only.
2. HCR / HCR Home Care in Cobleskill – CHHA serving Schoharie and Otsego Counties.
3. HCR / HCR Home Care in Delhi – CHHA and LTHHCP serving Delaware County only.
4. HCR / HCR Home Care in Homer – CHHA serving Cortland County only.
5. HCR / HCR Home Care in Hudson Falls – CHHA and LTHHCP serving Washington County only.
6. HCR / HCR Home Care in Plattsburgh – CHHA serving Clinton, Essex, Franklin, Hamilton, St. Lawrence, and Warren Counties, and LTHHCP serving Clinton County only.
7. HCR / HCR Home Care in Rochester (with an additional branch office practice location in Batavia) – CHHA serving Monroe, Genesee, Orleans, Livingston, Ontario, and Wayne Counties, and LTHHCP serving Genesee County only.

L. Woerner, Inc. d/b/a HCR / HCR Home Care also currently operates two Article 36 LHCSAs in New York State as follows:

1. HCR / HCR Home Care in Rochester – serving Livingston, Monroe, Ontario, Orleans, and Wayne Counties.
2. HCR / HCR Home Care in Batavia – serving Genesee, Monroe, Orleans, and Wyoming Counties.

This CHHA/LTHHCP CON application applies only to the seven L. Woerner, Inc. d/b/a HCR / HCR Home Care CHHAs and the five L. Woerner, Inc. d/b/a HCR / HCR Home Care LTHHCPs, which are each identified above. A separate LHCSA application (# 2606-L) has been submitted for the two L. Woerner, Inc. d/b/a HCR / HCR Home Care LHCSAs, identified above. Both the CHHA/LTHHCP CON application # 151099-E, and the LHCSA application # 2606-L, are being presented at this PHHPC meeting.

The current proposal seeks approval for L. Woerner, Inc. d/b/a HCR / HCR Home Care to add Duane Tolander as a new trustee for their Employee Stock Ownership Plan Trust, and to update the current status of the corporation’s stockholders, officers, board members, and trustees. Mr. Tolander would be an independent trustee, in that he will not also be a stockholder, director, officer, or employee of L. Woerner, Inc., thereby removing any possible conflicts of interest with respect to his management and investment decisions for the funds held in the Employee Stock Ownership Plan Trust. Mr. Tolander is also currently a trustee of the Bestcare, Inc. (LHCSA) Employee Stock Ownership Plan Trust, as approved by PHHPC in 2011. The current proposal also updates the current assumed name (d/b/a) of the corporation, by adding a new additional assumed name (d/b/a) HCR Home Care, to the existing assumed name (d/b/a) HCR.

In 2006, L. Woerner, Inc. d/b/a HCR / HCR Home Care (CON project # 061088-E) received both State Hospital Review and Planning Council and Public Health Council approval to convert 90% of the shares of corporate stock (which up to that time where owned 90.5% by Louise Woerner and 9.5% by Mark Maxim), to an Employee Stock Ownership Plan (ESOP) and establish a trust to control and manage the assets, including the stock, held by the ESOP. At that point in time, Ms. Woerner retained 7% of the shares, and Mr. Maxim retained 3% of the shares, and Ms. Woerner and Mr. Maxim were named the sole trustees of the ESOP trust.

At the current time, L. Woerner, Inc. d/b/a HCR / HCR Home Care is reporting instead (as disclosed in detail below) that the ESOP now owns 71.00%, Lawrence Peckham owns 10.07%, Don H. Kollmorgen owns 9.49%, Louise Woerner owns 9.34%, and Clayton Osborne owns 0.10% of the corporation’s issued stock, with Ms. Woerner the sole trustee of the ESOP trust, and Duane Tolander being added as a new additional trustee of the ESOP trust. Mr. Maxim has left the organization and no longer has any role as stockholder, trustee, director, officer, or employee. As previously stated, Mr. Tolander would be an independent trustee, in that he will not also be a stockholder, director, officer, or employee of L. Woerner,
Inc., thereby removing any possible conflicts of interest with respect to his management and investment decisions for the funds held in the Employee Stock Ownership Plan Trust.

Each employee participating in the L. Woerner, Inc. d/b/a HCR / HCR Home Care Employee Stock Ownership Plan (ESOP) does not actually take ownership of the stock itself, but instead has a separate stock account in the trust to hold his/her allocation of stock. Employees participating in the ESOP may not sell, transfer, assign, pledge, or encumber the shares of stock allocated to their stock account. Dividends will be allocated among, and credited to, each participant’s stock accounts on the basis of the number of shares held by the participant’s account. The duties and powers of the ESOP Trustee (or Trustees) are outlined in the HCR / HCR Home Care Employee Stock Ownership Trust Agreement under the HCR / HCR Home Care Employee Stock Ownership Plan. The Trustee (or Trustees) has/have the power to: manage and control the assets, including the stock, held in the trust; sell, exchange, transfer, or grant options for any property held in the trust; and vote all allocated and unallocated shares of stock. Employees participating in the ESOP instruct the Trustee(s) in the manner to vote the shares of stock allocated to their stock account only in the event of corporate merger, consolidation, recapitalization, reclassification, liquidation, dissolution, or sale of substantially all assets of the company or similar transaction, which must be approved by the shareholders of L. Woerner, Inc. d/b/a HCR / HCR Home Care, pursuant to applicable New York State law. The HCR / HCR Home Care Employee Stock Ownership Trust Agreement permits a Trustee to be removed by the Board of Directors, or to resign his/her position as Trustee, at any time. Any Successor Trustee(s) must receive prior approval of the New York State Department of Health and/or Public Health and Health Planning Council. Upon appointment, any and all Successor Trustees will be granted the same power, rights, and duties as the previous Trustee. Additional Trustees may be appointed in the future (upon prior approval of the New York State Department of Health and/or Public Health and Health Planning Council), and will have the same rights, powers, and duties of the Trustee as granted by the HCR / HCR Home Care Employee Stock Ownership Trust Agreement. The applicant had confirmed, and has restated such confirmation for this current project proposal, that no stockholder shall control 10% or more of the stock, of L. Woerner, Inc., without first obtaining New York State Department of Health and/or Public Health and Health Planning Council approval, as appropriate.

CON project # 061088-E also noted that L. Woerner, Inc. d/b/a HCR / HCR Home Care operates both a CHHA and LHCSA out of a single corporation. The Department has discouraged this type of arrangement because of the different regulatory requirements and payment structures applicable to CHHAs and LHCSAs. L. Woerner, Inc. d/b/a HCR / HCR Home Care wished to retain its current corporate arrangement, thus placing the agency at potential risk for future audit liabilities due to there being two different payment structures for the same service within a single corporation. Therefore, the Department required the agency to provide written notification, approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure. The applicant had confirmed, and has restated such confirmation for this current project proposal, that the agency continues to provide such written notification, as previously approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure.

L. Woerner, Inc. d/b/a HCR / HCR Home Care is currently authorized 4,000,000 shares of stock, with 2,464,344 shares of stock currently issued, and the remaining 1,535,656 shares of stock currently held in Treasury as unissued shares. Of the 2,464,344 shares of stock currently issued, the stockholders and stock distribution are as follows:

<table>
<thead>
<tr>
<th>Stockholder</th>
<th>Number of Shares</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee Stock Ownership Plan Trust</td>
<td>1,749,604</td>
<td>71.00%</td>
</tr>
<tr>
<td>Louise Woerner</td>
<td>230,180</td>
<td>9.34%</td>
</tr>
<tr>
<td>Don H. Kollmorgen</td>
<td>233,824</td>
<td>9.49%</td>
</tr>
<tr>
<td>Lawrence Peckham</td>
<td>248,236</td>
<td>10.07%</td>
</tr>
<tr>
<td>Clayton Osborne</td>
<td>2500</td>
<td>0.10%</td>
</tr>
</tbody>
</table>

All of the above listed stockholders are disclosed in detail below.
The Trustees of the Employee Stock Ownership Plan Trust (71.00 % stockholder) will be as follows:

<table>
<thead>
<tr>
<th>Louise Woerner</th>
<th>Duane E. Tolander, CPA (Iowa)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Executive Officer, L. Woerner, Inc. d/b/a HCR / HCR Home Care (CHHA, LTHHCP, and LHCSA)</td>
<td>Partner / Managing Director, HDH Advisors, LLC, West Des Moines, Iowa (Financial Advisory Services / Professional Consulting / Corporate and Business Valuations / Litigation Support); Trustee, Bestcare, Inc. (LHCSA) Employee Stock Ownership Plan Trust</td>
</tr>
<tr>
<td>Affiliations: HealthNow New York, Inc., Buffalo (Managed Care Plan) – 4/1/02 to 4/10/08</td>
<td></td>
</tr>
</tbody>
</table>

The members of Board of Directors of L. Woerner, Inc. d/b/a HCR / HCR Home Care, are as follows:

| Louise Woerner, Chairperson, Secretary, Treasurer (9.34% stockholder) Disclosed above | Don H. Kollmorgen (9.49% stockholder) Retired |
| Lawrence L. Peckham (10.07% stockholder) Retired | Joseph J. Castiglia, CPA Retired |
| Clayton H. Osborne, MSW, LCSW (0.10% stockholder) Retired Vice President of Human Resources and Talent Management, Bausch and Lomb (Vision Products Manufacturer) | |

An additional officer of L. Woerner, Inc. d/b/a HCR / HCR Home Care, who is neither a stockholder, trustee, nor board member, is as follows:

Mary Elizabeth Zicari, RN  
President / Administrator, L. Woerner, Inc. d/b/a HCR / HCR Home Care (CHHA, LTHHCP, and LHCSA)  
Affiliation: DePaul Adult Care Communities, Inc., Rochester (licensed ACFs/ALPs, in New York State, North Carolina, and South Carolina) – April 2009 to present

The Office of the Professions of the New York State Education Department indicates no issues with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW license of Clayton Osborne. The Professional Licensing Bureau of the State of Iowa indicates no issues with the CPA license of Duane Tolander. In addition, a search of all of the above named stockholders, trustees, board members, officers, employers, and health care affiliations revealed no matches on either the New York State Medicaid Disqualified Provider List or the federal Office of the Inspector General’s Provider Exclusion List.

The NYSDOH Division of Home and Community Based Services reviewed the compliance history of the CHHAs and LHCSAs operated by L. Woerner, Inc. d/b/a HCR / HCR Home Care for the time period 2008 to present, and the LTHHCPs operated by L. Woerner, Inc. d/b/a HCR / HCR Home Care for the time period May 2010 (establishment of the first HCR / HCR Home Care LTHHCP) to present. The Division of Home and Community Based Services also reviewed the compliance history of the LHCSAs operated by Bestcare, Inc., for the time period 2011 (when Mr. Tolander began serving as a Trustee of Bestcare’s Employee Stock Ownership Plan Trust) to present. It has been determined that the L. Woerner, Inc. d/b/a HCR / HCR Home Care CHHAs, LTHHCPs, and LHCSAs, plus the affiliated Bestcare, Inc. LHCSAs, have all exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. These CHHAs, LTHHCPs, and LHCSAs have all been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.
The NYSDOH Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the five ACFs and ALPs located in New York State operated by DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

An enforcement action was taken in November, 2012, against Glenwell Adult Home / Assisted Living Program in Cheektowaga, New York, based on a September 2011 inspection citing violations in the area of Endangerment. A $25,000 civil penalty was imposed.

An enforcement action was taken in February, 2015, against Kenwell Adult Home / Assisted Living Program in Kenmore, New York, based on September 2012, January 2013, and August 2013 inspections citing violations in the area of Resident Services. A $10,000 civil penalty was imposed.

An enforcement action was taken in October, 2011, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a July 2011 inspection citing violations in the area of Endangerment in Supervision. A $1000 civil penalty was imposed.

A second enforcement action was taken in November, 2012, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a November 2011 inspection citing violations in the area of Endangerment. A $4000 civil penalty was imposed.

A third enforcement action was taken in August, 2013, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on August 2011, and December 2011 inspections citing violations in the areas of Resident Services and Food Services. An $1800 civil penalty was imposed.

The two remaining New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc. (Horizons Adult Home / Assisted Living Program, and Westwood Adult Home) do not have any enforcement history to report. It has been determined that the five New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc. are now in substantial compliance with all applicable codes, rules, and regulations, with no additional enforcement or administrative actions imposed.

The NYSDOH Office of Health Insurance Program’s Bureau of Managed Care Certification and Surveillance reviewed the compliance history of the affiliated HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that this affiliated managed care plan was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The New York State Office of Mental Health’s Bureau of Inspection and Certification reviewed the compliance history of each of the affiliated mental health providers and residences located in New York State operated within the corporate structure of DePaul Community Services, Inc., an affiliate of DePaul Adult Care Communities, Inc., for the time period April 2009 to present. It has been determined that the mental health providers and residences in New York State affiliated with DePaul Community Services, Inc. were all in substantial compliance with all applicable codes, rules, and regulations, with no enforcement sanctions or administrative action imposed, during that time period.

Out of state compliance requests were sent to North Carolina for each of the twelve licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present. An out of state compliance request was also sent to South Carolina for the one licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

South Carolina has reported that the one licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc. has had no enforcement actions imposed within the previous twelve months (the only reporting period South Carolina provides) and is considered to be in good standing with the South Carolina Department of Health and Environmental Control.

North Carolina has reported that only one of the twelve licensed ACFs/ALPs in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc. has had an enforcement action since April 2009.
An enforcement action was taken in February, 2010, against Greenbrier Adult Home / Assisted Living Program located in Fairmont, North Carolina, based on a January 2009 survey citing violations in the area of Medication Administration. A $2,000 civil penalty was imposed.

The North Carolina Department of Health and Human Services reports that the remaining eleven licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc. have had no enforcement actions imposed since April 2009.

A review of the personal qualifying information indicates there is nothing in the background of the stockholders, trustees, board members, and officers to adversely affect their positions with L. Woerner, Inc. d/b/a HCR / HCR Home Care. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

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

---

**Financial Analysis**

**Agreement to Provide Trustee Services**
The applicant has submitted an executed Agreement to Provide Trustee Services, which is summarized below:

<table>
<thead>
<tr>
<th>Date:</th>
<th>May 1, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>By:</td>
<td>Louise Woermer – Chairwoman &amp; CEO, L. Woerner, Inc.</td>
</tr>
<tr>
<td>With:</td>
<td>Duane Tolander – Proposed Individual Trustee</td>
</tr>
<tr>
<td>Terms:</td>
<td>Effective from May 1, 2014, and renewable annually</td>
</tr>
</tbody>
</table>

**Service/Duties Provisions:**
Professional services as Independent Fiduciary under the Trust, Plan and ERISA including: approve Trust’s independent financial advisor to assist in evaluation of proposed transactions, stock agreements, and to perform the annual valuation and other valuations required; prepare/maintain adequate records of the Trustee’s actions/decisions, preserve such records, and make them available as reasonably requested; retain the Trustee’s own independent legal counsel of his choosing in connection with any proposed transaction.

**Excluded Duties:**
Daily administrative and ministerial functions under the Plan. The parties agree that such duties shall be the responsibility of the Plan Administrator and shall not be delegated to Mr. Tolander.

**Compensation:**
$15,000 annually, plus $325/hour for necessary special work outside of normal responsibilities covered by this agreement.

**Capability and Feasibility**
There are no project costs or operating budgets associated with this application.

BFA Attachment B is the 2012 and 2013 certified financial statements of L. Woerner, Inc. As shown, the facility had an average negative working capital position and an average negative shareholders position during 2012 and 2013. The applicant has indicated that the reason for the average negative working capital position and the average negative shareholders position was the result of historical operating losses and ESOP contributions. Also, the applicant incurred an average net loss of $1,906,718 from 2012 through 2013. The applicant has indicated that the reasons for the loss are as follows: ESOP contributions of $1,000,000, expenses incurred due to the facility expanding into the newly acquired counties, and delays in receiving reimbursement from its two largest payors, Medicaid and Medicare, as the enrollment process took an average of nine months to complete for each of the newly acquired agencies. The applicant has indicated that they have improved Medicaid case mix, increased volumes and reduced costs through efficiencies implemented through new software technology.
BFA Attachment C is the preliminary 2014 certified financial statements of L. Woerner, Inc. As shown, the entity had a negative working capital position and a negative shareholders position through December 31, 2014. The applicant has indicated that the reasons for the negative working capital position and the negative shareholders position are prior year historical losses and ESOP contributions. Also, the facility incurred a net loss of $2,003,482 through December 31, 2014. The applicant has indicated that the reason for the loss was the result of start-up associated with providing home care in the ten new counties throughout New York State. The applicant has indicated that they have significantly improved the revenue and operating margins of the CHHA segment of their business and are now profitable in 2015.

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

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

### Attachments

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BFA Attachment A</td>
<td>Organizational Chart before and after the addition of the new trustee.</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>2012 and 2013 certified financial statements of HCR</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Preliminary 2014 certified financial statements of HCR</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 8th day of October, 2015, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to add a new trustee for their Employee Stock Ownership Plan Trust and update the current status of the corporation’s stockholders, officers, board members, and trustees, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

<table>
<thead>
<tr>
<th>NUMBER</th>
<th>APPLICANT/FACILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>151099 E</td>
<td>HCR</td>
</tr>
</tbody>
</table>
APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the executed Written Consent of Directors and Shareholders to the Amendment to the Certificate of Incorporation. [CSL]
2. Submission of a photocopy of the executed Amendment to the Certificate of Incorporation. [CSL]

APPROVAL CONDITIONED 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. Proper notice must be given to all employees participating in the employee stock ownership plan (ESOP) of the potential for an audit risk due to the lack of a legal separation between the CHHA and the LHCSA as it relates to payment structures. [CHA]
3. No employee or any other individual or entity may own/control 10% or more of the corporation’s stock without first obtaining Department of Health and/or Public Health and Health Planning Council approval, as required. [CHA]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
MEMORANDUM

To: Members of the Establishment and Project Review Committee  
Public Health and Health Planning Council

From: Christopher Delker, Director  
Division of Planning and Licensure

Date: September 15, 2015

Subject: CON #151186 Premier Ambulatory Surgery Center

At their meeting of July 23, 2015, Committee members heard statements from Mr. John Galati, CEO of TLC Health Lake Shore Hospital (TLC Lake Shore), concerning cases that would potentially be lost to the proposed Premier ASC, and the associated impact on hospital revenues and operations.

Members voted to defer this application one cycle to enable the Department to obtain data from TLC Lake Shore clarifying the number of cases that could be transferred from the hospital to the ASC by Premier ASC’s participating physicians, specifically:

- Whether the applicant ophthalmologist, Dr. Sharma, had ceased performing surgery at TLC Lake Shore earlier in 2015, thus rendering the potential transfer of his cases to the proposed ASC a moot question.

- Whether Premier’s gastroenterologist, Dr. Miqdadi, was currently maintaining his traditional caseload at TLC Lake Shore, which would support the applicant’s statement that Dr. Miqdadi planned to continue practicing at the hospital and did not intend to transfer any of his TLC Lake Shore caseload to the proposed Premier ASC.

TLC Lake Shore has submitted payment data to the Department showing that Dr. Sharma had 497 ambulatory surgery cases at TLC Lake Shore in 2014 but only 90 cases in the first six months of 2015. The latter figure is consistent with Dr. Sharma’s statements that he ceased practicing at TLC Lake Shore earlier in 2015.

The hospital has also submitted payment data to the Department showing that Dr. Miqdadi had 1,129 ambulatory gastroenterology cases at TLC Lake Shore in 2014 and 592 from January 1, 2015 through June 30, 2015. This latter figure seems to indicate that Dr. Miqdadi is maintaining his traditional level of activity at TLC Lake Shore and is consistent with the applicant’s statement that Dr. Miqdadi does not intend to transfer any of his TLC Lake Shore cases to the proposed Premier ASC.
Executive Summary

Description
Premier Ambulatory Services Development Company, LLC d/b/a Premier Ambulatory Surgery Center (Premier), a recently formed New York limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to be certified as a multi-specialty freestanding ambulatory surgery center (ASC) initially specializing in ophthalmology and gastroenterology procedures. Premier will lease 6,925 square feet of space in a multi-tenant building located at 2816 Pleasant Avenue, Hamburg (Erie County). The ASC will include two operating rooms (one class C and one Class B), plus eight pre-op/post-op beds along with the requisite support areas.

The proposed members of Premier Ambulatory Services Development Company, LLC and their ownership percentages are as follows:

<table>
<thead>
<tr>
<th>Premier Ambulatory Services Development Company, LLC</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vishal Sharma, M.D.</td>
<td>50%</td>
</tr>
<tr>
<td>Nisha Sharma, M.D.</td>
<td>50%</td>
</tr>
</tbody>
</table>

OPCHSM Recommendation
Contingent Approval with an expiration of the operating certificate five years from the date of its issuance.

Need Summary
The number of projected procedures is 1,800 in Year 1 with Medicaid at 6.2% 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 cost of $495,218 will be met as follows: $60,218 in members’ equity and $435,000 via a five-year term bank loan at 5% interest. A letter of interest has been provided by First Niagara Bank.

Budget:

<table>
<thead>
<tr>
<th></th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$1,341,136</td>
<td>$1,421,478</td>
</tr>
<tr>
<td>Expenses</td>
<td>$1,186,777</td>
<td>$1,224,885</td>
</tr>
<tr>
<td>Net Income</td>
<td>$154,359</td>
<td>$196,593</td>
</tr>
</tbody>
</table>
Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management
Approval with an expiration of the operating certificate five 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 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]
3. 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:
   - Data showing actual utilization including procedures;
   - Data showing breakdown of visits by payer source;
   - Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
   - Data showing number of emergency transfers to a hospital;
   - Data showing percentage of charity care provided; and
   - Number of nosocomial infections recorded during the year in question. [RNR]
4. 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]
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 loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]

Approval conditional upon:
1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity’s clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant’s start of construction. [AER]
7. Construction must start on or before November 1, 2015 and construction must be completed by March 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

8. No additional physicians shall be allowed to perform surgical or interventional procedures at the Center without the Department’s prior approval, to allow an assessment of the impact of such additions on TLC Health Network – Lake Shore Hospital, for a period of five years from the date of the issuance of the operating certificate.

Council Action Date
July 23, 2015 EPRC – Recommended Deferral
August 6, 2015 PHHPC - Deferred

October 8, 2015
Need Analysis

Analysis
The service area consists of Erie County. Erie County has a total of seven freestanding multi-specialty ASC’s and two freestanding single-specialty ASC’s. The table below shows the number of patient visits at ambulatory surgery centers in Erie County for 2013 and 2014.

<table>
<thead>
<tr>
<th>ASC Type</th>
<th>Name of Facility</th>
<th>Total Patients 2013</th>
<th>Total Patients 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multi</td>
<td>Ambulatory Surgery Center of Western New York LLC</td>
<td>13,291</td>
<td>15,102</td>
</tr>
<tr>
<td>Multi</td>
<td>Buffalo Ambulatory Surgery Center</td>
<td>10,093</td>
<td>10,273</td>
</tr>
<tr>
<td>Multi</td>
<td>Buffalo Surgery Center, LLC</td>
<td>4,822</td>
<td>5,100</td>
</tr>
<tr>
<td>Multi</td>
<td>Center for Ambulatory Surgery LLC</td>
<td>10,201</td>
<td>10,026</td>
</tr>
<tr>
<td>Multi</td>
<td>Endoscopy Center of Western New York, LLC</td>
<td>10,259</td>
<td>10,892</td>
</tr>
<tr>
<td>Single</td>
<td>Eye Health Associates Inc.</td>
<td>4,119</td>
<td>4,221</td>
</tr>
<tr>
<td>Multi</td>
<td>Millard Fillmore Surgery Center, LLC</td>
<td>6,049</td>
<td>5,437</td>
</tr>
<tr>
<td>Multi</td>
<td>Sterling Surgical Center, LLC</td>
<td>5,472</td>
<td>5,564</td>
</tr>
<tr>
<td>Single</td>
<td>WNY Medical Management (opened 4/2013)</td>
<td>401</td>
<td>584</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>64,707</td>
<td>67,199</td>
</tr>
</tbody>
</table>

Source: SPARCS-2015

For Erie County, the total number of patient visits was 64,707 in 2013 and 67,199 in 2014. This represents an approximately 4% year-to-year increase in the number of patients served by ambulatory surgery centers in Erie County.

The number of projected procedures is 1,800 in Year 1 and 1,908 in Year 3. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Premier Ambulatory Surgery Center for Year 1 and Year 3.

<table>
<thead>
<tr>
<th>Projections</th>
<th>Year 1 Procedures</th>
<th>Year 1 %</th>
<th>Year 3 Procedures</th>
<th>Year 3 %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Ins</td>
<td>992</td>
<td>55.1%</td>
<td>1,051</td>
<td>55.1%</td>
</tr>
<tr>
<td>Medicare</td>
<td>660</td>
<td>36.7%</td>
<td>700</td>
<td>36.7%</td>
</tr>
<tr>
<td>Medicaid</td>
<td>112</td>
<td>6.2%</td>
<td>119</td>
<td>6.2%</td>
</tr>
<tr>
<td>Private Pay</td>
<td>0</td>
<td>0.0%</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Charity Care</td>
<td>36</td>
<td>2.0%</td>
<td>38</td>
<td>2.0%</td>
</tr>
<tr>
<td>Total</td>
<td>1,800</td>
<td>100.0%</td>
<td>1,908</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

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 provide additional access to surgical services in an Article 28 setting for the residents of Erie County and neighboring areas.

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

Project Proposal
Premier Ambulatory Services Development Company, LLC, d/b/a Premier Ambulatory Surgery Center, seeks approval to establish and construct an Article 28 freestanding multi-specialty ambulatory surgery center procedures to be located at 2816 Pleasant Avenue in Hamburg (Erie County).

<table>
<thead>
<tr>
<th>Proposed Operator</th>
<th>Premier Ambulatory Services Development Company, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doing Business As</td>
<td>Premier Ambulatory Surgery Center</td>
</tr>
</tbody>
</table>
| Site Address           | 2816 Pleasant Avenue  
                          Hamburg, NY (Erie County) |
| Surgical Specialties   | Multi-Specialty:  
                          Ophthalmology  
                          Gastroenterology |
| Operating Rooms        | 2 (Class B – 1, Class C – 1)                        |
| Procedure Rooms        | 0                                                   |
| Hours of Operation     | Monday through Friday from 7:00 am to 3:00 p.m.  
                          Weekend and/or evening surgery will be available, if needed, to accommodate patient scheduling issues. |
| Staffing (1st Year / 3rd Year) | 6.4 FTEs / 6.4 FTEs |
| Medical Director(s)    | Vishal Sharma, MD                                  |
| Emergency, In-Patient and Backup Support Services Agreement and Distance | Expected to be provided by Erie County Medical Center  
                          17 miles / 20 minutes |
| On-call service        | Calls to the surgeon’s service will be directed to the surgeon or to another physician of the surgeon’s specialty on-call. |

Character and Competence
The members of Premier Ambulatory Services Development Company, LLC are:

<table>
<thead>
<tr>
<th>Name</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nisha Sharma, MD</td>
<td>50%</td>
</tr>
<tr>
<td>Vishal Sharma, MD</td>
<td>50%</td>
</tr>
</tbody>
</table>

Drs. Sharma are both practicing physicians with roughly ten years of experience in their respective fields. Dr. Nisha Sharma is board-certified in Family Medicine and Dr. Vishal Sharma is a board-certified ophthalmologist.

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.

Integration with Community Resources
The medical staff members will require that their patients, whenever possible, have a medical clearance appointment with a primary care physician prior to surgery. If a primary care relationship does not exist, the members will encourage the establishment of one. The facility plans to reach out to primary care physicians and physician groups in its service area to inform them about the facility and its capabilities, including its participation with Medicare and Medicaid. The facility is committed to creating a program that facilitates access to all populations and they will serve all patients needing care regardless of their ability to pay or the source of payment.
The applicant plans on utilizing an Electronic Medical Record (EMR) and would consider becoming part of an Accountable Care Organization or Medical Home if one were to develop in its service area. Additionally, the facility would also consider participating in a Regional Health Information Organization (RHIO) or Health Information Exchange (HIE).

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

## Financial Analysis

### Total Project Cost and Financing
The total project cost for telecommunications, movable equipment, and fees is estimated at $495,218, broken down as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other fees</td>
<td>$20,000</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>$38,000</td>
</tr>
<tr>
<td>Movable Equipment</td>
<td>$432,520</td>
</tr>
<tr>
<td>Application Fees</td>
<td>$2,000</td>
</tr>
<tr>
<td>Additional Processing Fees</td>
<td>$2,698</td>
</tr>
<tr>
<td><strong>Total Project Cost</strong></td>
<td><strong>$495,218</strong></td>
</tr>
</tbody>
</table>

Financing for this project will be as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members Equity</td>
<td>$60,218</td>
</tr>
<tr>
<td>Bank loan (five-year term at 5% interest)</td>
<td>$435,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$495,218</strong></td>
</tr>
</tbody>
</table>

A letter of interest has been provided by First Niagara Bank.

### Lease Rental Agreement
The applicant has submitted an executed lease rental agreement for the site to be occupied, the terms of which are summarized below:

<table>
<thead>
<tr>
<th>Date:</th>
<th>April 7, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premises:</td>
<td>6925 sq. ft., located at 2816 Pleasant Avenue, Hamburg, NY</td>
</tr>
<tr>
<td>Landlord:</td>
<td>Sharma Development, LLC</td>
</tr>
<tr>
<td>Lessee:</td>
<td>Premier Ambulatory Services Development Company, LLC</td>
</tr>
<tr>
<td>Term:</td>
<td>15 years with two five-year renewal options</td>
</tr>
<tr>
<td>Rental:</td>
<td>$273,537 annually (39.50 per sq. feet), A 2% increase in rent per year beginning the 11th year</td>
</tr>
</tbody>
</table>

The applicant has submitted an affidavit stating the lease agreement is a non-arm’s length arrangement.

The applicant has also submitted two letters from NYS licensed realtors attesting to the reasonableness of the per square foot rental rate.
Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for years one and three, as summarized below:

<table>
<thead>
<tr>
<th></th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicaid-MC</td>
<td>$53,008</td>
<td>$56,256</td>
</tr>
<tr>
<td>Medicare-MC</td>
<td>$458,160</td>
<td>$486,022</td>
</tr>
<tr>
<td>Commercial-MC</td>
<td>822,768</td>
<td>871,560</td>
</tr>
<tr>
<td>Charity</td>
<td>7,200</td>
<td>7,640</td>
</tr>
<tr>
<td><strong>Total Revenue</strong></td>
<td>$1,341,136</td>
<td>$1,421,478</td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>$794,580</td>
<td>$842,825</td>
</tr>
<tr>
<td>Capital</td>
<td>392,197</td>
<td>382,060</td>
</tr>
<tr>
<td><strong>Total Expense</strong></td>
<td>$1,186,777</td>
<td>$1,224,885</td>
</tr>
<tr>
<td><strong>Net Income</strong></td>
<td>$154,359</td>
<td>$196,593</td>
</tr>
<tr>
<td><strong>Total Visits</strong></td>
<td>1,800</td>
<td>1,908</td>
</tr>
<tr>
<td><strong>Total Cost Per Visits</strong></td>
<td>659.32</td>
<td>641.97</td>
</tr>
</tbody>
</table>

Utilization by payor source for Years 1 and 3 is as follows:

<table>
<thead>
<tr>
<th>Payor:</th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Procedures</td>
<td>%</td>
</tr>
<tr>
<td>Commerical-MC</td>
<td>992</td>
<td>55.1%</td>
</tr>
<tr>
<td>Medicare-MC</td>
<td>660</td>
<td>36.7%</td>
</tr>
<tr>
<td>Medicaid-MC</td>
<td>112</td>
<td>6.2%</td>
</tr>
<tr>
<td>Charity Care</td>
<td>36</td>
<td>2.0%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,800</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on current payment rates by payor for ambulatory ophthalmology and gastroenterology procedures.
- Utilization assumptions are based on the number of outpatient case that Dr. Vishal Sharma, a board-certified ophthalmologist, and Dr. Jehad Miqdadi, a board-certified gastroenterologist, will transfer from other facilities including: Sterling Surgical Center, Buffalo General Hospital, Sister’s Hospital, Lake Shore Medical Center and West Seneca Center for Ambulatory Surgery. Both physicians have provided a letters supporting the year one utilization.
- Expense assumptions are based on the historical experience of similar service D&TCs in the proposed FASC’s service area, adjusted for operating the facility three days a week. The breakeven point is approximately 88% or 1,592 visits in ear one.

**Capability and Feasibility**

The total project cost of $495,218 will be satisfied from $60,218 in members’ equity with the $435,000 balance being provided through a loan at the above stated terms. First Niagara Bank has provided a letter of interest.

Working capital requirements are estimated at $204,147 based on two months of third year expenses. The applicant will provide $104,147 from the members’ equity. The remaining $100,000 will be satisfied through a five-year loan at 5% interest rate from First Niagara Bank. BFA Attachments A is members’ net worth summary which shows the members have sufficient liquid resources to meet both the project’s equity and working capital requirements.
BFA Attachment B is the pro-forma balance sheet for Premier Ambulatory Services Development Company, LLC that shows operation will start off with $169,667 in members’ equity.

The submitted budget projects a net income of $154,359 and $196,593 during years one and three of operations, respectively. Medicare reimbursement was based on the 2014 Medicare fee schedule. Based upon the physicians’ historical experience, commercial reimbursement for ophthalmology and gastroenterology was estimated at 118% and 158% of the of Medicare case rate. Medicaid Manage Care payment was estimated at 90% of Medicare case rate. The budget appears reasonable.

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

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

---

### Supplemental Information

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

**Facility:** TLC Health Network Lake Shore Hospital
845 Routes 5 & 20
Irving, New York 14081

<table>
<thead>
<tr>
<th>Current OR Use (% of capacity)</th>
<th>Surgery Cases</th>
<th>Amb. Surg. Cases by Applicant Physicians</th>
<th>Reserved OR Time for Applicant Physicians</th>
</tr>
</thead>
<tbody>
<tr>
<td>40%</td>
<td>Inpatient 5% of volume</td>
<td>1,768</td>
<td>Not indicated</td>
</tr>
<tr>
<td></td>
<td>Ambulatory 95% of volume</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

TLC Health Network (TLC) opposes the application, stating that the proposed ASC would result in a loss of a vast majority of the 1,768 cases currently performed at TLC Lake Shore by the two applicant physicians. This would result in a loss of $2,090,023 in net patient revenues annually, which represents 8.6 percent of TLC’s 2014 total net patient revenue. The hospital states that ambulatory surgery represents over 95 percent of total surgical volume at TLC Lake Shore and contends that the proposed ASC would have a “disastrous” effect on the financially fragile TLC system and seriously threaten its ability to continue providing quality health care to the community. The hospital does not describe the community-oriented services that would be affected by the projected loss of revenues to the ASC.

TLC also contends that there is no need for the proposed ASC because of the hospital’s current operating room utilization of less than 40 percent, which indicates an abundant capacity for growth. TLC also cites the presence of several other nearby ASCs, in Orchard Park, Amherst and other parts of Erie County, whence 42 percent of TLC’s patients come. The TLC Lake Shore hospital itself is located just 20 minutes from the site of the proposed ASC.
TLC filed for Chapter 11 bankruptcy in December, 2013. In 2013, TLC had current assets of $8.8 million on current liabilities of $16.6 million, for a ratio of 0.53. In 2014 current assets totaled $6.0 million while current liabilities came to $14.4 million, for a ratio of 0.42. (In both 2013 and 2014, current liabilities included liabilities subject to compromise by the United States Bankruptcy Court.) In 2013, TLC had revenues of $33.2 million on expenses of $43.5 million, for an operating loss of $10.3 million. TLC experienced $1.5 million in bad debt and provided $1.6 million in charity care. In 2014, TLC had revenues of $25.1 million on expenses of $32.6 million for an operating loss of $7.5 million. In 2014, TLC experienced $1.2 million in bad debt and provided $1.3 million in charity care.

Facility: Sisters of Charity Hospital       --  No Response
2157 Main Street
Buffalo, NY  14214

Facility: Mercy Hospital       --  No Response
565 Abbott Road
Buffalo, NY  14220

Facility: Bertrand Chaffee Hospital       --  No Response
224 East Main Street
Springville, NY  14141

Supplemental Information from Applicant

Need and Source of Cases: The applicant states that the proposed ASC will provide ambulatory surgery services to patients of physicians on its medical staff who elect to use the ASC to perform their outpatient surgeries. Surgeries performed at the ASC would otherwise be performed at area hospitals or other ambulatory surgery centers. In addition, the applicant points out that there are no freestanding ASCs in the Town of Hamburg, a fast-growing southern Erie County community, or in Chautauqua County, where many of the applicant ophthalmologist’s patients reside. The applicant also expects that patients will prefer to have their surgeries performed at a new, patient-friendly, state-of-the-art ambulatory surgery center. In addition to enhanced patient satisfaction, the applicant expects that there will be a high level of physician satisfaction as a result of the ASC’s seeking to accommodate its medical staff’s scheduling, equipment selection and staffing preferences.

Staff Recruitment and Retention: The applicant states that employees will be recruited from accredited schools and training programs as well as through advertisements in local newspapers and professional publications. The ASC may hire some of its nursing staff from one of the applicant physician’s medical practice. The ASC plans to offer competitive salary and benefits and will maintain good human resource and communication systems. In addition, the Center will provide a positive work environment and flexible working hours.

Office-Based Cases: The applicant states that none of the cases projected for the proposed ASC are currently performed in office settings. The anticipated 800 ophthalmological procedures are currently performed in a proprietary freestanding ASC, while the expected 1,000 gastroenterological procedures are currently distributed among three hospitals (Buffalo General Medical Center, Sisters of Charity Hospital and TLC Lake Shore Hospital) and the West Seneca Center for Ambulatory Surgery.

DOH Comment
TLC Health Network’s comments in opposition to the application assume that a vast majority of the 1,768 procedures currently performed at TLC Lake Shore Hospital by the applicant physicians would be lost to the proposed ASC. However, this assumption is at odds with the applicant’s statement that the 800 ophthalmological procedures projected for the ASC are currently performed in a freestanding ASC, not at TLC Lake Shore or other hospitals. It is also not consistent with the applicant’s statement that the 1,000 remaining (gastroenterological) procedures projected for the ASC are currently performed at two other hospitals in addition to TLC Lake Shore and at a freestanding ASC. TLC’s projection of net patient
revenue to be lost to the proposed ASC therefore cannot be assessed with precision and must be discounted. In view of this circumstance and in the absence of comments from other area hospitals, the Department finds insufficient basis for reversal or modification of the recommendation for approval of the proposed ASC based on public need, financial feasibility and owner/operator character and competence.

**Attachments**

<table>
<thead>
<tr>
<th>Attachment Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BPNR Attachment</td>
<td>Map</td>
</tr>
<tr>
<td>BFA Attachment A</td>
<td>Net Worth Statement of Proposed Members of Premier Ambulatory Services Development Company, LLC.</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>Pro-Forma balance sheet of Premier Ambulatory Services Development Company, LLC.</td>
</tr>
</tbody>
</table>
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a free standing multi-specialty ambulatory surgery center to be located at 2816 Pleasant Avenue, Hamburg, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: FACILITY/APPLICANT:

151186 B Premier Ambulatory Services Development Company, LLC d/b/a Premier Ambulatory Surgery Center
APPROVAL CONTINGENT UPON:

Approval with an expiration of the operating certificate five 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 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]

3. 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:
   - Data showing actual utilization including procedures;
   - Data showing breakdown of visits by payer source;
   - Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
   - Data showing number of emergency transfers to a hospital;
   - Data showing percentage of charity care provided; and
   - Number of nosocomial infections recorded during the year in question. [RNR]

4. 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]

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 loan commitment, acceptable to the Department of Health. [BFA]

7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant’s start of construction. [AER]
7. Construction must start on or before November 1, 2015 and construction must be completed by March 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]
8. No additional physicians shall be allowed to perform surgical or interventional procedures at the Center without the Department’s prior approval, to allow an assessment of the impact of such additions on TLC Health Network – Lake Shore Hospital, for a period of five years from the date of the issuance of the operating certificate.

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the **Contingencies Tab in NYSE-CON**.
Project # 151060-E  
Warren Operations Associates, LLC d/b/a Warren Center for Rehabilitation and Healthcare

Program: Residential Health Care Facility  
Purpose: Establishment  
County: Warren  
Acknowledged: February 18, 2015

Executive Summary

Description
Warren Operations Associates LLC, d/b/a Warren Center for Rehabilitation and Healthcare, an existing New York limited liability company, requests approval to be established as the operator of Westmount Health Facility, an 80-bed, public county, Article 28 residential health care facility (RHCF) located at 42 Gurney Lane, Queensbury (Warren County). The facility is currently operated by Warren County. Warren Operations Associates LLC’s sole member is David Greenberg. A separate entity, Warren Land Associates, LLC, will acquire the real property. There will be no change in services provided.

On December 31, 2014, Warren County entered into an Asset Purchase Agreement (APA) with Warren Operations Associates LLC for the sale and acquisition of the operating interests of Westmount Health Facility for a purchase price of $800,000. The APA was executed by Kenneth Rozenberg as managing member of Warren Operations Associates LLC. Mr. Rozenberg will no longer be a member of Warren Operations Associates LLC and has provided an Assignment of Membership Interests Agreement, executed September 15, 2015, assigning his membership and ownership interest in Warren Operations Associates LLC solely to David Greenberg.

On December 31, 2014, in conjunction with the APA, Warren Land Associates, LLC, a New York limited liability company whose members are Daryl Hagler and Jonathan Hagler, entered into a Land Sale Contract (LSC) with Warren County for the sale and acquisition of the real property interest of the RHCF for a purchase price of $1,500,000. The closing of the LSC will be concurrent with the closing of the transactions contemplated by the APA. The applicant will lease the premises from Warren Land Associates, LLC. The applicant has submitted an affidavit attesting that there is a relationship between landlord and tenant in that the members of each company have previous business relationships involving real estate transactions of other nursing homes.

OPCHSM Recommendation
Contingent Approval

Need Summary
This application will not result in a change to beds or services. Westmount Health Facility’s occupancy was 96.9% in 2011, 90.4% in 2012 and 89.1% in 2013. Occupancy as of May 6, 2015 was 96.3%, with 3 vacant beds.

Program Summary
No changes in the program or physical environment are proposed in this application. No negative information has been received concerning the character and competence of the proposed applicant. The individual background review indicates the applicant has met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).
**Financial Summary**

The purchase price for the operations is $800,000 to be funded as follows: $40,000 deposit paid and held in escrow, $190,000 member’s equity due at closing, and the balance of $570,000 to be funded via a bank loan at 5% interest for a ten-year term with a twenty-five year amortization.

There are no project costs associated with this application.

<table>
<thead>
<tr>
<th>Budget</th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$6,768,515</td>
<td>$6,911,009</td>
</tr>
<tr>
<td>Expenses</td>
<td>6,740,132</td>
<td>6,728,251</td>
</tr>
<tr>
<td>Net Income</td>
<td>$28,383</td>
<td>$182,758</td>
</tr>
</tbody>
</table>
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 and review of an acceptable consulting and services agreement. [LTC]
6. Submission of and programmatic approval of a transition plan that will outline proactive measures to be undertaken to ensure that the quality of care at the facility is maintained immediately following the transfer of ownership. [LTC]
7. Submission of an executed loan commitment for the purchase of the operations of the RHCF, acceptable to the Department of Health. (BFA)
8. Submission of an executed working capital loan commitment, acceptable to the Department of Health. (BFA)
9. Submission of the executed restated Articles of Organization of Warren Operations Associates, LLC., acceptable to the Department. [CSL]
Approval conditional upon:
1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date
October 8, 2015
**Need Analysis**

**Background**
Warren Operations Associates, LLC, doing business as Warren Center for Rehabilitation and Healthcare, seeks approval to become the established operator of Westmount Health Facility, an 80-bed Article 28 residential health care facility (RHCF), located at 42 Gurney Lane, Queensbury, 12804 in Warren County. The current operator is Warren County.

**Analysis**
There is currently a need for 15 beds in Warren County as indicated in the table below:

<table>
<thead>
<tr>
<th>Table 1: RHCF Need – Warren County</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2016 Projected Need</strong></td>
</tr>
<tr>
<td><strong>Current Beds</strong></td>
</tr>
<tr>
<td><strong>Beds Under Construction</strong></td>
</tr>
<tr>
<td><strong>Total Resources</strong></td>
</tr>
<tr>
<td><strong>Unmet Need</strong></td>
</tr>
</tbody>
</table>

The overall occupancy for Warren County was 92.0% in 2013 as indicated in the chart below:

**Chart 1: Westmount Health Facility's Occupancy Rates**

Westmount Health Facility's occupancy was 96.9% in 2011, 90.4% in 2012 and 89.1% in 2013. Occupancy as of May 6, 2015 was 96.3%, with 3 vacant beds. The decline in occupancy from 2011 to 2013 is attributed to below average Centers for Medicare and Medicaid Services facility ratings. To increase occupancy, the proposed operators plan to remedy existing deficiencies, strengthen relationships with hospital discharge planners and implement the following additional services: tracheostomy care, cardiac rehabilitation, enhanced wound care, IV therapy and complex clinical services.
**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.

Westmount Health Facility’s Medicaid admissions for 2012 and 2013 are 85.4% and 78.9% respectively. This facility exceeded Warren County’s 75% Medicaid admission threshold rates in 2012 and 2013 of 16.0% and 17.2%, respectively.

**Conclusion**
It is reasonable to expect that the applicant’s plan to remedy existing deficiencies at the nursing home, to strengthen its relationships with local discharge planners and to provide new specialized services will restore the facility’s occupancy rates to sustainable optimum levels. Approval of this application will help preserve a needed source of RHCF care for the Warren County community, including for its Medicaid-eligible population.

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

### Program Analysis

#### Facility Information

<table>
<thead>
<tr>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility Name</td>
<td>Westmount Health Facility</td>
</tr>
<tr>
<td>Address</td>
<td>42 Gurney Lane Queensbury, NY, 12804</td>
</tr>
<tr>
<td>RHCF Capacity</td>
<td>80</td>
</tr>
<tr>
<td>ADHC Program Capacity</td>
<td>N/A</td>
</tr>
<tr>
<td>Type of Operator</td>
<td>County</td>
</tr>
<tr>
<td>Class of Operator</td>
<td>Public</td>
</tr>
<tr>
<td>Operator</td>
<td>Warren County</td>
</tr>
<tr>
<td></td>
<td>Warren Operations Associates LLC</td>
</tr>
<tr>
<td></td>
<td>Member: David Greenberg 100%</td>
</tr>
<tr>
<td></td>
<td>Warren Center for Rehabilitation and Healthcare</td>
</tr>
</tbody>
</table>
Character and Competence - Background
Facilities Reviewed

Nursing Homes
- Corning Center for Rehabilitation 07/2013 to present
- Steuben Center for Rehab 07/2014 to present

Individual Background Review
David Greenberg is employed as the administrator of record at Boro Park Center for Rehabilitation and Health Care in Brooklyn. Mr. Greenberg holds nursing home administrator licenses in the states of New York and New Jersey, in good standing. Mr. Greenberg discloses the following nursing home ownership interests:
- Corning Center for Rehabilitation and Health Care 06/2013 to present
- Steuben Center for Rehabilitation and Health Care 07/2014 to present

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

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

Project Review
This application proposes to establish Warren Operations Associates, LLC as the new operator of Westmount Health Facility. Warren Operations Associates, LLC consists of David Greenburg as the sole member. Mr. Greenburg has been employed as the administrator of record in New Jersey and New York, and has had an ownership interest in two nursing homes since 2013.

No changes in the program or physical environment are proposed in this application. The new operator of the facility intends to enter into an administrative and consulting services agreement with Centers Healthcare (Centers). The agreement will cover administrative services such as billing and other office support as well as provide clinical consulting services. Centers provides similar services to numerous residential health care facilities across the state. A contingency regarding the submission and review of an acceptable consulting and service agreement will be necessary to ensure the applicant will have available sufficient clinical and administrative services during the transition period of the facility from public to private ownership.

Conclusion
No negative information has been received concerning the character and competence of the proposed applicant. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicant has 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, as summarized below:

<table>
<thead>
<tr>
<th>Date:</th>
<th>December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seller:</td>
<td>County of Warren</td>
</tr>
<tr>
<td>Buyer:</td>
<td>Warren Operations Associates, LLC</td>
</tr>
<tr>
<td>Asset Acquired:</td>
<td>All assets, properties, and rights used or usable solely in the operation of the Facility except those listed in excluded assets.</td>
</tr>
<tr>
<td>Excluded Assets:</td>
<td>Cash, cash equivalents, investments, pension funds, pre-closing receivables, retroactive rate adjustments from third parties for services performed prior to closing date, funded depreciation, refunds or credits prior to closing, deposits to utility companies, inter-governmental receivables, grant monies, and Medicaid reimbursements.</td>
</tr>
<tr>
<td>Excluded Liabilities:</td>
<td>All liabilities or obligations arising from or relating to the assets, ownership or operation of the Facility prior to closing.</td>
</tr>
<tr>
<td>Purchase Price:</td>
<td>$800,000</td>
</tr>
<tr>
<td>Payment of Purchase Price:</td>
<td>$40,000 deposit paid/held in escrow, with the balance due at closing as follows: $190,000 member’s equity; and $570,000 financed at 5% for ten years with a twenty-five year amortization.</td>
</tr>
</tbody>
</table>

The applicant will finance the balance due at closing as follows:

- Equity – Warren Operations Associates LLC: $190,000
- Bank Loan (5% interest, ten-year term, twenty-five year principal payout): $570,000

A bank letter of interest for the loan has been provided by Greystone. The applicant indicated the loan will be refinanced when the balloon payment becomes due. David Greenberg has submitted an affidavit stating he will fund the balloon payment from his personal resources should acceptable financing be unavailable at the time of refinancing.

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 Medicaid liabilities or assessments.

## Assignment of Membership Interests Agreement
At the time the APA was executed, Kenneth Rozenberg, as managing member of Warren Operations Associates LLC, had the authority to enter the agreement. As Mr. Rozenberg will no longer be a member of Warren Operations Associates LLC, the applicant has submitted an executed Assignment of Membership Interests Agreement, the terms of which are as follows:

<table>
<thead>
<tr>
<th>Date:</th>
<th>September 15, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company:</td>
<td>Warren Operations Associates LLC</td>
</tr>
<tr>
<td>Assignor:</td>
<td>Kenneth Rozenberg</td>
</tr>
<tr>
<td>Assignee:</td>
<td>David Greenberg</td>
</tr>
<tr>
<td>Assignment:</td>
<td>55% of all the issued and outstanding membership and ownership interests in Warren Operations Associates LLC, free and clear of all liens and encumbrances (other than those relating to any financing arrangements made by the Company existing as of the date hereof) and Assignor fully withdraws from all positions within the Company.</td>
</tr>
<tr>
<td>Assignment Price:</td>
<td>$10</td>
</tr>
</tbody>
</table>

Project #151060-E Exhibit Page 8
Lease Rental Agreement
The applicant has submitted an executed lease rental agreement for the RHCF, as summarized below:

<table>
<thead>
<tr>
<th>Date:</th>
<th>January 6, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premises:</td>
<td>An 80-bed RHCF located at 42 Gurney Lane, Queensbury, NY 12804</td>
</tr>
<tr>
<td>Lessor:</td>
<td>Warren Land Associates, LLC</td>
</tr>
<tr>
<td>Lessee:</td>
<td>Warren Operations Associates, LLC</td>
</tr>
<tr>
<td>Terms:</td>
<td>10 years</td>
</tr>
<tr>
<td>Rental:</td>
<td>$550,000 net annual basic rent (payable in equal monthly installments)</td>
</tr>
<tr>
<td>Provisions:</td>
<td>Property taxes/assessments, public utilities, water and sewer fees</td>
</tr>
</tbody>
</table>

The lease arrangement is an arm’s lease agreement. Letters from two NYS licensed realtors have been provided attesting to the per square foot rental rate being of fair market value.

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:

<table>
<thead>
<tr>
<th>Revenues:</th>
<th>Per Diem</th>
<th>Year One</th>
<th>Per Diem</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid Managed Care</td>
<td>$160.57</td>
<td>$3,153,126</td>
<td>$160.57</td>
<td>$3,219,507</td>
</tr>
<tr>
<td>Medicare Managed Care</td>
<td>$480.00</td>
<td>1,498,011</td>
<td>$480.00</td>
<td>1,529,548</td>
</tr>
<tr>
<td>Private Pay/Other</td>
<td>$425.00</td>
<td>2,117,378</td>
<td>$425.00</td>
<td>2,161,954</td>
</tr>
<tr>
<td>Total Revenue</td>
<td>$6,768,515</td>
<td>$6,911,009</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenses:</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating</td>
<td>$6,078,585</td>
<td>$6,078,585</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital</td>
<td>661,547</td>
<td>649,666</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$6,740,132</td>
<td>$6,728,251</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Net Income $28,383 $182,758

Utilization (Patient Days) 27,740 28,324
Occupancy 95.0% 97.0%

The following is noted with respect to the submitted budget:
- Medicaid Managed Care revenues are projected based on the current operator’s actual January 2014 Medicaid Fee-For-Service (FFS) rate as benchmark. The Department notes that subsequent revisions to reflect updated case mix (July 2014 rate also reflected in the current 2015 rate) suggest that projected Medicaid revenues are conservative, given that the July 2014 and January 2015 rates increased by approximately $15 and $20, respectively, over the January 2014 payment level.
- Medicare revenues are based on the applicant’s historical experience operating skilled nursing facilities, with consideration for Medicare rate increases related to services provided to higher acuity patients.
- The Private Pay rates are based on the facility’s actual 2014 rates trended to 2015.
- Expense assumptions are based on the historical experience of the facility, taking into consideration reductions to be implemented based on the applicant’s analysis of the current operator’s staffing and operational expenses that can be brought into line. Reductions are anticipated in the following areas:
  - Salary and Wages decrease by $750,173 related to FTE reductions (21.4 total) in the following areas: Management, LPNs; Aides, Physical Therapy, Food Service and Clerical. It is noted that the applicant will be increasing FTEs in these areas: Technicians, RNs, Social Worker and Psychology, Occupational Therapy, Speech Therapy, Activities and Transportation.
  - Employee Health Benefits decrease by $1,646,694 related to the reduction of FTE’s and reduced pension costs.
Purchased services decrease by $138,778.
Non-Medical Supplies decrease by $61,427.
Other Direct Expenses decrease by $125,060.

- Utilization was at 89% in 2013, but previously averaged 93.5% for 2010-2012 based on the RHCF cost report data. With a focus on staff education, training, and improved services, the applicant anticipates maintaining 95% occupancy in year one and 97% by year three.
- Utilization by payor source for the first and third years is anticipated as follows:
  - Medicare Managed Care: 11.3%
  - Medicaid Managed Care: 70.8%
  - Private Pay / Other: 18.0%
- Breakeven utilization in the first year is projected at 94.6% or 27,624 patient days.

**Capability and Feasibility**

The purchase price for the operating interests is $800,000 and will be met via a $40,000 deposit paid at APA signing and held in escrow, $190,000 member’s equity due at closing, and a bank loan of $570,000 at an interest rate of 5% for a ten-year term with payout period of twenty-five years. The applicant intends to refinance the loan when the balloon payment becomes due and has submitted an affidavit indicating he will fund the balloon payment from his personal resources if acceptable refinancing is not available at that time.

Working capital requirements are estimated at $1,123,356, which is equivalent to two months of the first year expenses. The applicant will finance $561,678 at an interest rate of 5% for a term of five years. The remaining $561,678 will be provided from member’s equity. A bank letter of interest from Greystone at the stated terms has been provided.

BFA Attachment A is the personal net worth statement of the proposed operator, which indicates the availability of sufficient resources to fund both the equity contribution for the purchase price and the working capital requirement.

BFA Attachment C shows the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of $791,678. Assets includes $800,000 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 $8,322.

The submitted budget indicates a net income of $28,383 and $182,758 for the first and third year, respectively, subsequent to the change in operator. The budget appears reasonable.

The following is a comparison of 2014 historical and projected revenues and expenses for Year One and Year Three:

<table>
<thead>
<tr>
<th></th>
<th>Annual 2014</th>
<th>Year One</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$ 6,210,585</td>
<td>$6,768,514</td>
<td>$6,911,009</td>
</tr>
<tr>
<td>Expenses</td>
<td>9,184,427</td>
<td>6,740,547</td>
<td>6,728,251</td>
</tr>
<tr>
<td>Net Operating Income</td>
<td>($2,973,842)</td>
<td>$28,383</td>
<td>$182,751</td>
</tr>
<tr>
<td>Incremental Net Income</td>
<td></td>
<td>$3,002,225</td>
<td>$3,156,593</td>
</tr>
</tbody>
</table>

The increase in projected income comes from a decrease in total expenses based on administrative efficiencies under new management. The most significant decrease will be from Salaries and Employee Benefits tied to the change in staffing pattern, for a total reduction of $2,396,867. Employee Benefits accounts for $1,646,694 of the total decrease. The applicant indicated that the current operator has an Employee Benefits expense of approximately 72% of Salaries and Wages (inclusive of pension costs). The applicant will renegotiate union contracts and anticipates Employee Benefits expenses to be brought down to 35% of the facility’s projected Salaries and Wages.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate...
payment rates directly with NH providers. A department policy, as described in the “Transition of Nursing Home Benefit and Population into Managed Care Policy Paper,” provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment B is a financial summary of Westmount Health Facility for the period 2012 through 2014. As shown, the entity had an average positive working capital position and an average negative net asset position from 2012 through 2014. Also, the facility had an average operating loss of $2,826,638 for the period shown. The facility received Intergovernmental Transfer payments of $1,400,000 in 2013 and $2,874,531 in 2014 to support operations.

BFA Attachment D is the 2013-2014 financial summary of the Corning Center for Rehabilitation and Healthcare, in which the proposed member has 5% ownership interest. The facility maintained an average positive net asset position and had positive income from operations for the periods shown. Financial statements for Steuben Center for Rehabilitation are not available as the facility was newly acquired in 2014.

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

Recommendation
From a financial perspective, contingent approval is recommended.

Attachments

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BNHLC Attachment A</td>
<td>Quality Measures and Inspection Report</td>
</tr>
<tr>
<td>BFA Attachment A</td>
<td>Personal Net Worth Statement of Proposed Member</td>
</tr>
<tr>
<td>BFA Attachment B</td>
<td>2012-2014 Financial Summary - Westmount Health Facility</td>
</tr>
<tr>
<td>BFA Attachment C</td>
<td>Pro Forma Balance Sheet</td>
</tr>
<tr>
<td>BFA Attachment D</td>
<td>Financial Summary - Applicant’s Affiliated RHCF</td>
</tr>
</tbody>
</table>
Westmount Health Facility

The following table shows how this nursing home performs in key quality measure areas.

<table>
<thead>
<tr>
<th>Percentage of residents who...</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>😷Self-report moderate to severe pain (short stay) Reporting period: April 2014 to March 2015</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>5.2% This Facility 13.7% State average 18.3% National average</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>😷Have pressure sores that are new or worsened Reporting period: April 2014 to March 2015</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>0.0% This Facility 1.0% State average 0.9% National average</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>😷Were given, appropriately, the seasonal influenza vaccine (short stay) Reporting period: April 2014 to March 2015</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>96.6% This Facility 84.6% State average 82.8% National average</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>😷Were given, appropriately, the pneumococcal vaccine Reporting period: April 2014 to March 2015</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>92.9% This Facility 83.3% State average 81.9% National average</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>😷Newly received an antipsychotic medication Reporting period: April 2014 to March 2015</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>2.7% This Facility 2.3% State average 2.4% National average</td>
<td>2 out of 5 stars</td>
</tr>
<tr>
<td>😷Needed increased help with daily activities (long stay) Reporting period: July 2014 to March 2015</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>29.2% This Facility 14.4% State average 15.6% National average</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>😷Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>0.9% This Facility 4.9% State average 7.4% National average</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>😷Have pressure sores (long stay) Reporting period: July 2014 to March 2015</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>3.5% This Facility 7.5% State average 5.9% National average</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>😷Lose too much weight (long stay) Reporting period: July 2014 to March 2015</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td></td>
<td>1 out of 5 stars</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Condition</th>
<th>Period</th>
<th>This Facility (%)</th>
<th>State Average (%)</th>
<th>National Average (%)</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lose control of their bowels or bladder (long stay, low risk)</td>
<td>Reporting period: July 2014 to March 2015</td>
<td>10.2%</td>
<td>6.1%</td>
<td>7.0%</td>
<td>4 stars</td>
</tr>
<tr>
<td>Had a catheter inserted and left in their bladder (long stay)</td>
<td>Reporting period: July 2014 to March 2015</td>
<td>34.7%</td>
<td>45.7%</td>
<td>45.0%</td>
<td>4 stars</td>
</tr>
<tr>
<td>Had a urinary tract infection (long stay)</td>
<td>Reporting period: July 2014 to March 2015</td>
<td>2.5%</td>
<td>2.6%</td>
<td>3.1%</td>
<td>3 stars</td>
</tr>
<tr>
<td>Have depressive symptoms (long stay)</td>
<td>Reporting period: July 2014 to March 2015</td>
<td>4.9%</td>
<td>5.6%</td>
<td>5.7%</td>
<td>4 stars</td>
</tr>
<tr>
<td>Were physically restrained (long stay)</td>
<td>Reporting period: July 2014 to March 2015</td>
<td>3.4%</td>
<td>1.5%</td>
<td>1.1%</td>
<td>1 star</td>
</tr>
<tr>
<td>Experienced one or more falls with major injury (long stay)</td>
<td>Reporting period: July 2014 to March 2015</td>
<td>3.9%</td>
<td>2.7%</td>
<td>3.2%</td>
<td>2 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the seasonal influenza vaccine (long stay)</td>
<td>Reporting period: July 2014 to March 2015</td>
<td>99.5%</td>
<td>94.8%</td>
<td>92.6%</td>
<td>5 stars</td>
</tr>
<tr>
<td>Were given, appropriately, the pneumococcal vaccine (long stay)</td>
<td>Reporting period: July 2014 to March 2015</td>
<td>100.0%</td>
<td>96.7%</td>
<td>93.8%</td>
<td>5 stars</td>
</tr>
<tr>
<td>Received an antipsychotic medication (long stay)</td>
<td>Reporting period: July 2014 to March 2015</td>
<td>19.3%</td>
<td>17.6%</td>
<td>19.2%</td>
<td>2 stars</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
Westmount Health Facility

Inspection Report

PFI: 1008
Regional Office: Capital District Regional Office

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>30</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>37</td>
<td>35</td>
</tr>
<tr>
<td>Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>% of Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>3%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Corning Center for Rehabilitation and Healthcare

The following table shows how this nursing home performs in key quality measure areas.

<table>
<thead>
<tr>
<th>Percentage of residents who...</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>📞 Self-report moderate to severe pain (short stay) Reporting period: April 2014 to March 2015</td>
<td>🟢🟦🟦 3 out of 5 stars</td>
</tr>
<tr>
<td>9.5% This Facility 13.7% State average 18.3% National average</td>
<td></td>
</tr>
<tr>
<td>Category</td>
<td>Reporting Period</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>-------------------------------------------</td>
</tr>
<tr>
<td>Have pressure sores that are new or worsened</td>
<td>April 2014 to March 2015</td>
</tr>
<tr>
<td>Were given, appropriately, the seasonal influenza vaccine (short stay)</td>
<td>April 2014 to March 2015</td>
</tr>
<tr>
<td>Were given, appropriately, the pneumococcal vaccine</td>
<td>April 2014 to March 2015</td>
</tr>
<tr>
<td>Newly received an antipsychotic medication</td>
<td>April 2014 to March 2015</td>
</tr>
<tr>
<td>Needed increased help with daily activities (long stay)</td>
<td>July 2014 to March 2015</td>
</tr>
<tr>
<td>Self-report moderate to severe pain (long stay)</td>
<td>July 2014 to March 2015</td>
</tr>
<tr>
<td>Have pressure sores (long stay)</td>
<td>July 2014 to March 2015</td>
</tr>
<tr>
<td>Lose too much weight (long stay)</td>
<td>July 2014 to March 2015</td>
</tr>
<tr>
<td>Lose control of their bowels or bladder (long stay, low risk)</td>
<td>July 2014 to March 2015</td>
</tr>
<tr>
<td>Had a catheter inserted and left in their bladder (long stay)</td>
<td>July 2014 to March 2015</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
Had a urinary tract infection (long stay)
Reporting period: July 2014 to March 2015
2.4% This Facility
5.6% State average
5.7% National average

Have depressive symptoms (long stay)
Reporting period: July 2014 to March 2015
37.4% This Facility
11.4% State average
6.0% National average

Were physically restrained (long stay)
Reporting period: July 2014 to March 2015
5.2% This Facility
1.5% State average
1.1% National average

Experienced one or more falls with major injury (long stay)
Reporting period: July 2014 to March 2015
2.1% This Facility
2.7% State average
3.2% National average

Were given, appropriately, the seasonal influenza vaccine (long stay)
Reporting period: July 2014 to March 2015
90.2% This Facility
94.8% State average
92.6% National average

Were given, appropriately, the pneumococcal vaccine (long stay)
Reporting period: July 2014 to March 2015
97.6% This Facility
96.7% State average
93.8% National average

Received an antipsychotic medication (long stay)
Reporting period: July 2014 to March 2015
26.6% This Facility
17.6% State average
19.2% National average

Corning Center for Rehabilitation and Healthcare
Inspection Report

PFI: 0867
Regional Office: WRO--Rochester Area Office

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

Source: NYS Department of Health website, Nursing Home Profile
This table summarizes the citations in the details section of this report and compares them against the statewide average.

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>80</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>90</td>
<td>35</td>
</tr>
<tr>
<td>Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>% of Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>1%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Steuben Center for Rehabilitation and Healthcare

The following table shows how this nursing home performs in key quality measure areas.

<table>
<thead>
<tr>
<th>Percentage of residents who...</th>
<th>Performance Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="https://example.com" alt="Self-report moderate to severe pain (short stay)" /></td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>27.2% This Facility</td>
<td></td>
</tr>
<tr>
<td>13.7% State average</td>
<td></td>
</tr>
<tr>
<td>18.3% National average</td>
<td></td>
</tr>
<tr>
<td><img src="https://example.com" alt="Have pressure sores that are new or worsened" /></td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>3.0% This Facility</td>
<td></td>
</tr>
<tr>
<td>1.0% State average</td>
<td></td>
</tr>
<tr>
<td>0.9% National average</td>
<td></td>
</tr>
<tr>
<td><img src="https://example.com" alt="Were given, appropriately, the seasonal influenza vaccine" /></td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>97.7% This Facility</td>
<td></td>
</tr>
<tr>
<td>84.6% State average</td>
<td></td>
</tr>
<tr>
<td>82.8% National average</td>
<td></td>
</tr>
<tr>
<td><img src="https://example.com" alt="Were given, appropriately, the pneumococcal vaccine" /></td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Reporting period: April 2014 to March 2015</td>
<td></td>
</tr>
<tr>
<td>94.1% This Facility</td>
<td></td>
</tr>
<tr>
<td>83.3% State average</td>
<td></td>
</tr>
<tr>
<td>81.9% National average</td>
<td></td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Measure</th>
<th>Reporting Period</th>
<th>This Facility</th>
<th>State Average</th>
<th>National Average</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newly received an antipsychotic medication</td>
<td>April 2014 to March 2015</td>
<td>0.9%</td>
<td>2.3% State</td>
<td>2.4% National</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Needed increased help with daily activities (long stay)</td>
<td>July 2014 to March 2015</td>
<td>6.0%</td>
<td>14.4% State</td>
<td>15.6% National</td>
<td>5 out of 5 stars</td>
</tr>
<tr>
<td>Self-report moderate to severe pain (long stay)</td>
<td>July 2014 to March 2015</td>
<td>4.3%</td>
<td>4.9% State</td>
<td>7.4% National</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Have pressure sores (long stay)</td>
<td>July 2014 to March 2015</td>
<td>11.6%</td>
<td>7.5% State</td>
<td>5.9% National</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Lose too much weight (long stay)</td>
<td>July 2014 to March 2015</td>
<td>3.8%</td>
<td>6.1% State</td>
<td>7.0% National</td>
<td>4 out of 5 stars</td>
</tr>
<tr>
<td>Lose control of their bowels or bladder (long stay, low risk)</td>
<td>July 2014 to March 2015</td>
<td>61.5%</td>
<td>45.7% State</td>
<td>45.0% National</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Had a catheter inserted and left in their bladder (long stay)</td>
<td>July 2014 to March 2015</td>
<td>2.1%</td>
<td>2.6% State</td>
<td>3.1% National</td>
<td>3 out of 5 stars</td>
</tr>
<tr>
<td>Had a urinary tract infection (long stay)</td>
<td>July 2014 to March 2015</td>
<td>8.8%</td>
<td>5.6% State</td>
<td>5.7% National</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Have depressive symptoms (long stay)</td>
<td>July 2014 to March 2015</td>
<td>48.2%</td>
<td>11.4% State</td>
<td>6.0% National</td>
<td>1 out of 5 stars</td>
</tr>
<tr>
<td>Were physically restrained (long stay)</td>
<td>July 2014 to March 2015</td>
<td>0.4%</td>
<td>1.5% State</td>
<td>1.1% National</td>
<td>3 out of 5 stars</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Experienced one or more falls with major injury (long stay)</td>
<td>1 out of 5</td>
<td>stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td>5.3% This Facility</td>
<td>2.7% State average</td>
</tr>
<tr>
<td>Were given, appropriately, the seasonal influenza vaccine (long stay)</td>
<td>4 out of 5</td>
<td>stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td>99.2% This Facility</td>
<td>94.8% State average</td>
</tr>
<tr>
<td>Were given, appropriately, the pneumococcal vaccine (long stay)</td>
<td>3 out of 5</td>
<td>stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td>98.5% This Facility</td>
<td>96.7% State average</td>
</tr>
<tr>
<td>Received an antipsychotic medication (long stay)</td>
<td>2 out of 5</td>
<td>stars</td>
</tr>
<tr>
<td>Reporting period: July 2014 to March 2015</td>
<td>22.1% This Facility</td>
<td>17.6% State average</td>
</tr>
</tbody>
</table>

Steuben Center for Rehabilitation and Healthcare

**Inspection Report**

**Report Period: August 2011 to July 2015**

PFI: 0875  
Regional Office: WRO--Rochester Area Office

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

**Summary**

This table summarizes the citations in the details section of this report and compares them against the statewide average.

<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Health Deficiencies</td>
<td>33</td>
<td>23</td>
</tr>
<tr>
<td>Life Safety Code Deficiencies</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Total Deficiencies</td>
<td>43</td>
<td>35</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Measure</th>
<th>This Facility</th>
<th>Statewide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>% of Deficiencies Related to Actual Harm or Immediate Jeopardy</td>
<td>0%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Source: NYS Department of Health website, Nursing Home Profile
<table>
<thead>
<tr>
<th>Westmount Health Facility</th>
<th>2014</th>
<th>2013</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Assets</td>
<td>$2,067,380</td>
<td>$4,096,636</td>
<td>$3,033,849</td>
</tr>
<tr>
<td>Non-Current Assets</td>
<td>3,751,471</td>
<td>2,985,240</td>
<td>3,335,244</td>
</tr>
<tr>
<td>Total Assets</td>
<td>$5,818,851</td>
<td>$7,081,876</td>
<td>$6,369,093</td>
</tr>
<tr>
<td>Current Liabilities</td>
<td>1,926,139</td>
<td>2,901,611</td>
<td>1,689,646</td>
</tr>
<tr>
<td>Long Term Liabilities</td>
<td>6,406,709</td>
<td>6,795,941</td>
<td>6,066,661</td>
</tr>
<tr>
<td>Total Liabilities</td>
<td>8,332,848</td>
<td>9,697,552</td>
<td>7,756,307</td>
</tr>
<tr>
<td>Net Assets</td>
<td>($2,513,997)</td>
<td>($2,615,676)</td>
<td>($1,387,214)</td>
</tr>
<tr>
<td>Working Capital Position</td>
<td>$141,241</td>
<td>$1,195,025</td>
<td>$1,344,203</td>
</tr>
<tr>
<td>Operating Revenues</td>
<td>$6,210,585</td>
<td>$6,415,380</td>
<td>$6,224,594</td>
</tr>
<tr>
<td>Operating Expenses</td>
<td>9,184,427</td>
<td>9,234,331</td>
<td>8,911,716</td>
</tr>
<tr>
<td>Operating Net Deficit</td>
<td>($2,973,842)</td>
<td>($2,818,951)</td>
<td>($2,687,122)</td>
</tr>
</tbody>
</table>
Westmount Health Facility  
(An Enterprise Fund of the County of Warren, New York)  

Balance Sheets  
December 31, 2014 and 2013

<table>
<thead>
<tr>
<th>Assets</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current assets:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash</td>
<td>$920,916</td>
<td>$487,503</td>
</tr>
<tr>
<td>Restricted cash - patient funds</td>
<td>18,790</td>
<td>15,167</td>
</tr>
<tr>
<td>Assets limited as to use</td>
<td>1,006</td>
<td>13,168</td>
</tr>
<tr>
<td>Patient accounts receivable, net</td>
<td>723,914</td>
<td>990,593</td>
</tr>
<tr>
<td>Due from third party payors, current</td>
<td>125,258</td>
<td>2,342,453</td>
</tr>
<tr>
<td>Supplies</td>
<td>60,665</td>
<td>59,242</td>
</tr>
<tr>
<td>Due from County, current</td>
<td>55,660</td>
<td>11,790</td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>161,151</td>
<td>175,720</td>
</tr>
<tr>
<td><strong>Total current assets</strong></td>
<td><strong>2,067,380</strong></td>
<td><strong>4,096,636</strong></td>
</tr>
<tr>
<td>Due from third party payors, long-term</td>
<td>1,066,463</td>
<td>-</td>
</tr>
<tr>
<td>Due from County, long-term</td>
<td>61,255</td>
<td>73,568</td>
</tr>
<tr>
<td>Property, plant, and equipment, net</td>
<td>2,623,753</td>
<td>2,911,672</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td><strong>$5,818,851</strong></td>
<td><strong>$7,081,876</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Liabilities and Fund Equity</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Current liabilities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current portion of capital lease payable</td>
<td>$304,403</td>
<td>$335,653</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>132,540</td>
<td>96,551</td>
</tr>
<tr>
<td>Due to County, current</td>
<td>1,112,912</td>
<td>2,037,687</td>
</tr>
<tr>
<td>Accrued payroll and related benefits</td>
<td>90,169</td>
<td>183,666</td>
</tr>
<tr>
<td>Vacation leave and related benefits</td>
<td>180,732</td>
<td>179,472</td>
</tr>
<tr>
<td>Due to third party payors</td>
<td>6,425</td>
<td>46,205</td>
</tr>
<tr>
<td>Patient funds</td>
<td>18,790</td>
<td>15,167</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>168</td>
<td>610</td>
</tr>
<tr>
<td><strong>Total current liabilities</strong></td>
<td><strong>1,926,139</strong></td>
<td><strong>2,901,811</strong></td>
</tr>
</tbody>
</table>

| Long-term liabilities:      |              |              |
| Due to County, net of current portion | - | 500,000 |
| Sick leave and related benefits | 170,762    | 189,140    |
| Capital lease payable, net of current portion | 553,269 | 937,672 |
| Postemployment health benefits | 5,682,676 | 5,169,129 |
| **Total long-term liabilities**| **6,406,709**| **6,795,941**|

| Fund equity (deficit):      |              |              |
| Invested in property and equipment, net of related debt | 1,686,081 | 1,638,347 |
| Restricted                 | 1,006        | 13,168       |
| Unrestricted               | (4,201,084)  | (4,257,191)  |
| **Total fund equity (deficit)** | (2,513,997) | (2,515,576) |

| Total liabilities and fund equity |              |              |
|**Total liabilities and fund equity**| **$5,818,851**| **$7,081,876**|
Westmount Health Facility
(An Enterprise Fund of the County of Warren, New York)

Statements of Revenues and Expenses and Fund Equity
Years Ended December 31, 2014 and 2013

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating revenues:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net patient service revenue</td>
<td>$ 6,206,285</td>
<td>$ 6,408,642</td>
</tr>
<tr>
<td>Other operating revenue</td>
<td>4,300</td>
<td>6,738</td>
</tr>
<tr>
<td>Total operating revenues</td>
<td>$ 6,210,585</td>
<td>$ 6,415,380</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nursing services</td>
<td>2,947,253</td>
<td>3,279,773</td>
</tr>
<tr>
<td>Ancillary services</td>
<td>444,147</td>
<td>471,531</td>
</tr>
<tr>
<td>Dietary services</td>
<td>716,360</td>
<td>678,207</td>
</tr>
<tr>
<td>Housekeeping</td>
<td>183,155</td>
<td>217,169</td>
</tr>
<tr>
<td>Laundry service</td>
<td>89,512</td>
<td>81,605</td>
</tr>
<tr>
<td>Maintenance</td>
<td>409,161</td>
<td>412,116</td>
</tr>
<tr>
<td>Administrative and fiscal services</td>
<td>709,574</td>
<td>619,802</td>
</tr>
<tr>
<td>Employee benefits</td>
<td>2,667,947</td>
<td>2,697,118</td>
</tr>
<tr>
<td>New York State tax assessment</td>
<td>324,807</td>
<td>265,065</td>
</tr>
<tr>
<td>Depreciation</td>
<td>369,883</td>
<td>361,016</td>
</tr>
<tr>
<td>Provision for bad debts</td>
<td>322,928</td>
<td>149,929</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>$ 9,184,427</td>
<td>$ 9,234,331</td>
</tr>
<tr>
<td>Loss from operations</td>
<td>(2,973,842)</td>
<td>(2,818,951)</td>
</tr>
<tr>
<td>Non-operating revenue (expense):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indirect costs from County</td>
<td>249,877</td>
<td>246,557</td>
</tr>
<tr>
<td>Intergovernmental transfers</td>
<td>2,874,531</td>
<td>1,400,000</td>
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<tr>
<td>Investment income</td>
<td>2,779</td>
<td>1,965</td>
</tr>
<tr>
<td>Interest expense</td>
<td>(51,666)</td>
<td>(59,371)</td>
</tr>
<tr>
<td>Other revenue</td>
<td></td>
<td>1,716</td>
</tr>
<tr>
<td>Total non-operating revenue, net</td>
<td>$ 3,075,521</td>
<td>$ 1,590,469</td>
</tr>
<tr>
<td>Increase (decrease) in fund equity</td>
<td>101,879</td>
<td>(1,228,462)</td>
</tr>
<tr>
<td>Fund equity (deficit), beginning</td>
<td>(2,615,576)</td>
<td>(1,387,214)</td>
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<tr>
<td>Fund equity (deficit), ending</td>
<td>$ (2,513,997)</td>
<td>$ (2,616,576)</td>
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## PRO FORMA

<table>
<thead>
<tr>
<th>Assets</th>
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<tbody>
<tr>
<td><strong>Current Assets</strong></td>
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</tr>
<tr>
<td>Working Capital</td>
<td>$1,123,356</td>
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<tr>
<td>Tangible/Intangible Assets</td>
<td>$800,000</td>
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<tr>
<td><strong>TOTAL:</strong></td>
<td>$1,923,356</td>
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<table>
<thead>
<tr>
<th>Liabilities</th>
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<tbody>
<tr>
<td><strong>Current Liabilities</strong></td>
<td></td>
</tr>
<tr>
<td>Acquisition Loan</td>
<td>$570,000</td>
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<tr>
<td>Working Capital Loan</td>
<td>$561,678</td>
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<td><strong>TOTAL:</strong></td>
<td>$1,131,678</td>
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<table>
<thead>
<tr>
<th>Members' Equity</th>
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<tbody>
<tr>
<td>David Greenberg</td>
<td>$791,678</td>
</tr>
<tr>
<td><strong>TOTAL:</strong></td>
<td>$791,678</td>
</tr>
<tr>
<td></td>
<td>2014</td>
</tr>
<tr>
<td>------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>Current Assets</td>
<td>$3,018,606</td>
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<tr>
<td>Non-Current Assets</td>
<td>4,465,775</td>
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<td>Total Assets</td>
<td>$7,484,381</td>
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<td>Current Liabilities</td>
<td>1,624,114</td>
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<td>Long Term Liabilities</td>
<td>2,213,868</td>
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<td>Total Liabilities</td>
<td>3,838,082</td>
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<tr>
<td>Net Assets</td>
<td>$3,646,299</td>
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<tr>
<td>Working Capital Position</td>
<td>$1,394,492</td>
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<tr>
<td>Operating Revenues</td>
<td>$11,837,542</td>
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<tr>
<td>Operating Expenses</td>
<td>11,003,841</td>
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<td>Operating Net Income</td>
<td>$833,683</td>
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<table>
<thead>
<tr>
<th>Ownership Interest</th>
<th>Date Acquired</th>
<th># of Beds</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.00%</td>
<td>June 2013</td>
<td>120</td>
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<table>
<thead>
<tr>
<th>Steuben Center for Rehab</th>
<th>2014</th>
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<tr>
<td>Current Assets</td>
<td>$2,586,350</td>
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<td>Non-Current Assets</td>
<td>7,297,840</td>
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<td>Total Assets</td>
<td>$9,884,190</td>
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<td>Current Liabilities</td>
<td>2,117,735</td>
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<td>Long Term Liabilities</td>
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<td>Total Liabilities</td>
<td>8,128,739</td>
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<td>Net Assets</td>
<td>$1,755,451</td>
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<td>Working Capital Position</td>
<td>$468,615</td>
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<td>Operating Revenues</td>
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<td>Operating Expenses</td>
<td>5,545,548</td>
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<td>Operating Net Income</td>
<td>$136,830</td>
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<tr>
<td>5.00%</td>
<td>July 2014</td>
<td>105</td>
</tr>
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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Warren Operations Associates, LLC as the new operator of the 80-bed facility located at 42 Gurney Lane, Queensbury that is currently operated as Westmount Health Facility, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: FACILITY/APPLICANT:

151060 E Warren Operations Associates, LLC
d/b/a Warren Center for Rehabilitation and Healthcare
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 and review of an acceptable consulting and services agreement. [LTC]

6. Submission of and programmatic approval of a transition plan that will outline proactive measures to be undertaken to ensure that the quality of care at the facility is maintained immediately following the transfer of ownership. [LTC]

7. Submission of an executed loan commitment for the purchase of the operations of the RHCF, acceptable to the Department of Health. (BFA)

8. Submission of an executed working capital loan commitment, acceptable to the Department of Health. (BFA)

9. Submission of the executed restated Articles of Organization of Warren Operations Associates, LLC., acceptable to the Department. [CSL]
APPROVAL CONDITIONAL UPON:
1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a complete response to each individual contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the Contingencies Tab in NYSE-CON.
Name of Agency: MedPro Homecare Agency, Inc.
Address: Kew Gardens
County: Queens
Structure: Proprietary Corporation
Application Number: 1909L

Description of Project:

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

MedPro Homecare Agency, Inc. has authorized 200 shares of stock. The shareholders comprise the following individuals:

Natalya Chornaya, RN – 10 shares
Marina Rabinovich, Esq. - 190 shares

The Board of Directors of MedPro Homecare Agency, Inc. is comprised of the following individuals:

Natalya Chornaya, RN, President
RN, Mount Sinai Beth Israel

Affiliations:
NC Homecare Agency of NY, Inc. (8/11/12 – present)
Unihelp Homecare, Inc. (2008-2009)

Marina Rabinovich, Esq. Vice President
Attorney, Law Office of Marina Rabinovich, Esq.

Affiliation:
MR Homecare Agency of NY, Inc. (5/25/12 – present)

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

The applicant proposes to serve the residents of the following counties from an office located at 119-40 Metropolitan Avenue, Unit CU2 – Suite 151, Kew Gardens, New York 11415

Queens
New York

Kings
Richmond

Bronx
Nassau

The applicant proposes to provide the following health care services:

Nursing
Physical Therapy
Speech-Language Pathology
Nutrition
Medical Supplies, Equipment and Appliances

Home Health Aide
Respiratory Therapy
Audiology
Homemaker

Personal Care
Occupational 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):

MR Homecare Agency of NY, Inc. (May 2012 – present)
NC Homecare Agency of NY, Inc. (August 2012 – present)
Unihelp Homecare, Inc. (2008-2009)

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: August 24, 2015
Name of Agency: Touch of Love Homecare Agency Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2042-L

Description of Project:

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

Touch of Love Homecare Agency Inc. has authorized 200 shares of stock, which are owned solely by Lev Paukman.

The Board of Directors of Touch of Love Homecare Agency Inc. comprises the following individual:

Lev Paukman, MD, President/Director
Private Practice, Lev J. Paukman, MD

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 and the New York State Department of Health Office of Professional Medical Conduct 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 396-400 Avenue X, Brooklyn, New York 11223:

Bronx
Richmond
Kings
New York
Queens
Nassau

The applicant proposes to provide the following health care services:

Nursing
Physical Therapy
Speech-Language Pathology
Nutrition
Medical Equipment, Supplies and Appliances
Home Health Aide
Occupational Therapy
Audiology
Homemaker
Personal Care
Respiratory Therapy
Medical Social Services
Housekeeper

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.

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

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

Recommendation: Contingent Approval
Date: July 20, 2015
Name of Agency: Victory Home Care Services, Inc.
Address: Central Islip
County: Suffolk
Structure: For-Profit Corporation
Application Number: 2059-L

Description of Project:

Victory 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.

Victory Home Care Services, Inc. has authorized 200 shares of stock. The shareholders will consist of Beverly Dean, Cynthia Exhem Williams and Paul St. Juste with each shareholder owning 10 shares. The remaining 170 shares will be unissued.

The Board of Directors of Victory Home Care Services, Inc. comprises the following individuals:

Paul St. Juste, President
President, General Island Taxi, Inc.
Pastor, Victory Gospel Assembly Church

Beverly Dean, DNP., Vice President/Vice Chairperson
Adjunct Professor, Pace University
Adjunct Professor, Medford Multicare Nurse Educator

Cynthia Exhem Williams, PA, Treasurer
President/Physician Assistant, House Calls Plus, Inc.

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

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

The applicant proposes to serve the residents of the following counties from an office located at 917 W. Suffolk Avenue, Brentwood, NY 11717:

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
Audiology               Medical Social Services    Nutrition
Homemaker               Housekeeper             Respiratory Therapy

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

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

Recommendation: Contingent Approval
Date: August 20, 2015
Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Theresa Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For Profit Corporation
Application Number: 2133-L

Description of Project:

Theresa 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.

Theresa Home Care, Inc. has authorized 200 shares of stock which are owned solely by Vashti Ramlogan.

The members of the Board of Directors of Theresa Home Care, Inc. comprise the following individual:

Vashti Ramlogan, Nursing Assistant  
Unemployed

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 522 Chauncey Street, Brooklyn, New York 11233:

New York
Kings

Bronx
Queens

Richmond
Nassau

The applicant proposes to provide the following health care services:

Nursing  
Physical Therapy  
Speech-Language Pathology  
Nutrition  
Home Health Aide  
Occupational Therapy  
Audiology  
Medical Supplies, Equipment & Appliances  
Personal Care  
Respiratory Therapy  
Medical Social Services

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

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

Recommendation: Contingent Approval
Date: July 24, 2015
Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Kirenaga Home Care Brooklyn, Inc.
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 2184-L

Description of Project:
Kirenaga Home Care Brooklyn, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are solely owned by Kirenaga Home Care, LLC.

The Board of Directors of Kirenaga Home Care Brooklyn, Inc. comprises the following individual:

David Muson, President
FINRA, Series 7, 63, 79
Operator, SonicLiebs d/b/a Synergy HomeCare

Affiliations:
SonicLiebs d/b/a Synergy HomeCare (2013 – Present)
Synergy HomeCare of Hudson County (2011 – 2014)

The membership of Kirenaga Home Care, LLC comprises the following:

Kirenaga Partners, LLC – 99%
David Muson – 1%
Disclosed Above

The membership of Kirenaga Partners, LLC comprises the following:

Kirenaga Management, LLC – 30%
Solely Economic Investors – 70%
Non-Voting/Non-Operating members

The membership of Kirenaga Management, LLC comprises the following:

Kirenaga, Inc. – 33.33%
David Muson, Inc. – 33.33%
Disclosed Above

Berland Investments Incorporated – 33.33%
Kirenaga, Inc. has authorized 1,500 shares of stock which are solely owned by David Scalzo.

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

David Scalzo, MBA
Founder/President, Kirenaga Partners, LLC

David Muson, Inc. has authorized 200 shares of stock, which are solely owned by David Muson.

The Board of Directors of David Muson, Inc. comprises the following individual:

David Muson
Disclosed Above
Berland Investments Incorporated has authorized 1,000 shares of stock, which are solely owned by Terrance Berland.

The Board of Directors of Berland Investments Incorporated comprises the following individual:

Terrance Berland, MBA
Former Senior Management Associate, Bridgewater Associates, LP

Affiliations:

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 575 Lexington Avenue, New York, New York 10022:

New York             Kings             Queens
Bronx               Richmond           Nassau

The applicant proposes to provide the following health care services:

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

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

- SonicLiebs d/b/a Synergy HomeCare (2013 – Present)
- Synergy HomeCare of Hudson County (2011 – 2014, New Jersey)

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

The information provided by the New Jersey Office of the Attorney General, Division of Consumer Affairs Office of Consumer Protection has indicated that Synergy HomeCare of Hudson County has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the State of Connecticut Department of Public Health, Division of Health Systems Regulation indicated that there were not any enforcement actions and the Stamford Health System 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: September 8, 2015
Name of Agency: Kirenaga Home Care Queens, Inc.
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 2186-L

Description of Project:
Kirenaga Home Care Queens, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are solely owned by Kirenaga Home Care, LLC.

The Board of Directors of Kirenaga Home Care Queens, Inc. comprises the following individual:

David Muson, President
FINRA, Series 7, 63, 79
Operator, SonicLiebs d/b/a Synergy HomeCare

Affiliations:
SonicLiebs d/b/a Synergy HomeCare (2013 – Present)
Synergy HomeCare of Hudson County (2011 – 2014)

The membership of Kirenaga Home Care, LLC comprises the following:

Kirenaga Partners, LLC – 99%
David Muson – 1%
Disclosed Above

The membership of Kirenaga Partners, LLC comprises the following:

Kirenaga Management, LLC – 30%
Solesly Economic Investors – 70%
Non-Voting/Non-Operating members

The membership of Kirenaga Management, LLC comprises the following:

Kirenaga, Inc. – 33.33%
David Muson, Inc. – 33.33%
Disclosed Above

Berland Investments Incorporated – 33.33%

Kirenaga, Inc. has authorized 1,500 shares of stock which are solely owned by David Scalzo.

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

David Scalzo, MBA
Founder/President, Kirenaga Partners, LLC

David Muson, Inc. has authorized 200 shares of stock, which are solely owned by David Muson.

The Board of Directors of David Muson, Inc. comprises the following individual:

David Muson
Disclosed Above
Berland Investments Incorporated has authorized 1,000 shares of stock, which are solely owned by Terrance Berland.

The Board of Directors of Berland Investments Incorporated comprises the following individual:

Terrance Berland, MBA
Former Senior Management Associate, Bridgewater Associates, LP

Affiliations:

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 575 Lexington Avenue, New York, New York 10022:

New York
Bronx
Kings
Richmond
Queens
Nassau

The applicant proposes to provide the following health care services:

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

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

SonicLiebs d/b/a Synergy HomeCare (2013 – Present)
Synergy HomeCare of Hudson County (2011 – 2014, New Jersey)

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

The information provided by the New Jersey Office of the Attorney General, Division of Consumer Affairs Office of Consumer Protection has indicated that Synergy HomeCare of Hudson County has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the State of Connecticut Department of Public Health, Division of Health Systems Regulation indicated that there were not any enforcement actions and the Stamford Health System 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: September 8, 2015
Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Imo’s Nursing Agency, Inc.
Address: Hollis
County: Queens
Structure: For-Profit Corporation
Application Number: 2193-L

Description of Project:

Imo’s Nursing Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows: Vivette Griffiths owns 5 shares and Joan Duncan owns 5 shares. The remaining 190 are unissued.

The Board of Directors of Imo’s Nursing Agency, Inc. comprises the following individuals:

Vivette Griffiths, RN, NP, President/CEO
RN, Emergency Medicine, Winthrop University Hospital
Clinical Instructor, Critical Care, Malloy College

Joan Duncan, RN, FNP, Vice President
Assistant Nurse Manager, Neonatal ICU, New York Hospital Queens

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 healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 205-04 109th Avenue, Hollis, New York 11412:

Queens          Kings          Bronx
New York        Richmond

The applicant proposes to provide the following health care services:

Nursing            Home Health Aide              Personal Care
Physical Therapy  Occupational Therapy          Respiratory 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: August 24, 2015
Description of Project:

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

The applicant has authorized 200 shares, which are owned solely by Russell Smith.

The Board of Directors of ABR Homecare of NY, Inc. comprises the following individual:

Russell Smith, President/CEO
Oversight of Operations, JR Smith Professionals, Inc.
President/Owner, Prime Care Services of Connecticut, Inc. (Companion Care)
President, PCS Level One Cleaning, Inc.

Affiliations:
Prime Care Services of Connecticut, Inc. (2008 – 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 74365 Main Street, Greenport, NY 11944:

Suffolk
Nassau

The applicant proposes to provide the following health care services:

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

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

Prime Care Services of Connecticut, Inc.

The State of Connecticut, Department of Consumer Protection 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: August 17, 2015
Name of Agency: Loyal Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2293-L

Description of Project:

Loyal 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: Tsiliistina Ryabicheva owns 100 shares and Tsisnami Gogilashvili owns 100 shares.

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

Tsiliistina Ryabicheva, RN - President
Outreach Community Liaison RN, Four Seasons CHHA

Tsisnami Gogilashvili – Vice-President
Provider Relations, Home Care Services of NY

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

The Office of 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 3730 Cypress Avenue, Brooklyn, New York 11224:

Kings   Bronx   Queens   Richmond   New York

The applicant proposes to provide the following health care services:

Nursing   Home Health Aide   Personal Care
Physical Therapy   Homemaker   Medical Social Services
Housekeeper

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

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

Recommendation: Contingent Approval
Date: August 10, 2015
Description of Project:

HT&T Corporation d/b/a HT&T 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: Yin Nog Tang owns 184 shares and Tao Huang owns 16 shares.

The Board of Directors of HT&T Corporation d/b/a HT&T Home Care comprises the following individuals:

Yin Nog Tang, RN, Chairman
Community Health Nurse, Centerlight Health System

Tao Huang, MBA, Vice Chairman/Secretary
Student

Jessica Yu, Treasury
Enrolled Agent, Department of Treasury
President/Manager, HT Tax Professionals, Inc.

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

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

The applicant proposes to serve the residents of the following counties from an office located at 31-30 138th Street, Apartment 3C, Flushing, New York 11354:

Queens        Brooklyn        New York
Kings         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:  July 24, 2015
Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Sundance Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2381-L

Description of Project:

Sundance 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.

Sundance Home Care, Inc. has authorized 200 shares of stock which are owned as follows: Lex Consulting of NJ, LLC owns 90 shares and Denning Corporation owns 90 shares. The remaining 20 shares are unissued.

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

Steven Metelsky, RN – President, Vice-President, Secretary, Treasurer
Executive Director, Sundance SADC, Inc.

The members of Lex Consulting of NJ, LLC comprise the following individuals:

Steven Metelsky, RN – 50%
(Tatiana Volovnik – 50%)
(Unemployed)

Affiliation
Sundance SADC, Inc. (2012-present)

Denning Corporation has authorized 200 shares of stock which are owned solely by Pavel Soltanov.

The Board of Directors of Denning Corporation is comprised of the following individual:

Pavel Soltanov, President
Assistant Executive Director, Sundance SADC, Inc.

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

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

The applicant proposes to serve the residents of the following counties from an office located at 1460 Flatbush Avenue, Brooklyn, New York, 11210:

Kings
Queens
New York
Bronx
Richmond
Nassau

The applicant proposes to provide the following health care services:

Nursing
Physical Therapy
Speech-Language Pathology
Nutrition
Home Health Aide
Respiratory Therapy
Audiology
Homemaker
Personal Care
Occupational Therapy
Medical Social Services
Housekeeper
Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

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

Recommendation: Contingent Approval
Date: August 24, 2015
Name of Agency: Queens Home Care, Inc. d/b/a Home Instead Senior Care Franchise #765
Address: Forest Hills
County: Queens
Structure: For-Profit Corporation
Application Number: 2405-L

Description of Project:

Queens Home Care, Inc. d/b/a Home Instead Senior Care Franchise #765, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Queens Home Care, Inc. has proposed to operate as a franchisee of Home Instead, Inc.

The applicant has authorized 200 shares of stock which are owned as follows: Beverly Silver owns 104 shares and Ilan David owns 96 shares.

The Board of Directors of Queens Home Care, Inc. d/b/a Home Instead Senior Care Franchise #765 comprises the following individuals:

Ilan David, President
Operations Coordinator, Queens Home Care, Inc. d/b/a Home Instead Senior Care Franchise #765 (Companion Care, 2011 – Present)
International Sales Manager, New Yorker Electronics

Beverly Silver, Esq., Secretary
Owner/Director, Queens Home Care, Inc. d/b/a Home Instead Senior Care Franchise #765 (Companion Care, 2011 – Present)
Owner/Attorney, The Law Offices of Beverly Silver, Esq.

A Certificate of Good Standing has been received for the attorney 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 102-40A 67th Drive, Suite C2, Forest Hills, New York 11375:

Queens  Bronx  Kings
New York  Richmond  Nassau

The applicant proposes to provide the following health care services:

Nursing  Home Health Aide  Personal Care

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

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

Recommendation: Contingent Approval
Date: August 18, 2015
Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Collins Anyanwu-Mueller d/b/a Angelic Touching Home Health Care Agency
Address: Yonkers
County: Westchester
Structure: Sole Proprietorship
Application Number: 2414-L

Description of Project:

Collins Anyanwu-Mueller d/b/a Angelic Touching Home Health Care Agency, a sole proprietorship, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole proprietor of Angelic Touching Home Health Care Agency is the following individual:

Collins Anyanwu-Mueller, RN
Private Duty Nurse/Self Employed

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 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 201 N. Broadway, #3-S, Yonkers, New York 10701.

Westchester Rockland

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care
Homemaker Housekeeper

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

Recommendation: Contingent Approval
Date: August 26, 2015
Description of Project:

Artful 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: Beth McNeill-Muhs owns 100 shares. The remaining 100 shares are unissued.

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

Beth McNeill-Muhs, PCA, President
Principal, McNeill Art Group, Inc.

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

The New York State Home Care Registry indicates no issues with the certification of the Personal Care Aide associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 565 Montauk Highway, Southampton, NY 11968:

Suffolk Nassau

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Nutrition

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

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

Recommendation: Contingent Approval
Date: August 18, 2015
Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Companion Angels Home Care Solutions, LLC
Address: Bronx
County: Bronx
Structure: Limited Liability Company
Application Number: 2452-L

Description of Project:

Companion Angels 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 sole member of Companion Angels Home Care Solutions, LLC is the following individual:

Rama Akanni, RN – 100%
Owner/Operator, Companion Angels Home Care Solutions, LLC (Companion Care)
Registered Nurse Recovery Room/Operating Room, Manhattan Eye, Ear and Throat Hospital

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 2117A Williams Bridge Road, Bronx, New York 10461:

New York             Bronx             Kings
Queens               Richmond

The applicant proposes to provide the following health care services:

Nursing               Home Health Aide       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: August 10, 2015
Name of Agency: Family First Home Companions of New York, Inc.
Address: Bohemia
County: Suffolk
Structure: For-Profit Corporation
Application Number: 2459-L

Description of Project:

Family First Home Companions of New York, 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: Alice Bonora owns 100 shares and Jennifer Benjamin owns 100 shares.

The Board of Directors of Family First Home Companions of New York, Inc. comprises the following individuals:

Alice Bonora, President/Treasurer
Certified Senior Advisor, Society of Certified Senior Advisors
Owner, Family First Home Companions of New York, Inc. (Companion Care, 2005 – Present)

Jennifer Benjamin, MBA, Vice President/Secretary
Owner, Family First Home Companions of New York, Inc. (Companion Care, 2005 – 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 600 Johnson Avenue, Suite C-2, Bohemia, New York 11716:

Suffolk        Nassau        Queens

The applicant proposes to provide the following health care services:

Nursing        Home Health Aide        Personal Care        Homemaker

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

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

Recommendation: Contingent Approval
Date: August 24, 2015
1st Home Care of NY 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 solely owned by Dilya Khalitova.

The Board of Directors of 1st Home Care of NY Corp. comprises the following individual:

Dilya Khalitova, President/CEO
Marketing Consultant, Maaser Social Adult Day Care

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

The applicant proposes to serve the residents of the following counties from an office located at 34-40 78th Street, Apartment 2C, Jackson Heights, New York 11372:

Queens  Bronx  Kings
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  Audiology  Medical Social Services
Nutrition  Homemaker  Housekeeper

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

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

Recommendation:  Contingent Approval
Date:  August 10, 2015
Name of Agency: Zenith Home Care of NY, LLC  
Address: New Rochelle  
County: Westchester  
Structure: Limited Liability Company  
Application Number: 2469-L

Description of Project:

Zenith Home Care of NY, 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 Zenith Home Care of NY, LLC comprises the following individuals:

Alwell Nwankwoala, PhD – 51%  
Senior Research Scientist, Sandoz Pharmaceutical, Inc.

Uchechi Nwankwoala, RN, BSN – 49%  
RN, Connecticut/New York  
Charge Nurse, Surgical and Step Down Unit, Montefiore 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 indicates no issues with the license of the healthcare professional associated with this application.

The State of Connecticut Department of Public Health 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 201 Coligni Avenue, New Rochelle, New York 10801:

Westchester  
Putnam  
Bronx

The applicant proposes to provide the following health care services:

Nursing  
Home Health Aide  
Physical Therapy
Occupational Therapy  
Speech-Language Pathology  
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: August 25, 2015
Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Acute Care Experts of New York, Inc.  
Address: Nassau  
County: Nassau  
Structure: For-Profit Corporation  
Application Number: 2474-L  

Description of Project:  
Acute Care Experts of New York, 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 Frederick Lucich.  

The Board of Directors of Acute Care Experts of New York, Inc. is comprised of the following individual:  
Frederick Lucich, RN – President/Owner  
Owner/President, Acute Care Experts, Inc. (NJ)  

Affiliations:  
Acute Care Experts, Inc. (NJ)  
Acute Care Experts, Inc. (NY; 12/31/12-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 to be located in Nassau County:  
Nassau   Suffolk   Dutchess   Orange   Putnam   Rockland   Sullivan   Ulster   Westchester  

The applicant proposes to provide the following health care service:  
Nursing  

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):  
Acute Care Experts, Inc. (NJ)  
Acute Care Experts, Inc. (NY; 12/31/12-present)  

The information provided by the New Jersey regulatory agency indicated that the Acute Care Experts, Inc. has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.  

The information provided by the Division of Home and Community Based Services has indicated that the home care services agency 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: August 31, 2015
SR Miracle Care Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned solely by Sophia Perkins.

The Board of Directors of SR Miracle Care Agency, Inc. is comprised of the following individuals:

Sophie Perkins – President
Executive Director, SR Miracle Care Agency, Inc. (Companion Care)

Rory Perkins – Vice-President/Treasurer
Administrator, SR Miracle Care Agency, Inc. (Companion Care)

Zatanya Cooke - Secretary
Secretary, SR Miracle Care Agency, Inc. (Companion Care)

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

The applicant proposes to serve the residents of the following counties from an office located at 760 Burke Avenue, Bronx, New York 10467:

Bronx  New York  Kings
Queens  Richmond  Westchester

The applicant proposes to provide the following health care services:

Nursing  Home Health Aide  Personal Care
Homemaker  Housekeeper

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

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

Recommendation: Contingent Approval
Date: August 26, 2015
Description of Project:

Qualycare Home Care, a partnership, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The partners of Qualycare Home Care comprise the following individuals:

- Samuel Ansah – 40%
  Assistant Vice President, Deutsche Bank

- Baffuor Gyawu – 30%
  Certified Hemodialysis Technician
  Phlebotomy Technician
  Driver, Self Employed
  Volunteer Director, Community Mobilization Organization

- Theodora R. Kwarteng, RN – 30%
  RN, 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 703 East 156th Street, Suite 1B, Bronx, New York 10455:

- Bronx
- New York
- Queens

The applicant proposes to provide the following health care services:

- Nursing
- Home Health Aide
- Personal Care
- Homemaker

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

Contingency

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

Recommendation: Contingent Approval

Date: August 25, 2015
Name of Agency: ZaQia Chaplin, LLC d/b/a Trusting Hands Homecare Agency
Address: Freeport
County: Nassau
Structure: Limited Liability Company
Application Number: 2490-L

Description of Project:

ZaQia Chaplin, LLC d/b/a Trusting Hands Homecare Agency, 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 ZaQia Chaplin, LLC d/b/a Trusting Hands Homecare Agency is the following individual:

ZaQia Chaplin, MSPH, LPN
LPN, Sweet P Home Care

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

The 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 53 East Merrick Road, Suite 113, Freeport, New York 11520:

Nassau Suffolk Queens

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Housekeeper

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

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

Recommendation: Contingent Approval
Date: August 26, 2015
Name of Agency: Trivium of New York, LLC
Address: Forest Hills
County: Queens
Structure: Limited Liability Company
Application Number: 2492-L

Description of Project:

Trivium of New York, 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 Trivium of New York, LLC comprises the following individuals:

Nigel Douglas – 51%
Operations Consultant, Better Care Nursing Services, LLC

Adaku Nwachuku, MBA, DO – 49%
Attending Physician, Advanced Spine and Pain

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 New York State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs indicates no issues with the license of the healthcare professional associated with this application.

The State of Maryland Board of Physicians indicates no issues with the license of the healthcare professional associated with this application.

The State of Pennsylvania, Department of State indicates that the license of the healthcare professional associated with this application is currently expired. There were no issues with the license during the time of registration (July 2011 – November 2014).

The applicant proposes to serve the residents of the following counties from an office located at 118-35 Queens Boulevard, Suite 400, Forest Hills, New York 11375:

Queens  Kings  New York
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: August 26, 2015
Description of Project:

Brookside 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 100 shares of stock which are owned solely by Robert Calarco.

The Board of Directors of Brookside Home Care Inc. comprises the following individual:

Robert Calarco, President/Treasurer/Secretary
Certified Senior Advisor
FINRA Series 7 and 66
President/Manager, Brookside Home Care, Inc. (Companion Care Agency, 2014 – 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 375 Sunrise Highway, Suite 10, Lynbrook, New York 11563:

Nassau  Suffolk  Queens

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:  August 18, 2015
Description of Project:

L. Woerner, Inc. d/b/a HCR/HCR Home Care, a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 4,000,000 shares of stock with 2,464,344 shares of stock currently issued, and the remaining 1,535,656 shares of stock currently held in Treasury as non-unissued shares. Of the 2,464,344 shares of stock currently issued, the stockholders and stock distribution are as follows:

Employee Stock Ownership Plan Trust – 1,749,604 shares (71.00%)
Louise Woerner – 230,180 shares (9.34%)
Don H. Kollmorgen – 233,824 shares (9.49%)
Lawrence Peckham – 248,236 shares (10.07%)
Clayton Osborne – 2,500 shares (0.10%)

The Trustees of the Employee Stock Ownership Plan Trust (71.00 % stockholder) will be as follows:

Louise Woerner
Chief Executive Officer, L. Woerner, Inc., d/b/a HCR / HCR Home Care (CHHA, LTHHCP, and LHCSA)
Affiliations: HealthNow New York, Inc., Buffalo (Managed Care Plan) – 4/1/02 to 4/10/08

Duane E. Tolander, CPA (Iowa)
Partner / Managing Director, HDH Advisors, LLC, West Des Moines, Iowa (Financial Advisory Services / Professional Consulting / Corporate and Business Valuations / Litigation Support); Trustee, Bestcare, Inc. (LHCSA) Employee Stock Ownership Plan Trust

The members of Board of Directors of L. Woerner, Inc., d/b/a HCR / HCR Home Care, are as follows:

Louise Woerner, Chairperson, Secretary, Treasurer (9.34% stockholder)
Disclosed above

Don H. Kollmorgen (9.49% stockholder)
Retired

Lawrence L. Peckham (10.07% stockholder)
Retired

Joseph J. Castiglia, CPA
Retired

Clayton H. Osborne, MSW, LCSW (0.10% stockholder)
Retired Vice President of Human Resources and Talent Management, Bausch and Lomb (Vision Products Manufacturer)

An additional officer of L. Woerner, Inc., d/b/a HCR / HCR Home Care, who is neither a stockholder, trustee, nor board member, is as follows:
Mary Elizabeth Zicari, RN
President / Administrator, L. Woerner, Inc., d/b/a
HCR / HCR Home Care (CHHA, LTHHCP, and
LHCSA)
Affiliation: DePaul Adult Care Communities, Inc.,
Rochester (licensed ACFs/ALPs, in New York
State, North Carolina, and South Carolina) – April
2009 to present

The Office of the Professions of the New York State Education Department indicates no issues
with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW
license of Clayton Osborne.

The Professional Licensing Bureau of the State of Iowa indicates no issues
with the CPA license of Duane Tolander.

In addition, a search of all of the above named stockholders, trustees, board members, officers,
employers, and health care affiliations revealed no matches on either the New York State
Medicaid Disqualified Provider List or the federal Office of the Inspector General’s Provider
Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at
795 East Main Street, Suite 10, Cobleskill, New York 12043:

Schoharie Otsego Delaware

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 Housekeeper

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

L. Woerner, Inc., d/b/a HCR / HCR Home Care
Bestcare, Inc. (2011 – Present)
HealthNow New York, Inc. (Managed Care Plan, 2002 – 2008)
DePaul Adult Care Communities, Inc. (2009 – Present)
DePaul Community Services, Inc. (2009 – Present)

The NYSDOH Division of Home and Community Based Services reviewed the compliance
history of the CHHAs and LHCSAs operated by L. Woerner, Inc., d/b/a HCR / HCR Home
Care, for the time period 2008 to present, and the LTHHCPs operated by L. Woerner, Inc.,
d/b/a HCR / HCR Home Care, for the time period May 2010 (establishment of the first HCR /
HCR Home Care LTHHCP) to present.

The Division of Home and Community Based Services also reviewed the compliance history
of the LHCSAs operated by Bestcare, Inc., for the time period 2011 (when Mr. Tolander
began serving as a Trustee of Bestcare’s Employee Stock Ownership Plan Trust) to present.

It has been determined that the L. Woerner, Inc., d/b/a HCR / HCR Home Care CHHAs,
LTHHCPs, and LHCSAs, plus the affiliated Bestcare, Inc., LHCSAs, have all exercised
sufficient supervisory responsibility to protect the health, safety and welfare of patients and to
prevent any recurrent code violations. These CHHAs, LTHHCPs, and LHCSAs have all been
in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The NYSDOH Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the five (5) ACFs and ALPs located in New York State operated by DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

An enforcement action was taken in November, 2012, against Glenwell Adult Home / Assisted Living Program in Cheektowaga, New York, based on a September 2011 inspection citing violations in the area of Endangerment. A $25,000 civil penalty was imposed.

An enforcement action was taken in February, 2015, against Kenwell Adult Home / Assisted Living Program in Kenmore, New York, based on September 2012, January 2013, and August 2013 inspections citing violations in the area of Resident Services. A $10,000 civil penalty was imposed.

An enforcement action was taken in October, 2011, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a July 2011 inspection citing violations in the area of Endangerment in Supervision. A $1000 civil penalty was imposed.

A second enforcement action was taken in November, 2012, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a November 2011 inspection citing violations in the area of Endangerment. A $4000 civil penalty was imposed.

A third enforcement action was taken in August, 2013, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on August 2011, and December 2011 inspections citing violations in the areas of Resident Services and Food Services. An $1800 civil penalty was imposed.

The two (2) remaining New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., (Horizons Adult Home / Assisted Living Program, and Westwood Adult Home) do not have any enforcement history to report. It has been determined that the five (5) New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., are now in substantial compliance with all applicable codes, rules, and regulations, with no additional enforcement or administrative actions imposed.

The NYSDOH Office of Health Insurance Program’s Bureau of Managed Care Certification and Surveillance reviewed the compliance history of the affiliated HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that this affiliated managed care plan was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The New York State Office of Mental Health’s Bureau of Inspection and Certification reviewed the compliance history of each of the affiliated mental health providers and residences located in New York State operated within the corporate structure of DePaul Community Services, Inc., an affiliate of DePaul Adult Care Communities, Inc., for the time period April 2009 to present. It has been determined that the mental health providers and residences in New York State affiliated with DePaul Community Services, Inc., were all in substantial compliance with all applicable codes, rules, and regulations, with no enforcement sanctions or administrative action imposed, during that time period.

Out of state compliance requests were sent to North Carolina for each of the twelve (12) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present. An out of state compliance request was also sent to South Carolina for the one (1) licensed ACF/ALP
located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

South Carolina has reported that the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., has had no enforcement actions imposed within the previous twelve (12) months (the only reporting period South Carolina provides) and is considered to be in good standing with the South Carolina Department of Health and Environmental Control.

North Carolina has reported that only one (1) of the twelve (12) licensed ACFs/ALPs in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., has had an enforcement action since April 2009.

An enforcement action was taken in February, 2010, against Greenbrier Adult Home / Assisted Living Program located in Fairmont, North Carolina, based on a January 2009 survey citing violations in the area of Medication Administration. A $2,000 civil penalty was imposed.

The North Carolina Department of Health and Human Services reports that the remaining eleven (11) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., have had no enforcement actions imposed since April 2009.

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

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

Recommendation: Contingent Approval
Date: August 10, 2015
L. Woerner, Inc. d/b/a HCR/HCR Home Care, a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 4,000,000 shares of stock with 2,464,344 shares of stock currently issued, and the remaining 1,535,656 shares of stock currently held in Treasury as non-unissued shares. Of the 2,464,344 shares of stock currently issued, the stockholders and stock distribution are as follows:

Employee Stock Ownership Plan Trust – 1,749,604 shares (71.00%)
Louise Woerner – 230,180 shares (9.34%)
Don H. Kollmorgen – 233,824 shares (9.49%)
Lawrence Peckham – 248,236 shares (10.07%)
Clayton Osborne – 2,500 shares (0.10%)

The Trustees of the Employee Stock Ownership Plan Trust (71.00 % stockholder) will be as follows:

Louise Woerner
Chief Executive Officer, L. Woerner, Inc., d/b/a HCR / HCR Home Care (CHHA, LTHHCP, and LHCSA)
Affiliations: HealthNow New York, Inc., Buffalo (Managed Care Plan) – 4/1/02 to 4/10/08

Duane E. Tolander, CPA (Iowa)
Partner / Managing Director, HDH Advisors, LLC, West Des Moines, Iowa (Financial Advisory Services / Professional Consulting / Corporate and Business Valuations / Litigation Support); Trustee, Bestcare, Inc. (LHCSA) Employee Stock Ownership Plan Trust

The members of Board of Directors of L. Woerner, Inc., d/b/a HCR / HCR Home Care, are as follows:

Louise Woerner, Chairperson, Secretary, Treasurer (9.34% stockholder)
Disclosed above

Don H. Kollmorgen (9.49% stockholder)
Retired

Lawrence L. Peckham (10.07% stockholder)
Retired

Joseph J. Castiglia, CPA
Retired

Clayton H. Osborne, MSW, LCSW (0.10% stockholder)
Retired Vice President of Human Resources and Talent Management, Bausch and Lomb (Vision Products Manufacturer)

An additional officer of L. Woerner, Inc., d/b/a HCR / HCR Home Care, who is neither a stockholder, trustee, nor board member, is as follows:
Mary Elizabeth Zicari, RN
President / Administrator, L. Woerner, Inc., d/b/a
HCR / HCR Home Care (CHHA, LTHHCP, and
LHCSA)
Affiliation: DePaul Adult Care Communities, Inc.,
Rochester (licensed ACFs/ALPs, in New York
State, North Carolina, and South Carolina) – April
2009 to present

The Office of the Professions of the New York State Education Department indicates no issues
with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW
license of Clayton Osborne.

The Professional Licensing Bureau of the State of Iowa indicates no issues with the CPA license
of Duane Tolander.

In addition, a search of all of the above named stockholders, trustees, board members, officers,
employers, and health care affiliations revealed no matches on either the New York State
Medicaid Disqualified Provider List or the federal Office of the Inspector General’s Provider
Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at
176 US Oval, Suite 3, Plattsburgh, New York 12903:

Clinton  Franklin  Essex
Hamilton  Warren  Washington
St. Lawrence

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
Housekeeper

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

L. Woerner, Inc., d/b/a HCR / HCR Home Care
Bestcare, Inc. (2011 – Present)
HealthNow New York, Inc. (Managed Care Plan, 2002 – 2008)
DePaul Adult Care Communities, Inc. (2009 – Present)
DePaul Community Services, Inc. (2009 – Present)

The NYSDOH Division of Home and Community Based Services reviewed the compliance
history of the CHHAs and LHCSAs operated by L. Woerner, Inc., d/b/a HCR / HCR Home
Care, for the time period 2008 to present, and the LTHHCPs operated by L. Woerner, Inc.,
d/b/a HCR / HCR Home Care, for the time period May 2010 (establishment of the first HCR /
HCR Home Care LTHHCP) to present.

The Division of Home and Community Based Services also reviewed the compliance history
of the LHCSAs operated by Bestcare, Inc., for the time period 2011 (when Mr. Tolander
began serving as a Trustee of Bestcare’s Employee Stock Ownership Plan Trust) to present.

It has been determined that the L. Woerner, Inc., d/b/a HCR / HCR Home Care CHHAs,
LTHHCPs, and LHCSAs, plus the affiliated Bestcare, Inc., LHCSAs, have all exercised
sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. These CHHAs, LTHHCPs, and LHCSAs have all been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The NYSDOH Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the five (5) ACFs and ALPs located in New York State operated by DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

An enforcement action was taken in November, 2012, against Glenwell Adult Home / Assisted Living Program in Cheektowaga, New York, based on a September 2011 inspection citing violations in the area of Endangerment. A $25,000 civil penalty was imposed.

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An enforcement action was taken in October, 2011, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a July 2011 inspection citing violations in the area of Endangerment in Supervision. A $1000 civil penalty was imposed.

A second enforcement action was taken in November, 2012, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a November 2011 inspection citing violations in the area of Endangerment. A $4000 civil penalty was imposed.

A third enforcement action was taken in August, 2013, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on August 2011, and December 2011 inspections citing violations in the areas of Resident Services and Food Services. An $1800 civil penalty was imposed.

The two (2) remaining New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., (Horizons Adult Home / Assisted Living Program, and Westwood Adult Home) do not have any enforcement history to report. It has been determined that the five (5) New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., are now in substantial compliance with all applicable codes, rules, and regulations, with no additional enforcement or administrative actions imposed.

The NYSDOH Office of Health Insurance Program’s Bureau of Managed Care Certification and Surveillance reviewed the compliance history of the affiliated HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that this affiliated managed care plan was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The New York State Office of Mental Health’s Bureau of Inspection and Certification reviewed the compliance history of each of the affiliated mental health providers and residences located in New York State operated within the corporate structure of DePaul Community Services, Inc., an affiliate of DePaul Adult Care Communities, Inc., for the time period April 2009 to present. It has been determined that the mental health providers and residences in New York State affiliated with DePaul Community Services, Inc., were all in substantial compliance with all applicable codes, rules, and regulations, with no enforcement sanctions or administrative action imposed, during that time period.

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Adult Care Communities, Inc., for the time period April 2009 to present. An out of state compliance request was also sent to South Carolina for the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

South Carolina has reported that the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., has had no enforcement actions imposed within the previous twelve (12) months (the only reporting period South Carolina provides) and is considered to be in good standing with the South Carolina Department of Health and Environmental Control.

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An enforcement action was taken in February, 2010, against Greenbrier Adult Home / Assisted Living Program located in Fairmont, North Carolina, based on a January 2009 survey citing violations in the area of Medication Administration. A $2,000 civil penalty was imposed.

The North Carolina Department of Health and Human Services reports that the remaining eleven (11) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., have had no enforcement actions imposed since April 2009.

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

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

Recommendation: Contingent Approval
Date: August 10, 2015
L. Woerner, Inc., d/b/a HCR / HCR Home Care, a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 4,000,000 shares of stock with 2,464,344 shares of stock currently issued, and the remaining 1,535,656 shares of stock currently held in Treasury as non-unissued shares. Of the 2,464,344 shares of stock currently issued, the stockholders and stock distribution are as follows:

- Employee Stock Ownership Plan Trust – 1,749,604 shares (71.00%)
- Louise Woerner – 230,180 shares (9.34%)
- Don H. Kollmorgen – 233,824 shares (9.49%)
- Lawrence Peckham – 248,236 shares (10.07%)
- Clayton Osborne – 2,500 shares (0.10%)

The Trustees of the Employee Stock Ownership Plan Trust (71.00 % stockholder) will be as follows:

- Louise Woerner
  Chief Executive Officer, L. Woerner, Inc., d/b/a HCR / HCR Home Care (CHHA, LTHHCP, and LHCSA)
  Affiliations: HealthNow New York, Inc., Buffalo (Managed Care Plan) – 4/1/02 to 4/10/08
  Disclosed above

- Duane E. Tolander, CPA (Iowa)
  Partner / Managing Director, HDH Advisors, LLC, West Des Moines, Iowa (Financial Advisory Services / Professional Consulting / Corporate and Business Valuations / Litigation Support); Trustee, Bestcare, Inc. (LHCSA) Employee Stock Ownership Plan Trust

The members of Board of Directors of L. Woerner, Inc., d/b/a HCR / HCR Home Care, are as follows:

- Louise Woerner, Chairperson, Secretary, Treasurer (9.34% stockholder)
  Disclosed above

- Don H. Kollmorgen (9.49% stockholder)
  Retired

- Lawrence L. Peckham (10.07% stockholder)
  Retired

- Joseph J. Castiglia, CPA
  Retired

- Clayton H. Osborne, MSW, LCSW (0.10% stockholder)
  Retired Vice President of Human Resources and Talent Management, Bausch and Lomb (Vision Products Manufacturer)

An additional officer of L. Woerner, Inc., d/b/a HCR / HCR Home Care, who is neither a stockholder, trustee, nor board member, is as follows:
Mary Elizabeth Zicari, RN
President / Administrator, L. Woerner, Inc., d/b/a
HCR / HCR Home Care (CHHA, LTHHCP, and
LHCSA)
Affiliation: DePaul Adult Care Communities, Inc.,
Rochester (licensed ACFs/ALPs, in New York
State, North Carolina, and South Carolina) – April
2009 to present

The Office of the Professions of the New York State Education Department indicates no issues
with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW
license of Clayton Osborne.

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of Duane Tolander.

In addition, a search of all of the above named stockholders, trustees, board members, officers,
employers, and health care affiliations revealed no matches on either the New York State
Medicaid Disqualified Provider List or the federal Office of the Inspector General’s Provider
Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at
7080 Commercial Drive, Canastota, New York 13032:

- Madison
- Onondaga
- Cayuga
- Oswego
- Jefferson
- Cortland

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
- Housekeeper

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

- L. Woerner, Inc., d/b/a HCR / HCR Home Care
- Bestcare, Inc. (2011 – Present)
- HealthNow New York, Inc. (Managed Care Plan, 2002 – 2008)
- DePaul Adult Care Communities, Inc. (2009 – Present)
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The NYSDOH Division of Home and Community Based Services reviewed the compliance
history of the CHHAs and LHCSAs operated by L. Woerner, Inc., d/b/a HCR / HCR Home
Care, for the time period 2008 to present, and the LTHHCPs operated by L. Woerner, Inc.,
d/b/a HCR / HCR Home Care, for the time period May 2010 (establishment of the first HCR /
HCR Home Care LTHHCP) to present.

The Division of Home and Community Based Services also reviewed the compliance history
of the LHCSAs operated by Bestcare, Inc., for the time period 2011 (when Mr. Tolander
began serving as a Trustee of Bestcare’s Employee Stock Ownership Plan Trust) to present.

It has been determined that the L. Woerner, Inc., d/b/a HCR / HCR Home Care CHHAs,
LTHHCPs, and LHCSAs, plus the affiliated Bestcare, Inc., LHCSAs, have all exercised
sufficient supervisory responsibility to protect the health, safety and welfare of patients and to
prevent any recurrent code violations. These CHHAs, LTHHCPs, and LHCSAs have all been
in substantial compliance with all applicable codes, rules, and regulations, with no
enforcement or administrative action imposed.

The NYSDOH Division of Adult Care Facilities and Assisted Living Surveillance reviewed the
compliance history of the five (5) ACFs and ALPs located in New York State operated by
DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

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Living Program in Cheektowaga, New York, based on a September 2011 inspection
citing violations in the area of Endangerment. A $25,000 civil penalty was imposed.

An enforcement action was taken in February, 2015, against Kenwell Adult Home / Assisted
Living Program in Kenmore, New York, based on September 2012, January 2013, and
August 2013 inspections citing violations in the area of Resident Services. A $10,000 civil
penalty was imposed.

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Home / Assisted Living Program in Henrietta, New York, based on a July 2011 inspection
citing violations in the area of Endangerment in Supervision. A $1000 civil penalty was
imposed.

A second enforcement action was taken in November, 2012, against Woodcrest Commons
Adult Home / Assisted Living Program in Henrietta, New York, based on a November 2011
inspection citing violations in the area of Endangerment. A $4000 civil penalty was imposed.

A third enforcement action was taken in August, 2013, against Woodcrest Commons Adult
Home / Assisted Living Program in Henrietta, New York, based on August 2011, and
December 2011 inspections citing violations in the areas of Resident Services and Food
Services. An $1800 civil penalty was imposed.

The two (2) remaining New York State ACFs and ALPs operated by DePaul Adult Care
Communities, Inc., (Horizons Adult Home / Assisted Living Program, and Westwood Adult
Home) do not have any enforcement history to report. It has been determined that the five
(5) New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., are
now in substantial compliance with all applicable codes, rules, and regulations, with no
additional enforcement or administrative actions imposed.

The NYSDOH Office of Health Insurance Program’s Bureau of Managed Care Certification and
Surveillance reviewed the compliance history of the affiliated HealthNow New York, Inc., for the
time period April 1, 2002 to April 10, 2008. It has been determined that this affiliated managed
care plan was in substantial compliance with all applicable codes, rules, and regulations, with no
enforcement or administrative action imposed, during that time period.

The New York State Office of Mental Health’s Bureau of Inspection and Certification reviewed the
compliance history of each of the affiliated mental health providers and residences located in New
York State operated within the corporate structure of DePaul Community Services, Inc., an
affiliate of DePaul Adult Care Communities, Inc., for the time period April 2009 to present. It has
been determined that the mental health providers and residences in New York State affiliated with
DePaul Community Services, Inc., were all in substantial compliance with all applicable codes,
rules, and regulations, with no enforcement sanctions or administrative action imposed, during
that time period.

Out of state compliance requests were sent to North Carolina for each of the twelve (12)
licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul
Adult Care Communities, Inc., for the time period April 2009 to present. An out of state
compliance request was also sent to South Carolina for the one (1) licensed ACF/ALP
located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

South Carolina has reported that the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., has had no enforcement actions imposed within the previous twelve (12) months (the only reporting period South Carolina provides) and is considered to be in good standing with the South Carolina Department of Health and Environmental Control.

North Carolina has reported that only one (1) of the twelve (12) licensed ACFs/ALPs in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., has had an enforcement action since April 2009.

An enforcement action was taken in February, 2010, against Greenbrier Adult Home / Assisted Living Program located in Fairmont, North Carolina, based on a January 2009 survey citing violations in the area of Medication Administration. A $2,000 civil penalty was imposed.

The North Carolina Department of Health and Human Services reports that the remaining eleven (11) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., have had no enforcement actions imposed since April 2009.

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

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

Recommendation: Contingent Approval
Date: August 10, 2015
Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: GM Family Resources, Inc.  
Address: Staten Island  
County: Richmond  
Structure: For-Profit Corporation  
Application Number: 2521-L

Description of Project:

GM Family Resources, 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: Yue Mei Meng owns 51 shares and Guo Ping Liu owns 49 shares. The remaining 100 shares are unissued.

The Board of Directors of GM Family Resources, Inc. comprises the following individuals:

Yue Mei Meng, HHA/PCA, President/Treasurer  
New York State License in Nail Specialty Owner/Manager, Garden Rose Nails, Inc.  
HHA, LH Wellbeing Care, Inc.

Guo Ping Liu, HHA/PCA, Vice President/Secretary  
Manager of Facility/Billing Director, LH Wellbeing Care, Inc.

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 Home Care Registry 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 1057 Olympia Boulevard, Staten Island, New York 10306:

Richmond   Kings   Queens  
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: July 10, 2015
Name of Agency: Edira Family Home Care LLC
Address: Jamaica
County: Queens
Structure: Limited Liability Company
Application Number: 2546-L

Description of Project:

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

The membership of Edira Family Home Care LLC comprises the following individuals:

Irina Korneyeva – 50%
Patient Service Coordinator, Geriatric Resource

Larisa Shusterman, RN – 50%
Director of Patient Services, Geriatric Resource

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 82-08 135th Street, #3M, Jamaica, New York 11435:

Queens          Kings          New York
Bronx           Richmond      Nassau

The applicant proposes to provide the following health care services:

Nursing          Home Health Aide          Personal Care

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

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

Recommendation: Contingent Approval
Date: August 26, 2015
Exceptional 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 common stock which are owned as follows:

Esmira Yusufova, RN – 200 Shares

The following individual is the sole member of Board of Directors of Exceptional Home Care Services Inc.:

Esmira Yusufova, RN – President
Nurse Educator and Utilization Management Review Nurse, Village Care

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

A search of the 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 1825 Coney Island Avenue, 2nd FL FR Brooklyn, New York 11230:

- Bronx
- Kings
- New York
- Queens
- Richmond

The applicant proposes to provide the following health care services:

- Nursing
- Home Health Aide
- Personal Care

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

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

Recommendation: Contingent Approval
Date: July 30, 2015
Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Albemarle Terrace, Inc. d/b/a Terrace Home Care
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2300-L

Description of Project:

Albemarle Terrace, Inc. d/b/a Terrace 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 with the Assisted Living Program to be operated by Albemarle Terrace, Inc. d/b/a Albemarle Terrace Assisted Living.

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

Moses J. Scharf – 200 shares

The Board of Directors of Albemarle Terrace, Inc. d/b/a Terrace Home Care is comprised by the following individuals:

Moses J. Scharf – President/Board Member
Owner/Operator, Ateret Avoth, LLC

Elisa H. Stern, LCSW – Board Member
Director of Supportive Serviced Project for Holocaust Survivors, Bikur Cholim Chessed Organization

Joel E. Shafran – Secretary/Treasurer/Board Member
President/JM Management of N.Y. Corp.

Allen Spielman – Board Member
Administrator/Director of Operations, New Century Home Care

Temi Fink – Board Member
Director of Community Outreach, New Century Home Care

Eliyahu Scharf – Board Member
Manager, Ateret Avoth, LLC

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

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

The applicant proposes to serve the residents of the following counties from an office located at 385 McDonald Avenue, Brooklyn, New York 11219.

Bronx  Kings  New York  Richmond
Queens

The applicant proposes to provide the following health care services:

Nursing  Home Health Aide  Personal Care  Occupational Therapy
Respiratory Therapy  Physical Therapy  Audiology  Medical Social Services
Nutrition  Homemaker  Housekeeper  Speech Language Pathology
Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

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

Recommendation: Contingent Approval
Date: July 27, 2015
Name of Agency: Samuel Konig d/b/a Park Inn Home Care
Address: Rockaway Park
County: Queens
Structure: Sole Proprietorship
Application Number: 2605-L

Description of Project:

Samuel Konig d/b/a Park Inn Home Care, a sole proprietorship, 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 Samuel Konig d/b/a Park Inn Assisted Living.

The sole proprietor of Samuel Konig d/b/a Park Inn Home Care is the following individual:

Samuel Konig
Owner/Operator, Park Inn Home (Adult Home, 1978 – 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 115-02 Ocean Promenade, Rockaway Park, New York 11694:

Queens
Bronx
Kings
New York
Richmond
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 seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

Park Inn Home

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: July 17, 2015
Description of Project:

Marquis Home Care, LLC, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

All Pro Home & Health Care Services, Inc. was previously approved as a home care services agency by the Public Health Council at its July 21, 2005 meeting and subsequently licensed as 9655L001 and 9655L002. Subsequently, All Pro Home & Health Care Services, Inc submitted LHCSA application number 1842L for a change in stock ownership which was contingently approved by the Public Health and Health Planning Council at the June 16, 2011 meeting, but the applicant never finalized the approval process for this change of ownership.

Marquis Home Care, LLC entered into a management agreement with All Pro Home & Health Care Services, Inc. which has been approved by the Department of Health.

The members of Marquis Home Care, LLC are:

Eric Newhouse, Esq. – 75%  Neil Zelman – 25%
CEO, MedWiz Solutions  Chief of Operations, Adult Care Management, LLC

Affiliations:
The Elliot at Erie Station ALP (2007-present)  The Elliot at Erie Station ALP (2011-present)
The Elliot at Catskill (8/2010-present)  The Elliot at Catskill (8/2010-present)

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 Eric Newhouse, Esq.

The applicant proposes to serve the residents of the counties indicated below from offices located at the addresses specified.

230 North Main St., Spring Valley, NY 10977
Rockland  Orange  Nassau  Suffolk

440 Beach 21st St., Far Rockaway, NY 11691
Queens  Kings  New York  Westchester
Bronx  Richmond

The applicant proposes to provide the following health care services:

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

The Eliot at Erie Station ALP  
The Eliot at Catskill (8/2010 to present)

The Eliot at Erie Station was fined ten thousand dollars ($10,000) pursuant to a stipulation and order dated July 6, 2010 for inspection findings of September 29, 2009 for violations of Article 7 of the Social Services Law and 18 NYCRR 487 Standards for Adult Homes.

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

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

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

Recommendation: Contingent Approval  
Date: August 25, 2015
Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Paramount Homecare Agency, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2436-L

Description of Project:

Paramount 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.

Paramount Homecare Agency, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its December 8, 2011 meeting and subsequently licensed 1952L001. At that time it was owned as follows: Michael Pinter – 100 Shares and Reuben Grabel – 100 Shares.

Through a Stock Purchase Agreement, Roman Offengeym will become the sole stock holder of Paramount Homecare Agency, Inc.

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

Roman Offengeym, LPN – 200 Shares

The following individual will be the sole member of Board of Directors of Paramount Homecare Agency, Inc.:

Roman Offengeym, LPN – President/Secretary  
Administrator, Paramount Home Care Agency, Inc.

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 continue to serve the residents of the following counties from an office located at 1711 Kings Highway, Suite 2, Brooklyn, New York 11229.

Kings  Queens  Bronx  
New York  Richmond  Nassau

The applicant proposes to provide the following health care services:

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

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

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

Recommendation: Contingent Approval
Date: July 17, 2015
Kirenaga Home Care Manhattan, Inc. d/b/a Synergy HomeCare, 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.

SonicLeibs, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its February 7, 2013 meeting and subsequently licensed as 1979L001. At that time SonicLeibs, Inc. d/b/a Synergy HomeCare was solely owned by David S. Muson.

The applicant has authorized 200 shares of stock which are solely owned by Kirenaga Home Care, LLC.

The Board of Directors of Kirenaga Home Care Manhattan, Inc. comprises the following individual:

David Muson, President
FINRA, Series 7, 63, 79
Operator, SonicLeibs d/b/a Synergy HomeCare

Affiliations:
SonicLeibs d/b/a Synergy HomeCare (2013 – Present)
Synergy HomeCare of Hudson County (2011 – 2014)

The membership of Kirenaga Home Care, LLC comprises the following:

Kirenaga Partners, LLC – 99%
David Muson – 1%
Disclosed Above

The membership of Kirenaga Partners, LLC comprises the following:

Kirenaga Management, LLC – 30%
Solely Economic Investors – 70%
Non-Voting/Non-Operating members

The membership of Kirenaga Management, LLC comprises the following:

Kirenaga, Inc. – 33.33%
David Muson, Inc. – 33.33%
Disclosed Above

Berland Investments Incorporated – 33.33%

Kirenaga, Inc. has authorized 1,500 shares of stock which are solely owned by David Scalzo.

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

David Scalzo, MBA
Founder/President, Kirenaga Partners, LLC

David Muson, Inc. has authorized 200 shares of stock, which are solely owned by David Muson.

The Board of Directors of David Muson, Inc. comprises the following individual:
Berland Investments Incorporated has authorized 1,000 shares of stock, which are solely owned by Terrance Berland.

The Board of Directors of Berland Investments Incorporated comprises the following individual:

Terrance Berland, MBA
Former Senior Management Associate, Bridgewater Associates, LP

Affiliations:

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 575 Lexington Avenue, New York, New York 10022:

<table>
<thead>
<tr>
<th>New York</th>
<th>Bronx</th>
<th>Queens</th>
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<tbody>
<tr>
<td>Kings</td>
<td>Richmond</td>
<td>Westchester</td>
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The applicant proposes to provide the following health care services:

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

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

- SonicLiebs d/b/a Synergy HomeCare (2013 – Present)
- Synergy HomeCare of Hudson County (2011 – 2014, New Jersey)

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

The information provided by the New Jersey Office of the Attorney General, Division of Consumer Affairs Office of Consumer Protection has indicated that Synergy HomeCare of Hudson County has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the State of Connecticut Department of Public Health, Division of Health Systems Regulation indicated that there were not any enforcement actions and the Stamford Health System 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: September 8, 2015
Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: CareGuardian, Inc. d/b/a Hometeam  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 2501-L

Description of Project:

CareGuardian, Inc. d/b/a Hometeam, a Delaware business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

New Universal Home Care, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its October 6, 2011 meeting and subsequently licensed 1764L001. At that time it was owned as follows: Felix Salinas – 200 Shares.

CareGuardian, Inc. d/b/a Hometeam has obtained a Certificate of Authority to Do Business in New York State from the New York State Department of State.

The applicant has authorized 2,930,052 shares of stock of which 1,500,000 shares are Common Stock. 1,072,909 shares are Preferred Stock and 357,143 Employee Incentive Stock Options which are owned as follows:

Josh M. Bruno – 1,200,000 Shares Common Stock  
Akash A. Shah – 300,000 Shares Common Stock  
Lux Capital LP – 515,855 Shares Preferred Stock  
IA Ventures Strategies Fund II LP – 533,509 Shares Preferred Stock

In addition, the applicant has authorized 357,143 shares of Employee Incentive Stock Options with 91,124 issued with the remaining 266,019 shares unissued. No individuals owns 10% or more of the issued shares.

The Managing Partner of IA Ventures Strategies Fund II LP is:

Bradford W. Gillespie

The Principal of Lux Capital LP is:

Adam L. Goulburn, Ph.D.

The proposed Board of Directors of CareGuardian, Inc. d/b/a Hometeam comprises the following individuals:

Josh M. Bruno – President  
Co-Founder and CEO, CareGuardian, Inc.  
Operations Consultant, Home Care Agency Consultant

Akash A. Shah  
Co-Founder and COO, CareGuardian, Inc.  
Operations & IT Consultant, Healthcare Services Consultant

Bradford W. Gillespie – Board Member  
Managing Partner, IA Ventures Strategies Fund II, LP

Adam L. Goulburn, Ph.D. – Board Member  
Principal, Lux Capital LP

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

The response received from the New Jersey Office of the Attorney General, Division of Consumer Affairs, Office of Consumer Protection Responses indicated that CareGuardian, Inc. is currently active and that they have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients.
The applicant disclosed that they have recently been granted a home care agency license in the State of Pennsylvania in preparation to begin operations in 2015.

The applicant proposes to continue to serve the residents of the following counties from an office located at 740 Broadway #1203, New York, New York 10003.

New York    Kings    Queens    Bronx    Richmond

The applicant proposes to provide the following health care services:

Nursing       Personal Care       Homemaker

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

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

Recommendation: Contingent Approval
Date: August 18, 2015
Name of Agency: Better Choice Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2542-L

Description of Project:

Better Choice Home Care, 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.

Reliable Choice Home Health Care, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its August 4, 2011 meeting and was subsequently licensed as 1737L001.

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

David Li – 200 Shares

The Board of Directors of Better Choice Home Care, Inc. is comprised of the following individual:

David Li, CEO/President/Director
Licensed Acupuncturist, D.L. Acupuncture

A search for David Li named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

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

The applicant proposes to continue to serve the residents of the following counties from an office located at 7104 18th Avenue, Brooklyn, New York 11204:

Bronx  Kings  New York  Queens
Richmond  Nassau

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  Housekeeper

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

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

Recommendation: Contingent Approval
Date: August 18, 2015
Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: All Boro Home Care, Inc.
Address: Flushing
County: Queens
Structure: For-Profit Corporation
Application Number: 2547-L

Description of Project:

All Boro Home Care, 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.

YWCA of Queens, Inc. d/b/a Y Evergreen Care, a not-for-profit corporation, was previously approved as a home care services agency by the Public Health Council at its March 2, 2007 meeting and subsequently licensed 1467L001.

Through a Purchase and Sale Agreement the applicant proposes to purchase the Licensed Home Care Services Agency currently operated by YWCA of Queens, Inc. d/b/a Y Evergreen Care.

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

Yong Ho Lee – 10 Shares
190 shares remain unissued.

The Board of Directors of All Boro Home Care, Inc. is comprised of the following individual:

Yong Ho Lee – Director
President, X-Treme Care, LLC

Affiliations:
- X-Treme Care, LLC (LHCSA)
- Agewell New York, Inc. (MLTCP)
- Cassena at Norwalk (CT – Nursing and Rehab Facility: 2010 - Present)

A search for Yong Ho Lee named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

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

- X-Treme Care, LLC (LHCSA)
- Agewell New York, Inc. (MLTCP)
- Cassena at Norwalk (CT – Nursing and Rehab Facility: 2010 - Present)

The information provided by the Office of Managed Care has indicated that the MLTC plan has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

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

The information provided by the State of Connecticut, Department of Public Health, Facility Licensing and Investigation Section has indicated that Cassena at Norwalk holds a current valid license and that all license entities must adhere to a minimum standard dictated by the Public Health Care of the State of Connecticut.
The applicant proposes to serve the residents of the following counties from an office located at 149-06 41st Avenue, 2nd Floor, Flushing, New York 11355:

Bronx  Kings  New York  Queens  Richmond  Westchester

The applicant proposes to provide the following health care services:

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

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

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

Recommendation:  Contingent Approval
Date:  August 21, 2015
License Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency
Address: Rockaway Beach County: Queens Structure: Limited Liability Company Application Number: 2554-L

Description of Project:

Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency was previously approved as a home care services agency by the Public Health Council at its May 16, 2003 meeting and subsequently licensed 1150L001. At that time the membership of the LLC consisted of Bert Fried and Tividar Marcovici with both individuals owning a 50% membership interest. Subsequently, the agency submitted a Transfer of Ownership Interest Notice in which 9.9% of membership was transferred to Daniel Lifschutz. Therefore, the current membership of this LLC is Bert Fried – 45.05%, Tividar Marcovici – 45.05% and Daniel Lifschutz – 9.9%. The purpose of the application is transfer the remaining 90.9% ownership interest to Mr. Lifschutz.

The proposed sole member of Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency is as follows:

Daniel Lifschutz
Director: Overseeing Operations, Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency

Affiliations:
- Kings Adult Care Center (February 2010 – Present)
- Promenade Rehabilitation and Health Care Center (July 2007 – Present)

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

A seven year review was conducted for the following healthcare facilities:

- Kings Adult Care Center (February 2010 – Present)
- Promenade Rehabilitation and Health Care Center (July 2007 – Present)
- Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency (January 27, 2015 – Present)

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

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

The Information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.
The applicant proposes to continue to serve the residents of the following counties from an office located at 214 Beach 96th Street, Rockaway Beach, New York 11693.

Bronx  Nassau  New York  Kings
Queens  Richmond

The applicant proposes to continue to provide the following health care services:

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

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

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

Recommendation:  Contingent Approval
Date:  August 6, 2015
Licensed Home Care Services Agency  
Character and Competence Staff Review  

Name of Agency: Hakuna, Inc.  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 2592-L  

Description of Project:  

Hakuna, Inc., a Delaware business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.  

Finest Home Care Corp. was previously approved as a home care services agency by the Public Health and Health Planning Council at its December 6, 2012 meeting and subsequently licensed as 1663L001.  

The applicant has authorized 10,000,000 shares of stock, which are owned as follows: Kevin Liu owns 1,668,000 shares and the remaining 8,332,000 shares are unissued.  

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

Kevin Liu, MBA, Chairman  
Owner/Operator, Hakuna, Inc. (Companion Care Agency, 2014 – 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 550 West 45th Street, #243, New York, New York 10036:  

<table>
<thead>
<tr>
<th>New York</th>
<th>Kings</th>
<th>Queens</th>
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</table>
| Bronx  | Richmond | 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  

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

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

Recommendation: Contingent Approval  
Date: September 3, 2015
Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Allcare Family Services, Inc.
Address: Buffalo
County: Erie
Structure: For-Profit Corporation
Application Number: 151264-E

Description of Project:

Allcare Family Services, 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.

Allcare Family Services, Inc. was previously approved as a home care services agency by the Public Health Council at its May 23, 1986 meeting and subsequently licensed 0067L001. At that time Joseph LoTempio and Joseph Mosey Jr. each owned 25 shares of stock.

Joseph LoTempio died April 25, 2013 and left his shares of stock to Laura Macy in his Last Will and Testament. Joseph Mosey, Jr. died October 10, 2014 and his shares went to his estate per his Last Will and Testament. The executor of the Estate of Joseph Mosey Jr. advised that they are not interested in staying in the home health care business and proposed that Laura Macy purchase the stock.

The applicant has authorized 200 shares of stock which will be owned as follows:

Laura A. Macy – 50 Shares
Administrator, Officer – Allcare Family Services, Inc.

150 shares of stock remain unissued.

The following individual is the sole member of Board of Directors of Allcare Family Services, Inc.,

Laura A. Macy – President/Secretary/Treasurer
(Previously Disclosed)

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 continue to serve the residents of Erie County from an office located at 625 Delaware Avenue Suite 150, Buffalo, New York 14202.

The applicant proposes to continue to provide the following health care services:

Nursing     Home Health Aide     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: August 31, 2015
Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: CDS Monarch, Inc.
Address: Webster
County: Monroe
Structure: Not-For-Profit Corporation
Application Number: 2280-L

Description of Project:

CDS Monarch, 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 CDS Monarch, Inc. comprises the following individuals:

Mark S. Peterson, MBA, CFRE, Board Chair/Executive Committee Chair
President/CEO, Greater Rochester Enterprise

Joseph J. Gabriel, Vice Chair/Facilities Committee Chair
Associate Administrator/Director of IT, University of Rochester Medical Center – The Flaum Eye Institute

William Woodard, Treasurer/Finance Committee Chair
CFO, Fibertech Networks

Gregory Gribben, JD, Secretary
Attorney/Partner, Woods, Oviatt, Gilman LLP

Jennifer Carlson, MPA, Program Assessment Committee Chair
Director of Quality Assurance, Finger Lakes Addiction Counseling & Referral Agency

Richard T. Yarmel, JD, Guardianship and Executive Committees
Partner, Harter, Secrest & Emery, LLP

Jerry McCullough, Wolf Foundation Board Chair
General Manager, Ryan Plumbing, Heating, Air Conditioning and Fire Protection, LLC

Dennis Buchan, Member
Retired

Richard H. Ferrari, MBA, Member
Senior Vice President, Relationship Management and Commercial Lending, Wells Fargo Bank N.A.

Claire Kaler, Member
Owner, K2 Communications

Dennis B. Olbrich, MBA, Member
President, Paper & Output Systems Business, Kodak Alaris, Inc.

Daniel Skinner, Member
Assembly Positions, CDS Monarch Vocational Services

Susan Travis, Member
Judicial Assistant, United States Federal Courts, Western District of New York
Eric Gilbert, Member  
NY State Licensed Life/Accident/Health Insurance Agent  
Managing Director, US Employee Benefits Services Group

Angel Morales, Member  
CDS Monarch Day Program Workshop

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 all attorneys associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 860 Hard Road, Webster, New York 14580:

Monroe Wayne

The applicant proposes to provide the following health care services:

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

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

CDS Monarch

The information provided by the Office for People with Developmental Disabilities 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 Office of Managed Care has indicated that the MLTC plan has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The Bureau of Quality Assurance and Licensure and the Bureau of Long Term Care have determined that the Traumatic Brain Injury (TBI) provider has exercised sufficient supervisory responsibility to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

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

Contingency:

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

Recommendation: Contingent Approval  
Date: August 17, 2015
Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Azor Care at Home, Inc. d/b/a Azor Home Care
Address: New Rochelle
County: Westchester
Structure: Not-for-Profit
Application Number: 2158-L

Description of Project:

Azor Care at Home, Inc. d/b/a Azor 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.

Azor Home Care, Inc., a business corporation, was previously approved as a home care services agency by the Public Health Council at its March 20, 1998 meeting and subsequently licensed as 0587L001 on June 18, 1999. Approval is sought for the conveyance of the interests in Azor Home Care, Inc. including the operations of the Licensed Home Care Services Agency to Azor Care at Home, Inc. All other aspects of the operations will remain the same.

Azor Care at Home, Inc. previously received approval by the Public Health Council for the change of ownership from the Azor Home Care, Inc. to Azor Care at Home, Inc. at the May 8, 2009 Public Health Council meeting under application number 1699L. The applicant did not finalize the approval with the regional office and that application was withdrawn from consideration.

The proposed Board of Directors of Azor Care at Home, Inc. d/b/a Azor Home Care is comprised of the following individuals:

<table>
<thead>
<tr>
<th>Name</th>
<th>Role</th>
<th>Affiliations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rita C. Mabli, LNHA, President/CEO</td>
<td>United Hebrew Geriatric Center</td>
<td>United Hebrew Geriatric Center (2007 – Present)</td>
</tr>
<tr>
<td>Michael R. Rozen, Chairman</td>
<td>Retired</td>
<td>United Hebrew Geriatric Center (2002 – Present)</td>
</tr>
<tr>
<td>Malcolm H. Lazarus, Vice Chairman</td>
<td>United Hebrew Geriatric Center</td>
<td>United Hebrew Geriatric Center (1981 – Present)</td>
</tr>
<tr>
<td>Donald Duberstein, Secretary</td>
<td>President, The Duberstein Organization, Ltd.</td>
<td></td>
</tr>
<tr>
<td>Linda Forman, Treasurer</td>
<td>Senior Advisor to the President, United Hebrew Geriatric Center</td>
<td></td>
</tr>
</tbody>
</table>

The Bureau of Professional Credentialing has indicated that the Licensed Nursing Home Administrator associated with this application holds a Nursing Home Administrator license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or their license.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.
The applicant proposes to continue to serve the residents of the following counties from an office located at 391 Pelham Road, New Rochelle, New York 10805:

- New York
- Kings
- Queens
- Bronx
- Richmond
- Westchester

The applicant proposes to continue 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):

United Hebrew Geriatric Center

The information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facility reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

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

Recommendation: Contingent Approval
Date: August 24, 2015
L. Woerner, Inc. d/b/a HCR/HCR Home Care, a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

L. Woerner, Inc. d/b/a HCR was previously approved as a home care services agency by the Public Health Council at its October 3, 2006 meeting and subsequently licensed as 1477L001 and 1477L002.

L. Woerner, Inc. d/b/a HCR requests approval to add Duane Tolander as a new trustee for their Employee Stock Ownership Plan Trust and to update the current status of the corporation’s stockholders, officers, board members and trustees. Mr. Tolander would be an independent trustee, in that he will not also be a stockholder, director, officer, or employee of L. Woerner, Inc., thereby removing any possible conflicts of interest with respect to his management and investment decisions for the funds held in the Employee Stock Ownership Plan Trust. Mr. Tolander is also currently a trustee of the Bestcare, Inc. (LHCSA) Employee Stock Ownership Plan Trust, as approved by PHHPC in 2011. The current proposal also updates the current assumed name (d/b/a) of the corporation, by adding a new additional assumed name (d/b/a) HCR Home Care, to the existing assumed name (d/b/a) HCR.

The corporation L. Woerner, Inc., d/b/a HCR / HCR Home Care, is currently authorized 4,000,000 shares of stock, with 2,464,344 shares of stock currently issued, and the remaining 1,535,656 shares of stock currently held in Treasury as non-issued shares. Of the 2,464,344 shares of stock currently issued, the stockholders and stock distribution are as follows:

Employee Stock Ownership Plan Trust – 1,749,604 shares (71.00%)
Louise Woerner – 230,180 shares (9.34%)
Don H. Kollmorgen – 233,824 shares (9.49%)
Lawrence Peckham – 248,236 shares (10.07%)
Clayton Osborne – 2,500 shares (0.10%)

The Trustees of the Employee Stock Ownership Plan Trust (71.00 % stockholder) will be as follows:

Louise Woerner
Chief Executive Officer, L. Woerner, Inc., d/b/a HCR / HCR Home Care (CHHA, LTHHCP, and LHCSA)
Affiliations: HealthNow New York, Inc., Buffalo (Managed Care Plan) – 4/1/02 to 4/10/08

Duane E. Tolander, CPA (Iowa)
Partner / Managing Director, HDH Advisors, LLC, West Des Moines, Iowa (Financial Advisory Services / Professional Consulting / Corporate and Business Valuations / Litigation Support); Trustee, Bestcare, Inc. (LHCSA) Employee Stock Ownership Plan Trust

The members of Board of Directors of L. Woerner, Inc., d/b/a HCR / HCR Home Care, are as follows:
Louise Woerner, Chairperson, Secretary, Treasurer
(9.34% stockholder)
Disclosed above

Don H. Kollmorgen (9.49% stockholder)
Retired

Lawrence L. Peckham (10.07% stockholder)
Retired

Joseph J. Castiglia, CPA
Retired

Clayton H. Osborne, MSW, LCSW (0.10% stockholder)
Retired Vice President of Human Resources and
Talent Management, Bausch and Lomb (Vision
Products Manufacturer)

An additional officer of L. Woerner, Inc., d/b/a HCR / HCR Home Care, who is neither a
stockholder, trustee, nor board member, is as follows:

Mary Elizabeth Zicari, RN
President / Administrator, L. Woerner, Inc., d/b/a
HCR / HCR Home Care (CHHA, LTHHCP, and
LHCSA)
Affiliation: DePaul Adult Care Communities, Inc.,
Rochester (licensed ACFs/ALPs, in New York
State, North Carolina, and South Carolina) – April
2009 to present

The Office of the Professions of the New York State Education Department indicates no issues
with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW
license of Clayton Osborne.

The Professional Licensing Bureau of the State of Iowa indicates no issues with the CPA license
of Duane Tolander.

In addition, a search of all of the above named stockholders, trustees, board members, officers,
employers, and health care affiliations revealed no matches on either the New York State
Medicaid Disqualified Provider List or the federal Office of the Inspector General’s Provider
Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at
211 East Main Street, Batavia, New York 14020:

Genesee Monroe Orleans
Wyoming

85 Metro Park, Rochester, New York 14623:

Monroe Livingston Ontario
Orleans Wayne

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care
Physical Therapy Occupational Therapy Respiratory Therapy
Speech-Language Pathology Medical Social Services Nutrition
Medical Equipment and Supplies
A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

L. Woerner, Inc., d/b/a HCR / HCR Home Care
Bestcare, Inc. (2011 – Present)
HealthNow New York, Inc. (Managed Care Plan, 2002 – 2008)
DePaul Adult Care Communities, Inc. (2009 – Present)
DePaul Community Services, Inc. (2009 – Present)

The NYSDOH Division of Home and Community Based Services reviewed the compliance history of the CHHAs and LHCSAs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period 2008 to present, and the LTHHCPs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period May 2010 (establishment of the first HCR / HCR Home Care LTHHCP) to present.

The Division of Home and Community Based Services also reviewed the compliance history of the LHCSAs operated by Bestcare, Inc., for the time period 2011 (when Mr. Tolander began serving as a Trustee of Bestcare’s Employee Stock Ownership Plan Trust) to present.

It has been determined that the L. Woerner, Inc., d/b/a HCR / HCR Home Care CHHAs, LTHHCPs, and LHCSAs, plus the affiliated Bestcare, Inc., LHCSAs, have all exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. These CHHAs, LTHHCPs, and LHCSAs have all been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The NYSDOH Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the five (5) ACFs and ALPs located in New York State operated by DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

An enforcement action was taken in November, 2012, against Glenwell Adult Home / Assisted Living Program in Cheektowaga, New York, based on a September 2011 inspection citing violations in the area of Endangerment. A $25,000 civil penalty was imposed.

An enforcement action was taken in February, 2015, against Kenwell Adult Home / Assisted Living Program in Kenmore, New York, based on September 2012, January 2013, and August 2013 inspections citing violations in the area of Resident Services. A $10,000 civil penalty was imposed.

An enforcement action was taken in October, 2011, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a July 2011 inspection citing violations in the area of Endangerment in Supervision. A $1000 civil penalty was imposed.

A second enforcement action was taken in November, 2012, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a November 2011 inspection citing violations in the area of Endangerment. A $4000 civil penalty was imposed.

A third enforcement action was taken in August, 2013, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on November 2011 inspections citing violations in the areas of Resident Services and Food Services. An $1800 civil penalty was imposed.

The two (2) remaining New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., (Horizons Adult Home / Assisted Living Program, and Westwood Adult Home) do not have any enforcement history to report. It has been determined that the five (5) New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., are
now in substantial compliance with all applicable codes, rules, and regulations, with no additional enforcement or administrative actions imposed.

The NYSDOH Office of Health Insurance Program’s Bureau of Managed Care Certification and Surveillance reviewed the compliance history of the affiliated HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that this affiliated managed care plan was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The New York State Office of Mental Health’s Bureau of Inspection and Certification reviewed the compliance history of each of the affiliated mental health providers and residences located in New York State operated within the corporate structure of DePaul Community Services, Inc., an affiliate of DePaul Adult Care Communities, Inc., for the time period April 2009 to present. It has been determined that the mental health providers and residences in New York State affiliated with DePaul Community Services, Inc., were all in substantial compliance with all applicable codes, rules, and regulations, with no enforcement sanctions or administrative action imposed, during that time period.

Out of state compliance requests were sent to North Carolina for each of the twelve (12) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present. An out of state compliance request was also sent to South Carolina for the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

South Carolina has reported that the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., has had no enforcement actions imposed within the previous twelve (12) months (the only reporting period South Carolina provides) and is considered to be in good standing with the South Carolina Department of Health and Environmental Control.

North Carolina has reported that only one (1) of the twelve (12) licensed ACFs/ALPs in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., has had an enforcement action since April 2009.

An enforcement action was taken in February, 2010, against Greenbrier Adult Home / Assisted Living Program located in Fairmont, North Carolina, based on a January 2009 survey citing violations in the area of Medication Administration. A $2,000 civil penalty was imposed.

The North Carolina Department of Health and Human Services reports that the remaining eleven (11) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., have had no enforcement actions imposed since April 2009.

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

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

Recommendation: Contingent Approval
Date: August 10, 2015
Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: America Homecare Agency Services Corporation  
Address: Schenectady  
County: Schenectady  
Structure: For-Profit Corporation  
Application Number: 2456-L

Description of Project:

America Homecare Agency Services Corporation, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Rohan Chetoora owns 100 shares and Christina Geewanparsud owns 100 shares.

The Board of Directors of America Homecare Agency Services Corporation comprises the following individuals:

Rohan Chetoora, President/CEO  
Licensed Real Estate Broker  
Broker/Owner/President, North East Realty USA

Christina Geewanparsud, RN, BSN, Treasurer/Secretary  
Nurse, Saratoga 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 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 1438 State Street, Schenectady, New York 12304:

Schenectady  
Saratoga  
Albany  
Rensselaer  
Schoharie  
Washington  
Warren

The applicant proposes to provide the following health care services:

Nursing  
Home Health Aide

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

Contingency

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

Recommendation: Contingent Approval  
Date: August 26, 2015
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 8th day of October, 2015, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

<table>
<thead>
<tr>
<th>NUMBER</th>
<th>FACILITY</th>
</tr>
</thead>
</table>
| 1909 L | MedPro Homecare Agency, Inc.  
(Queens, New York, Kings, Richmond, Bronx, and Nassau Counties) |
| 2042 L | Touch of Love Homecare Agency Inc.  
(Bronx, Richmond, Kings, New York, Queens, and Nassau Counties) |
| 2059 L | Victory Home Care Services, Inc.  
(Suffolk and Nassau Counties) |
| 2133 L | Theresa Home Care, Inc.  
(New York, Kings, Bronx, Queens, Richmond, and Nassau Counties) |
<table>
<thead>
<tr>
<th>Code</th>
<th>Company Name</th>
<th>Counties</th>
</tr>
</thead>
<tbody>
<tr>
<td>2184 L</td>
<td>Kirenaga Home Care Brooklyn, Inc.</td>
<td>(New York, Bronx, Kings, Richmond, Queens and Nassau Counties)</td>
</tr>
<tr>
<td>2186 L</td>
<td>Kirenaga Home Care Queens, Inc.</td>
<td>(New York, Bronx, Kings, Richmond, Queens, and Nassau Counties)</td>
</tr>
<tr>
<td>2193 L</td>
<td>Imo’s Nursing Agency, Inc.</td>
<td>(Queens, New York, Kings, Richmond, and Bronx Counties)</td>
</tr>
<tr>
<td>2260 L</td>
<td>ABR Homecare of NY, Inc.</td>
<td>(Suffolk and Nassau Counties)</td>
</tr>
<tr>
<td>2280 L</td>
<td>CDS Monarch, Inc.</td>
<td>(Monroe and Wayne Counties)</td>
</tr>
<tr>
<td>2293 L</td>
<td>Loyal Home Care, Inc.</td>
<td>(Kings, Bronx, Queens, Richmond and New York Counties)</td>
</tr>
<tr>
<td>2362 L</td>
<td>HT&amp;T Corporation d/b/a HT&amp;T Home Care</td>
<td>(Queens, Kings, Brooklyn, Richmond, New York and Nassau Counties)</td>
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<tr>
<td>2381 L</td>
<td>Sundance Home Care, Inc.</td>
<td>(Kings, Queens, New York, Bronx, Richmond, and Nassau Counties)</td>
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<tr>
<td>2405 L</td>
<td>Queens Home Care, Inc. d/b/a Home Instead Senior Care Franchise #765</td>
<td>(Queens, New York, Bronx, Richmond, Kings and Nassau Counties)</td>
</tr>
<tr>
<td>2414 L</td>
<td>Collins Anyanwu-Mueller d/b/a Angelic Touching Home Health Care Agency</td>
<td>(Westchester and Rockland Counties)</td>
</tr>
<tr>
<td>2437 L</td>
<td>Artful Home Care, Inc.</td>
<td>(Suffolk and Nassau Counties)</td>
</tr>
<tr>
<td>2452 L</td>
<td>Companion Angels Home Care Solutions, LLC</td>
<td>(New York, Queens, Bronx, Richmond, and Kings Counties)</td>
</tr>
</tbody>
</table>
America Homecare Agency Services Corporation
(Schenectady, Rensselaer, Warren, Saratoga, Schuylerie, Albany and Washington Counties)

Family First Home Companions of New York, Inc.
(Suffolk, Nassau, and Queens Counties)

1st Home Care of NY Corp.
(Queens, New York, Bronx, Richmond, Kings and Nassau Counties)

Zenith Home Care of NY, LLC
(Westchester, Putnam, and Bronx Counties)

Acute Care Experts of New York, Inc.
(Nassau, Rockland, Suffolk, Sullivan, Dutchess, Ulster, Orange, Westchester, and Putnam Counties)

SR Miracle Care Agency, Inc.
(Bronx, Queens, New York, Richmond, Kings, and Westchester Counties)

Qualycare Home Care
(Bronx, New York, and Queens Counties)

ZaQia Chaplin, LLC
d/b/a Trusting Hands Homecare Agency
(Nassau, Suffolk, and Queens Counties)

Trivium of New York, LLC
Queens, Bronx, Kings, Richmond, New York and Nassau Counties)

Brookside Home Care Inc.
(Nassau, Suffolk and Queens Counties)

L. Woerner, Inc. d/b/a HCR/HCR Home Care
(Schoharie, Otsego, and Delaware Counties)

L. Woerner, Inc. d/b/a HCR/HCR Home Care
(Clinton, Hamilton, St. Lawrence, Franklin, Warren, Essex and Washington Counties)
2505 L  L. Woerner, Inc. d/b/a HCR/HCR Home Care (Madison, Oswego, Onondaga, Jefferson, Cayuga and Cortland Counties)

2521 L  GM Family Resources, Inc. (Richmond, New York, Kings, Bronx, Queens, and Nassau Counties)

2546 L  Edira Family Home Care LLC (Queens, Bronx, Kings, Richmond, New York and Nassau Counties)

2573 L  Exceptional Home Care Services, Inc. (Bronx, Richmond, Kings, New York and Queens Counties)

2300 L  Albemarle Terrace, Inc. d/b/a Terrace Home Care (Bronx, Queens, Kings, New York and Richmond Counties)

2605 L  Samuel Konig d/b/a Park Inn Home Care (Queens, New York, Bronx, Richmond, Kings and Nassau Counties)

2158 L  Azor Care at Home, Inc. d/b/a Azor Home Care (New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)

2188 L  Marquis Home Care, Inc. (Queens, Bronx, Kings, Richmond, New York and Westchester Counties)

2436 L  Paramount Homecare Agency, Inc. (Kings, New York, Queens, Richmond, Bronx, and Nassau Counties)

2441 L  Kirenaga Home Care Manhattan, Inc. d/b/a Synergy Homecare (New York, Kings, Bronx, Richmond, Queens, and Westchester Counties)

2501 L  CareGuardian, Inc. d/b/a Hometeam (New York, Kings, Queens, Bronx, and Richmond Counties)
2542 L Better Choice Home Care, Inc.  
(Bronx, Richmond, Kings, Nassau, New York, and Queens Counties)

2547 L All Boro Home Care, Inc.  
(Bronx, Richmond, Kings, Westchester, New York and Queens Counties)

2554 L Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency  
(Bronx, Queens, Nassau, Richmond, New York, and Kings Counties)

2592 L Hakuna, Inc.  
(New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)

2606 L L Woerner, Inc. d/b/a HCR/HCR Home Care  
(Genesee, Wyoming, Monroe, Orleans, Orleans, Livingston, Wayne, and Ontario Counties)

151264 E Allcare Family Services, Inc.  
(Erie County)
MEMORANDUM

TO: Public Health and Health Planning Council

FROM: Richard Zahnleus, General Counsel

DATE: September 11, 2015

SUBJECT: Proposed Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc.

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc. This not-for-profit corporation seeks approval to change its name to “Housing Works Community Healthcare, Inc.” The corporation also seeks approval to include additional purposes. Public Health and Health Planning Council approval for the certificate of amendment is therefore required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (2).

The Department has no objection to the proposed name change, and the proposed Certificate of Amendment is in legally acceptable form.

Attachments
July 8, 2015

STATE OF NEW YORK DEPARTMENT OF HEALTH
Public Health and Health Planning Council
Corning Tower, 24th Fl.
The Governor Nelson A. Rockefeller Empire State Plaza
Albany, New York 12237
518-473-3233

RE: HOUSING WORKS HEALTH SERVICES III, INC.

To whom this may concern:

I hereby respectfully request your consent to the filing of the attached certificate of amendment for the above reference NYS Not-for-Profit Corporation. A copy of all charter documents are attached from the New York Secretary of State.

If you have any questions or require further information, please do not hesitate to contact me. Otherwise, please issue your consent to the undersigned at your earliest convenience.

Sincerely,

Nicholas P. Hopeck
Vice President
RESTATED CERTIFICATE OF INCORPORATION

OF

HOUSING WORKS HEALTH SERVICES III, INC.

(Under Section 805 of the Not-for-Profit Corporation Law)

The undersigned, being the Secretary of Housing Works Health Services III, Inc., in accordance with Section 805 of the New York Not-for-Profit Corporation Law, does hereby certify:

1. The name of the corporation is Housing Works Health Services III, Inc.

2. The Certificate of Incorporation of Housing Works Health Services III, Inc. was filed by the Department of State on the 4th day of April, 1995.

3. The Certificate of Incorporation as now in full force and effect is hereby amended to effect the following amendments:

   Article FIRST of the Certificate of Incorporation, setting forth the name of the corporation, is hereby amended to read, in its entirety, as follows:

   FIRST: The name of the corporation is Housing Works Community Healthcare, Inc. (hereinafter referred to as the "Corporation").

   Article FOURTH of the Certificate of Incorporation, setting forth the purposes of the corporation, is hereby amended to read, in its entirety, as follows:

   FOURTH: The Corporation is organized exclusively for charitable, scientific and educational purposes, within the meaning of Section 501(c)(3) of the Code, which purposes shall include the following:

   (a) planning, developing, constructing, erecting, building, acquiring, altering, reconstructing, rehabilitating, owning, leasing, maintaining and operating one or more adult day diagnostic and treatment centers (hereinafter referred to as the "Centers") to be located in the City of New York, State of New York, which Centers will serve persons living with AIDS or HIV illness;

   (b) applying for and maintaining all necessary certificates and permits under Article 28 of the Public Health Law of the State of New York, as amended (hereinafter referred to as the "Public Health Law") and the regulations in effect from time to time thereunder to operate the Centers;

   (c) operating each such Center to provide a broad range of health services to persons living with AIDS or HIV illness, including patients who may be residents of any
low income housing facility owned or operated by Housing Works or any affiliate thereof and other clients of Housing Works, by providing and/or arranging a comprehensive range of multi-disciplinary health and social services, including, without limitation, medical services, case management services, food and nutrition services, social services as indicated by the patients’ medically related social and emotional needs, assistance and/or supervision, when required, with activities of daily living, rehabilitation therapy services, activities programs, nursing services, religious and pastoral counselling and HIV risk reduction counselling for patients requesting such counselling, pharmaceutical services, substance abuse treatment, if appropriate, and dental services;

(d) promoting and carrying on scientific research related to the care of the sick, injured and disabled, and related to the causes, origins, treatment and prevention of diseases and sickness, injuries and disabilities; provided, however, that the Corporation shall not promote or carry on scientific research involving human subjects, unless such scientific research is conducted in accordance with applicable law;

(e) engaging in educational activities related to providing care to the sick, injured and disabled, and related to promoting the health of the public; and

(f) operating outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health. The Corporation understands that it may not establish any facility or program without first obtaining such operating certificate.

Article FIFTH, subsection (a) of the Certificate of Incorporation, setting forth the powers and authorities of the corporation in furtherance of its corporate purposes, is hereby amended to read as follows:

FIFTH

...(a) solicit grants, contributions and donations of money, goods, merchandise and other property of all kinds, whether real, personal or mixed, by private or public appeal, by advertisement or by any other lawful means for any corporate purpose;

Article SEVENTH, subsection (d) of the Certificate of Incorporation, regarding Internal Revenue Code requirements, is hereby amended to read as follows:

SEVENTH

...(d) For those periods (if any) during which the Corporation is a private foundation as described in Section 509(a) of the Code, and as provided by Section 406 of the Not-for-Profit Corporation Law:

(i) 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;

(ii) the Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941 of the Code;
(iii) the Corporation shall not retain any excess business holdings which are subject to tax under Section 4943 of the Code;

(iv) the Corporation shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(v) the Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

Article EIGHTH, setting forth the principal office of the corporation, is hereby amended to read as follows:

EIGHTH: The principal office of the Corporation is to be located in Kings County, State of New York.

Article TENTH, setting forth the initial Board of Directors, is hereby deleted, and the Certificate of Incorporation is hereby renumbered to reflect such deletion.

Article ELEVENTH, setting forth the address of the corporation, is hereby renumbered and amended to read as follows:

TENTH: The Corporation hereby designates the Secretary of State as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

Housing Works Community Healthcare, Inc.
57 Willoughby St.
Brooklyn, NY 11201

6. The text of the Certificate of Incorporation is hereby restated to set forth its entire text, as amended, as follows:

FIRST: The name of the corporation is Housing Works Community Healthcare, Inc. (hereinafter referred to as 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 Type B corporation under Section 201 of the Not-for-Profit Corporation Law having the purposes set forth in Article Fourth below.

THIRD: Pursuant to Section 601 of the Not-for-Profit Corporation Law, the Corporation shall have one class of members, the sole member of which shall be Housing Works, Inc. (hereinafter referred to as “Housing Works”), a New York corporation organized under the Not-for-Profit Corporation Law and recognized as a tax-exempt, publicly-supported organization under Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as the “Code”; all references
FOURTH: The Corporation is organized exclusively for charitable, scientific and educational purposes, within the meaning of Section 501(c)(3) of the Code, which purposes shall include the following:

(a) planning, developing, constructing, erecting, building, acquiring, altering, reconstructing, rehabilitating, owning, leasing, maintaining and operating one or more adult day diagnostic and treatment centers (hereinafter referred to as the "Centers") to be located in the City of New York, State of New York, which Centers will serve persons living with AIDS or HIV illness;

(b) applying for and maintaining all necessary certificates and permits under Article 28 of the Public Health Law of the State of New York, as amended (hereinafter referred to as the "Public Health Law") and the regulations in effect from time to time thereunder to operate the Centers;

(c) operating each such Center to provide a broad range of health services to persons living with AIDS or HIV illness, including patients who may be residents of any low income housing facility owned or operated by Housing Works or any affiliate thereof and other clients of Housing Works, by providing and/or arranging a comprehensive range of multi-disciplinary health and social services, including, without limitation, medical services, case management services, food and nutrition services, social services as indicated by the patients' medically related social and emotional needs, assistance and/or supervision, when required, with activities of daily living, rehabilitation therapy services, activities programs, nursing services, religious and pastoral counselling and HIV risk reduction counselling for patients requesting such counselling, pharmaceutical services, substance abuse treatment, if appropriate, and dental services;

(d) promoting and carrying on scientific research related to the care of the sick, injured and disabled, and related to the causes, origins, treatment and prevention of diseases and sickness, injuries and disabilities; provided, however, that the Corporation shall not promote or carry on scientific research involving human subjects, unless such scientific research is conducted in accordance with applicable law;

(e) engaging in educational activities related to providing care to the sick, injured and disabled, and related to promoting the health of the public; and

(f) operating outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health. The Corporation understands that it may not establish any facility or program without first obtaining such operating certificate.

FIFTH: In furtherance, but not in limitation, of the purposes set forth in Article Fourth above, the Corporation shall have the power and authority to do the following:
(a) solicit grants, contributions and donations of money, goods, merchandise and other property of all kinds, whether real, personal or mixed, by private or public appeal, by advertisement or by any other lawful means for any corporate purpose;

(b) receive, own, repair, administer and maintain, as applicable, money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights and services of every kind and description, received by grant, contribution, donation, gift, deed, bequest, devise or loan from any source, private, public or governmental, and otherwise to acquire money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights and services of every kind and description, and to own, hold, repair, invest, lease, loan, expend, contribute, use, sell, transfer, pledge, hypothecate, encumber, mortgage, grant a security interest in or otherwise dispose of or deal with, as applicable, any and all such money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights or services so acquired for any corporate purpose;

(c) aid, support and assist by gifts, contributions or otherwise, other domestic or foreign corporations, community chests, funds and foundations that are organized and operated exclusively for charitable, educational, religious, scientific, literary or cultural purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(h) of the Code), and which do 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) enter into such contracts, agreements or other arrangements and do all such acts as are necessary or convenient to accomplish the objects and purposes herein set forth, to the extent not forbidden by law, this Certificate of Incorporation or the by-laws of the Corporation, including the execution of a Regulatory Agreement with New York State Medical Care Facilities Financing Agency, acting by and through the Commissioner of Health of the State of New York (hereinafter referred to as the “Commissioner”), and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of Article 28-B of the Public Health Law; and

(e) have and exercise all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law and all other powers set forth herein, in the by-laws of the Corporation and elsewhere in the Not-for-Profit Corporation Law and those powers granted to it by the Public Health Law and the relevant regulations in effect from time to time thereunder.

SIXTH: (a) Except to the extent such approvals or consents have been obtained, nothing contained herein shall authorize the Corporation to engage in any activities which would require the approval or consent of the State of New York or any
official, department, agency or instrumentality thereof as required by Section 404 of the Not-for-Profit Corporation Law and the Public Health Law and the relevant regulations in effect from time to time thereunder.

(b) Nothing in this Certificate of Incorporation shall authorize the Corporation to engage in any activity which is not in furtherance of the purposes set forth in Article Fourth above.

(c) Notwithstanding anything in this Certificate of Incorporation to the contrary, whenever the Corporation proposes to lease premises in which the operation of the Center is to be conducted, it shall do so in accordance with the provisions of Article 28 of the Public Health Law and the relevant regulations in effect from time to time thereunder, and in particular, insofar as required by any such regulations, any such lease agreement shall include the following language:

"The landlord acknowledges that his rights of reentry into the premises set forth in this lease do not confer on him the authority to operate a hospital as defined in Article 28 of the Public Health Law on the premises and agrees that he will give the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of his intent to reenter the premises or to initiate dispossess proceedings or that the lease is due to expire, at least 30 days prior to the date on which the landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before the expiration of the lease.

Upon receipt of notice from landlord of his intent to exercise his right of reentry or upon the service of process in dispossess proceedings and 60 days prior to the expiration of the lease, the tenant shall immediately notify by certified mail the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, of the receipt of such notice or service of such process or that the lease is about to expire."

or other such language, if any, as may be required by applicable law to be contained in any such lease agreement.

(d) The Corporation has been organized exclusively to serve a public purpose and it shall be and remain subject to the supervision of the Commissioner to the extent required by provisions of Article 28-B of the Public Health Law and the relevant regulations in effect from time to time thereunder.

SEVENTH: (a) Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for charitable, scientific and educational purposes as specified in Section 501(c)(3) of the Code and the Corporation shall not carry on any activity not permitted to be carried on (i) by a corporation exempt from Federal income taxation under Section 501(c)(3) of the Code or (ii) by a corporation the contributions, transfers, or gifts to which are deductible under Sections 170(c)(2), 2055(a)(2) and 2522(a)(2) of the Code.
(b) The Corporation is not formed for pecuniary profit or for financial gain and no part of its assets, income or profit shall be distributed to or inure to the benefit of any private individual, except to the extent permitted by the Not-for-Profit Corporation Law and the Public Health Law and the relevant regulations in effect from time to time thereunder. Reasonable compensation, however, may be paid for services rendered to or for the Corporation in furtherance of one or more of its purposes. No director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets of the Corporation upon 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 in Section 501(h) of the Code), and the Corporation shall not participate in, or intervene (including the publishing or distributing of statements) in, any political campaign on behalf of (or in opposition to) any candidate for public office.

(d) For those periods (if any) during which the Corporation is a private foundation as described in Section 509(a) of the Code, and as provided by Section 406 of the Not-for-Profit Corporation Law:

(i) 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;

(ii) the Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(iii) the Corporation shall not retain any excess business holdings which are subject to tax under Section 4943 of the Code;

(iv) the Corporation shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(v) the Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

EIGHTH: The principal office of the Corporation is to be located in Kings County, State of New York.

NINTH: The number of Directors shall be as specified in the by-laws of the Corporation, but in no event shall there be fewer than three Directors.

TENTH: The Corporation hereby designates the Secretary of State as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

Housing Works Community Healthcare, Inc.
57 Willoughby St.
Brooklyn, NY 11201
ELEVENTH: In the event of the dissolution of the Corporation, all of the assets of the Corporation remaining after the payment or satisfaction of its liabilities shall be distributed, subject to the approval of a Justice of the Supreme Court of the State of New York, but only to one or more organizations as shall at the time qualify as an exempt organization(s) under Section 501(c)(3) of the Code.

TWELFTH: The Corporation's existence shall be perpetual.

7. The changes included in this Restated Certificate of Incorporation and the restatement of this Certificate of Incorporation were authorized by the sole member of the Corporation.

[The remainder of this page has been intentionally left blank.]
IN WITNESS WHEREOF, this restated certificate of incorporation has been signed, and the statements made herein are affirmed as true, under the penalties of perjury, this 24th day of June, 2015.

Daronne Hudson
Secretary
STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 8, 2015.

Anthony Giardina
Executive Deputy Secretary of State
CERTIFICATE OF INCORPORATION

OF

HOUSING WORKS HEALTH SERVICES III, INC.

Under Section 402 of the Not-for-Profit Corporation Law
of the State of New York

I, the undersigned, a natural person eighteen years of
age or older, desiring to form a corporation pursuant to the
provisions of the Not-for-Profit Corporation Law of the State of
New York, as amended (hereinafter referred to as the "Not-for-
Profit Corporation Law"), do hereby certify as follows:

FIRST: The name of the corporation is Housing Works
Health Services III, Inc. (hereinafter referred to as 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 Type B corporation under
Section 201 of the Not-for-Profit Corporation Law having the
purposes set forth in Article Fourth below.

THIRD: Pursuant to Section 601 of the Not-for-Profit
Corporation Law, the Corporation shall have one class of members,
the sole member of which shall be Housing Works, Inc.
(hereinafter referred to as "Housing Works"), a New York
corporation organized under the Not-for-Profit Corporation Law
and recognized as a tax-exempt, publicly-supported organization
under Sections 501(c)(3) and 509(a)(1) of the Internal Revenue
Code of 1986, as amended (hereinafter referred to as the "Code");
all references herein to Sections of the Code shall be to Sections thereof, as amended from time to time, and to corresponding provisions of subsequent United States Internal Revenue laws).

FOURTH: The Corporation is organized exclusively for charitable, scientific and educational purposes, within the meaning of Section 501(c)(3) of the Code, which purposes shall include, but are not limited to, the following:

(a) planning, developing, constructing, erecting, building, acquiring, altering, reconstructing, rehabilitating, owning, leasing, maintaining and operating one or more adult day diagnostic and treatment centers (hereinafter referred to as the "Centers") to be located in the City of New York, State of New York, which Centers will serve persons living with AIDS or HIV illness;

(b) applying for and maintaining all necessary certificates and permits under Article 28 of the Public Health Law of the State of New York, as amended (hereinafter referred to as the "Public Health Law") and the regulations in effect from time to time thereunder to operate the Centers;

(c) operating each such Center to provide a broad range of health services to persons living with AIDS or HIV illness, including patients who may be residents of any low income housing facility owned or operated by Housing Works or any affiliate thereof and other clients of Housing Works, by providing and/or arranging a comprehensive range of multi-
disciplinary health and social services, including, without limitation, medical services, case management services, food and nutrition services, social services as indicated by the patients' medically related social and emotional needs, assistance and/or supervision, when required, with activities of daily living, rehabilitation therapy services, activities programs, nursing services, religious and pastoral counselling and HIV risk reduction counselling for patients requesting such counselling, pharmaceutical services, substance abuse treatment, if appropriate, and dental services;

(d) promoting and carrying on scientific research related to the care of the sick, injured and disabled, and related to the causes, origins, treatment and prevention of diseases, sickness, injuries and disabilities; provided, however, that the Corporation shall not promote or carry on scientific research involving human subjects, unless such scientific research is conducted in accordance with; and

(e) engaging in educational activities related to providing care to the sick, injured and disabled, and related to promoting the health of the public.

FIFTH: In furtherance, but not in limitation, of the purposes set forth in Article Fourth above, the Corporation shall have the power and authority to do the following:

(a) solicit grants, contributions and donations of money, goods, merchandise and other property of all kinds, whether real, personal and mixed, by private or public appeal, by
advertisement or by any other lawful means for any corporate purpose;

(b) receive, own, repair, administer and maintain, as applicable, money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights and services of every kind and description, received by grant, contribution, donation, gift, deed, bequest, devise or loan from any source, private, public or governmental, and otherwise to acquire money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights and services of every kind and description, and to own, hold, repair, invest, lease, loan, expend, contribute, use, sell, transfer, pledge, hypothecate, encumber, mortgage, grant a security interest in or otherwise dispose of or deal with, as applicable, any and all such money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights or services so acquired for any corporate purpose;

(c) aid, support and assist by gifts, contributions or otherwise, other domestic or foreign corporations, community chests, funds and foundations that are organised and operated exclusively for charitable, educational, religious, scientific, literary or cultural purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is
carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(h) of the Code), and which do 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) enter into such contracts, agreements or other arrangements and do all such acts as are necessary or convenient to accomplish the objects and purposes herein set forth, to the extent not forbidden by law, this Certificate of Incorporation or the by-laws of the Corporation, including the execution of a Regulatory Agreement with New York State Medical Care Facilities Financing Agency, acting by and through the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"), and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of Article 28-B of the Public Health Law; and

(e) have and exercise all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law and all other powers set forth herein, in the by-laws of the Corporation and elsewhere in the Not-for-Profit Corporation Law and those powers granted to it by the Public Health Law and the relevant regulations in effect from time to time thereunder.

SIXTH: (a) Except to the extent such approvals or consents have been obtained, nothing contained herein shall authorize the Corporation to engage in any activities which would
carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(b) of the Code), and which do 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) enter into such contracts, agreements or other arrangements and do all such acts as are necessary or convenient to accomplish the objects and purposes herein set forth, to the extent not forbidden by law, this Certificate of Incorporation or the by-laws of the Corporation, including the execution of a Regulatory Agreement with New York State Medical Care Facilities Financing Agency, acting by and through the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"), and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of Article 28-B of the Public Health Law; and

(e) have and exercise all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law and all other powers set forth herein, in the by-laws of the Corporation and elsewhere in the Not-for-Profit Corporation Law and those powers granted to it by the Public Health Law and the relevant regulations in effect from time to time thereunder.

SIXTH: (a) Except to the extent such approvals or consents have been obtained, nothing contained herein shall authorize the Corporation to engage in any activities which would
require the approval or consent of the State of New York or any official, department, agency or instrumentality thereof as required by Section 404 of the Not-for-Profit Corporation Law and the Public Health Law and the relevant regulations in effect from time to time thereafter.

(b) Nothing in this Certificate of Incorporation shall authorize the Corporation to engage in any activity which is not in furtherance of the purposes set forth in Article Fourth above.

(c) Notwithstanding anything in this Certificate of Incorporation to the contrary, whenever the Corporation proposes to lease premises in which the operation of the Center is to be conducted, it shall do so in accordance with the provisions of Article 28 of the Public Health Law and the relevant regulations in effect from time to time thereafter, and in particular, insofar as required by any such regulations, any such lease agreement shall include the following language:

"The landlord acknowledges that his rights of reentry into the premises set forth in this lease do not confer on him the authority to operate a hospital as defined in Article 28 of the Public Health Law on the premises and agrees that he will give the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of his intent to reenter the premises or to initiate dispossess proceedings or that the lease is due to expire, at least 30 days prior to the date on which the landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before the expiration of the lease.

Upon receipt of notice from landlord of his intent to exercise his right of reentry or upon the service of process in dispossess proceedings and 60 days prior to the expiration of the lease, the tenant shall immediately notify by certified..."
mail the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, of the receipt of such notice or service of such process or that the lease is about to expire.

or such other language, if any, as may be required by applicable law to be contained in any such lease agreement.

(d) The Corporation has been organized exclusively to serve a public purpose and it shall be and remain subject to the supervision of the Commissioner to the extent required by the provisions of Article 28-B of the Public Health Law and the relevant regulations in effect from time to time thereunder.

SEVENTH: (a) Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for charitable, scientific and educational purposes as specified in Section 501(c)(3) of the Code and the Corporation shall not carry on any activity not permitted to be carried on (i) by a corporation exempt from Federal income taxation under Section 501(c)(3) of the Code or (ii) by a corporation the contributions, transfers, or gifts to which are deductible under Sections 170(c)(2), 2055(a)(2) and 2522(a)(2) of the Code.

(b) The Corporation is not formed for pecuniary profit or for financial gain and no part of its assets, income or profit shall be distributed to or inure to the benefit of any private individual, except to the extent permitted by the Not-for-Profit Corporation Law and the Public Health Law and the relevant regulations in effect from time to time thereunder. Reasonable compensation, however, may be paid for services rendered to or
for the Corporation in furtherance of one or more of its purposes. No director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets of the Corporation upon 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 in Section 501(h) of the Code), and the Corporation shall not participate in, or intervene (including the publishing or distributing of statements) in, any political campaign on behalf of (or in opposition to) any candidate for public office.

(d) For those periods (if any) during which the Corporation is a private foundation as described in Section 509(a) of the Code, and as provided by Section 406 of the Not-for-Profit Corporation Law:

(i) 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;

(ii) the Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;

(iii) the Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code;
(iv) the Corporation shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(v) the Corporation shall not make any taxable expenditures which are subject to tax under Section 4945(d) of the Code.

EIGHTH: The principal office of the Corporation is to be located in the County and State of New York.

NINTH: The number of Directors shall be as specified in the by-laws of the Corporation, but in no event shall there be fewer than three Directors.

TENTH: The names and addresses of the persons constituting the initial Board of Directors of the Corporation are as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mindy Fullilove, M.D.</td>
<td>715 Park Avenue</td>
</tr>
<tr>
<td></td>
<td>Hoboken, New Jersey 07030</td>
</tr>
<tr>
<td>Dennis de León, Esq.</td>
<td>337 West 14th St. #51</td>
</tr>
<tr>
<td></td>
<td>New York, New York 10014</td>
</tr>
<tr>
<td>Valerie Jiménez</td>
<td>262 East 2d St. Apt. 1B</td>
</tr>
<tr>
<td></td>
<td>New York, New York 10009</td>
</tr>
<tr>
<td>Teri Hagan</td>
<td>239 East 2d St. Apt. #2</td>
</tr>
<tr>
<td></td>
<td>New York, New York 10009</td>
</tr>
</tbody>
</table>

ELEVENTH: The Corporation hereby designates the Secretary of State as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation

9
served upon him is:

Housing Works Health Services III, Inc.
594 Broadway
7th Floor, Suite 700
New York, New York 10012
Attn: Charles King

TWELFTH: In the event of the dissolution of the Corporation, all of the assets of the Corporation remaining after the payment or satisfaction of its liabilities shall be distributed, subject to the approval of a Justice of the Supreme Court of the State of New York, but only to one or more organizations as shall at the time qualify as an exempt organization(s) under Section 501(c)(3) of the Code.


IN WITNESS WHEREOF, I, CHARLES KING, as sole incorporator, hereby subscribe and affirm, under penalties of perjury, this Certificate of Incorporation as true this 15th day of February, 1995.

Charles King, Sole Incorporator
594 Broadway
7th Floor, Suite 700
New York, NY 10012

Subscribed and Sworn to this 15th day of February, 1995

[Signature]

Notary Public
Mr. Charles King  
Co-Executive Director  
Housing Works, Inc.  
594 Broadway, Suite 700  
New York, NY 10012

Re: Application No. 941006 - Housing Works Health Services III, Inc. d/b/a Housing Works East New York HIV/AIDS Adult Day Health Care Program (Kings Co.)

Dear Mr. King:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Housing Works Health Services III, Inc. is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of January 20, 1995.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the New York City Area Office of the New York State Office of Health Systems Management, 5 Penn Plaza, 5th Floor, 8th Avenue between West 33rd and West 34th Streets, New York, NY 10001, or (212) 613-4258 within 30 days of receipt of this letter.

Sincerely,

Karen S. Westervelt  
Executive Secretary
March 23, 1995

Mr. Charles King
Co-Executive Director
Housing Works, Inc.
594 Broadway, Suite 700
New York, NY 10012

Re: Certificate of Incorporation of Housing Works Health Services III, Inc.

Dear Mr. King:


Sincerely,

[Signature]

Karen S. Westervelt
Executive Secretary
CERTIFICATE OF INCORPORATION
OF
HOUSING WORKS HEALTH SERVICES III, INC.
UNDER SECTION 404 OF THE NOT-FOR-PROFIT CORPORATION LAW OF THE STATE OF NEW YORK

BILLED
NCR-26

FILED BY:
HOUSING WORKS, INC.
594 BROADWAY
NEW YORK, N.Y. 10012.

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED APR 04 1995
TAX:

NEW YORK

13

95040400040

13
STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 8, 2015.

Anthony Giardina
Executive Deputy Secretary of State
CERTIFICATE OF AMENDMENT
OF THE CERTIFICATE OF INCORPORATION
OF
Housing Works Health Services III, Inc.

Under Section 803 of the
Not-For-Profit Corporation Law

We, the undersigned, Charles King and Craig Stier, being respectively the
Vice-President and Secretary of Housing Works Health Services III, Inc. (hereinafter
referred to as the “Corporation”), hereby certify:

1. The name of the Corporation under which it was originally incorporated is
Housing Works Health Services III, Inc.

2. The Certificate of Incorporation of the Corporation was filed by the
Department of State on the 4th day of April, 1995 and the law under which it was
formed is Section 402 of the New York Not-For-Profit Corporation Law.

3. The Corporation is a corporation as defined in subparagraph (a) (5) of
Section 102 of the New York Not-for-Profit Corporation law and is a Type B
corporation under Section 201 of the New York Not-For-Profit Corporation Law.
Pursuant to Section 601 of the Not-For-Profit Corporation Law, the Corporation has
one class of member, the sole member of which is Housing Works, Inc., a New York
corporation organized under the Not-For-Profit Corporation Law and recognized as
a tax-exempt, publicly-supported organization under Sections 501(c)(3) and 501(a) (1)
of the Internal Revenue Code of 1986, as amended.

4. (a) Article THIRTEENTH of the Corporation’s Certificate of Incorporation
is amended to extend the existence of the Corporation from terminating on January
20, 1998 to perpetual existence.
(b) To effect the foregoing, Article THIRTEENTH of the Corporation's Certificate of Incorporation is amended to read in its entirety as follows:

THIRTEENTH: The Corporation's existence shall be perpetual.

(c) this amendment was authorized by the unanimous vote of the Board of Directors of the Corporation present at a duly convened meeting of the Board of Directors of the Corporation held on July 26, 1995 at which all of the members of the Board of Directors of the Corporation were present.

5. The Secretary of State is designated as agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

Housing Works Health Services III, Inc.
594 Broadway
7th Floor, Suite 7000
New York, New York 10012
Attn: Charles King
INN WITNESS WHEREOF, the undersigned have executed this
Certificate of Amendment on the 27th day of July, 1995 and affirm the statements
contained herein as true under penalties of perjury.

[Signature]
Charles King
Vice-President

[Signature]
Craig Stier
Secretary
VERIFICATION

STATE OF NEW YORK

COUNTY OF NEW YORK

Charles King, being duly sworn, deposes and says that he is the Vice-President of Housing Works Health Services III, Inc., and that he has read the foregoing Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc. and knows the contents thereof, and that the contents thereof are, of his own personal knowledge, true and correct, except as to statements based upon information and belief, and as to those matters, he believes them to be true.

Charles King
Vice-President

Sworn to before me this 27th day of July, 1995

Notary Public
VERIFICATION

STATE OF NEW YORK  )
COUNTY OF NEW YORK  )

Craig Stier, being duly sworn, deposes and says that he is the Secretary of Housing Works Health Services III, Inc., and that he has read the foregoing Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc. and knows the contents thereof, and that the contents thereof are, of his own personal knowledge, true and correct, except as to statements based upon information and belief, and as to those matters, he believes them to be true.

Craig Stier  
Secretary

Sworn to before me this  
27th day of July, 1995

Notary Public
August 4, 1995

Mr. Charles King  
Co-Executive Director  
Housing Works, Inc.  
594 Broadway, Suite 700  
New York, NY 10012

Re: Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc.

Dear Mr. King:


Sincerely,

Karen S. Westervelt  
Executive Secretary
CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
HOUSING WORKS HEALTH SERVICES III, INC.

Under Section 803 of the
Not-For-Profit Corporation Law

Craig S. Stier, Esq.
Housing Works, Inc.
594 Broadway - suite 700
New York, NY 10012
(212)966-0466
STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 8, 2015.

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13
CERTIFICATE OF CHANGE

Housing Works Health Services III, Inc.

Under Section 803-A of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is: Housing Works Health Services III, Inc.

If the name of the corporation has been changed, the name under which it was formed is: ________________________________

SECOND: The certificate of incorporation was filed by the Department of State on: 7/4/95

THIRD: The change(s) effected hereby are: [Check appropriate box(es)]

Q The county location, within this state, in which the office of the corporation is located, is changed to: ________________________________

X The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to:

320 West 13th Street 14th Floor
New York, NY 10014

Q The corporation hereby: [Check one] (N/A)

- Q Designates ________________________________ as its registered agent upon whom process against the corporation may be served.

The street address of the registered agent is: ________________________________

Q Changes the designation of its registered agent to: ________________________________

The street address of the registered agent is: ________________________________

Q Changes the address of its registered agent to: ________________________________

Q Revokes the authority of its registered agent.
FOURTH: The change was authorized by the board of directors.

(Signature) (Name and Capacity of Signer)

CERTIFICATE OF CHANGE

OF

Housing Works Health Services III, Inc.

(Exact Name of Domestic Corporation)

Under Section 803-A of the Not-for-Profit Corporation Law

Filer's Name

Kris Cavanaugh

Address

320 West 13th Street 4th Floor

City, State and Zip Code

NY, NY 10014

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a $20 filing fee.

STATE OF NEW YORK
DEPARTMENT OF STATE

MAY 6, 2003

For Office Use Only

FILLED
TAX $ BY:
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of October, 2015, approves the filing of the Restated Certificate of Incorporation of Housing Works Health Services III, Inc. dated June 24, 2015.
STATE OF NEW YORK - DEPARTMENT OF HEALTH
MEMORANDUM

TO: Public Health and Health Planning Council
FROM: Richard J. Zahnleuten, Acting General Counsel
DATE: September 10, 2015
SUBJECT: Proposed Name Change of Samaritan Village, Inc.

Samaritan Village, Inc. requests Public Health and Health Planning Council approval of its proposed name change to Samaritan Daytop Village, Inc. in accordance with the requirements of Sections 404 and 804 of the Not-For-Profit Corporation Law.

Attached are the following with regard to this matter:

1. Letter dated August 13, 2015, from the applicant’s counsel, requesting Public Health and Health Planning Council approval of the proposed name change.

2. Proposed Certificate of Amendment of the applicant’s Certificate of Incorporation setting forth the proposed name change.

3. Existing Certificate of Incorporation and amendments thereto.

The proposed Certificate of Amendment is in legally acceptable form.
August 13, 2015

VIA E-MAIL.

Colleen Leonard
NYS Department of Health
Corning Tower, Room 1805
Albany, New York 12237
collen.leonard@health.ny.gov

Re: Proposed Name Change of Samaritan Village, Inc.

Dear Ms. Leonard:

I am writing to follow up on my August 12, 2015 telephone conversation with Michael Stone, Barbara Del Cogliano, Keith Servis, and Mark Furnish of the Department of Health (“DOH”), and Mark Boss of the Office of Alcoholism and Substance Abuse Services (“OASAS”), during which the topic of Samaritan Village, Inc.’s proposed name change to Samaritan Daytop Village, Inc. was discussed.

During the course of the conversation, the participants came to the conclusion that Samaritan Village’s proposed name change requires approval of the Public Health and Health Planning Council (“PHHPC”) pursuant to Sections 404 and 804 of the New York Not-for-Profit Corporation Law. Accordingly, I have attached hereto as Exhibit A, for the PHHPC’s consideration and approval, a proposed certificate of amendment to Samaritan Village’s Certificate of Incorporation to change the corporation’s name to “Samaritan Daytop Village, Inc.” I have also attached Samaritan Village’s existing Certificate of Incorporation, with all prior amendments, as Exhibit B.

Due to the time sensitivity of this request, we respectfully request that the amendment be presented for consideration at the September 24, 2015 PHHPC Committee meeting and the October 8, 2015 full Council meeting. Please let me know as soon as possible if there is anything further that you need in order for the Department or PHHPC to consider and approve this name change amendment within that timeframe.

Very truly yours,

GREENBERG TRAURIG, LLP

Tricia A. Asaro
Colleen Leonard
August 13, 2015

BMF/TAH/map
Attachments
cc:  Mr. Mark Furnish (via email)
     Mr. Mark Boss (via email)
     Ms. Barbara Del Cogliano (via email)
     Mr. Keith Servis (via email)
CERTIFICATE OF AMENDMENT 
OF THE 
CERTIFICATE OF INCORPORATION 
OF

Samaritan Village, Inc. 

(Name of Domestic Corporation) 

Under Section 803 of the Not-for-Profit Corporation Law 

FIRST: The name of the corporation is 
Samaritan Village, Inc. 

If the name of the corporation has been changed, the name under which it was formed is 

SECOND: The certificate of incorporation was filed by the Department of State on 
December 29, 1981.

THIRD: The law the corporation was formed under is 
Section 402 of the Not-for-Profit Corporation Law of the State of New York.

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 certificate of incorporation is amended as follows:

Paragraph _______________ of the Certificate of Incorporation regarding the name of the Corporation

is hereby [check the appropriate box] □added □amended to read in its entirety as follows:

"FIRST: The name of the Corporation is Samaritan Daytop Village, 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

Samaritan Daylop Village, Inc.
138-02 Queens Boulevard
Briarwood, New York, 11435

SEVENTH: The certificate of amendment was authorized by (Check the appropriate box)

☐ a vote of a majority of the members at a meeting.

☐ the unanimous written consent of the members entitled to vote thereon.

☒ a vote of a majority of the entire board of directors. The corporation has no members.

(Signature)

Chief Operating Officer

(Capacity of Signer)

Doug Apple

(Print or Type Signer's Name)
CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

Samaritan Village, Inc.  

(Name of Domestic Corporation)

Under Section 803 of the Not-for-Profit Corporation Law

Filer's Name  Benjamin M. Friedman, Esq.

Address  54 State Street, 6th Floor

City, State and Zip Code  Albany, New York 12207

NOTE: The certificate must be submitted with a $30 filing fee. This form was prepared by the New York State Department of State. It does not contain all optional provisions under the law. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. Please be sure to review Section 804 and Section 404 of the Not-for-Profit Corporation Law to determine if any consents or approvals are required to be attached to this certificate of amendment.

For Office Use Only
The University of the State of New York

STATE OF NEW YORK:

COUNTY OF ALBANY:

Pursuant to the provisions of section 216 of the Education Law and
section 404, subdivision (d) of the Not-for-Profit Corporation Law,
consent is hereby given to the filing of the annexed certificate of
incorporation of SAMARITAN VILLAGE, INC.

as a not-for-profit corporation.

This consent to filing, however, shall not be construed as approval
by the Board of Regents, the Commissioner of Education or the State
Education Department of the purpose or objects of such corporation, nor
shall it be construed as giving the officers or agents of such corpo-
rations the right to use the name of the Board of Regents, the Commissioner
of Education, the University of the State of New York or the State Edu-
cation Department in its publications or advertising matter.

This consent to filing is granted with the understandings and upon
the conditions set forth on the reverse side of this form.

In Witness Whereof this instrument is
executed and the seal of the state
Education Department is affixed this
teenth day of November, 1981.

Robert R. Stone
Counsel and Deputy Commissioner
for Legal Affairs
This consent to filing is granted with the understanding that nothing contained in the annexed certificate of incorporation shall be construed as authorizing the corporation to engage in the practice of law, except as provided by subdivision 7 of section 495 of the Judiciary Law, or of any of the professions designated in Title VIII of the Education Law, or to use any title restricted by such law, or to conduct a school for any such profession, or to hold itself out to the public as offering professional services.

This consent to filing is granted with the further understanding that nothing contained in the certificate of incorporation shall be construed as authorizing the corporation to operate a nursery school, kindergarten, elementary school, secondary school, institution of higher education, cable television facility, educational television station pursuant to section 236 of the Education Law, library, museum, or historical society, or to maintain an historic site.

This consent to filing shall not be deemed to be or to take the place of registration for the operation of a private business school in accordance with the provisions of section 5002 of the Education Law, nor shall it be deemed to be, or to take the place of, a license granted by the Board of Regents pursuant to the provisions of section 5001 of the Education Law, a license granted by the Commissioner of Motor Vehicles pursuant to the provisions of section 394 of the Vehicle and Traffic Law, a license as an employment agency granted pursuant to section 172 of the General Business Law, or any other license, certificate, registration, or approval required by law.
CERTIFICATE OF INCORPORATION OF

SAMARITAN VILLAGE, INC.

Under Section 402 of the Not-For-Profit
Corporation Law

The undersigned hereby certify:

FIRST: The name of the Corporation is SAMARITAN
VILLAGE, INC.

SECOND: The Corporation is a Corporation as
defined in subparagraph (a)(5) of Section 102 of the
Not-For-Profit Corporation Law, in that it is not formed for
pecuniary profit or financial gain, and no part of the
assets, income or profit of the Corporation is distributable
to, or inures to the benefit of its members, directors or
officers or any private person except to the extent
permissible under the Not-For-Profit Corporation Law.

THIRD: The purposes for which the Corporation
is formed are:

To establish, maintain, and operate programs and
facilities for the care, education and treatment of persons
who because of drug dependency or other mental, physical or
emotional conditions cannot be cared for, educated or treated
in regular public or private programs, including, but not
limited to, the operation of "drug-free" residential
facilities, residential facilities offering a methadone to
abstinence rehabilitation program, and ambulatory and day,
care programs for the treatment of drug addicts, drug abusers
and others.
To operate a diagnostic and treatment center, a methadone clinic, under the medical supervision of a physician for the care, treatment and rehabilitation of heroin addicts and to render such other services pursuant to Articles 28 and 33 of the Public Health Law necessary to carry out such care, treatment and rehabilitation;

To operate a substance abuse program, providing substance abuse services within the meaning of Article 19 of the Mental Hygiene Law and the rules and regulations adopted pursuant thereto, as each may be amended from time to time, which shall in accordance therewith include, but not be limited to, the power to provide intervention, prevention, diagnostic testing, detoxification, chemotherapy, counseling, vocational remediation, educational remediation, referral and other necessary services. Such services may be provided in either residential or non-residential setting;

To provide information as to narcotics addiction and abuse;

To stimulate research and community concern about drug dependency, emotional and mental illness;

To provide counseling service to all within its bounds who are in need of help, guidance or some form of care;

To provide a place or places where such persons may receive opportunities for personal counseling, social and recreational activities;

To solicit and administer funds, grants-in-aid and
donations of real and personal property and apply the
principal and income to corporate purposes;
To finance and plan to do all acts incidental to
the execution of therapeutic programs for narcotic addicts;
In furtherance of the above-mentioned purposes, the
Corporation, in addition to the powers granted under the laws
of the State of New York, shall have the following powers:
   a) To solicit donations of property, and
   administer gifts, legacies, bequests, devises, whether real
or personal, of any sort or nature without limitation as to
amount or value, and to use, apply, employ, expend, disburse
and/or donate the income and/or principal thereof.
   b) To receive and maintain a fund or funds, to
   have, control and manage such fund or funds, change
the investments thereof, to invest and reinvest the same and the
proceeds thereof and to collect and receive the income and
profits thereof and therefrom.
   c) To voluntarily aid and/or assist institutions,
organisations, and governmental bodies, the activities of
which shall be such as to further accomplish, foster or
attain any of the purposes for which the corporation is
organised, including, without limiting the foregoing, the
acquisition of property and the making of such property and
any improvements thereto available to any such institution,
organisation or governmental body with or without charge.
   d) To acquire, purchase, sell, hold title, lease,
improve, maintain, manage, operate, conduct, control,
supervise, direct, fit out, license the use of and generally deal in any manner in and with any and all real and personal property.

e) To borrow money, and, from time to time, to make, accept, endorse, execute and issue bonds, debentures, promissory notes, bills of exchange or other obligations.

f) To make and adopt by-laws, and rules and regulations for the admission, suspension and expulsion of the members of the Corporation, and for their government, and for the establishment of one or more classes of membership, for the collection of fees and dues, for the election and appointment of the directors and officers of the Corporation, and the definition of their duties, and for the safekeeping and protection of the property and funds of the Corporation, and in general to regulate, manage and preserve the property and interests of the Corporation, and from time to time to alter, repeal, rescind or vary such by-laws, rules and regulations, or any of them.

g) Either directly to worthy or needy individuals or indirectly alone or in conjunction or cooperation with other whether such others be persons or organisations of any sort or nature, such as firms, associations, trusts, syndicates, institutions, agencies, corporations or government bureaus, departments or agencies to do any and all lawful acts and things, including the making and carrying out of any contract, and to engage in any and all lawful activities which may be necessary, useful, suitable,
desirable and proper to the fostering or attainment of any or all of the foregoing purposes and powers.

Nothing herein contained shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Not-For-Profit Corporation Law Section 404(b-t).

FOURTH: No part of the activities of the Corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

FIFTH: In the event of dissolution, all of the remaining assets and property of the corporation shall after necessary expenses thereof be distributed to another organization exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws, or to the Federal government, or state or local government for a public purpose.

SIXTH: Any person who shall be made a party to any action, suit or proceeding by reason of the facts that he or she, his or her testator or testatrix or intestate is or was a director, officer, or employee of the Corporation or of any corporation which he served as such at the request of the Corporation, shall be indemnified by the Corporation against the reasonable expenses, including attorneys' fees, actually
and necessarily incurred by him or her in connection with the
defense of such action; suit or proceeding, or in connection
with any appeal in such action, except in relation to matters
as to which it shall be adjudged in such action, suit or
proceeding that such officer, director or employee is liable
for negligence or misconduct in the performance of the duties
as director. Indemnification shall not be deemed exclusive.
of any other rights to which such director, officer or
employee may be entitled apart from this provision.

SEVENTH: The Corporation is a Type B corporation
under Section 204 of the Not-For-Profit Corporation Law.

EIGHTH: The principal office of the Corporation is
to be located in the City and State of New York, County of
Queens.

NINTH: The territory in which the operations of the
Corporation are principally to be conducted is the United
States of America.

TENTH: The number of directors shall not be less
than three and not more than twenty-five.

ELEVENTH: The names and places of business of the
Directors shall be: 104 Woodside Road, Brooklyn, New York, 11413.

JAMIE LEINBANDT

ELIZABETH LINSN

AUDREY BROOKER

PLACE OF RESIDENCE

104 Woodside Road
Brooklyn, New York 11413

121-20 138 Avenue
New Garden, New York 11413

52-52 Beverly Road
New Garden, New York 11413
TWELFTH: All of the subscribers of this Certificate are of full age; at least two-thirds are citizens of the United States; at least one is a resident of the State of New York, and of the persons named as directors at least one is a citizen of the United States and resident of the State of New York.

THIRTEENTH: The Secretary of State of the State of New York is hereby designated the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent of the corporation is c/o WALLACE L. LEINHEERDT, Suite 1007, 125-10 Queens Boulevard, New York, New York 11415.

FOURTEENTH: Prior to the delivery of this Certificate of Incorporation to the Department of State for filing, all approvals or consents required by the Not-For-Profit Corporation Law or by any other statute of the State of New York will be endorsed upon or annexed hereto.

IN WITNESS WHEREOF, the undersigned incorporators each affix that the statements made herein are true under the penalties of perjury.

Dated: New York
September 31, 1981

[Signature]

M. A. [Name]
Secretary

[Signature]

[Name]

[Signature]

[Name]
October 22, 1981

Mr. Garry Lischin, Esq.,
Wallace T. Leinheiser, P.C.
125-10 Queens Boulevard
New Gardens, New York 11418

Re: Samaritan Village, Inc.
Your File No. 1-211-826

Dear Mr. Lischin:

This is to acknowledge receipt of your letter dated October 5, 1981, which was received in this office on October 15th, enclosing a copy of the proposed Certificate of Incorporation of Samaritan Village, Inc. to be formed under Section 402 of the Not-For-Profit Corporation Law.

I am pleased to advise you that the approval of this agency is not required under Not-For-Profit Corporation Law, Sections 404 or 404 for purposes of filing certificates of incorporation or certificates of amendment thereto. However, our approval must be obtained under Mental Hygiene Law, Section 23.01 before a corporation can operate under our rules.

This letter should accompany the original of the proposed Certificate of Incorporation when submitted with the Application to the Attorney General for purposes of filing. The same as the Secretary of the Supreme Court of the Eleventh Judicial District.

Yours truly,

A. Thomas Basom
Assistant Counsel
The University of the State of New York

STATE OF NEW YORK
COUNTY OF ALBANY

In accordance with the provisions of Article 3 of the Not-For-Profit Corporation Law, pursuant to the
Charter of purpose of SUNY at Plattsburgh, the corporation is hereby authorized to:

[Signature]

This certificate issued herewith shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the incorporation of such corporation, but shall be construed as giving the officers or agents of such corporation the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York, and the publications of the University, as authorized.

In accordance with this instrument as executed and the seal of the State Education Department in affidavits, this instrument as of the first day of January, 1957.

[Signature]

[Seal]

[Signature]
[Seal]
January 6, 1984

KNOW ALL MEN BY THESE PRESENTS:

Thereby certify that after inquiry and investigation, the application of Samaritan Village, Inc., to operate Samaritan Village, Inc., as approved, the conditions having been fulfilled satisfactorily. The Public Health Council has considered this application and impose the contingencies of the Act, as amended, in Title 10, N.Y. C.M.R. 4-4.4, and

The Certificate of Amendment to Certificate of Incorporation of Samaritan Village, Inc. is also APPROVED.

Public Health Council approval is not to be construed as approval of any property costs or lease amounts specified in the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payer reimbursement guidelines.

Public Health Council approval is not to be construed as in any manner releasing or relieving any transferee (or any interest in the facility that is the subject of this application) of responsibility and liability for any Medicaid/Medical Assistance Program Title XIX or the Social Security Act or State fund overpayments made to the facility during the period during which any such transferee was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments. The state shall continue to hold any such transferee responsible and liable for any such overpayments.

Nancy A. Massaroni
Acting Secretary

Sent to: Ms. Elizabeth Barton
Vice President for Administration
Samaritan Village, Inc.
180-28 Queens Boulevard
Forest Hills, New York 11375

cc: Wesley D. Lifshutz
Enq.
TH-10 Queens Blvd.
Ken Gardens, New York 11375
AMENDMENT TO CERTIFICATE OF INCORPORATION
OF
Samaritan Village, Inc.

Statement Section 306 of the New York not-For-Profit Corporation Law

1. Ms. an Order of the Corporation of the Samaritan Village, Inc.

2. The Certificate of Incorporation was filed with the Department of State on December 21, 1983.

3. The Corporation was formed under Section 102 of the Non-Profit Corporation Law of the State of New York.

4. By Order dated August 17, 1983 of the Supreme Court of the State of New York, County of Queens, it was ordered that a Plan of Assignment dated March 22, 1983 between Samaritan Healthcare Society, Inc., a Religious Corporation, and Samaritan Village, Inc., be approved effective July 1, 1983.

5. The Corporation is a Corporation as defined in subparagraph (a), (13) of Section 102 (Definitions) and the Corporation is a Type B Corporation under Section 301 (Purpose of the Non-Profit Corporation Law).

6. The Certificate of Incorporation dated September 21, 1983, is to be amended by adding the following:

A Paragraph "SECOND" is to be deleted and amended to read as follows:

 
Second: The Corporation shall be a Corporation as defined in subsection (a) of Section 6 of the Act of May 23, 1964, Narcotic Narcotic Corporation Law so that it is not formed for pecuniary profit or financial gain, and to part of the assets, income or profits of the Corporation is attributable to or used to the benefit of the person, directors or officers or any private persons.

3. Purposes: The Corporation shall be formed with the object to read anthologize:

THIRD: The purposes for which the Corporation is formed are:

(a) to establish, maintain and operate community-based programs and facilities for the care, education, and treatment of persons who because of physical or dependency, psychiatric, mental, physical or emotional conditions cannot be cared for, educated or treated in regular public or private programs, including, but not limited to, the operation of "drug-free" substance abuse programs, where other programs utilizing methadone, and any other programs for prevention and treatment of substance abuse for specialized groups, or the general public;

(b) to operate a substance abuse program, providing substance abuse services under the enabling of Article 19 and 20 of the Mental Hygiene Law and the rules and regulations adopted pursuant thereto, as each may be amended from time to time, which shall include such services as inclusion, but not be limited to, the power to provide intervention, prevention, education, and treatment services.
diagnostic testing, rehabilitation, chemotherapy, counseling, vocational rehabilitation, educational remediation, research, and other necessary services. Such services may be provided in either residential or nonresidential settings.

To operate a method to challenge the public offering a range of treatment procedures and services for the rehabilitation of heroin addicts as defined in Article 12 of this Act.

To operate medical facilities such as diagnosis and treatment centers, providing health services under Articles 20 and 22 of the Public Health Law.

To render such other services pursuant to Article 26 and 29 of the Public Health Law as may be necessary to carry out such care, treatment and rehabilitation.

To provide information on to narcotic addiction
and abuse;

To stimulate research and community concern about drug dependency, emotional and mental illness;

To provide counseling services to all within the bounds of the need of help, guidance or some form of care;

To provide a place or places where such persons may receive opportunities for personal counseling, social and recreational activities;

To solicit and administer funds, grants-in-aid and donations of real and personal property and apply the principal and income to corporate purposes.

To finance and plan to do all acts incidental to
In furtherance of the above-mentioned purposes, the Corporation, in addition to the powers granted under the laws of the State of New York, shall have the following powers:

a) To solicit, donations of property, and administer gifts, legacies, bequests, devises, whether real or personal, or any other bequests without limitation as to amount or value, and to use, apply, exploit, expend, dispose of or donate the income and/or principal thereof.

b) To receive and administer funds or funds, to have, control and manage such fund or funds, change the investments thereof, to invest and re-invest the same and the proceeds thereof and to collect and receive the income and profits thereof and therefrom.

c) To voluntarily aid and/or assist institutions, organisations, and governmental bodies, the activities of which shall be such as to further, accomplish, foster or attain any of the purposes for which the Corporation is organized, including, without limiting the foregoing, the acquisition of property and the making of such property and any improvements thereto available to any such institution, organisation or governmental body with or without charge.

d) To acquire, purchase, sell, hold title, lease, improve, maintain, manage property, conduct, control, supervise, direct, fix rates, license the use of and generally deal in any manner in and with any and all real and personal property.
for the borrow money, and, from time to time, to
make, accept, endorse, execute and issue bonds, debentures,
promissory notes, bills of exchange or other obligations.

7. To make and adopt by-laws, rules and
regulations for the election, suspension and expulsion of the
members of the Corporation, and for their government, and for:
the establishment of one or more classes of membership for the
collection of fees and dues, for the election and appointment
of the directors and officers of the Corporation, and the
definition of their duties, and for the keeping and
protection of the property and funds of the Corporation, and in
general to regulate, manage and preserve the property and
interests of the Corporation, and from time to time to make,
repeal, vacate or vary such by-laws, rules and regulations, or
any of them.

g. Either directly to worthy or needy individuals,
or indirectly, by means of or in conjunction with other
whether such others be persons or organizations of any sort or
nature, such as firms, associations, trusts, syndicates,
institutions, agencies, corporations or government bureaus,
departments or agencies to do any and all lawful acts and
things, including the making and carrying out of any contract,
and to engage in any and all lawful activities which may be
necessary, useful, suitable, desirable and proper to them,
constituting or accomplishing any or all of the foregoing purposes
and powers.
Nothing herein contained shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Non-Profit Corporation Law Section 404 b through h.

C) Paragraph "FIFTEENTH" to be added as follows:

"FIFTEENTH: Notwithstanding any other provision of these articles, the corporation is organized exclusively for one or more of the following purposes: religious, charitable, scientific, and educational purposes, as specified in section 501 (c)(3) of the Internal Revenue Code of 1954, and shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954."

D) Paragraph "SIXTEENTH" to be added as follows:

"SIXTEENTH: No part of the net earnings of the corporation shall inure to the benefit of any member, trustee, director, officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or by the corporation), and no member, trustee, officer of the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation."

This Amendment was authorized by the vote of a majority of the entire Board.
The undersigned, 作為 the Secretary of the Corporation, do hereby declare that the Corporation has no agents nor is it necessary to have agents. The sole office address at which the Secretary will mail a copy of any process against the Corporation served on it is as follows:


In Witness Whereof, the undersigned, has hereunto set his hand and signed this certificate on the date set forth below.

[Signature]

Secretary

[Date]

11/21/83
The undersigned has no objection to the granting of judicial approval of the within Amendment to Certificate of Incorporation and wishes statutory notice.

Name:
Dated: October 4, 1963

ROBERT ABRAMS
Attorney General of the State of New York

Assistant, Attorney General of the State of New York

Hon. Samuel Rosen
Justice of the Supreme Court of the State of New York, Eleventh Judicial District, do hereby approve the foregoing Amendment to the Certificate of Incorporation of SAMARITAN VILLAGE, INC., and of the foregoing:

Dated: Jamaica, New York
December 2, 1963

Justice of the Supreme Court of the State of New York
Eleventh Judicial District
CERTIFICATE OF CHANGE OF

SAMARITAN VILLAGE, INC.

(Insert Name of Domestic Corporation)

Under Section 805-A of the Business Corporation Law

FIRST: The name of the corporation is: Samaritan Village, Inc.

SECOND: The certificate of incorporation was filed by the Department of State on December 29, 1981.

THIRD: The change(s) affected hereby are: [Check appropriate box(es)]

☐ The county location, within this state, in which the office of the corporation is located, is changed to:

☐ The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to: Samaritan Village, Inc., 128-02 Queens Boulevard, Briarwood, New York 11435.

☐ The corporation hereby: [Check one]

☐ Designates ____________________________ as its registered agent upon whom process against the corporation may be served.

☐ Changes the designation of its registered agent to:

☐ Changes the address of its registered agent to:

☐ Revokes the authority of its registered agent.

DCS-1558 (4/01)
FOURTH: The change was authorized by the board of directors.

Inefficiency (Signature)

Inefficiency (Name and Capacity of Signer)

CERTIFICATE OF CHANGE
OF
SAMARITAN VILLAGE, INC.
(Insert Name of Domestic Corporation)

Under Section 935-A of the Business Corporation Law

Filer's Name: Wallace L. Leinheiser, Esq.

Address: 300 Garden City Plaza

City, State and Zip Code: Garden City, New York 11530

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use a form available at the Secretary of State's website. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a $30 filing fee.

For Office Use Only

STATE OF NEW YORK
DEPARTMENT OF STATE
AUG 14 2023
FILLED TAXES
BY (Signature)
CERTIFICATE OF MERGER

OF

VERITAS THERAPEUTIC COMMUNITY, INC.
(a New York not-for-profit corporation)

INTO

SAMARITAN VILLAGE, INC.
(a New York not-for-profit corporation)

Under Section 904 of the

New York Not-for-Profit Corporation Law

We, the undersigned, Veritas Therapeutic Community, Inc., a New York not-for-profit corporation, and Samaritan Village, Inc., a New York not-for-profit corporation, do hereby certify the following:

I. Names

A. The names of the constituent corporations are:

1. Veritas Therapeutic Community, Inc. ("Veritas"); and

2. Samaritan Village, Inc. ("Samaritan").

B. The surviving corporation will be Samaritan.

II. Members

Neither Veritas nor Samaritan has a membership.

III. Certificates of Incorporation

A. The certificate of incorporation of Veritas was filed by the Department of State of the State of New York on September 26, 1973.

B. The certificate of incorporation of Samaritan was filed by the Department of State of the State of New York on December 29, 1981.

C. The certificate of incorporation of the surviving corporation will be the certificate of incorporation of Samaritan, as amended to add the following at the end of Article Third of the certificate of incorporation:

"Except as authorized by Title VIII of the Education Law or other applicable statute, nothing herein shall authorize the corporation to engage in the practice of any profession in New York, unless authorized to do so under an operating certificate or license by an appropriate State, regional or local agency; and

632031 (v)
“Such services will be carried out by individuals authorized to do so pursuant to Title VIII of the Education Law, including New York State licensed psychologists, social workers, mental health counselors, marriage and family therapists, psychomotorists and creative arts therapists. Such practitioners will provide such services for the corporation only to the extent permitted under section 6503-a of the Education Law.”

IV. Manner of Authorization

A. The Board of Directors of Veritas approved and adopted the Plan of Merger by unanimous written consent of the directors dated as of May 22, 2012. This action has not been rescinded or amended.

B. The Board of Directors of Samaritan approved and adopted the Plan of Merger by resolution adopted by majority vote of the directors present at a duly convened meeting held on May 9, 2012 at which a quorum was present. One director abstained from voting, and no votes were cast against the resolution. This action has not been rescinded or amended.

V. Capital Certificates and Subvention Certificates

Neither Veritas nor Samaritan has any outstanding capital certificates or subvention certificates.

VI. Effective Date

The effective date of the merger shall be upon the filing of this Certificate of Merger by the Department of State of the State of New York.

[Remainder of page intentionally left blank.]
IN WITNESS WHEREOF, the constituent corporations have caused this Certificate of Merger to be duly executed by their respective officers thereunto duly authorized as of this 5th day of April, 2013.

VERITAS THERAPEUTIC COMMUNITY, INC.

By: ____________________________
   Name: [Signature]
   Title: [Signature]

SAMARITAN VILLAGE, INC.

By: ____________________________
   Name: [Signature]
   Title: [Signature]
IN WITNESS WHEREOF, the constituent corporations have caused this Certificate of Merger to be duly executed by their respective officers thereunto duly authorized as of this 5th day of April, 2013.

VERITAS THERAPEUTIC COMMUNITY, INC.

By: ____________________________
Name: __________________________
Title: ___________________________

SAMARITAN VILLAGE, INC.

By: ____________________________
Name: Florentino Hernandez
Title: President/CEO
STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
Albany, New York

CONSENT TO FILING WITH THE DEPARTMENT OF STATE
(Consolidation or Merger)

Consent is hereby given to the filing of the annexed

MERGER

[certificate of consolidation or certificate of merger]

of Veritas Therapeutic Community, Inc. and Samaritan Village, Inc.

[name of each constituent entity being consolidated or merged]

into Samaritan Village, Inc.

[name of consolidated or merged entity]

pursuant to the applicable provisions of the Education Law, the Not-for-Profit Corporation Law, the Business Corporation Law, the Limited Liability Company Law or any other applicable statute.

This consent is issued solely for purposes of filing the annexed document by the Department of State and shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such entity, nor shall it be construed as giving the officers or agents of such entity the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.

IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed.

JOHN B. KING, JR.
Commissioner of Education

By: 

Commissioner's authorized designee

5/22/13

Date

THIS DOCUMENT IS NOT VALID WITHOUT THE SIGNATURE OF THE COMMISSIONER’S AUTHORIZED DESIGNEE AND THE OFFICIAL SEAL OF THE STATE EDUCATION DEPARTMENT.
STATE OF NEW YORK
OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES
ALBANY, NEW YORK

KNOWN ALL PERSONS BY THESE PRESENTS:

Pursuant to the provisions of Article 32 of the Mental Hygiene Law, and Section 909 of the Not-For-Profit Corporation Law, approval is hereby given to the filing of the Certificate of Merger of

SAMARITAN VILLAGE, INC.

&

VERITAS THERAPEUTIC COMMUNITY, INC.

This approval shall not be construed as an authorization for the Corporation to engage in any activity for which the provisions of Article 32 of the Mental Hygiene Law require an Operating Certificate to be issued by the Office of Alcoholism and Substance Abuse Services unless said Corporation has been issued such Operating Certificate; nor shall it be construed to eliminate the need for the said Corporation to meet any and all of the requirements and conditions precedent set forth in Article 32 of such law and the regulations promulgated thereunder for issuance of said Operating Certificate.

IN WITNESS WHEREOF, this instrument is executed and the Seal of the New York State Office of Alcoholism and Substance Abuse Services is affixed this 10th day of February, 2013

ROBERT A. KENT
GENERAL COUNSEL
NYS OASAS

By: Janet L. Paloski
Acting Director
Bureau of Certification and Systems Management

[Signature]

[Seal]
June 5, 2013

William P. Gaske, Esq.
Patterson Belknap Webb & Tyler, LLP
1133 Avenue of the Americas
New York, New York 10036-6710

Re: Proposed Certificate of Merger of Veritas Therapeutic Community, Inc. into Samaritan Village, Inc.

Dear Mr. Gaske:

The above referenced Certificate of Merger, dated April 5, 2013 and signed by Susan Mescher and Florentino Hernandez, does not require the formal approval of the Public Health and Health Planning Council or the Commissioner of Health under either the Public Health Law, Social Services Law or the Not-for-Profit Corporation Law, since the Certificate does not add, change or delete from the Certificate of Incorporation of Samaritan Village, Inc., the surviving corporation, a purpose that requires the consent of the Public Health and Health Planning Council or the Commissioner of Health.

The Department of Health does not object to the Certificate being filed with the Department of State.

Sincerely,

[Signature]
Michael M. Stone
Assistant Counsel
Bureau of House Counsel

HEALTH.NY.GOV
facebook.com/NYSDOH
twitter.com/HealthNYGov
CHARLES E. RAMOS


Veritas Therapeutic Community, Inc.

and

Samaritan Village, Inc.

Petitioners,

For an Order Approving Their Plan of Merger under Section 907 of the Not-for-Profit Corporation Law and Authorizing the Filing of a Certificate of Merger under Section 904 of the Not-for-Profit Corporation Law

Now upon the Verified Petition of Veritas Therapeutic Community, Inc., a New York not-for-profit corporation, and Samaritan Village, Inc., a New York not-for-profit corporation, sworn to on July 20, 2012 and August 2, 2012, and the Plan of Merger and the Certificate of Merger of Veritas Therapeutic Community, Inc. into Samaritan Village, Inc. under Section 904 of the Not-for-Profit Corporation Law, all in support of the application, and the Attorney General of the State of New York having waived notice and hearing and having certified no objection to the entry of this order, and the Court having given due consideration hereto, and it appearing to the satisfaction of the Court that the provisions of Section 907 of the Not-for-Profit Corporation Law have been complied with, and that the interests of the constituent corporations and the public interest will not be adversely affected by the proposed merger;

Now, upon motion of Patterson Belknap Webb & Tyler LLP, attorneys for petitioner Veritas Therapeutic Community, Inc., it is

ORDERED, that the Plan of Merger between Veritas Therapeutic Community, Inc. and Samaritan Village, Inc., with Samaritan Village, Inc. being the surviving corporation, be, and the same hereby is, approved; and it is further
ORDERED, that the corporations be, and they hereby are, authorized to file with the Secretary of State of New York a Certificate of Merger in accordance with Section 904 of the Not-for-Profit Corporation Law; and it is further

ORDERED, that upon filing of the Certificate of Merger together with a certified copy of this order as required by Section 907 of the Not-for-Profit Corporation Law, all of the assets of Vedras Therapeutics Community, Inc. shall thereupon and thereby be transferred and conveyed to Samaritan Southeastern Inc., in accordance with the Plan of Merger, to be held by it subject to the purposes set forth in its certificate of incorporation, as from time to time amended; and it is further

ORDERED, that a signed copy of this Order shall be sent to the New York State Attorney General's Office; and it is further

ORDERED, that a copy of the Certificate of Merger filed with the Secretary of State of New York shall be sent to the New York State Attorney General's Office; and it is further

ORDERED, that the merger of the corporations shall have the effect provided by Section 905 of the Not-for-Profit Corporation Law of the State of New York.

[Signature]
J.S.C.

[Stamp]

The Attorney General hereby affirms herein, has no objection to the granting of Judicial Approval herein, acknowledges receipt of statutory notice, and demands service of all papers submitted herein including all orders, judgments and endorsements of the court, said no objection is conditioned on submission of the matter to the court within 60 days from the date.

[Signature]
Michele A. Alina

[Date] 6/20/13

[Stamp]
CERTIFICATE OF MERGER
OF
VERITAS THERAPEUTIC COMMUNITY, INC.
(a New York not-for-profit corporation)
INTO
SAMARITAN VILLAGE, INC.
(a New York not-for-profit corporation)
Under Section 904 of the
New York Not-for-Profit Corporation Law

Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036-6710

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JUL 19 2013
TAX S
BY: Queens
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of October, 2015, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Samaritan Village, Inc., dated as attached.
The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. ("SSI") requests Public Health and Health Planning Council approval of its proposed Certificate of Amendment to its Certificate of Incorporation, in accordance with the requirements of Sections 404 and 804 of the Not-For-Profit Corporation Law, and Sections 2854 and 2855 of the Public Health Law.

Attached are the following with regard to this matter:

1. Letter dated August 21, 2015, from SSI’s counsel, requesting Public Health and Health Planning Council approval of the proposed Certificate of Amendment, and setting forth the reasons for the request.

2. Proposed Certificate of Amendment of SSI’s Certificate of Incorporation.

3. Existing Certificate of Incorporation and amendments thereto.

The proposed Certificate of Amendment is in legally acceptable form.

The attached letter also discuss a Certificate of Amendment to the Certificate of Incorporation of The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund, Inc. ("SBSI Fund"). The original Certificate of Incorporation for the SBSI Fund did not require the formal approval of the Department of Health, or of the Public Health Council, since no approval was necessary for the purposes set forth therein. The amendments effected by the Certificate of Amendment do not add any purposes for which approval is required. Therefore, the filing of the Certificate of Amendment does not require the consent or approval of the Department of Health, or of the Public Health and Health Planning Council, and we have provided a letter to SBSI Fund’s counsel reciting this.
August 21, 2015

VIA FEDEX

Mark Furnish  
Senior Attorney  
New York State Department of Health  
Division of Legal Affairs  
Bureau of House Counsel  
Empire State Plaza,  
Corning Tower  
Albany, New York 12237-0031

Re: The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc.  
The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund, Inc.

Dear Mr. Furnish:

Thank you for your help during our recent telephone conversation and your willingness to review the request below on an expedited basis.

Per our conversation, I am writing on behalf of (1) The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. ("SSI"); and (2) The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund, Inc. ("SBSI Fund"), to request that the New York State Department of Health (the "DOH") issue a letter to each of the foregoing entities stating that the DOH consents to, or that its consent is not required for, the filing of the Certificates of Amendment of SSI and SBSI Fund. Copies of the executed Certificates of Amendment for SSI and SBSI Fund are attached as Exhibit 1 and Exhibit 2, respectively. I have also attached the current Certificate of Incorporation, and all amendments thereto, of both SSI and SBSI Fund, for your reference, as Exhibit 3 and Exhibit 4, respectively.

By way of background, SSI and SBSI Fund are affiliates of The Brookdale Hospital Medical Center, a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law operating in Brooklyn, New York (the "Hospital"). SSI and SBSI Fund have historically operated as constituents of and for the benefit of the Hospital and its affiliated health system. SSI was incorporated in 1968 under the name "Brookdale Hospital Center Nursing Home Company, Inc." SBSI Fund was incorporated in 1973 to support SSI. (Both entities have since undergone multiple changes in their legal names.)

The Hospital has been experiencing severe financial distress in recent years and has been receiving critical financial support through the DOH in coordination with the Dormitory Authority...
SheppardMullin

Mark Furnish
August 21, 2015
Page 2

of the State of New ("DASNY"). In connection with a loan issued by DASNY to the Hospital in February of 2014, DASNY requested that SSI and SBSI Fund pledge and mortgage their real and personal property in favor of DASNY to secure obligations of the Hospital relating to such loan. To enable such pledges and mortgages, the proposed Certificates of Amendment would clarify the purposes of SSI and SBSI Fund to expressly provide for supporting the purposes of the Hospital and the Brookdale health system as a whole.

As we discussed by phone, it took several months to receive a response to our previous request for consent to the filing of the attached Certificates of Amendment, despite several phone calls to check on the status. We ultimately received only one consent letter, for SBSI Fund, and by the time it was received, the changes to the New York State Not-for-Profit Corporation Law made by the Nonprofit Revitalization Act became effective, necessitating modifications to both Certificates of Amendment. We also subsequently learned that the individual at the DOH who worked on our requests no longer works at the DOH. Given this history and the strong desire by DASNY to file the enclosed Certificates of Amendment as promptly as possible, we greatly appreciate your assistance in expediting your review of the Certificates. Please be in touch by phone with any questions.

Thank you very much.

Sincerely,

[Signature]
Tamar R. Rosenberg
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:215578439.1
Ends.
CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE SCHULMAN AND SCHACHNE INSTITUTE FOR NURSING AND
REHABILITATION, INC.

Under Section 803 of the
New York State Not-For-Profit Corporation Law

The undersigned, Mark E. Toney, hereby certifies that he is the President and
Chief Executive Officer of The Schulman and Schachne Institute for Nursing and Rehabilitation,
Inc., a corporation organized and existing under the Not-for-Profit Corporation Law of the State of
New York ("NPCL"), and does hereby further certify as follows:

1. The name of the corporation is The Schulman and Schachne Institute for Nursing and
   Rehabilitation, Inc. (the "Corporation").

2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary
   of State on January 11, 1968 under Section 402 of the NPCL. The name under which the
   Corporation was formed is Brookdale Hospital Center Nursing Home Company, Inc.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the
   NPCL.

4. Paragraph II of the Corporation’s Certificate of Incorporation, which sets forth the
   Corporation’s purposes, including to provide nursing home accommodations and engage
   in related activities, is hereby amended to explicitly establish and clarify that the purposes
   of the Corporation include providing nursing home accommodations and engaging in
   related activities for the purpose of benefitting, promoting, supporting and furthering the
   charitable, scientific and educational purposes of the constituent entities of the Brookdale
   Health System, of which the Corporation has historically been a constituent, and
   improving and enhancing the general health and well-being of the communities of
   Brooklyn, New York served by the constituent entities of the Brookdale Health System,
   which the Corporation has served historically served. Accordingly, Paragraph II of the
   Corporation’s Certificate of Incorporation is hereby amended to read in its entirety as
   follows:

   “II. The Company is organized and shall be operated exclusively for the
   charitable, scientific and educational purposes of promoting, facilitating and
improving the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities of Brooklyn, New York served by the "Brookdale Health System," a system of affiliated health care providers and related entities, by:

(i) providing nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of Article 28-A of the New York State Public Health Law; and

(ii) benefitting, promoting, supporting and furthering the charitable, scientific and educational purposes of the constituent entities of the Brookdale Health System that are exempt from federal income tax under Section 501(a) of the Code as organizations described in Section 501(c)(3) of the Code, including, in particular, The Brookdale Hospital Medical Center, a charitable New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law, including through the provision of financial and/or other support to such entities, as shall be determined by the Company’s Board of Directors from time to time.

5. This Certificate of Amendment of the Corporation’s Certificate of Incorporation was authorized by the unanimous approval of the Corporation’s sole member, acting through its Board of Trustees, at a duly constituted meeting of such Board of Trustees, in accordance with Section 802(a)(1) of the NPCL.

6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is: The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc., Attn: General Counsel, One Brookdale Plaza, Brooklyn, New York 11212.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[signature page to follow.]
IN WITNESS WHEREOF, the undersigned has signed this Certificate of Amendment on August 19, 2015.

By: Mark E. Toney
Title: President and Chief Executive Officer
CERTIFICATE OF AMENDMENT
 OF THE
 CERTIFICATE OF INCORPORATION
 OF
 THE SCHULMAN AND SCHACHNE INSTITUTE FOR NURSING AND
 REHABILITATION, INC.

 Under Section 803 of the
 New York State Not-For-Profit Corporation Law

 Filed By:

 Jay E. Gerzog, Esq.
 Sheppard Mullin Richter & Hampton LLP
 30 Rockefeller Plaza
 New York, NY 10112-0015
Pursuant to the Membership Corporations Law and the Public Health Law of the State of New York hereby certify:

I

The Name of the proposed corporation is The Brookdale Hospital Center Nursing Home Company, Inc. (hereinafter referred to as the "Company").

II

The purposes for which the company is to be formed are to provide nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law.

III

The territory in which the operations of the company will be principally conducted is the State of New York.

IV

The principal office of the company is to be located in the City of New York, Borough of Brooklyn, County of Kings, State of New York.
VI

The names and residences of the Directors of the company until
the first annual meeting are:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Benne Katz</td>
<td>802 Shore Boulevard, Brooklyn, New York 11235</td>
</tr>
<tr>
<td>Mr. Arnold Schwartz</td>
<td>Ritz Towers, 57th Street and Park Avenue, New York, New York 10022</td>
</tr>
<tr>
<td>Mr. David Bergner</td>
<td>70 East 10th Street, New York, New York 10003</td>
</tr>
<tr>
<td>Mr. Emanuel Kugler</td>
<td>124 Richmond Place, Lawrence, Long Island 11559</td>
</tr>
<tr>
<td>Mr. Paul Bluth</td>
<td>770 Empire Boulevard, Brooklyn, New York 11213</td>
</tr>
<tr>
<td>Mr. Samuel C. Rubin</td>
<td>10 Plaza Street, Brooklyn, New York 11238</td>
</tr>
<tr>
<td>Mr. Harry Rudolph</td>
<td>34 Plaza Street, Brooklyn, New York 11238</td>
</tr>
<tr>
<td>Mr. William Marx</td>
<td>12 Hastings Street, Brooklyn, New York 11235</td>
</tr>
<tr>
<td>Mr. Harry Koeppel</td>
<td>35 East 75th Street, New York, New York 10021</td>
</tr>
<tr>
<td>Mr. Nathan Packer</td>
<td>3600 Bedford Avenue, Brooklyn, New York 11210</td>
</tr>
<tr>
<td>Mr. Bernard Gordon</td>
<td>1199 Park Avenue, New York, New York 10028</td>
</tr>
<tr>
<td>Mr. Harry Maslow</td>
<td>20 Plaza Street, Brooklyn, New York 11238</td>
</tr>
<tr>
<td>Mr. Harold Levin</td>
<td>912 Fifth Avenue, New York, New York 10021</td>
</tr>
</tbody>
</table>

VII

The names and residences of the Subscribers to this Certificate
of Incorporate are:

<table>
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<tr>
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<td>34 Plaza Street, Brooklyn, New York 11238</td>
</tr>
</tbody>
</table>
VIII

The duration of the company is for a period of ten years, commencing on the date of the filing of this certificate by the Secretary of State.

IX

The real property of the company shall not be sold, transferred, encumbered or assigned except as permitted by the provisions of the Public Health Law.

X

The company has been organized exclusively to serve a public purpose and it shall be and remain subject to the supervision and control of the commissioner pursuant to the provisions of the Public Health Law.

XI

All income and earnings of the company shall be used exclusively for its corporate purposes.

XII

No part of the net income or net earning of the company shall inure to the benefit or profit of any private individual, firm or corporation. Nothing herein contained shall be deemed to include any power, activity or purpose or to authorize the company to engage in any business or activity which would disqualify the company from an exemption under §501 (c) (3) of the United States Internal Revenue Code of 1954, as amended. In the event of dissolution or other liquidation of the assets of the company, its assets shall be distributed to non-profit and charitable corporations or institutions as may be designated by directors, subject to the approval of a Justice of the Supreme Court.
XIII

All of the Subscribers to this Certificate of Incorporation are of full age. At least two-thirds of them are citizens of the United States and at least one of them is a resident of the State of New York. At least one of the persons named as a Director of the company is a citizen of the United States and a resident of the State of New York.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this Certificate of incorporation, in quadruplicate, this 11th day of October, 1966.

William Marx
(Mr. William Marx)

Harry Koeppel
(Mr. Harry Koeppel)

Nathan Packer
(Mr. Nathan Packer)

Bernard Gordon
(Mr. Bernard Gordon)

Harry Maslow
(Mr. Harry Maslow)

Harold Levin
(Mr. Harold Levin)

Benne Katz
(Mr. Benne Katz)

Arnold Schwartz
(Mr. Arnold Schwartz)

David Bergner
(Mr. David Bergner)

Emanuel Kugler
(Mr. Emanuel Kugler)

Paul Bluth
(Mr. Paul Bluth)

Samuel C. Rubin
(Mr. Samuel C. Rubin)

Harry Rudolph
(Mr. Harry Rudolph)
STATE OF NEW YORK
COUNTY OF KINGS

On this 11th day of October, 1966, before me personally

came Mr. Benne Katz, Mr. Arnold Schwartz, Mr. David Gershner,
Mr. Emanuel Kugler, Mr. Paul Bluth, Mr. Samuel C. Rubin,
Mr. Harry Rudolph, Mr. William Marx, Mr. Harry Koeppe,
Mr. Nathan Packer, Mr. Bernard Gordon, Mr. Harry Maslow,
and Mr. Harold Levin, to me known and known to me to be the
persons described in and who executed the foregoing Certificate of
Incorporation of The Brookdale Hospital Center Nursing Company, Inc.
and they duly acknowledged to me that they executed the same.

Pauline Cutler
Notary Public

PAULINE CUTLER
NOTARY PUBLIC, State of New York
No. 54-0557790
Qualified in Kings County
Commission Expires March 30, 1968
Consent to Incorporation By
Commissioner of Health.

I, HOLLIS S. INGRAHAM, M.D., Commissioner of Health of the
State of New York, do this 26 day of December 1967, pursuant
to Article 28-A of the Public Health Law hereby certify that I consent
to the filing of the foregoing Certificate of Incorporation of The Brookdale
Home of Hospital Center Nursing/Company, Inc. with the Secretary of State of
the State of New York.

HOLLIS S. INGRAHAM, M.D.
Commissioner of Health

By: ________________

Robert F. Whalen, M.D.
Deputy Commissioner

The undersigned, a Justice of the Supreme Court of the State of
New York, wherein is located the principal office of The Brookdale
Home Hospital Center Nursing/Company, Inc., hereby approves the within
Certificate of Incorporation of The Brookdale Hospital Center Nursing Home
Company, Inc. and the filing thereof.

HON. FRANK CAMANSKY

Dated: June 6, 1967

Justice of the Supreme Court
2nd Judicial District

Application Waived

This is not to be deemed an
application on behalf of any
Agency of the State of New York, nor an
endorsement of activities
erwise limited by law.

LOUIS J. LEFKOWITZ
Attorney General

By: __________________________

LEFKOWITZ
STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 4, 2012.

Daniel E. Shapiro
First Deputy Secretary of State
Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on the nineteenth day of December, 1967, due inquiry and investigation having been made, the Board approved the application of BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC., No. 6-27, a membership corporation, for approval of the proposed certificate of incorporation pursuant to Section 35 of the Social Services Law and Article 28-A of the Public Health Law, empowering it to establish, maintain and operate a 200 bed nursing home at Brookdale Plaza, Brooklyn, New York.

In Witness Whereof, the State Board of Social Welfare has caused these presents to be signed in accordance with the provisions of the statutes and its by-laws, and the official seal of the Board and of the Department to be hereunto affixed, this twentieth day of December, in the year one thousand nine hundred and sixty-seven.

[Signature]

Secretary
STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 4, 2012.

Daniel E. Shapiro
First Deputy Secretary of State
Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on the twentieth day of January, 1970, due inquiry and investigation having been made, the Board approved the proposed certificate of revival of existence of BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC. pursuant to Section 49 of the General Corporation Law of the State of New York.

In Witness Whereof, the State Board of Social Welfare has caused these presents to be signed in accordance with the provisions of the statutes and its by-laws, and the official seal of the Board and of the Department to be hereunto affixed, this twenty-first day of January, in the year one thousand nine hundred and seventy.

[Signature]
Secretary
CERTIFICATE OF REVIVAL OF
EXISTENCE OF
BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC.
(a Membership corporation)

Pursuant to Section 49 of the General Corporation Law

We, the undersigned, HARRY KOEPPEL, President, and MILTON COHEN, Secretary of BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC. CERTIFY:

1. The name of the Corporation is Brookdale Hospital Center Nursing Home Company, Inc.

2. The Certificate of Incorporation was filed in the office of the Secretary of State on January 11, 1968.

3. The term of existence specified in the original Certificate of Incorporation expired on January 11, 1970.

4. The duration of the Corporation shall be extended for a period of one year, to wit: January 11, 1971.

IN WITNESS WHEREOF, we have executed this Certificate this 8th day of January, 1970.

Harry Koeppe, President

Milton Cohen, Secretary

STATE OF NEW YORK
COUNTY OF KINGS

On the 8th day of January, 1970, before me personally came HARRY KOEPPEL and MILTON COHEN, to me known and known to me to be the persons described and who executed the foregoing Certificate of Revival of Existence and they
thereupon severally duly acknowledged to me that they executed
the same.

STATE OF NEW YORK
COUNTY OF KINGS

HARRY KOEPEL and MILTON COHEN, being severally duly
sworn, deposes and says, each for himself deposes and says, that
he, HARRY KOEPEL, is the President of Brookdale Hospital
Center Nursing Home Company, Inc. and he, MILTON COHEN, is the
Secretary of said Corporation, that they were duly authorized
to execute and file the foregoing Certificate of Revival of
Existence of said Corporation by the votes, cast in person or
by proxy, of a majority of the members of record of said
Corporation, at a meeting of the members called for that purpose
upon like notice as that required for the annual meetings of the
Corporation, the said meeting having been held at Brooklyn,
New York, on January 8, 1970.

Harry Koeppel, President

Milton Cohen, Secretary

SWORN to before me this
8th day of January, 1970

Notary Public
CONSENT TO FILING CERTIFICATE OF EXTENSION
OF EXISTENCE BY COMMISSIONER OF HEALTH

I, Hollis S. Ingraham, M.D., Commissioner of Health
of the State of New York, do this 29th day of January
1970, pursuant to Article 28-A of the Public Health Law,
hereby certify that I consent to the filing of the foregoing
Certificate of Revival of Existence of the Brookdale Hospital
Center Nursing Home Company, Inc. with the Secretary of
State of the State of New York.

Hollis S. Ingraham, M.D.
Commissioner of Health

By
Donald C. Dickson, M.D.
Deputy Commissioner
CERTIFICATE
of
REVIVAL OF EXISTENCE OF
BROOKDALE HOSPITAL CENTER NURSING
HOME COMPANY, INC.
(a Membership Corporation)
Pursuant to Section 49 of the
General Corporation Law

BERGNER & BERGNER
ATTORNEYS AT LAW
ELEVEN PARK PLACE
NEW YORK CITY
BARCLAY 7-8200
STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 4, 2012.

Daniel E. Shapiro
First Deputy Secretary of State
CERTIFICATE OF TYPE OF NOT-FOR-PROFIT CORPORATION OF

THE BROOKDALE HOSPITAL CENTER-NURSING HOME COMPANY, INC.

Under Section 113 of the Not-For-Profit Corporation Law

We the undersigned President and Secretary of
The Brookdale Hospital Center Nursing Home Company, Inc.,
certify:

1. The name of the corporation is: The
Brookdale Hospital Center Nursing Home Company, Inc.

2. The name under which the corporation was
originally incorporated was The Brookdale Hospital
Center Nursing Home Company, Inc.

3. The Certificate of Incorporation of the
Corporation was originally filed by the Department of
State on January 11, 1968 and the corporation was
formed pursuant to the Membership Corporations Law
and the Public Health Law.

4. The post office address within the State
of New York to which the Secretary of State shall mail a
copy of any notice required by law is Linden Boulevard
and Rockaway Parkway, Brooklyn, New York.

5. Under Section 201 (Purposes) of the Not-
For-Profit Corporation Law, The Brookdale Hospital Center
Nursing Home Company, Inc. is a Type D Not-For-Profit
Corporation as defined in this Chapter.

In Witness Whereof, we have executed this
Certificate this 19th day of October, 1970.

Harry Koeppel
President

Milton Cohen
Secretary
STATE OF NEW YORK

COUNTY OF NEW YORK

HARRY KOEPPEL, and MILTON COHEN each being severally duly sworn, severally depose and say; each for himself, that he HARRY KOEPPEL, is the President of The Brookdale Hospital Center Nursing Home Company, Inc. and he MILTON COHEN is the Secretary of said Corporation; that they have read the foregoing Certificate of Type of Not-For-Profit Corporation of The Brookdale Hospital Center Nursing Home Company, Inc. under Section 113 of the Not-For-Profit Corporation Law and know the contents thereof; that the same is true to their own knowledge, except as to matters therein stated to be alleged upon information and belief; and that as to those matters they believe it to be true.

HARRY KOEPPEL, President

Milton Cohen, Secretary

Sworn to before me this 19th day of October, 1970.

Notary Public

APPROVED SIMON
Notary Public in New York
Commission Expires March 30, 1977
CERTIFICATE OF TYPE OF
NOT-FOR-PROFIT CORPORATION OF

THE BROOKDALE HOSPITAL CENTER
NURSING HOME COMPANY, INC.

Under Section 113 of the Not-For-
Profit Corporation Law

BERGNER & BERGNER
Attorneys at Law
Eleven Park Place
New York City
BARCLAY 7-9280

1/11/68

STATE OF NEW YORK
DEPARTMENT OF STATE
Filed Oct 27 1970
TAX B.
FILING FEB 8 71
John P. Emmer
R. B. Haxby
2/9/71
Typing

659362-8
STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 4, 2012.

Daniel E. Shapiro
First Deputy Secretary of State
CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION

THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC.

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the President and Secretary of The Brookdale Hospital Center Nursing Home Company, Inc. certify:

1. The name of the Corporation is The Brookdale Hospital Center Nursing Home Company, Inc. It was formed under that name and the name has not been changed.

2. The certificate of incorporation of said Corporation was filed in the office of the Department of State on January 11, 1968.


4. The term of existence of the Corporation is to be amended to make such existence perpetual.

5. The manner in which the Amendment of the Certificate of Incorporation was authorized was by the consent of all members of Board of Directors of the Corporation voting in person at a meeting duly called for that purpose; said meeting was held at the Brookdale Hospital Center, Brooklyn, New York on October 19, 1970. There are no members eligible to vote.
6. The corporate purposes are not enlarged, limited or in any way changed, except as above set forth.

IN WITNESS WHEREOF, we have executed this certificate the 30th day of October, 1970.

Harry Koeppel, President

Milton Cohen, Secretary
HARRY KOEPEL, being duly sworn, deposes and says:

That deponent is the President of The Brookdale Hospital Center Nursing Home Company, Inc., the corporation named in the foregoing Certificate of Amendment of Certificate of Incorporation; deponent has read the foregoing Certificate of Amendment of Certificate of Incorporation and knows the contents thereof; that the same is true to deponent's own knowledge except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true; this verification is made by deponent because The Brookdale Hospital Center Nursing Home Company, Inc. is a Not-For-Profit corporation; deponent is an officer thereof, to wit: its President.

MILTON COHEN, being duly sworn, deposes and says:

That deponent is the Secretary of The Brookdale Hospital Center Nursing Home Company, Inc., the corporation named in the foregoing Certificate of Amendment of Certificate of Incorporation; deponent has read the foregoing Certificate of Amendment of Certificate of Incorporation and knows the contents thereof; that the same is true to deponent's own knowledge except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true; this verification is made by deponent because The Brookdale Hospital Center Nursing Home Company, Inc. is a Not-For-Profit corporation; deponent is an officer thereof, to wit: its Secretary.
CONSENT TO FILING CERTIFICATE OF AMENDMENT
RELATING TO THE EXTENSION OF THE DURATION
OF
THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC.

I, HOLLIS S. INGRAHAM, Commissioner of Health of the State of New York, do this 6 day of December, 1970, pursuant to Article 28-A of the Public Health Law, hereby certify that I consent to the filing of the foregoing Certificate of Amendment relating to the extension of the duration of The Brookdale Hospital Center Nursing Home Company, Inc. with the Secretary of State of the State of New York.

By Donald C. Dickson, M.D.
Deputy Commissioner

The undersigned, a Justice of the Supreme Court of the State of New York, 2nd Judicial District wherein is located the principal office of The Brookdale Hospital Center Nursing Home Company, Inc. hereby approves the within Certificate of Amendment to the Certificate of Incorporation of The Brookdale Hospital Center Nursing Home Company, Inc. and the filing thereof.

Dated: December 26, 1970
Brooklyn-New York

Justice of the Supreme Court 2nd Judicial District

HON. JOHN E. CONE

Notice of ApplicationFiled
(This is not to be deemed an approval on behalf of any Department or Agency of the State of New York for an authorization or privileges otherwise indicated herein.)
Dated: December 18, 1970
LOUIS J. LEMKOWITZ
Assistant Attorney General

HUNTINGTON, N.Y.
WHEREAS, the certificate of incorporation of The Brookdale Hospital Center Nursing Home Co., Inc. was heretofore approved by the State Board of Social Welfare and the certificate of incorporation was filed with the Secretary of State on January 11, 1968, and

WHEREAS, the aforementioned certificate limited the duration of the Corporation for the period of two years, and

WHEREAS, on February 3, 1970, the existence of the Corporation was extended to January 11, 1971; and

WHEREAS, the Staff of the New York State Department of Health has recommended, in a report to this Council, that the life of the Corporation be extended so as to make its existence perpetual, and has further recommended the approval of a certificate of amendment relating to the disposition of the assets of the Corporation upon the dissolution of the Corporation in order to conform with the requirements of the Internal Revenue Service, now therefore

BE IT

RESOLVED, that a certificate of amendment of Brookdale Hospital Center Nursing Home Co., Inc. extending the existence of the corporation so as to make it perpetual, and that a certificate of amendment of Brookdale Hospital Center Nursing Home Co., Inc. relating to the disposition of the assets of the corporation upon the dissolution of the corporation in order to conform with the requirements of the Internal Revenue Service, are hereby approved, provided, that properly executed certificates of amendment are presented to the New York State Department of Health in a form acceptable to the Department.

ALBANY, NEW YORK
DATED: DECEMBER 18, 1970

[Signature]
SECRETARY
CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

THE BROOKDALE HOSPITAL CENTER
NURSING HOME COMPANY, INC.

Under Section 803 of the Not-For-Profit Corporation Law

BERGNER & BERGNER
ATTORNEYS AT LAW
ELEVEN PARK PLACE
NEW YORK CITY
BARGAIN 7-6260
STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 4, 2012.

Daniel E. Shapiro
First Deputy Secretary of State
CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC.

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the President and Secretary of The Brookdale Hospital Center Nursing Home Company, Inc., certify:

1. The name of the Corporation is The Brookdale Hospital Center Nursing Home Company, Inc. It was formed under that name and the name has not been changed.

2. The certificate of incorporation of said Corporation was filed in the office of the Department of State on January 11, 1968.

3. The existence of the said Corporation expired on January 11, 1970. By Certificate of Revival of Existence filed in the Office of the Department of State on February 3, 1970, the existence of the Corporation was extended to January 11, 1971. The duration of the Corporation was made perpetual by Certificate of Amendment under Section 803 of the Not-For-Profit Law which such certificate is intended to be filed simultaneously with the filing of this certificate.

4. Paragraph XII of the Certificate of Incorporation is to be amended. The present paragraph XII of the Certificate of Incorporation to be eliminated by the execution and filing of this certificate for amendment is as follows:
"No part of the net income or net earnings of the company shall inure to the benefit or profit of any private individual, firm or corporation. Nothing herein contained shall be deemed to include any power, activity or purpose or to authorize the company to engage in any business or activity which would disqualify the company from an exemption under §501 (c) (3) of the United States Internal Revenue Code of 1954, as amended. In the event of dissolution or other liquidation of the assets of the company, its assets shall be distributed to non-profit and charitable corporations or institutions as may be designated by the directors, subject to the approval of a Justice of the Supreme Court."

5. The new paragraph XII of the Certificate of Incorporation to be substituted for the foregoing is as follows:

"12. The Company is organized and shall be operated as a non-profit organization, shall not have power to issue certificates of stock or to declare or pay dividends, and shall be operated exclusively for the purposes enumerated in Article 11 hereof, thereby to lessen the burdens of government and promote social welfare. No part of the net income or net earnings of the Company shall inure to the benefit or profit of any private individual, firm or corporation. No officer or employee of the Company shall receive or be lawfully entitled to receive any pecuniary benefits from the operation thereof, except as reasonable compensation for services. No member or director of the Company shall receive any salary, other compensation or pecuniary profit of any kind for services as such member or director other than reimbursement of actual and necessary expenses incurred in the performance of his duties.

Upon the dissolution of the Company, the Board of Directors, shall after paying or making provisions for the payment of all of the liabilities of the Company, distribute all of the remaining assets of the Company exclusively for the purposes of the Company or for a similar public use or purpose, to such organization or organizations organized and operated exclusively for charitable purposes as shall at the time qualify as an exempt organization or organizations under Section 501 (c) (3) of the Internal Revenue Code of 1954 as the same shall then be in force, or the corresponding provision of any future United States Internal Revenue Law, or to the United States of America, the State of New York, or a local government within the State of New York, as the Board of Directors shall determine or in the absence of such determination by the Board of Directors, such assets shall be distributed by the Supreme Court of the State of New York to such other qualified exempt organization or organizations as in the judgment of the Court will best accomplish the general purposes or a similar public use or purpose of this Company. In no event shall the assets of this Company upon dissolution be distributed to a director, officer, employee or member of this Company.

The dissolution of this Company and any distribution..."
of the assets of this Company incident thereto shall be
subject to such law, if any, then in force as may require
the approval or consent thereto by any court or Judge there-
of having jurisdiction or by any governmental department or
agency or official thereof."

6. The manner in which the Amendment of the
Certificate of Incorporation was authorized was by the
consent of all members of Board of Directors of the Cor-
poration voting in person at a meeting duly called for that
purpose; said meeting was held at the Brookdale Hospital
Center, Brooklyn, New York on October 19, 1970. There are no
members eligible to vote.

7. The corporate purposes are not enlarged,
limited or in any way changed, except as above set forth.

IN WITNESS WHEREOF, we have executed this certi-
ficate the 30th day of October, 1970.

Harry Rosapel
Pres.

Milton Cohen, Secretary
STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.

HARRY KOEPPEL, being duly sworn, deposes and says:

That deponent is the President of The Brookdale Hospital Center Nursing Home Company, Inc., the corporation named in the foregoing Certificate of Amendment of Certificate of Incorporation; deponent has read the foregoing Certificate of Amendment of Certificate of Incorporation and knows the contents thereof; that the same is true to deponent's own knowledge except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true; this verification is made by deponent because The Brookdale Hospital Center Nursing Home Company, Inc. is a Not-For-Profit corporation; deponent is an officer thereof, to wit: its President.

[Signature]

Subscribed and sworn to before me this 26th day of October, 1970.

MILTON COHEN, being duly sworn, deposes and says:

That deponent is the Secretary of The Brookdale Hospital Center Nursing Home Company, Inc., the corporation named in the foregoing Certificate of Amendment of Certificate of Incorporation; deponent has read the foregoing Certificate of Amendment of Certificate of Incorporation and knows the contents thereof; that the same is true to deponent's own knowledge except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true; this verification is made by deponent because The Brookdale Hospital Center Nursing Home Company, Inc. is a Not-For-Profit corporation; deponent is an officer thereof, to wit: its Secretary.

[Signature]

Subscribed and sworn to before me this 26th day of October, 1970.
CONSENT TO FILING CERTIFICATE OF AMENDMENT
RELATING TO THE DISPOSITION OF ASSETS UPON
THE DISSOLUTION, AND NON-PROFIT CHARACTER
OF
THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC.

I, HOLLIS S. INGRAHAM, Commissioner of Health of the State of New York, do this 16th day of December, 1970, pursuant to Article 28-A of the Public Health Law, hereby certify that I consent to the filing of the foregoing Certificate of Amendment relating to the Disposition of Assets Upon the Dissolution and Non-Profit Character of The Brookdale Hospital Center Nursing Home Company, Inc. with the Secretary of State of the State of New York.

Hollis S. Ingraham, M.D.
Commissioner of Health

By

Donald G. Dickson, M.D.
Deputy Commissioner

The undersigned, a Justice of the Supreme Court of the State of New York, 2nd Judicial District wherein is located the principal office of The Brookdale Hospital Center Nursing Home Company, Inc., hereby approves the within Certificate of Amendment to the Certificate of Incorporation of The Brookdale Hospital Center Nursing Home Company, Inc. and the filing thereof.

Brooklyn, New York

Notice of Application Filed
(This is not to be read as approval of an application to the Office of the Attorney General.)

Dated: Dec. 16, 1970
Louis J. Lefkowitz
Attorney General

By

Robert M. Veletri
Assistant Attorney General, 5
WHEREAS, the certificate of incorporation of The Brookdale Hospital Center Nursing Home Co., Inc. was heretofore approved by the State Board of Social Welfare and the certificate of incorporation was filed with the Secretary of State on January 11, 1968, and

WHEREAS, the aforementioned certificate limited the duration of the Corporation for the period of two years, and

WHEREAS, on February 3, 1970, the existence of the Corporation was extended to January 11, 1971, and

WHEREAS, the Staff of the New York State Department of Health has recommended, in a report to this Council, that the life of the Corporation be extended so as to make its existence perpetual, and has further recommended the approval of a certificate of amendment relating to the disposition of the assets of the Corporation upon the dissolution of the Corporation in order to conform with the requirements of the Internal Revenue Service, now therefore be it

RESOLVED, that a certificate of amendment of Brookdale Hospital Center Nursing Home Co., Inc. extending the existence of the corporation so as to make it perpetual, and that a certificate of amendment of Brookdale Hospital Center Nursing Home Co., Inc. relating to the disposition of the assets of the corporation upon the dissolution of the corporation in order to conform with the requirements of the Internal Revenue Service, are hereby approved, provided, that properly executed certificates of amendment are presented to the New York State Department of Health in a form acceptable to the Department.

ALBANY, NEW YORK
DATED: DECEMBER 18, 1970

[Signature]
SECRETARY
CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

THE BROOKDALE HOSPITAL CENTER
NURSING HOME COMPANY, INC.

Under Section 803 of the Not-For-Profit Corporation Law

BERGER & BERGNER
ATTORNEYS AT LAW
ELEVEN PARK PLACE
NEW YORK CITY
BARCLAY 7-6280

876654

REVISED EXPIRY TO 1/11/71

S

659262-8

FILING DEC. 2, 1970

John P. Zaccara
Secretary of State

2/4773
STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 4, 2012.

Daniel E. Shapiro
First Deputy Secretary of State
CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
BROOKDALE HOSPITAL CENTER NURSING HOME
COMPANY, INC.

Under Section 403 of The Not-For-Profit Corporation Law
and the Public Health Law

WE, the undersigned, hereby certify:
1. The name of the corporation is BROOKDALE HOSPITAL
   CENTER NURSING HOME COMPANY, INC. It was formed under that name
   and the name has not been changed.
2. The Certificate of Incorporation of said corporation
   was filed by the Department of State of January 11, 1968. The
   corporation was formed under the Not-For-Profit Corporation Law
   and the Public Health Law.
3. The corporation is a corporation as defined in sub-
   paragraph (a)(5) of Section 102 (Definition) of the Not-For-
   Profit Corporation Law, and is a Type D corporation under
   Section 201 (Purposes).
4. The Secretary of State, pursuant to Section 402(a)(17)
   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 555- Rockaway Parkway, Brooklyn, New York 11212.
5. Paragraph 1 of the Certificate of Incorporation relating to the name of the corporation is amended to read as follows:

"1. The name of the Corporation shall be THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION."

6. The manner in which the Amendment of the Certificate of Incorporation was authorized was by consent of a majority of the membership of the corporation voting in person at a special meeting of the membership, duly-called for that purpose upon due notice to all members of record given in the manner required for a special meeting of the corporation; said meeting was held at 1060 Ocean Parkway, Brooklyn, New York at 6:15 P.M. on October 18th, 1982; a majority of the members were present; the certificate of Incorporation of the corporation does not require the consent of more than a majority of the members to change the name of the corporation to "THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION"
and the following approvals or consents will be endorsed upon or annexed to this Certificate of Amendment prior to its delivery to the Department of State:

Commissioner of Health, Public Health Council, Justice of the Supreme Court, Waiver of the
Attorney General

IN WITNESS WHEREOF, we have executed this Certificate of Amendment this 31st day of January, 1983 and affirmed that the statements made herein are true under the penalties of perjury.

Edwin Schüllman
New York, New York

EDWIN SCHULMAN - President

David Schlang
New York, New York

DAVID SCHLANG - Secretary
STATE OF NEW YORK  
COUNTY OF NEW YORK  

EDWIN SCHULMAN and DAVID SCHLANG, being severally duly sworn, depose and say:

1. That EDWIN SCHULMAN is the President of THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC., mentioned in the foregoing Certificate, and was such President at the time of the consent mentioned therein for the change of name of the corporation from BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC. to "THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION".

2. That DAVID SCHLANG is the Secretary of THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC., mentioned in the foregoing Certificate, and was such Secretary at the time of the consent mentioned therein for the change of name of the corporation from BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC. to "THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION".

3. That at a special meeting of the membership duly called at which a quorum was present, the membership duly authorized the execution and filing of the foregoing Certificate of Amendment by action of a majority of the entire membership.

4. Such consent was given by affirmative votes cast in person by a majority of the entire membership at a special meeting of the membership after due notice to the entire membership.
of the corporation given in the manner required for a special
meeting of the membership of the corporation.

5. That the Certificate of Incorporation of this corporation
does not require a consent of more than a majority of the
entire membership to change the name of the corporation to
"THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION".

EDWIN SCHULMAN

DAVID SCHLANG

Sworn to before me this
31st day of January, 1983.

NOTARY PUBLIC
CONSENT TO AMENDMENT OF
CERTIFICATE OF INCORPORATION
BY
COMMISSIONER OF HEALTH

I. David Axelrod, M.D., Commissioner of Health of the State of New York, on this 26th day of April, 1983, pursuant to Article 28-A of the Public Health Law and Section 804 of the Not-For-Profit Corporation Law, hereby certify that I consent to the filing of the foregoing Certificate of Amendment to change the name of the Corporation to "THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION", with the Secretary of State of the State of New York.

COMMISSIONER OF HEALTH

[Signature]

[Handwritten Signature]
March 29, 1983

In accordance with action taken after inquiry and investigation at a meeting of the Public Health Council held on the 25th day of March, 1983, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of Brookdale Hospital Center Nursing Home Company, Inc., dated January 31, 1983 is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amount as specified in the application will be reimbursable under third-party payer reimbursement guidelines.

Marion C. LaPoint
Acting Executive Secretary

Sent to: Marvin E. Landau, Esq.
Landau, Berkowitz and Nostrand
Suite 2501
60 East 42nd Street
New York, New York 10165

cc: Brookdale Hospital Center
Nursing Home Company, Inc.
555 Rockaway Parkway
Brooklyn, New York 11212
TO: Public Health Council
FROM: Peter J. Millock, General Counsel
DATE: March 1, 1983
SUBJECT: Certificate of Amendment of Certificate of Incorporation of Brookdale Hospital Center Nursing Home Company, Inc.

Brookdale Hospital Center Nursing Home Company, Inc., a not-for-profit corporation formed with State Board of Social Welfare approval on December 1967, requests Public Health Council approval of the attached certificate of amendment of its certificate of incorporation. The corporation operates a nursing home in Brooklyn, New York.

The sole purpose of the attached amendment is to change the corporate name to "The Samuel Schuman Institute for Nursing and Rehabilitation," a name deemed by the directors to honor the corporation's deceased former president, as well as to indicate the corporation's scope and purposes.

The attached document has been found to comply with the requirements of the Not-For-Profit Corporation Law.

Attachment
WAIVER OF NOTICE OF APPLICATION
BY ATTORNEY GENERAL

Notice of Application waived: (This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law.)

DATED: 1983

ATTORNEY GENERAL OF THE STATE OF NEW YORK
BY:
Assistant Attorney General

See next page
CONSENT TO AMENDMENT OF
CERTIFICATE OF INCORPORATION
BY A RESIDENT SUPREME COURT JUSTICE.

The undersigned, a Justice of the Supreme Court of the
State of New York, for the Second Judicial District, hereby
approves the within Certificate to change the name of the
corporation to "THE SAMUEL SCHULMAN INSTITUTE FOR NURSING
AND REHABILITATION".

BROOKLYN
DATED: JUNE 28, 1983

J. N. C.

Gerald Adler

June 9, 1983
JUN 28 1983

SUPREME COURT
KINGS COUNTY
SPECIAL TERM
PART 2

THE UNDERSIGN HAS NO OBJECTION
TO THE GRANTING OF JUDICIAL
APPROVAL WITNESSED AND WAIVED
STATUTORY NOTICE.

RICHARD LEVINE, ATTORNEY GEN.
STATE OF NEW YORK

HOWARD HOLT
Associate Attorney
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JUL-7 1983

AMT. OF CHECK $47.50
FILING FEE $30
TAX $100
COUNTY FEE $15.00
COPY $7.50
REG. FEE $150
SPOC-HANDLE $10

BY:

[KINGO]

CERTIFICATE OF AMENDMENT
OF CERTIFICATE OF INCORPORATION
OF BROOKDALE HOSPITAL CENTER NURSING HOME
COMPANY, INC.

Under Section 803 of the Not-For-Profit Corporation Law
and the Public Health Law

1/0/83

LAWRENCE BERKOWITZ & NOSTRAND
Attorneys-at-Law
60 East 42nd Street - Suite 2501
New York, New York 10165
(212) 687-2226

8888 0766
STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 4, 2012.

Daniel E. Shapiro
First Deputy Secretary of State
CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION

Under Section 803
of the Not-For-Profit Corporation Law

We, the undersigned being the President and Secretary
of The Samuel Schulman Institute For Nursing and Rehabilitation
("Corporation") do hereby certify:

(1) The name of the Corporation is The Samuel Schulman
Institute For Nursing And Rehabilitation. The name under which
the Corporation was formed is Brookdale Hospital Center Nursing
Home Company, Inc.

(2) The Certificate of Incorporation was filed by the
Department of State on the 11th day of January 1968. The said
Corporation was formed under the Membership Corporation Law and
the Public Health Law of the State
of New York.

(3) The Corporation is a corporation as defined in
subparagraph (a) of section 102 of the Not-For-Profit
Corporation Law and is a Type D corporation under section 201 of
said law.
(4) Paragraph I of the Certificate of Incorporation, which sets forth the name of the Corporation, is hereby amended to read as follows:

"The name of the Corporation is The Samuel and Bertha Schulman Institute For Nursing and Rehabilitation."

(5) This amendment to the Certificate of Incorporation was authorized by the unanimous written consent of the sole member of the Corporation, pursuant to Section 614 of the Not-For-Profit Corporation Law.

(6) The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is 555 Rockaway Parkway, Brooklyn, New York 11212, Attention: Office of the President.

IN WITNESS WHEREOF, the undersigned have executed this certificate this 26th day of October, 1989.

It is affirmed that the statements made herein are true under the penalties and perjury.

[Signature]

Edwin L. Schulman
President
STATE OF NEW YORK

COUNTY OF Kings

On this 26th day of October, 1989, before me personally came Edward Schlanger and David Schlanger, to me known and known to me to be the persons described in and who executed the foregoing Certificate of Amendment of Certificate of Incorporation and they duly acknowledged to me that they severally and independently executed the same.

JOYCE E. SMITH
Notary Public

Notary Public, State of New York
No. 41-486595
Qualified in Queens County
Commission Expires April 30, 1991

9.12.3/BM1
The undersigned has no objection to the granting of judicial approval to the attached Certificate of Amendment and waives statutory notice.

Robert Abrams
Attorney General
State of New York

By:

Dated:

I, HON. NICHOLAS A. CLEMENTE, a Justice of the Supreme Court of the State of New York, Second Judicial District, do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of The Samuel Schulman Institute For Nursing And Rehabilitation, and consent that the same be filed.

Date: MAY 14 1990
Brooklyn, New York

[Signature]
Justice, Supreme Court of the State of New York
Second Judicial District

ROBERT ABRAMS, Attorney General
STATE OF NEW YORK

by Laura Werner
May 9, 1990
ASSISTANT ATTORNEY GENERAL
CONSENT
TO FILING A CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION
BY THE
COMMISSIONER

I, DAVID AXELROD, M.D., Commissioner of Health of the State of New York, do this 10th day of May, 1990, consent to the filing with the Secretary of State of the Certificate of Amendment of the Certificate of Incorporation of Samuel Schuiman Institute for Nursing and Rehabilitation, as executed on the 26th of October 1989, pursuant to Section 2854 of the Public Health Law.

David Axelrod, M.D.
Commissioner of Health
April 23, 1990

Ms. Beth Margolis
Kalkines, Arky, Zall & Bernstein
885 Third Avenue
New York, NY 10022

Re: Certificate of Amendment of the Certificate of Incorporation of The Samuel Schulman Institute for Nursing and Rehabilitation

Dear Ms. Margolis:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of The Public Health Council held on the 20th day of April, 1990, I hereby certify that the Certificate of Amendment to the Certificate of Incorporation of The Samuel Schulman Institute for Nursing and Rehabilitation hereafter to be known as The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation dated October 26, 1989 is approved.

Sincerely,

Karen S. Westervelt
Executive Secretary
RESOLUTION

RESOLVED, that the Public Health Council, on this 20th day of April, 1990, approves the filing of the Certificate of Amendment to the Certificate of Incorporation of The Samuel Schulman Institute for Nursing and Rehabilitation, hereafter to be known as The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation dated October 26, 1989.
AFFIDAVIT OF BERTHA SCHULMAN

BERTHA SCHULMAN, being duly sworn, deposes and says:

1. I have no objection to the addition of my name to the titles of The Samuel Schulman Institute For Nursing And Rehabilitation ("SSI") and The Samuel Schulman Institute For Nursing And Rehabilitation Fund, Inc. (the "Fund").

2. I am honored by the addition of my name to the titles of SSI and the Fund so that the new titles will be "The Samuel And Bertha Schulman Institute For Nursing And Rehabilitation" and "The Samuel And Bertha Schulman Institute For Nursing And Rehabilitation Fund, Inc."

[Signature]
BERTHA SCHULMAN

Sworn to before me this 8th day of January, 1990

[Signature]
JUNE E. SMITH
Notary Public

JOYCE S. SMITH
Notary Public, State of New York
No. 41-4858990
Qualified in Queens County
Commission Expires April 30, 1991
CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION

Under Section 803 of the Not-For-Profit
Law of the State of New York:

555 Rockway Parkway
L - A997188-11
11/11/96
Kalkins Arky Zall & Bernstein
1675 Broadway - 27th Floor
New York, New York 10019
STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 4, 2012.

Daniel E. Shapiro
First Deputy Secretary of State
CERTIFICATE OF MERGER
OF
THE DOROTHY AND DAVID I. SCHACHNE INSTITUTE FOR NURSING AND REHABILITATION
AND
THE SAMUEL AND BERTHA SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION
INTO
THE SAMUEL AND BERTHA SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION

Under Section 964 of the New York Not-for-profit Corporation Law

The undersigned, being respectively the President and Secretary of the The Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, (hereinafter "DDISI"), and the President and Secretary of The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, (hereinafter "SBSI"), hereby certify as follows:

1. (a) The names of the constituent Corporations are DDISI and SBSI. DDISI was formed under the name Linroc Nursing Home, Inc. SBSI was formed under the name The Brookdale Hospital Center Nursing Home Company, Inc.

(b) The Corporations are corporations as defined in subparagraph (a) (5) of Section 162 of the Not-For-Profit Corporation Law and are Type D Corporations under Section 201 of said law.

(c) The name of the surviving Corporation is SBSI.

2. Neither of the constituent corporations has issued any certificates evidencing capital contributions of subventions.

3. The sole member of DDISI is Linroc Community Service Corporation, Inc., (hereinafter "LCSC"). The sole member of SBSI is LCSC. The surviving corporation's sole member is LCSC.

4. The Certificate of Incorporation of the surviving corporation is hereby amended to effect the following amendments authorized by the Not-for-Profit Corporation Law:

(a) The original Paragraph 1.0 of the Certificate of Incorporation, which sets forth the name of the Corporation, is hereby amended to read in its entirety as
follows: The name of the Corporation is The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc.

(b) The Paragraph 6 of the Amended Certificate of Incorporation, which designates the Secretary of State as agent of the Corporation upon whom process may be served, is amended to read in its entirety as follows: 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 or her as agent of the Corporation is:

One Brookdale Plaza
Brooklyn, New York 11212-3198
Att: President & Chief Executive Officer
The Brookdale University Hospital
and Medical Center

5. The effective date of the Merger shall be the date on which this Certificate of Merger is filed by the Department of State of the State of New York (the "Department of State").

6. (a) The Certificate of Incorporation for the Dorothy and David I. Schachne Institute for Nursing and Rehabilitation was filed by the Department of State on the 17th day of December, 1990. The said corporation was formed under the 104 (a) of the not-for-profit corporation law and section 2854 (2) (a) of the Public Health Law.

(b) The Certificate of Incorporation for The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation was filed by the Department of State on the 11th day of January, 1968. The said Corporation was formed under the Membership Corporation Law and the Public Health Law of the State of New York.

7. (a) The merger was authorized with respect to the Dorothy and David I. Schachne Institute for Nursing and Rehabilitation in the following manner: A plan of merger providing for the Merger (the "Plan") was duly adopted by a majority of the members of the Board of Directors of the Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, at a meeting on February 17, 1998.

(b) The merger was authorized with respect to the Samuel and Bertha Schulman Institute for Nursing and Rehabilitation in the following manner: A plan of merger providing for the merger (the "Plan") was duly adopted by a majority of the members of the Board of Directors of The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, at a meeting held on February 17, 1998.

(a) The Plan has not been abandoned.
IN WITNESS WHEREOF, the undersigned, on behalf of the constituent Corporations, hereby subscribe this certificate and affirm it as true under the penalties of perjury as of the 31st day of August, 1998.

Martin J. Simon, Chairman
The Dorothy and David L. Schachne Institute for Nursing and Rehabilitation, Inc.

Ascher L. Hechtel, M.D., Secretary
The Dorothy and David L. Schachne Institute for Nursing and Rehabilitation, Inc.

Edwin L. Schulman, President
The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc.

David Schlang, Secretary
The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc.
IN WITNESS WHEREOF, the undersigned, on behalf of the constituent Corporations, hereby subscribe this certificate and affirm it as true under the penalties of perjury as of the 31st day of August, 1998.

Martin J. Simon, Chairman
The Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, Inc.

Ascher L. Mestel, M.D.
Ascher L. Mestel, M.D., Secretary
The Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, Inc.

Edwin L. Schulman, President
The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc.

David Schlang, Secretary
The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc.
IN WITNESS WHEREOF, the undersigned, on behalf of the constituent Corporations, hereby subscribe this certificate and affirm it as true under the penalties of perjury as of the 31st day of August, 1998.

Martin J. Simoh, Chairman
The Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, Inc.

Ascher L. Mestel, M.D., Secretary
The Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, Inc.

Edwin L. Schulman, President
The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc.

David Schlang, Secretary
The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc.
IN WITNESS WHEREOF, the undersigned, on behalf of the constituent Corporations, hereby subscribe this certificate and affirm it as true under the penalties of perjury as of the 17th day of February, 1998.

Martin J. Simon, Chairman
The Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, Inc.

Ascher L. Nestel, M.D., Secretary
The Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, Inc.

Edwin L. Schulman, President
The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc.

David Schlang, Secretary
The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc.

NOTE: Mr. Schulman is out of the country; upon his return, he will sign the revised version of the signature page for the Certificate of Merger, and that page will be forwarded to the State Health Department.
New York, held in and for the
County of Kings at the
Courthouse thereof located at
360 Adams Street, Brooklyn,
New York on the 21st day of

P R E S E N T:

Hon. , Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the Matter of the Application
of

THE SAMUEL AND BERTHA SCHULMAN
INSTITUTE FOR NURSING AND REHABILITATION, INC., and THE DOROTHY AND DAVID I.
SCHACHNE INSTITUTE FOR NURSING AND REHABILITATION, INC.

ORDER APPROVING
MERGER

Index No. 45345/99

For an order approving their
plan of merger under Section 907 of
the Not-for-Profit Corporation Law
into THE SAMUEL AND BERTHA SCHULMAN
INSTITUTE FOR NURSING AND REHABILITATION, INC., and authorizing the filing
of the Certificate of Merger
under Section 904 of said Law.

The Samuel and Bertha Schulman Institute for Nursing and
Rehabilitation, Inc., and The Dorothy and David I. Schachne
Institute for Nursing and Rehabilitation, Inc., having duly made
joint application for an order, pursuant to Section 907 of the
Not-for-Profit Corporation Law ("N-PCL"), approving the plan of
merger of said corporations and authorizing the filing of the
certificate of merger in accordance with N-PCL § 904, and said
application having regularly come on to be heard,

Now upon reading the joint affidavit of Edwin L. Schulman,
the President of The Samuel and Bertha Schulman Institute for
Nursing and Rehabilitation, Inc. and Martin J. Simon, the
Chairman of The Dorothy and David I. Schachne Institute for
Nursing and Rehabilitation, Inc., sworn to on June 9, 1949,
and the plan of merger designated Exhibit A herein, and the
certificate of merger of said corporations into The Samuel and
Bertha Schulman Institute for Nursing and Rehabilitation, Inc.
under section 904 of the Not-For-Profit Corporation Law, all in
support of the application, and after due deliberation having
been held thereon, and it appearing that the interests of the
constituent corporations and the public interest will not be
adversely affected by the proposed merger,

Now, upon the petition of Edwin L. Schulman, President of The
Samuel and Bertha Schulman Institute for Nursing and
Rehabilitation, Inc. and Martin J. Simon, Chairman of The Dorothy
and David Schachne Institute for Nursing and Rehabilitation,
Inc., it is

ORDERED, that the plan of merger between The Samuel and
Bertha Schulman Institute for Nursing and Rehabilitation, Inc.
and The Dorothy and David I. Schachne Institute for Nursing and
Rehabilitation, Inc. designated Exhibit A herein, be and the same
is hereby approved, and it is further
ORDERED, that the aforesaid certificate of merger is authorized to be filed by the Department of State in accordance with N-PCL § 904, to which certificate a certified copy of this order shall be annexed.

ENTER,

J.S.C.

THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREBEAUD WAIVES STATUTORY NOTICE
ELIOT SPITZER, ATTORNEY GENERAL OF THE STATE OF NEW YORK

[Signature]

[Signature]
July 29, 1999

Frank T. Cicero
Cicero Shapiro Velazquez & Cicero
701 Westchester Avenue - Suite 210W
White Plains, New York 10604

Re: Certificate of Merger of the Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, Inc., into the Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc., and Amendment to the Samuel and Bertha Schulman Institute Certificate of Incorporation

Dear Mr. Cicero:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 30th day of October, 1998, I hereby certify that the Certificate of Merger of Certificate of Merger of the Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, Inc. into the Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc. and Amendment to the Samuel and Bertha Schulman Institute Certificate of Incorporation dated February 17, 1998 is approved.

Sincerely,

[Signature]
Karen S. Westervelt
Executive Secretary
CERTIFICATE OF MERGER
OF
THE DOROTHY AND DAVID L. SCHACHNE INSTITUTE
FOR NURSING AND REHABILITATION
AND
THE SAMUEL AND BERtha SCHULMAN INSTITUTE
FOR NURSING AND REHABILITATION
INTO
THE SAMUEL AND BERtha SCHULMAN INSTITUTE
FOR NURSING AND REHABILITATION
UNDER SECTION 904 OF THE NEW YORK NOT-FOR-PROFIT
CORPORATION LAW

DRAWDOWN
DELANEY - 30

FILED BY:
KALKINES, ARKY, ZALL & BERNSTEIN LLP
1675 BROADWAY, 27TH FLOOR
NEW YORK, NEW YORK 10019

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED DEC 15 1999
TAX $ BY: 

991216000763

991216000795
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of October, 2015, approves the filing of the Certificate of Amendment of Certificate of Incorporation of The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc., dated August 19, 2015.
Brookdale Family Care Centers, Inc. requests Public Health and Health Planning Council approval of its proposed Certificate of Amendment to its Certificate of Incorporation, in accordance with the requirements of Sections 404 and 804 of the Not-For-Profit Corporation Law, and Section 2801-a of the Public Health Law.

The Corporation's initial Certificate of Incorporation, and a previous amendment thereto changing the corporate duration to perpetual, were approved by the Public Health Council. This amendment adds to the corporate purposes, as described in the attached letter from corporate counsel.

Attached are the following with regard to this matter:

1. Letter dated September 18, 2015, from corporate counsel, requesting Public Health and Health Planning Council approval of the proposed Certificate of Amendment, and setting forth the reasons for the request.


3. Existing Certificate of Incorporation and amendment thereto.

The proposed Certificate of Amendment is in legally acceptable form.
September 18, 2015

VIA FEDEX

Colleen M. Leonard
Executive Secretary
Public Health and Health Planning Council
New York State Department of Health
Center for Health Care Facility Planning,
Licensure and Finance
Corning Tower, Room 1805
Albany, New York 12237

Re: Brookdale Family Care Centers, Inc.
Urban Strategies/Brookdale Family Care Center, Inc.

Dear Ms. Leonard:

I am writing to request that the Public Health and Health Planning Council (the “PHHPC”) of the New York State Department of Health (the “DOH”) review and consent to the filing of the proposed Certificates of Amendment of the Certificates of Incorporation of Brookdale Family Care Centers, Inc. (“BFCC”) and Urban Strategies/Brookdale Family Care Center, Inc. (“Urban Strategies”) with the Department of State at the October 8, 2015 meeting of the PHHPC. This special request for expedited review is made in coordination with the Dormitory Authority of the State of New York (“DASNY”), for whose benefit the proposed Certificates of Amendment are being filed, as described below.

By way of background, BFCC and Urban Strategies are affiliates of The Brookdale Hospital Medical Center, a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law operating in Brooklyn, New York (the “Hospital”). BFCC and Urban Strategies are each a New York not-for-profit corporation located in Brooklyn, New York, and each is licensed as a diagnostic and treatment center under Article 28 of the New York State Public Health Law. BFCC and Urban Strategies have historically operated as constituents of and for the benefit of the Hospital and its affiliated health system.

The Hospital has been experiencing severe financial distress in recent years and has been receiving critical financial support through the DOH in coordination with DASNY in order to cover the Hospital’s operating shortfalls, cash flow needs and capital improvement expenses. In
connection with a loan issued by DASNY to the Hospital on August 27, 2015 in the aggregate amount of $13,491,266.00, DASNY required the Hospital to covenant to cause BFCC and Urban Strategies to issue guaranties and to pledge and mortgage their real and personal property in favor of DASNY to secure the Hospital’s repayment of both such loan and other outstanding indebtedness to DASNY, including amounts advanced to the Hospital under a non-revolving credit line loan pursuant to which the Hospital may borrow an aggregate amount of up to $78,000,000.00.

The proposed Certificates of Amendment would clarify the purposes of BFCC and Urban Strategies to more explicitly establish that their purposes include operating in support of the Hospital and the health system of which it is a part, and promoting the health of the community served by such health system. Such amendments are proposed to ensure that the Hospital Affiliates have the requisite corporate authority under the New York Not-for-Profit Corporation Law to enter into the guaranties, pledges and other agreements and instruments required by DASNY.

Copies of the Certificates of Amendment of BFCC and Urban Strategies are attached as Exhibit 1 and Exhibit 2, respectively, and copies of their respective Certificates of Incorporation and all amendments thereto are attached as Exhibit 3 and Exhibit 4, respectively.

The agenda for the October 8, 2015 meeting of the PHHPC currently includes the proposed Certificate of Amendment of another affiliate of the Hospital, The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. (“SSI”). SSI seeks to amend its Certificate of Incorporation for the same reason as BFCC and Urban Strategies. SSI’s Certificate of Amendment was reviewed by Mark Noordsy, a Senior Attorney in the DOH’s Division of Legal Affairs.

DASNY is requiring that SSI, BFCC and Urban Strategies enter into the required guaranties, pledges, mortgages and other instruments and agreements prior to the Hospital’s receipt of additional loan funds from DASNY. Given the Hospital’s urgent need for such funds in order to cover essential operating expenses, we respectfully request the PHHPC’s review of the proposed Certificates of Amendment, together with SSI’s proposed Certificate of Amendment, at its October 8, 2015 meeting. We greatly appreciate any assistance you can offer in this regard.

Given DASNY’s close coordination with the DOH with respect to the Hospital, we understand that DASNY is separately making the same request to the DOH and that, accordingly, you may be separately contacted on this matter by DASNY or other DOH representatives.
Thank you very much.

Sincerely,

[Tammar R. Rosenberg]

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH22425973722
Encs.

cc:  Mark Noordsy, Esq. (DOH)
     Deryck A. Palmer, Esq. (Pillsbury)
CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BROOKDALE FAMILY CARE CENTERS, INC.

Under Section 803 of the
New York State Not-For-Profit Corporation Law

The undersigned, Reginald Bullock Jr, hereby certifies that he is the Assistant Secretary of Brookdale Family Care Centers, Inc., a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify as follows:

1. The name of the corporation is Brookdale Family Care Centers, Inc. (the "Corporation").

2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on October 27, 1994 under Section 402 of the NPCL.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. The Corporation’s Certificate of Incorporation is hereby amended as follows:

   a. Article THIRD of the Corporation’s Certificate of Incorporation, which sets forth the Corporation’s purposes, including to establish, operate and maintain one or more diagnostic and treatment centers and engage in related activities, is hereby amended to explicitly establish and clarify that the purposes of the Corporation include establishing, operating and maintaining one or more diagnostic treatment centers and engaging in related activities for the purpose of benefiting, promoting, supporting and furthering the charitable, scientific and educational purposes of the constituent entities of the Brookdale Health System, Inc., of which the Corporation has historically been a constituent, and improving and enhancing the general health and well-being of the communities of Brooklyn, New York served by the constituent entities of the Brookdale Health System, Inc., which the Corporation has historically served. Accordingly, Article THIRD of the Corporation’s Certificate of Incorporation is hereby amended to read in its entirety as follows:
THIRD: The Corporation is organized and shall be operated exclusively for the charitable, scientific and educational purposes of promoting, facilitating and improving the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities of Brooklyn, New York served by the “Brookdale Health System, Inc.” a system of affiliated health care providers and related entities, by:

(i) establishing, operating and maintaining one or more diagnostic and treatment centers, as defined in Article 28 of the Public Health Law of the State of New York, for the prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition;

(ii) benefiting, promoting, supporting and furthering the charitable, scientific and educational purposes of the constituent entities of the Brookdale Health System, Inc. that are exempt from federal income tax under Section 501(a) of the Code as organizations described in Section 501(c)(3) of the Code, including, in particular, The Brookdale Hospital Medical Center, a charitable New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law, including through the provision of financial and/or other support to such entities, as shall be determined by the Corporation’s Board of Directors from time to time; and

(iii) without limiting the generality of the foregoing, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges applicable to corporations incorporated under the NPCL, in furtherance of accomplishing the foregoing purposes.

b. Article ELEVENTH of the Corporation’s Certificate of Incorporation, which designates the Secretary of State of the State of New York as the agent of the Corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation, is hereby amended to read in its entirety as follows:

ELEVENTH: The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her as agent of the Corporation is:
5. This Certificate of Amendment of the Corporation’s Certificate of Incorporation was authorized by the Corporation’s sole member, Brookdale Health System, Inc., acting through the affirmative vote of its Board of Trustees at a duly constituted meeting thereof, in accordance with Section 802(a)(1) of the NPCL.

6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

Brookdale Family Care Centers, Inc.
c/o The Brookdale Hospital Medical Center
ATTN: General Counsel
One Brookdale Plaza
Brooklyn, New York 11212

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE TO FOLLOW.]
IN WITNESS WHEREOF, the undersigned has signed this Certificate of Amendment on September 22nd, 2015.

By: Reginald Bullock Jr
Title: Assistant Secretary
CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BROOKDALE FAMILY CARE CENTERS, INC.

Under Section 803 of the
New York State Not-For-Profit Corporation Law

Filed By:

Tamar R. Rosenberg, Esq.
Sheppard Mullin Richter & Hampton LLP
30 Rockefeller Plaza
New York, NY 10112-0015
CERTIFICATE OF INCORPORATION

SHOOKDALE FAMILY CARE CENTER, INC.

(under Section 402 of the Not-for-Profit Corporation Law)

The undersigned, a natural person at least 18 years of age, for the purpose of forming a corporation under Section 402 of the Not-for-Profit Corporation Law of New York, do hereinafter declare:

FIRST: The name of the corporation is "SHOOKDALE FAMILY CARE CENTER, INC." (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (r)(5) of Section 102 of the Not-for-Profit Corporation Law (hereinafter referred to as "N-FLC") and is a Type B Corporation under N-FLC § 201.

THIRD: The purposes for which the Corporation is formed and shall be operated are as follows:

A. To establish, operate and maintain one or more diagnostic and treatment centers, as defined in Article 28 of the Public Health Law of the State of New York, for the prevention, diagnosis and treatment of human disease, pain, injury.
deficiency or physical condition; and

B. To engage in any and all other lawful activities incidental to and in pursuit of the foregoing purposes, except as restricted herein.

FOURTH: In furtherance of its corporate purposes, the corporation shall have all general powers enumerated in N-PCL § 202, together with the power to solicit grants and contributions for corporate purposes. The corporation shall have the right to exercise such other powers as now are, or may hereafter be, conferred by law upon a corporation organized for the purposes set forth in Article THIRD hereof or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof.

FIFTH: Nothing herein contained shall authorize the corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in N-PCL § 404(a)-(m), (p)-(s) and (u)-(v). The approvals required by N-PCL § 403(c) and (d) are annulled.

SIXTH: Notwithstanding any other provision herein, the corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status as a corporation (i) which is exempt from Federal income taxation under Section 501(a) of the Internal Revenue Code of 1954, as amended (hereinafter referred to as
"I.R.C."), as an organization described in I.R.C. § 501(c)(3) and
(ii) contributions to which are deductible under I.R.C. §§
170[c][2], 2055[a][2] and 2522[a][2].

SEVENTH: 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,
firm, corporation or association, except that reasonable
compensation may be paid for services rendered and payments and
distributions may be made in furtherance of the purposes set
forth in Article THIRD hereof, and no member, trustee, director,
or officer of the corporation, nor any private individual, firm,
corporation or association, shall be entitled to share in the
distribution of any of the corporate assets on dissolution of the
corporation.

EIGHTH: Upon the dissolution of the corporation, its
Board of Directors, after making provision for the payment of all
of the liabilities of the corporation, shall arrange for either
the direct distribution of all of the assets of the corporation
for the tax exempt purposes of the corporation (as set forth in
Article THIRD hereof), or distribution to one or more organiza-
tions that qualify for exemption under the provisions of I.R.C. §
501(c)(3) and the Treasury Regulations promulgated thereunder,
subject to the laws of the State of New York.
NINTH: The Corporation is organized and operated exclusively for charitable purposes qualifying it for exemption from taxation under 26 U.S.C. § 501(c)(3). Except as may otherwise be permitted by 26 U.S.C. § 501(h) or any other provision of the Internal Revenue Code of 1986, as amended, and the corresponding laws of the State of New York, no substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, and no part of the activities of the Corporation shall be participating in, or intervening in, any political campaign on behalf of or in opposition to any candidate for public office (including the publishing or distributing of statements).

TENTH: The office of the Corporation shall be located in the County of Kings, State of New York.

ELEVENTH: The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her as agent of the Corporation is:

Brookdale Family Care Centers, Inc.
c/o Brookdale Hospital Medical Center
Linden Boulevard at Brookdale Plaza
Brooklyn, New York 11212
TWELFTH: All references herein to "T.R.C." shall be deemed to include both amendments thereto and statutes which succeed such provisions, i.e., the corresponding provisions of future United States Internal Revenue Laws.

THIRTEENTH: The names and addresses of the initial directors, until the first annual meeting, are:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert A. Koepel</td>
<td>1035 Fifth Avenue New York, New York 10028</td>
</tr>
<tr>
<td>Michael Levin</td>
<td>210 East 86th Street New York, New York 10028</td>
</tr>
<tr>
<td>Henrietta Fuller Nassena</td>
<td>421 Pearl Street Brooklyn, New York 11212</td>
</tr>
</tbody>
</table>

FOURTEENTH: The duration of the corporation shall be for a period expiring on September 30, 1995.

IN WITNESS WHEREOF, I, the undersigned, have executed and signed this certificate this 7th day of October, 1994, and affirm that the statements herein are true under the penalties of perjury.

[Signature]

Michael Levin, Incorporator
210 East 86th Street
New York, New York 10028
Jeffrey C. Tropis, Esq.
Kalkines, Asky, Zell & Bernstein
Attorneys at Law
1875 Broadway
New York, NY 10019-5809

Re: Certificate of Incorporation of Brookdale Family Care Centers, Inc.

Dear Mr. Tropis,

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 29th day of September, 1994, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Brookdale Family Care Centers, Inc., dated October 7, 1994, for a one year limited life duration expiring on September 23, 1995.

Sincerely,

Karen Y. Misielowski
Executive Secretary
CERTIFICATE OF INCORPORATION
OF
BROOKDALE FAMILY CARE CENTERS, INC.
(Under Section 482 of the Not-for-Profit
Corporation Law)

KALKINES, ARBY, ZAID & BERNSTEIN
1675 Broadway
New York, New York 10019
Attorney—Jeffrey C. Trope, Esq.
Tel. (212) 761-9000

STATE OF NEW YORK
DEPARTMENT OF STATE
DID: OCT 27, 1994
TAX: JAH
BY: WUTZF
Type: B
STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on August 17, 2015.

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13
CERTIFICATE OF INCORPORATION
OF THE
CORPORATION OF INCORPORATION
OF
BROOKDALE FAMILY CARE CENTERS, INC.
(Under Section 903 of the Not-For-Profit Corporation Law)

We, the undersigned, being the President and Secretary of
Brookdale Family Care Centers, Inc., do hereby certify:

1. The name of the corporation is Brookdale Family Care
   Centers, Inc. (the "Corporation").

2. The certificate of incorporation of the Corporation was
   filed by the Department of State on the 17th day of October,
   1994. The Corporation was formed under the Not-For-Profit
   Corporation Law of the State of New York.

3. The Corporation is a corporation as defined in
   subparagraph (a) (3) of section 102 of the Not-For-Profit
   Corporation Law and is a Type B corporation under section 251 of
   said law.

4. Paragraph FOURTEENTH of the certificate of incorporation
   of the Corporation, which sets forth the duration of the
   Corporation, is hereby amended to read as follows:

   [Amended text]
Article Ninth: The duration of the Corporation shall be perpetual.

5. This amendment to the certificate of incorporation of the Corporation was authorized by the vote of a majority of the directors of Marine Community Service Corporation, the Corporation's sole member.

6. The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post-office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon her as agent of the Corporation is:

Brookdale Family Care Centers, Inc.
100 Marine Community Service Corporation
3 Linden Boulevard at Brookdale Plaza
Brooklyn, New York 11213

IN WITNESS WHEREOF, the undersigned have executed this certificate and agree that the statements made herein are true under the penalties of perjury.

[Signature]
Michael Levin, President

[Signature]
Robert A. McPhee, Secretary
April 26, 1995

Jeffrey C. Thrope, Esq.
Kalkinesis, Zall & Bernstein
1475 Broadway
New York, NY 10019-5820

Re: Certificate of Amendment of the Certificate of Incorporation of Brookdale Family Care Centers, Inc.

Dear Mr. Thrope:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23rd day of September, 1994, I hereby certify that the Public Health Council approved the AMENDMENT to the Certificate of Incorporation of Brookdale Family Care Centers, Inc., dated December 8, 1994.

Sincerely,

Karen S. Westervelt
Executive Secretary
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of October, 2015, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of Brookdale Family Care Centers, Inc., dated September 22, 2015.
Urban Strategies/Brookdale Family Care Center, Inc. requests Public Health and Health Planning Council approval of its proposed Certificate of Amendment to its Certificate of Incorporation, in accordance with the requirements of Sections 404 and 804 of the Not-For-Profit Corporation Law, and Section 2801-a of the Public Health Law.

The Corporation’s initial Certificate of Incorporation, and a previous amendment thereto changing the corporate duration to perpetual, were approved by the Public Health Council. This amendment adds to the corporate purposes, as described in the attached letter from corporate counsel.

Attached are the following with regard to this matter:

1. Letter dated September 18, 2015, from corporate counsel, requesting Public Health and Health Planning Council approval of the proposed Certificate of Amendment, and setting forth the reasons for the request.


3. Existing Certificate of Incorporation and amendment thereto.

The proposed Certificate of Amendment is in legally acceptable form.
September 18, 2015

VIA FEDEX

Colleen M. Leonard
Executive Secretary
Public Health and Health Planning Council
New York State Department of Health
Center for Health Care Facility Planning,
Licensure and Finance
Corning Tower, Room 1805
Albany, New York 12237

Re: Brookdale Family Care Centers, Inc.
Urban Strategies/Brookdale Family Care Center, Inc.

Dear Ms. Leonard:

I am writing to request that the Public Health and Health Planning Council (the "PHHPC") of the New York State Department of Health (the "DOH") review and consent to the filing of the proposed Certificates of Amendment of the Certificates of Incorporation of Brookdale Family Care Centers, Inc. ("BFCC") and Urban Strategies/Brookdale Family Care Center, Inc. ("Urban Strategies") with the Department of State at the October 8, 2015 meeting of the PHHPC. This special request for expedited review is made in coordination with the Dormitory Authority of the State of New York ("DASNY"), for whose benefit the proposed Certificates of Amendment are being filed, as described below.

By way of background, BFCC and Urban Strategies are affiliates of The Brookdale Hospital Medical Center, a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law operating in Brooklyn, New York (the "Hospital"). BFCC and Urban Strategies are each a New York not-for-profit corporation located in Brooklyn, New York, and each is licensed as a diagnostic and treatment center under Article 28 of the New York State Public Health Law. BFCC and Urban Strategies have historically operated as constituents of and for the benefit of the Hospital and its affiliated health system.

The Hospital has been experiencing severe financial distress in recent years and has been receiving critical financial support through the DOH in coordination with DASNY in order to cover the Hospital's operating shortfalls, cash flow needs and capital improvement expenses. In
connection with a loan issued by DASNY to the Hospital on August 27, 2015 in the aggregate amount of $13,491,266.00, DASNY required the Hospital to covenant to cause BFCC and Urban Strategies to issue guaranties and to pledge and mortgage their real and personal property in favor of DASNY to secure the Hospital's repayment of both such loan and other outstanding indebtedness to DASNY, including amounts advanced to the Hospital under a non-revolving credit line loan pursuant to which the Hospital may borrow an aggregate amount of up to $78,000,000.00.

The proposed Certificates of Amendment would clarify the purposes of BFCC and Urban Strategies to more explicitly establish that their purposes include operating in support of the Hospital and the health system of which it is a part, and promoting the health of the community served by such health system. Such amendments are proposed to ensure that the Hospital Affiliates have the requisite corporate authority under the New York Not-for-Profit Corporation Law to enter into the guaranties, pledges and other agreements and instruments required by DASNY.

Copies of the Certificates of Amendment of BFCC and Urban Strategies are attached as Exhibit 1 and Exhibit 2, respectively, and copies of their respective Certificates of Incorporation and all amendments thereto are attached as Exhibit 3 and Exhibit 4, respectively.

The agenda for the October 8, 2015 meeting of the PHHPC currently includes the proposed Certificate of Amendment of another affiliate of the Hospital, The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. ("SSI"). SSI seeks to amend its Certificate of Incorporation for the same reason as BFCC and Urban Strategies. SSI's Certificate of Amendment was reviewed by Mark Noordsy, a Senior Attorney in the DOH's Division of Legal Affairs.

DASNY is requiring that SSI, BFCC and Urban Strategies enter into the required guaranties, pledges, mortgages and other instruments and agreements prior to the Hospital's receipt of additional loan funds from DASNY. Given the Hospital's urgent need for such funds in order to cover essential operating expenses, we respectfully request the PHHPC's review of the proposed Certificates of Amendment, together with SSI's proposed Certificate of Amendment, at its October 8, 2015 meeting. We greatly appreciate any assistance you can offer in this regard.

Given DASNY's close coordination with the DOH with respect to the Hospital, we understand that DASNY is separately making the same request to the DOH and that, accordingly, you may be separately contacted on this matter by DASNY or other DOH representatives.
Thank you very much.

Sincerely,

[Signature]

Tamar R. Rosenberg
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

cc: Mark Noordsy, Esq. (DOH)
    Deryck A. Palmer, Esq. (Pillsbury)
CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
URBAN STRATEGIES/BROOKDALE FAMILY CARE CENTER, INC.

Under Section 803 of the
New York State Not-For-Profit Corporation Law

The undersigned, Reginald Bullock Jr., hereby certifies that he is the Assistant Secretary of Urban Strategies/Brookdale Family Care Center, Inc., a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify as follows:

1. The name of the corporation is Urban Strategies/Brookdale Family Care Center, Inc. (the "Corporation").

2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on October 28, 1994 under Section 402 of the NPCL.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. The Corporation's Certificate of Incorporation is hereby amended as follows:
   a. Article THIRD of the Corporation's Certificate of Incorporation, which sets forth the Corporation's purposes, including to establish, operate and maintain one or more diagnostic and treatment centers and engage in related activities, is hereby amended to explicitly establish and clarify that the purposes of the Corporation include establishing, operating and maintaining one or more diagnostic treatment centers and engaging in related activities for the purpose of benefiting, promoting, supporting and furthering the charitable, scientific and educational purposes of the constituent entities of the Brookdale Health System, Inc., of which the Corporation has historically been a constituent, and improving and enhancing the general health and well-being of the communities of Brooklyn, New York served by the constituent entities of the Brookdale Health System, Inc., which the Corporation has historically served. Accordingly, Article THIRD of the Corporation's Certificate of Incorporation is hereby amended to read in its entirety as follows:
THIRD: The Corporation is organized and shall be operated exclusively for the charitable, scientific and educational purposes of promoting, facilitating and improving the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities of Brooklyn, New York served by the “Brookdale Health System, Inc.,” a system of affiliated health care providers and related entities, by:

(i) establishing, operating and maintaining one or more diagnostic and treatment centers, as defined in Article 28 of the Public Health Law of the State of New York, for the prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition;

(ii) benefitting, promoting, supporting and furthering the charitable, scientific and educational purposes of the constituent entities of the Brookdale Health System, Inc. that are exempt from federal income tax under Section 501(a) of the Code as organizations described in Section 501(c)(3) of the Code, including, in particular, The Brookdale Hospital Medical Center, a charitable New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law, including through the provision of financial and/or other support to such entities, as shall be determined by the Corporation’s Board of Directors from time to time; and

(iii) without limiting the generality of the foregoing, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges applicable to corporations incorporated under the NPCL, in furtherance of accomplishing the foregoing purposes.

b. Article ELEVENTH of the Corporation’s Certificate of Incorporation, which designates the Secretary of State of the State of New York as the agent of the Corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation, is hereby amended to read in its entirety as follows:

ELEVENTH: The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her as agent of the Corporation is:

Urban Strategies/Brookdale Family Care Center, Inc.
c/o The Brookdale Hospital Medical Center
ATTN: General Counsel  
One Brookdale Plaza  
Brooklyn, New York 11212

5. This Certificate of Amendment of the Corporation's Certificate of Incorporation was authorized by the Corporation's sole member, Brookdale Health System, Inc., acting through the affirmative vote of its Board of Trustees at a duly constituted meeting thereof, in accordance with Section 802(a)(1) of the NPCL.

6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

Urban Strategies/Brookdale Family Care Center, Inc.  
c/o The Brookdale Hospital Medical Center  
ATTN: General Counsel  
One Brookdale Plaza  
Brooklyn, New York 11212

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[_SIGNATURE PAGE TO FOLLOW.]
IN WITNESS WHEREOF, the undersigned has signed this Certificate of Amendment on September 22nd, 2015.

By:  Reginald Bullock Jr  
Title:  Assistant Secretary
CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
URBAN STRATEGIES/BROOKDALE FAMILY CARE CENTER, INC.

Under Section 803 of the
New York State Not-For-Profit Corporation Law

Filed By:

Tamar R. Rosenberg, Esq.
Sheppard Mullin Richter & Hampton LLP
30 Rockefeller Plaza
New York, NY 10112-0015
PH-32
CERTIFICATE OF INCORPORATION
OF
URBAN STRATEGIES/BROOKDALE FAMILY CARE CENTER, INC.
(Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, a natural person at least 18 years of age, for the purpose of forming a corporation under Section 402 of the Not-for-Profit Corporation Law of New York, does hereby certify:

FIRST: The name of the corporation is Urban Strategies/Brookdale Family Care Center, Inc. (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 103 of the Not-for-Profit Corporation Law (hereinafter referred to as "N-PCL") and is a Type B corporation under N-PCL § 201.

THIRD: The purposes for which the Corporation is formed and shall be operated are as follows:

A. To establish, operate and maintain one or more diagnostic and treatment centers, as defined in Article 28 of the Public Health Law of the State of New York, for the prevention, diagnosis and treatment of human disease, pain, injury.
federal or physical condition; and

B. To engage in any and all other service activities incidental to and in pursuit of the foregoing purposes except as restricted herein.

FOURTH: In furtherance of its corporate purposes, the Corporation shall have all general powers enumerated in N-PCL § 202, together with the power to solicit grants and contributions for corporate purposes. The Corporation shall have the right to exercise such other powers as now are, or may hereafter be, conferred by law upon a corporation organized for the purposes set forth in Article THIRD hereof or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof.

FIFTH: Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in N-PCL § 404(a)-(n), (p)-(s) and (u)-(v). The approvals required by N-PCL § 404(c) and (t) are annexed.

SIXTH: Notwithstanding any other provision herein, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status as a corporation (i) which is exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as

ATT147-15068.212 (12/04)
"I.R.C. 501(c)(3), as an organization described in I.R.C. § 501(c)(3) and (ii) contributions to which are deductible under I.R.C. §§ 170(c)(2); 2055(a)(2) and 2522(a)(2)."

Seventh: 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, firm, corporation, or association, except that reasonable compensation may be paid for services rendered and payments and distributions may be made in furtherance of the purposes set forth in Article THIRD hereof, and no member, trustee, director, or officer of the Corporation, nor any private individual, firm, corporation, or association, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

Eighth: Upon the dissolution of the Corporation, its Board of Directors, after making provision for the payment of all of the liabilities of the Corporation, shall arrange for either the direct distribution of all of the assets of the Corporation for the tax-exempt purposes of the Corporation (as set forth in Article THIRD hereof), or distribution to one or more organizations that qualify for exemption under the provisions of I.R.C. § 501(c)(3) and the Treasury Regulations promulgated thereunder, subject to the laws of the State of New York.
NINTH: The Corporation is organized and operated exclusively for charitable purposes qualifying it for exemption from taxation under I.R.C. § 501(c)(3). No substantial part of the activities of the Corporation shall be carrying on propaganda or otherwise attempting to influence legislation, except as may be permitted by the I.R.C., including without limitation Sections 501(c)(3) and 501(h). No part of the activities of the Corporation shall be participating in, or intervening in, any political campaign on behalf of or in opposition to any candidate for public office (including the publishing or distributing of statements).

TENTH: The office of the Corporation shall be located in the County of Kings, State of New York.

ELEVENTH: The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him by her as agent of the Corporation is:

Urban Strategies/Brookdale Family Care Center, Inc.
Lincoln Community Services Corp.
President's Office
Linden Boulevard at Brookdale Plaza
Brooklyn, New York 11212

TWELFTH: All references herein to "I.R.C." shall be deemed to include both amendments thereto and statutes which suc-
TENTH: The name and addresses of the initial directors, until the first annual meeting are:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eric Johnson</td>
<td>1543 St. Marks Avenue 11233 Brooklyn, New York</td>
</tr>
<tr>
<td>Gloria McCleod</td>
<td>330 Dimon Avenue 11212 Brooklyn, New York</td>
</tr>
<tr>
<td>Joseph Castro</td>
<td>227 Traders Circle 10025 San Francisco, New York</td>
</tr>
<tr>
<td>Michael Levin</td>
<td>210 East 86th Street 10028 New York, New York</td>
</tr>
<tr>
<td>Alan Roth</td>
<td>2050 East 85th Street 11234 Brooklyn, New York</td>
</tr>
</tbody>
</table>

TWELFTH: The duration of the Corporation shall be for a period expiring on September 23, 1999.

IN WITNESS WHEREOF, I, the undersigned, have executed and signed this certificate this 7th day of October, 1994, and affirm that the statements herein are true under the penalties of perjury.

Michael Levin, Incorporator
210 East 86th Street
New York, New York 10028
Jeffrey C. Thrope, Esq.
Kalkines, Arky, Zali & Barnstein
Attorneys at Law
1075 Broadway
New York, NY 10018-5909

Re: Certificate of Incorporation of Urban Strategies/Brookdale Family Care Center, Inc.

Dear Mr. Thrope:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23rd day of September, 1994, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Urban Strategies/Brookdale Family Care Center, Inc., dated October 7, 1994, for a one year limited life, expiring on September 23, 1995.

Sincerely,

Karen B. Wustrevelt
Executive Secretary
STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on August 17, 2015.

Anthony Giardina
Executive Deputy Secretary of State
CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
URBAN STRATEGIES/BROOKDALE FAMILY CARE CENTER, INC.
(Under Section 302 of the Not-For-Profit Corporation Law)

We, the undersigned, being the President and Secretary of
Urban Strategies/Brookdale Family Care Center, Inc., do hereby
certify:

1. The name of the corporation is Urban Strategies/
Brookdale Family Care Center, Inc. (the "Corporation").

2. The certificate of incorporation of the Corporation was
filed by the Department of State on the 25th day of October,
1989. The Corporation was formed under the Not-For-Profit
Corporation Law of the State of New York.

3. The Corporation is a corporation as defined in
subparagraph (a) (5) of section 153 of the Not-For-Profit
Corporation Law and is a Type B corporation under section 302 of
said law.

4. Paragraph FOURTEENTH of the certificate of incorporation
of the Corporation, which sets forth the duration of the
Corporation, is hereby amended to read as follows:
POWERS. The duration of the Corporation shall be perpetual.

5. This amendment to the certificate of incorporation of the Corporation was authorized by the vote of a majority of the directors of each of the two members of the Corporation, i.e., Linroc Community Service Corporation and Urban Strategies, Inc.

6. The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon her as agent of the Corporation is:

Urban Strategies/Brookdale Family Care Center, Inc.
c/o Linroc Community Service Corporation
1200 South Street at Brookdale Place
Brooklyn, New York 11212

IN WITNESS WHEREOF, the undersigned have executed this certificate and affirm that the statements made thereon are true under the penalties of perjury.

Michael Levin, President

Eric Johnson, Secretary

[Signatures]

Date: 12/18/94
Jeffrey C. Thrope, Esq.
Kalkines, Park, Bell & Bernstein
1675 Broadway
New York, NY 10013-5820

Re: Certificate of Amendment of the Certificate of Incorporation of Urban Strategies/Brookdale Family Care Center, Inc.

Dear Mr. Thrope:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23rd day of September, 1994, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment to the Certificate of Incorporation of Urban Strategies/Brookdale Family Care Center, Inc., dated December 8, 1994.

Sincerely,

Karen S. Westervelt
Executive Secretary
URBAN STRATEGIES/BROOKDALE FAMILY CARE CENTER, INC.

STATE OF NEW YORK
DEPARTMENT OF STATE
REC'D MAY 2 1986

Keltner, Anny, Zell & Bernstein
77 West 77 Broad St.
New York, NY 10019-5820

D.C. 08 4
STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on August 17, 2015.

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of October, 2015, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of Urban Strategies/Brookdale Family Care Center, Inc., dated September 22, 2015.
MEMORANDUM

TO: Public Health and Health Planning Council

FROM: Richard Zahnleuter, Deputy General Counsel

DATE: August 28, 2015

SUBJECT: Proposed Dissolution of River Hospital Foundation, Inc.

River Hospital Foundation, Inc. ("Foundation") 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.

The Public Health Council approved Foundation pursuant to Public Health Law §2801-a (6) to solicit contributions for the benefit of River Hospital in Jefferson County in March 2003. River Hospital has determined that expenses would decrease if River Hospital conducted its own development efforts and dissolved Foundation. Pursuant to Foundation’s Plan of Dissolution, if approved by the Supreme Court, Foundation’s remaining assets will be transferred to River Hospital.

Attached are a copy of the proposed Certificate of Dissolution, a letter from Foundation’s attorney explaining the need for the proposed dissolution, a proposed Plan of Dissolution and Distribution of Assets, and a proposed Verified Petition seeking the Supreme Court’s approval of St. Foundation’s Certificate of Dissolution.

The proposed Certificate of Dissolution is in legally acceptable form.

Attachments
January 14, 2015

Sandra Jensen, Acting Director
Bureau of House Counsel
NYS Department of Health
Coming Tower, 24th Floor
Empire State Plaza
Albany, New York 12237-0031

Re: River Hospital Foundation, Inc.

Dear Ms. Jensen:

We are counsel for River Hospital, Inc. (the “Hospital”) and the River Hospital Foundation, Inc. (the “Foundation”), both located in Jefferson County. At the time of its formation, the Foundation was approved by the Public Health Council (“PHC”), a copy of the letter approving the formation of the Foundation is attached. Accordingly, we respectfully request the Public Health and Health Planning Council (“PHHPC”) approve of the dissolution of the Foundation.

To that end, I have enclosed the operative documents required under 10 N.Y.C.R.R. 650.1 for the review and approval of the proposed Plan of Dissolution of the Foundation (the “Plan”): (i) the proposed certificate of dissolution, (ii) the proposed plan of dissolution setting forth the distribution of the Foundation’s assets, and (iii) the petition proposed to be submitted to the court in support of the application for judicial approval of the proposed Plan and distribution of assets.

The proposed dissolution will not impact the availability of any health services. As more fully detailed in the Plan and the Petition, the Foundation will deliver all assets to the Hospital and the Hospital will assume responsibility for fundraising efforts in the future. The transition is intended to, among other things, efficiently align the Hospital and its needs with its donors and reduce administrative expenses.

Please contact me if you have any questions or concerns.

Thank you for your time and consideration.

Respectfully,

CENTOLELLA LYNN D’ELIA & TEMES LLC

David C. Temes

DCT/sas
Enclosures

cc: Jason J. Centolella, Esq.
CERTIFICATE OF DISSOLUTION

OF

RIVER HOSPITAL FOUNDATION, INC.

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is River Hospital Foundation, Inc.

SECOND: The certificate of incorporation was filed with the Department of State on April 3, 2003.

THIRD: The name and address of each officer and director of the corporation is:

Raymond Smith, Director & Chairman, 41410 Kehoe Tract Road, Clayton, NY 13624
Kathleen Morris-Kortz, 1st Vice Chair, 10 Bolton Avenue, Alexandria Bay, NY 13607
Susan Rapant, Vice Chair, 19627 Collins Landing E., Alexandria Bay, NY 13607
Lynn Brown, Secretary & RH Board Liaison, 27960 County Route 193, Theresa, NY 13691
Kenneth VanHatten, Treasurer, P.O. Box 336, Theresa, NY 13607
Patricia Wagoner, Director, 47052 Dingman Point Rd, Alexandria Bay, NY 13607
Steven Yelle, Director, 36627 Reese Rd., Clayton, NY 13624
Jay Stewart, Director, P.O. Box 266, LeRoy, NY 14482

FOURTH: The corporation is a charitable corporation.

FIFTH: At the time of authorization of the corporation’s Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law § 1002, the corporation holds no assets which are legally required to be used for a particular purpose.

SIXTH: The corporation elects to dissolve.

SEVENTH: The dissolution was authorized by unanimous written consent of all of the directors of the corporation. The corporation has no members.
EIGHTH: Prior to the delivery of the Certificate of Dissolution to the Department of State for filing, the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the order is attached.

Jason J. Centolella, Authorized Person
CERTIFICATE OF DISSOLUTION

OF

RIVER HOSPITAL FOUNDATION, INC.

Under Section 1003 of the Not-for-Profit Corporation Law

Filed By: Centolella Lynn D'Elia & Temes LLC
100 Madison Street, Suite 1905
Syracuse, NY 13202
PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS
OF
RIVER HOSPITAL FOUNDATION, INC.

The Board of Directors (the "Board") of River Hospital Foundation, Inc. (the "Foundation"), having worked with a consultant hired by its constituent organization, River Hospital, Inc. (the "Hospital"), to review the current fundraising operations and advise the Hospital and the Board on best practices, and the Board having considered the recommendations of the consultant and advisability of voluntarily dissolving the Foundation, and it being the opinion of the Board that dissolution is advisable and in the best interests of the Foundation and its constituent organization, the Hospital, and the Board having adopted, by Unanimous Written Consent, a plan for a voluntary dissolution of the Foundation, does hereby resolve that the Foundation be dissolved in accordance with the following plan:

1. There being no members of the Foundation, no vote of membership is required to approve this dissolution, thus action of the Board is sufficient.

2. Approval of the dissolution of the Foundation shall be obtained from the Public Health Council, and shall be attached as Exhibit "A".

3. The Foundation has assets. Attached hereto as Exhibit "B" are financial statements 2011, 2012, 2013 and September 30, 2014 detailing the assets of the Foundation and their fair market values.

4. The Foundation is required to use its assets in support of the activities of Hospital. The Hospital qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

5. Accordingly, in connection with this dissolution, the assets held by the Foundation, subject to any unpaid liabilities of the Foundation, shall be distributed solely to the Hospital.

6. The Hospital is exempt from taxation pursuant to federal and state laws, and shall use the funds to continue to support the activities of the Hospital or where such gift was made to the Foundation with a specific donor restriction ("Donor Restriction"), such gift shall be used solely in accordance with such donor restriction.
7. Funds held by the Foundation for the “Friends of River Hospital” volunteer organization (the “Friends”), of approximately $6,868.53 shall be transferred to the Hospital to be held in a separate account for the benefit of the Friends and subject to any restrictions and purposes the Friends deem proper.

8. Funds held by the Foundation to support scholarships and other programs to pay for educational opportunities shall be transferred to the Hospital to be used solely for the purpose of providing financial support for educational opportunities in the manner the Hospital deems proper, including the creation of an Employee Assistance Program under section 127 of the Internal Revenue Code.

9. The Foundation has donated a total of $65,364.50 to the Northern New York Community Foundation, Inc. to hold and administer for the benefit of the Hospital. Such funds shall be unaffected by this Plan and shall continue to be held and administered by the Northern New York Community Foundation, Inc. solely for the benefit of the Hospital.

10. All funds transferred pursuant to this Plan and not subject to any Donor Restriction or other specific restriction stated herein shall be held by the Hospital and used to support the Hospital.

11. Upon approval of this Plan by the Court, the Foundation will release the Hospital from any and all claims the Foundation has against the Hospital, including, but not limited to, any obligation under any promissory note.

12. Attached hereto as Exhibit “C” are the Hospital’s Certificate of Incorporation and all amendments thereto.

13. Attached hereto as Exhibit “D” are the 2010, 2011 and 2012 Return of Organization Exempt from Income Tax (the “Form 990”) filed by the Hospital with the Internal Revenue Service.

14. Attached hereto as Exhibit “E” is the Internal Revenue Service letter of determination that the Hospital is exempt from taxation.

15. Attached hereto as Exhibit “F” is a sworn affidavit from Ben Moore, III, Chief Executive Officer and President of the Hospital, stating the purposes of the Hospital and that it is currently exempt from federal income taxation and verifying that all assets transferred from the Foundation will be used to support the activities of the Hospital or any successor hospital located in Alexandria Bay, New York.
16. Attached hereto as Exhibit "G" is a schedule containing the current liabilities of the Foundation, all which shall be paid prior to dissolution.

17. Attached hereto as Exhibit "H" is a schedule of contracts that the Foundation will assign to Hospital. The Hospital will assume any and all rights and obligations under these contracts and may use funds transferred from the Foundation to pay expenses associated with such contracts.

18. The Foundation estimates it will incur expenses not to exceed $20,000 in connection with this dissolution process, including any accounting and legal fees. All final distributions will be reflected in the Foundation’s final financial report.

19. The Foundation shall carry out this Plan within two hundred seventy (270) days after the date that an Order Approving this Plan of Dissolution and Distribution of Assets is signed by the Court.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF JEFFERSON

In the Matter of the Application of

River Hospital Foundation, Inc.

For Approval of Plan of Dissolution and
Distribution of Assets pursuant to
Section 1002 of the Not-for-Profit
Corporation Law

VERIFIED PETITION

Index No.: __________

RJI No.: __________

Petitioner, River Hospital Foundation, Inc. (the “Foundation”) by and through Centolella Lynn D’Elia & Temes LLC, its counsel, as and for its Verified Petition herein respectfully alleges:

1. The Foundation, whose principal office is located in the county of Jefferson, was incorporated pursuant to New York’s Not-for-Profit Corporation Law on April 3, 2003. A copy of the Certificate of Incorporation and any amendments thereto are attached as Exhibit “A”.

   Background

2. The Foundation was founded to solicit donations and provide financial support to River Hospital, Inc. (the “Hospital”) in Alexandria Bay, New York.

3. The Hospital retained a consultant with the Foundation’s consent to review the development activities of the Foundation and the Hospital and to advise them on the best practices for its continuing efforts to provide financial support for the operations at the Hospital.
4. The consultant recommended the Hospital assume primary responsibility for fund
development and that the Foundation be dissolved and the assets contributed to the Hospital.
The consultant advised that this structure will decrease expenses and avoid duplication of
development efforts while ensuring the needs of the Hospital are being addressed through the
ongoing development and fundraising activities.

5. Upon review and consideration of the consultant’s report and recommendations,
the Board of Directors (the “Board”) of the Foundation, in consultation with the Hospital,
determined the Foundation should be dissolved and responsibility for development should rest
with the Hospital.

6. In connection with the dissolution of the Foundation, the Foundation will turn
over all assets to the Hospital to support operations at the Hospital. The assets will be held by the
Hospital subject to donor restrictions and restrictions imposed by the Foundation.

7. The names, titles and addresses of the current directors of the Foundation are as
follows:

Raymond Smith, Director & Chairman, 41410 Kehoe Tract Road, Clayton, NY 13624
Kathleen Morris-Kortz, 1st Vice Chair, 10 Bolton Avenue, Alexandria Bay, NY 13607
Susan Rapant, Vice Chair, 19627 Collins Landing E., Alexandria Bay, NY 13607
Lynn Brown, Secretary & RH Board Liaison, 27960 County Route 193, Theresa, NY 13691
Kenneth VanHatten, Treasurer, P.O. Box 336, Theresa, NY 13607
Patricia Wagoner, 47052 Dingman Point Rd, Alexandria Bay, NY 13607
Steven Yelle, 36627 Reese Rd., Clayton, NY 13624
Jay Stewart, P.O. Box 266, LeRoy, NY 14482
The Plan of Dissolution

8. A true and accurate copy of the Plan of Dissolution approved by the Board on December 18, 2014 is attached hereto as Exhibit “B” (the “Plan”).

9. Approval of the dissolution of the Foundation has been obtained from the Public Health Council and is attached to the Plan as Exhibit “A”.

10. The Foundation has assets. Attached to the Plan as Exhibit “B” are financial statements detailing the current assets of the Foundation and their fair market values.

11. The Foundation is required to use its assets in support of the activities of the Hospital. The Hospital qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

12. Accordingly, in connection with the dissolution of the Foundation, the assets held by the Foundation, subject to any unpaid liabilities of the Foundation, shall be distributed solely to the Hospital in accordance with the Plan and subject to restriction imposed by donors at the time the gift was given to the Foundation or subject to restrictions imposed by the Foundation in connection with the Plan. The restrictions on funds is discussed more fully below.

13. The Hospital is exempt from taxation pursuant to federal and state laws, and shall use the funds to continue to support the activities of the Hospital or for a specific purpose as required by the relevant gift instrument, if any.

14. Attached to the Plan as Exhibit “C” is the Hospital’s Certificate of Incorporation and all amendments thereto.

15. Attached to the Plan as Exhibit “D” are the financial statements prepared by the Hospital for the last three years and interim financial statements detailing the assets as of September 30, 2014.
16. Attached to the Plan as Exhibit “E” is the Internal Revenue Service letter of determination that the Hospital is exempt from taxation.

17. Attached to the Plan as Exhibit “F” is a sworn affidavit from Ben Moore, III, Chief Executive Officer and President of the Hospital, stating the purposes of the Hospital and that it is currently exempt from federal income taxation and verifying that all assets transferred from the Foundation will be used to support the activities of the Hospital or any successor hospital located in Alexandria Bay, New York.

18. Attached to the Plan as Exhibit “G” is a schedule of the current liabilities of the Foundation.

19. Attached to the Plan as Exhibit “H” is a schedule of contracts that the Foundation will assign to the Hospital. The Hospital will assume any and all rights and obligations under these contracts.

The Transfer of Funds

20. Certain funds were given to the Foundation subject to donor restrictions at the time such funds were given to the Foundation (the “Donor Restricted Funds”). The Donor Restricted Funds are being transferred to the Hospital subject to the restrictions imposed by the donors.

21. The Foundation is also holding funds, in the amount of approximately $6,868.53, for the benefit of the “Friends of River Hospital” volunteer organization (the “Friends”). Pursuant to the Plan, these funds shall be transferred to the Hospital to be held in a separate account for the benefit of the Friends and subject to any restrictions and purposes the Friends deem proper (the “Friends Funds”).
22. The Foundation has historically funded certain educational opportunities for employees of the Hospital. To ensure funds remain available for this purpose, the Foundation will designate an as yet determined amount to be held for the purpose of supporting scholarships and other programs to pay for educational opportunities for employees of the Hospital (the "Scholarship Funds"). The Foundation understands the Hospital intends to use these funds to fund an Education Assistance Plan under section 127 of the Internal Revenue Code.

23. The remaining funds shall be contributed to the Hospital to support operations and may be appropriated and used as the Hospital deems proper.

24. As of the date of the Plan, the Foundation is owed $107,691 from the Hospital. In connection with the Plan and the transfer of assets, and in furtherance of its mission, the Foundation is forgiving any amounts due to the Foundation from the Hospital.

Assignment of Contracts

25. The Foundation has certain contracts that it believes should be assigned to and assumed by the Hospital. The Hospital has agreed to assume these obligations. Upon approval of the Plan by the Court, the Foundation will take the steps necessary to assign such contracts to the Hospital.

Consent of Attorney General

26. The Foundation has reviewed the Plan with the New York Attorney General’s (the “AG”) office and obtained a letter indicating the AG’s office consents to the Plan and the distribution of assets set forth therein. A copy of the AG’s letter is attached hereto as Exhibit “C”.
Expenses and Dissolution

27. The Foundation estimates it will incur expenses not to exceed $20,000 in connection with this dissolution process, including any accounting and legal fees. All final distributions will be reflected in the Foundation’s final financial report.

28. The Foundation shall carry out this Plan within two hundred seventy (270) days after the date that an Order Approving this Plan of Dissolution and Distribution of Assets is signed by this Court.

29. No previous application for approval of the Plan has been made.

WHEREFORE, Petitioner requests that the Court grant an Order Approving the Plan of Dissolution and Distribution of Assets of River Hospital Foundation, Inc., a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1002.

Dated: ________________

CENTOLELLA LYNN D’ELIA & TEMES LLC

David Temes, Esq.
Jason Centolella, Esq.
Attorneys for Petitioner
Office and P.O. Address
100 Madison Street, Suite 1905
Syracuse, New York 13202
Telephone: (315) 766-2119
STATE OF NEW YORK )
COUNTY OF JEFFERSON ) ss.:

______________________, being duly sworn, deposes and says that I am
the _______________ of River Hospital Foundation, Inc., petitioner in the above-entitled
action, have read the foregoing Petition and know the contents thereof, that the same is true to
the knowledge of deponent, except for the matters therein stated to be alleged upon information
and belief, and as to those matters, I believe them to be true. This verification is made by
deponent because the above party is a corporation and he/she is an officer thereof.

______________________________

Sworn to before me this
____ day of ____________, 2015.

______________________________
Notary Public
RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of October, 2015, approves the filing of the Certificate of Dissolution of River Hospital Foundation, Inc., dated as attached.