

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

**COMMITTEE DAY**

**AGENDA**

*July 19, 2018*

*10:30 a.m.*

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

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

Gary Kalkut, M.D., Vice Chair

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

**Ambulatory Surgery Centers - Construction Exhibit # 1**

| <u>Number</u> | <u>Applicant/Facility</u>              |
|---------------|--|
| 1. 181206 C   | OMNI Surgery Center<br>(Oneida County) |

**Hospice Services - Construction Exhibit # 2**

| <u>Number</u> | <u>Applicant/Facility</u>                  |
|---------------|--|
| 1. 181260 C   | Hudson Valley Hospice<br>(Dutchess County) |

**Residential Health Care Facilities – Construction Exhibit # 3**

| <u>Number</u> | <u>Applicant/Facility</u>             |
|---------------|---------------------------------------|
| 1. 181155 C   | Oxford Nursing Home<br>(Kings County) |

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

**Acute Care Services - Establish/Construct Exhibit # 4**

| <u>Number</u> | <u>Applicant/Facility</u>                            |
|---------------|--|
| 1. 181251 E   | South Nassau Communities Hospital<br>(Nassau County) |

**Ambulatory Surgery Centers - Establish/Construct Exhibit # 5**

| <u>Number</u> | <u>Applicant/Facility</u>   |
|---------------|---|
| 1. 172395 E   | Queens Endoscopy ASC, LLC<br>(Queens County)                                      |
| 2. 181152 E   | Roosevelt Surgery Center, LLC d/b/a Manhattan Surgery Center<br>(New York County) |

**Residential Health Care Facilities - Establish/Construct****Exhibit # 6**

| <u>Number</u> | <u>Applicant/Facility</u>   |
|---------------|---|
| 1. 172198 E   | Leroy Operating LLC d/b/a Leroy Village Green Nursing and Rehabilitation Center<br>(Genesee County) |
| 2. 172313 E   | Kingston NH Operation LLC d/b/a Ten Broeck Center for Rehabilitation & Healing<br>(Ulster County)   |
| 3. 181046 E   | Martine Center for Rehabilitation and Nursing<br>(Westchester County)                               |
| 4. 181112 E   | Clinton Square Operations, LLC d/b/a Bishop Rehabilitation and Nursing Center<br>(Onondaga County)  |
| 5. 181144 E   | Park Terrace Care Center<br>(Queens County)   |
| 6. 181165 E   | Queens Nassau Rehabilitation and Nursing Center<br>(Queens County)                                  |
| 7. 181182 E   | MARNC Operating LLC d/b/a Massena Rehabilitation & Nursing Center<br>(St. Lawrence County)          |

**Certified Home Health Agency - Establish/Construct****Exhibit #7**

| <u>Number</u> | <u>Applicant/Facility</u> |
|---------------|---------------------------|
| 1. 181084 E   | Willcare<br>(Erie County) |

**C. Home Health Agency Licensures****Exhibit # 8****Affiliated with Assisted Living Programs (ALPs)**

| <u>Number</u> | <u>Applicant/Facility</u>  |
|---------------|--|
| 161026 E      | Foundation for the Elderly Inc d/b/a Atlantis Home Care<br>(Queens County) |
| 172165 E      | Utica LHCSA, LLC d/b/a Oneida Home Care<br>(Oneida County)                 |

**Changes of Ownership with Consolidation**

| <u>Number</u> | <u>Applicant/Facility</u>   |
|---------------|---|
| 181393 E      | Community Care Companions, Inc. d/b/a Interim Healthcare of New York<br>(Monroe County) |

**D. Certificates**

**Exhibit # 9**

**Restated Certificate of Incorporation**

Applicant

The Frederick Ferris Thompson Hospital

**Certificate of Dissolution**

Applicant

Genesee Valley Group Health Association

Ruby Weston Manor



**Project # 181206-C  
OMNI Surgery Center**

**Program:** Diagnostic and Treatment Center    **County:** Oneida  
**Purpose:** Construction    **Acknowledged:** April 3, 2018

**Executive Summary**

**Description**

Central New York ASC, LLC d/b/a OMNI Surgery Center (the Center), a proprietary Article 28 freestanding ambulatory surgical center (FASC) located at 498 French Road, Utica (Oneida County), requests approval to be certified as a multi-specialty FASC. The Center is currently certified as a single-specialty FASC specializing in pain management services. Multi-specialty FASC certification is requested to accommodate the addition surgical specialties, including ophthalmology and endoscopy services. No construction or renovation is required, as indicated by the applicant. The only project costs are related to moveable equipment and CON fees.

The Center was approved by the Public Health Council for a five-year limited life under CON 131026 and began operations effective December 8, 2015. The applicant stated that the Center has the capacity to handle additional surgical cases in addition to the interventional pain management cases currently being performed, and would like the flexibility to allow physicians in other specialties to use the Center. Additionally, adding other specialties will assist in their charity care efforts. Approximately 500 additional cases are projected to be performed during the first incremental year.

The Center has only been operating for two years and will continue to operate under their "limited life" approval. The Department will continue to monitor the Center's Medicaid and Charity Care efforts, and when the center

requests indefinite life in 2020, the center's performance will be evaluated against the original projections provided in CON 131026.

**OPCHSM Recommendation**  
Approval, with no change to the operating certificate expiration date

**Need Summary**  
The Center is in its third year of operations and has begun efforts to attract charity care cases. The addition of multispecialty surgery services will assist in those efforts. At the time of review for indefinite life, the Center's performance in relation to their projected Medicaid and charity care volumes (under CON 131026) will be evaluated.

**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**  
Project costs of \$19,998 will be met via equity out of the Company's cash reserves. The proposed budget is as follows:

|            | <u>Current Year</u> | <u>Year One</u>  |
|------------|---------------------|------------------|
| Revenues   | \$3,980,388         | \$4,174,184      |
| Expenses   | <u>3,557,744</u>    | <u>3,628,644</u> |
| Net Income | \$422,644           | \$545,540        |

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval, with no change to the operating certificate expiration date, 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]
2. The continued submission of annual reports to the Department as required under approval of CON 131026. [RNR]

Council Action Date

**August 2, 2018**

## Need Analysis

### Analysis

The service area, Oneida County, has two freestanding multi-specialty ASCs and two freestanding single-specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in Oneida County for 2015 and 2016.

| ASC Type            | Facility Name                         | Total Patient Visits |               |
|---------------------|---------------------------------------|----------------------|---------------|
|                     |                                       | 2015                 | 2016          |
| Multi               | Apex Surgical Center (opened 7/10/15) | 362                  | 3,449         |
| Multi               | Griffiss Surgery Center               | 3,329                | 3,781         |
| Single              | Mohawk Valley Endoscopy Center        | 8,568                | 8,538         |
| Single              | OMNI Surgery Center (opened 12/8/15)  | N/A                  | 2,486         |
| <b>Total Visits</b> |                                       | <b>12,259</b>        | <b>18,254</b> |

Source: SPARCS-2017

The patient visits above constitute a 48.9% year-to-year increase.

The center began operation in Dec 2015, but didn't receive its Medicaid Provider number (approval) until June 2017. Hence, there was no Medicaid utilization for 2016. Per this application, the center is reporting 12.4% Medicaid utilization for 2017. The Charity Care utilization has been low thus far: 0% in 2016, and 0.2% for 2017.

The applicant indicated that becoming a multi-specialty FASC will enable the Center to offer a broader range of surgical services to the community and be able to provide care to the underserved residents of Oneida, Herkimer, and Madison counties. They believe this will help them to achieve the Medicaid and Charity Care commitments made in their establishment application. The Center indicated that they are committed to providing health care services to patients in Oneida, Herkimer and Madison Counties and surrounding service areas, regardless of their ability to pay. The Center maintains a Charity Care Policy to provide financial assistance to those patients who are unable to meet their financial obligation to the Center. A Financial Assistance Application must be filled out by the patient/guarantor prior to the date of service. The Center's Charity Care Policy provides a sliding fee schedule to patients meeting the financial criteria using the Federal Poverty Income Guidelines.

The center has contacted Utica Community Health Center (a FQHC) and Upstate Family Health Center, Inc. (an Article 28 FQHC look-alike) in Utica. Center staff make periodic visits to educate these, and other area physicians, of the services provided, their acceptance of referrals, and the availability of financial assistance for qualifying patients.

### Opposition

The Department received a jointly signed letter of opposition from Mohawk Valley Health System, Oneida Health System, and Apex Surgical Center (jointly owned by Oneida Health System and area physicians) requesting the CON be disapproved due to need and proximity to St. Elizabeth Campus and St. Luke's Campus. Additionally, the signatories request the project be withdrawn by the Department since the FASC is still under their limited life and is not yet meeting its charity care projections.

The FASC has the space and capacity to add specialties and believes that the expansion of surgical offerings will assist them in meeting their projected charity care commitment. The projected volumes, which appear reasonable and are based on physician commitment letters, project a financially feasible operation. The proposal to add surgical procedures enhances access through choice. Additionally, as the center is only in its third year of operation, and only received Medicaid certification in 2017, it is difficult to fully assess their service to the underserved. When the center requests permanent life in 2020, the center's performance will be evaluated against the original projections provided in CON 131026.

## Conclusion

Approval of this project will enhance access to multi-specialty surgery services in an outpatient setting for the residents of Oneida County.

## Recommendation

**From a need perspective, approval is recommended with no change to the operating certificate expiration date.**

# Program Analysis

## Project Proposal

Central New York ASC LLC, d/b/a OMNI Surgery Center, an existing single-specialty pain management ambulatory surgery center, located at 498 French Road in Utica (Oneida County), seeks approval to become a multi-specialty ambulatory surgery center.

The Center was designed and constructed to meet the standards of a multi-specialty surgery center. Currently, it operates four operating rooms, each of which are at least 410 square feet in area. The center has the capacity to handle additional surgical cases in addition to the interventional pain management cases currently being performed and would like the flexibility to allow physicians in other specialties to use the center.

It is anticipated that current staffing will be able to accommodate the projected incremental increase in cases. Dr. Nameer Haider will continue to serve as the Medical Director and the existing transfer and affiliation agreement with St. Elizabeth Center will remain in effect.

## 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.

## 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, approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

The total project cost is \$19,998, detailed as follows:

|                    |           |
|--------------------|-----------|
| Movable Equipment  | \$17,900  |
| Application Fee    | 2,000     |
| Processing Fee     | <u>98</u> |
| Total Project Cost | \$19,998  |

Project costs of \$19,998 will be met via equity out of the Company's cash reserves. BFA Attachment A is a financial summary of the Center's operations, which indicates sufficient cash to fund the transaction.

### Operating Budget

The applicant has submitted their current year (2017) and first-year operating budget, in 2018 dollars, as shown below:

| <u>Revenue</u>           | <u>Current Year (2017)</u> |                      | <u>Year One</u>  |                      |
|--------------------------|----------------------------|----------------------|------------------|----------------------|
|                          | <u>Per Proc.</u>           | <u>Total</u>         | <u>Per Proc.</u> | <u>Total</u>         |
| Commercial - FFS         | \$1,161.19                 | \$874,374            | \$966.71         | \$984,109            |
| Medicare - FFS           | \$1,161.09                 | 1,322,486            | \$1,106.60       | 1,354,484            |
| Medicaid - MC            | \$1,157.93                 | 492,121              | \$981.11         | 531,761              |
| Private Pay/Other        | \$1,162.38                 | <u>1,291,407</u>     | \$1,142.71       | <u>1,303,830</u>     |
| Total Revenue            |                            | \$3,980,388          |                  | \$4,174,184          |
| <br><u>Expenses</u>      |                            |                      |                  |                      |
| Operating                | \$835.09                   | \$2,869,358          | \$744.57         | \$2,935,858          |
| Capital                  | <u>200.35</u>              | <u>688,386</u>       | <u>175.70</u>    | <u>692,786</u>       |
| Total Expenses           | \$1,035.43                 | \$3,557,744          | \$920.27         | \$3,628,644          |
| <br>Net Income           |                            | <br><u>\$422,644</u> |                  | <br><u>\$545,540</u> |
| <br>Utilization (Visits) |                            | <br>3,436            |                  | <br>3,943            |

The following is noted with respect to the submitted budget:

- The reimbursement rates are based on the average rates experienced by the Center during 2018. Medicare rates are based on the 2018 Medicare fee schedule. Medicaid rates are at 90% of Medicare per historical experience. Commercial and Private Pay are at 110% of Medicare rates.
- Operating expenses are based on the current year average costs plus the addition of costs related to the new service.
- Utilization by payor related to the submitted operating budget is as follows:

|                   | <u>Current Year</u> | <u>Year One</u> |
|-------------------|---------------------|-----------------|
| Commercial - FFS  | 22.0%               | 25.9%           |
| Medicare - FFS    | 33.1%               | 31.0%           |
| Medicaid - MC     | 12.4%               | 13.7%           |
| Private Pay/Other | 32.3%               | 28.9%           |
| Charity           | <u>0.2%</u>         | <u>0.5%</u>     |
| Total             | 100.0%              | 100.0%          |

### Capability and Feasibility

Project costs of \$19,998 will be met via equity from, the Company's cash reserves. The submitted budget indicates a net income of \$545,540 in the first year. Revenues are based on the average rates experienced during 2018. The budgets appear reasonable.

BFA Attachment A is a financial summary of OMNI Surgery Center's 2016 certified financial statements and their internal financial as of the December 31, 2017 and May 30, 2018. As shown, the entity had a positive net asset position, net income, and positive working capital in all periods shown except for 2016. 2016 was the first full year of operations which resulted in a negative working capital and negative operating income due to start up.

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

### Recommendation

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

## Attachments

BFA Attachment A Financial Summary – OMNI Surgery Center's 2016 - May 30, 2018



**Project # 181260-C  
Hudson Valley Hospice**

**Program: Hospice  
Purpose: Construction**

**County: Dutchess  
Acknowledged: April 13, 2018**

**Executive Summary**

**Description**

Hudson Valley Hospice, Inc. (HV Hospice), a voluntary not-for-profit, Article 40 Hospice, requests approval to purchase the building in which its main administrative office currently resides, and perform renovations to expand the building. The main office is located at 374 Violet Avenue, Poughkeepsie (Dutchess County) in a single-story, 11,240-square foot (SF) building the hospice has been leasing from Taconic Realty Associates, LLC, the property owner, for the past 20 years. HV Hospice will purchase the building and renovate a portion adding a 4,000 SF addition. The building will continue to be used for administrative and support staff offices and office space for clinical directors responsible for coordinating clinical field staff. The new construction will accommodate additional offices, expanded spaces for its bereavement program, pastoral care, referral center, nursing case managers, a documentation area for social workers, multi-use conference rooms for Interdisciplinary Group Teams, and medical supply storage.

HV Hospice is licensed to provide hospice care to the residents of Dutchess and Ulster Counties and is certified by Medicare (CMS) and accredited by the Joint Commission. There will be no change to services, clinical programs, service area or office locations. The applicant maintains an additional office located at 400 Aaron Court, Kingston (Ulster County), which will not be impacted by this application. HV Hospice is the sole corporate member of the Hudson Valley Hospice Foundation, Inc., its fundraising organization.

On February 20, 2018, Hudson Valley Hospice, Inc. entered into Real Estate Purchase Agreement with Taconic Realty Associates, LLC for the sale and acquisition of the real property for \$1,450,000. A down payment of \$145,000 has already been paid to the seller.

The applicant indicated that over the past five years (2013 to 2017) they have experienced growth in patient referrals (1,456 to 2,372), admissions (926 to 1,401), average daily census (123 to 224) and patient visits (43,057 to 58,887), which required recruiting additional staff (78.38 FTEs to 154.98 FTEs from 2014 to 2017). The building expansion will accommodate administrative needs related to the added staff.

OPCHSM Recommendation  
Contingent Approval.

Need Summary  
This project will have no impact on services provided.

Program Summary  
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.

Financial Summary  
Total project costs of \$2,807,592 will be funded via \$707,592 in equity and a ten-year loan amortized over 20 years with interest fixed at

M&T Bank's 10-year Cost of Funds plus 185 basis points (Indicative rate of 4.70% as of March 20, 2018). The bank will provide one renewal option up to ten years based on M&T Bank's corresponding Cost of Funds plus credit spread to be determined at that time. M&T Bank has provided a letter to fund the project as stated above. A budget wasn't necessary as services remain the same and the costs of owning is less then renting as presented in BFA Attachment B.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 4006(a)(b) states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of thirty hundredths of one percent of the total capital value of the project, exclusive of CON fees.. [PMU]

**Approval conditional upon:**

1. The project must be completed within two 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. Construction must start on or before October 1, 2018 and construction must be completed by June 1, 2019, presuming the Department has issued a letter deeming all contingencies have been satisfied 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. [PMU]

Council Action Date

**August 2, 2018**

## Need & Program Analysis

### Program Description

Hudson Valley Hospice, a not-for-profit, Article 40 Hospice agency, is seeking approval to acquire and expand upon the property they are currently leasing.

The applicant has been leasing their office in Poughkeepsie for nearly twenty years from Taconic Realty Associates, LLC, a limited liability company in New York. This project proposes for Hudson Valley Hospice to buy this building for one million four hundred fifty thousand dollars (\$1,450,000) Currently, this space is used as offices for administration, support staff, and clinical directors. When the purchase is finalized, Hudson Valley Hospice will expand the building approximately four thousand square feet and renovate portions of the existing building in order to accommodate additional offices and provide space for its bereavement program, pastoral care, referral center, nursing Case Managers, Social Worker's documentation area, medical supply storage as well as multi-use conferences rooms.

Hudson Valley Hospice serves the residents of Dutchess county from their location at 374 Violet Avenue, Poughkeepsie, New York 12601. Hudson Valley Hospice has an additional office at 400 Aaron Court, Kingston, New York 12401 which serves the residents of Ulster county.

The agency provides the following services:

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

This project will not impact the services provided by Hudson Valley Hospice.

### Conclusion

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.

### Recommendation

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

## Financial Analysis

### Building Contract of Sale Agreement

The applicant has submitted an executed Contract of Sale for the Building, to be effective upon PHHPC approval. The terms are summarized below:

|                    |   |
|--------------------|---|
| Date:              | February 20, 2018   |
| Seller:            | Taconic Realty Associates, LLC  |
| Purchaser:         | Hudson Valley Hospice, Inc.   |
| Asset Transferred: | Real Property located at 374 Violet Avenue, Poughkeepsie, NY 12601 (building consisting of approximately 11,390 feet of space and approximately 1.68 acres on which the building is located on) |
| Purchase Price:    | \$1,450,000   |
| Payment:           | \$145,000 paid upon execution and balance at closing  |

The real property was appraised at \$1,500,000 by a certified MAI appraiser.

#### Total Project Cost and Financing

Total project costs for the building purchase, new construction and renovation is estimated at \$2,807,592, broken down as follows:

|                            |              |
|----------------------------|--------------|
| Building Acquisition *     | \$1,450,000  |
| New Construction           | 850,500      |
| Renovation & Demolition    | 180,000      |
| Design Contingency         | 102,100      |
| Construction Contingency   | 102,100      |
| Architect/Engineering Fees | 55,000       |
| Other Fees                 | 21,500       |
| Movable Equipment          | 29,000       |
| Financing Costs            | 7,000        |
| CON Application Fee        | 2,000        |
| CON Processing Fee         | <u>8,392</u> |
| Total Project Cost         | \$2,807,592  |

\*The \$1,450,000 building purchase price was below the MAI appraised value of \$1,500,000. Project costs are based on a construction start date of October 1, 2018, with an eight-month construction period.

The applicant's financing plan appears as follows:

|  |                  |
|--|------------------|
| Equity - Accumulated Funds   | \$707,592        |
| Loan: 10-year term, 20-year amortization, interest fixed at M&T's 10-year Cost of Funds plus 185 basis points (Indicative rate of 4.70% as of 3/20/18) | <u>2,100,000</u> |
| Total  | \$2,807,592      |

#### Capability and Feasibility

Total project costs of \$2,807,592 to be funded via \$707,592 in equity and a ten-year loan amortized over 20 years at the above stated terms. At the end of initial ten-year term, the bank will provide one renewal option of up to ten years based on M&T Bank's corresponding Cost of Funds plus credit spread to be determined at that time. M&T Bank has provided a letter committing to fund the project as stated above.

There is minimal effect on working capital as the cost of owning versus renting is approximately the same. BFA Attachment A presents the 2015-2016 certified financial statements of Hudson Valley Hospice, Inc. and their internal financials as of December 31, 2017, which shows an average positive working capital, an average positive net asset and an average positive net operating surplus of \$516,609.

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

#### Recommendation

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

## Attachments

- BFA Attachment A Hudson Valley Hospice, Inc. 2015 -2016 Certified Financial Statements and Internal Financial Statements as of December 31, 2017
- BFA Attachment B Occupancy Cost Comparison of Owning vs Leasing



**Project # 181155-C  
Oxford Nursing Home**

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

**County:** Kings  
**Acknowledged:** March 12, 2018

**Executive Summary**

**Description**

This application amends and supersedes CON 031182. Oxford Nursing Home, Inc., a 235-bed, proprietary business corporation, Article 28 residential health care facility (RHCF) located at 144 So. Oxford Street, Brooklyn (Kings County), requests approval to construct a 200-bed replacement facility to be located at 2832 Linden Boulevard, Brooklyn, and to decertify 35 RHCF beds. An application was first filed in 2003 to relocate the facility to the Red Hook section of Brooklyn. However, Oxford failed to receive required New York City (NYC) land use and administrative code approvals and as a result, the applicant sought alternative sites within the borough of Brooklyn. A new "as-of-right" development site was located upon which construction can commence. Therefore, land use approvals will not be a factor in construction of the nursing home.

The current facility was originally built as an Elks Club and retrofitted for an RHCF in 1957. The facility is one of the oldest nursing homes in NYC and its present bed compliment includes many multi-bedded, "ward accommodation" rooms. The new construction will be a modern design employing the neighborhood concept. The new facility will be constructed on a 100,000-square foot parcel of land in the Lindenwood section of Kings County, a neighborhood of Brooklyn. The design will be a campus style, low-rise building of three floors and a basement. Oxford Nursing Home, Inc. does not own the current facility or real estate, and therefore there is no outstanding mortgage.

Conover King Realty, LLC, an affiliate of Oxford Nursing Home, Inc., will be the property owner of the RHCF replacement facility and will be responsible for the mortgage. BFA Attachment C shows the organizational chart and members of Conover King Realty, LLC and Oxford Nursing Center, Inc. Oxford Nursing Home, Inc. will enter into a 30-year lease agreement with Conover King Realty, LLC for site control.

Upon Public Health and Health Planning Council (PHHPC) approval and completion of the project, Oxford Nursing Home will change its name to Oxford Rehabilitation and Nursing Facility.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

This project will assist in moving Kings County towards the Department's planning standard of 97 percent occupancy by reducing the overall bed compliment by 35 beds. The new facility will be a modern nursing home designed to meet the needs of nursing home residents going forward.

**Program Summary**

Oxford Nursing Home proposes to replace the current antiquated 235 bed nursing home with a modern 200 bed replacement facility and decertify 35 residential health care facility beds.

**Financial Summary**

Project costs of \$70,767,883 will be met as follows: equity of \$3,035,883 from accumulated funds; \$11,300,000 from the sale of the land

purchased by Conover King Realty, LLC for the original site (this will cover the land acquisition cost of the new site valued at \$11,300,000 per the MAI appraisal); and \$56,432,000 to be satisfied via a bank mortgage at 6.0% over 30 years. Greystone has provided a letter of interest as a source of permanent financing. The Department is reducing the recommended equity contribution to 20% since the facility is reducing 35 beds and total project costs are

below the reimbursable maximum bed caps. The proposed budget is as follows:

|          |                     |
|----------|---------------------|
| Revenues | \$28,521,100        |
| Expense  | <u>\$22,881,200</u> |
| Gain     | \$5,369,900         |

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a commitment acceptable to the Department of Health, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest within 120 days of receipt from the Office of Health Systems Management, Bureau of Architectural and Engineering Review approval of final plans and specifications and before the start of construction. Included in the submitted permanent mortgage commitment must be a Sources and Uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of documentation of the sale of the parcel of real estate at the corner of Conover and King Street in Red Hook, acceptable to the Department of Health. [BFA]
5. Submission and programmatic review and approval of the final floor plans. [LTC]
6. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-04. [AER]
7. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
8. Submission of State Environmental Quality Review (SEQR) Summary of Findings pursuant to 6 NYCRR Part 617.4(b) (6). [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. Construction must start on or before September 1, 2019 and construction must be completed by September 1, 2021, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. 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. [PMU]
3. The operator shall submit a plan to maintain resident services and safety during construction to the Metropolitan Area Regional Office, and must receive approval for such plan prior to the commencement of construction. [LTC]
4. The submission of Final Construction Documents, as described in BAER Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

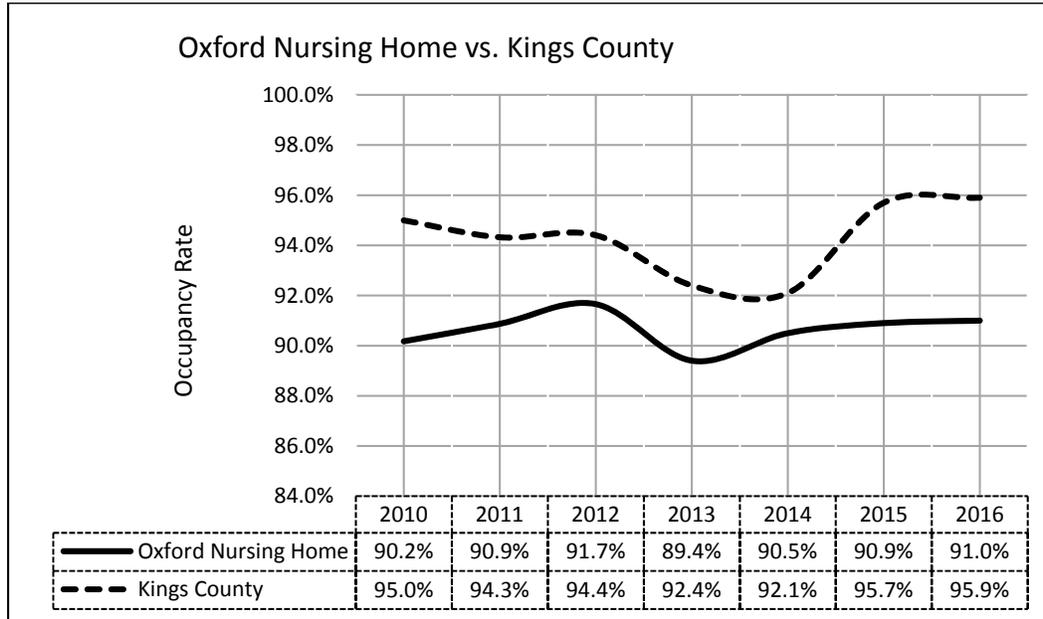
Council Action Date

**August 2, 2018**

# Need Analysis

## Background

The planning optimum for occupancy is 97% in New York State. The overall occupancy was 95.9% for Kings County and 91.0% for Oxford Nursing Home in 2016.



## Medicaid Admissions

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.

Oxford Nursing Home's Medicaid admission rate for 2015 was 77.0% which exceeded Kings County's threshold of 20.9%. In 2016 Oxford Nursing Home's saw 97% Medicaid admissions which was also above the County's threshold of 27.4%.

## Conclusion

This project will result in a reduction of 35 beds, which will bring Kings County closer to the planning optimum occupancy.

## Recommendation

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

## Program Analysis

### Facility Information

|                       | <b>Existing</b>                                | <b>Proposed</b>                            |
|-----------------------|--|--|
| Facility Name         | Oxford Nursing Home                            | Oxford Rehabilitation and Nursing Facility |
| Address               | 144 South Oxford Street.<br>Brooklyn, NY 11217 | 2832 Linden Bouvard.<br>Brooklyn, NY 11208 |
| RHCF Capacity         | 235  | 200  |
| ADHC Program Capacity | N/A  | Same                                       |
| Type of Operator      | Proprietary                                    | Same                                       |
| Class of Operator     | Business Corporation                           | Same                                       |
| Operator              | Oxford Nursing Home Inc.                       | Same                                       |

### Program Review

Oxford Nursing Home is an antiquated 235 bed nursing home located in the Clinton Hill section of Kings County. The existing building dates to 1915 with ward style resident rooms. Oxford Nursing Home, recognizing the limitations of the existing building, proposes to relocate and replace the facility to comply with today's standards and codes. Oxford Nursing Home has acquired a tract of land located at 2832 Linden Bouvard, Brooklyn, NY 11208 to construct a modern 200 bed nursing facility. The current proposal would be to construct the three-story building at the new location and reduce RHCF Capacity from 235 beds to 200 beds.

### Physical Environment

The proposed design layout of the Oxford Nursing Home is a conventional linear design. The floorplan has an institutional feel with double-loaded corridor configuration, but the layout is broken up into smaller resident neighborhoods with multiple lounges along the central hallway.

The cellar level will contain mechanical, staff support, and service areas such as maintenance, dietary, mechanical & utility service rooms, central laundry, and housekeeping.

The first-floor level contains the building's primary entry and most of the facilities' administrative and professional staff office space, along with several large resident recreational and therapeutic spaces. A separate activities of daily living area includes a bedroom, full kitchen, laundry area, and bathroom. A beauty parlor is situated convenient to the central recreation room, main lobby and therapy suites with a proximate toilet room. A large central auditorium space will also be located on the first floor configured to serve both day to day resident central activities as well as evening community events.

The second and third floors have identical floorplans for residential rooms, which utilizes a linear layout with double-loaded corridors. Each floor has 100 total beds composed of 42 double rooms and 16 single rooms. The floor is organized into four neighborhoods consisting of 25 beds with their own lounge space and nurses station. Lounges are located at the corners of corridors which allows for residents to stop and visit or take breaks as they move about the floor.

The shower rooms are shared by two neighborhoods. One shower room is designated for ambulatory residents and the other for assisted residents, both shower rooms offer tub and shower bathing options. Dining room space is shared between two neighborhoods and seats 50 residents. Each dining room has a full-service pantry with steam tables, refrigerators, freezers, ice maker, and beverage center for meal service. Food is sent to the units on hot and cold carts from the central kitchen in the basement.

### Compliance

Oxford Nursing Home Inc. is currently in current compliance with all applicable codes, rules, and regulations.

## Quality Review

| Provider Name            | Overall | Health Inspection | Quality Measures | Staffing | NYS Quintile |
|--------------------------|---------|-------------------|------------------|----------|--------------|
| Oxford Nursing Home Inc. | ****    | ****              | *****            | *        | 2            |

## Conclusion

The construction of New Oxford Nursing Home will enable the applicant to continue its mission of providing high quality long term care through the replacement of its obsolete and non-code conforming building. The new building will improve resident privacy by providing single and double bedrooms compared to the ward style rooms found at the current location. Although the floorplan is dated, the buildings neighborhood concept with smaller multiple lounges and dining spaces will add a homelike feel to the facility.

## Recommendation

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

## Financial Analysis

### Contract of Sale

The applicant has submitted an executed Contract of Sale for the land purchase for the site they will occupy. The terms are summarized below:

|                            |  |
|----------------------------|--|
| Date:                      | January 24, 2018   |
| Parcel:                    | 2832 Linden Boulevard, Brooklyn, New York, designated as block 4405, Lot 1 |
| Seller:                    | Health Insurance Plan of Greater New York                                  |
| Purchaser:                 | Conover King Realty, LLC   |
| Purchase Price:            | \$11,300,000   |
| Payment of Purchase Price: | \$11,300,000 from the sale of the land previously purchased in Red Hook    |

The land previously purchased under CON 031182 for construction of the Oxford Nursing Home replacement facility is for sale by Conover King Realty, LLC. The assets include the parcel of real estate at the corner of Conover and King Street in Red Hook, Brooklyn. Proceeds from the sale will be used to assist in the financing of this project. Conover King Realty, LLC, an affiliate of Oxford, acquired the real estate in 2003; however, Oxford failed to receive required NYC land use and administrative code approvals to construct the RHCFC at the site. An interested buyer signed a letter of intent for purchase of the property for a sale price of \$13,350,000, but the letter expired without a formal contract being signed. The applicant indicated that there are several other potential buyers, some of whom may be offering substantially more than \$13,350,000. Assuming the sale price for the Red Hook land to be \$13,350,000, after expenses related to the sale such as taxes and legal fees are considered, the applicant anticipates there will be \$11,300,000 remaining to be assigned to this project.

The remaining \$3,035,883 will come from the cash reserves of Oxford Nursing Home, Inc., a related entity. BFA Attachment B shows sufficient funds available.

Lease Agreement

Conover King Realty, LLC, a related party that will own the real property, will lease the premises to Oxford Nursing Home, Inc. under the terms of the proposed lease rental agreement summarized below:

|             |   |
|-------------|---|
| Premises:   | A 200-bed RHCf located at 2832 Linden Boulevard, Brooklyn, NY 11208   |
| Lessor:     | Conover King Realty, LLC  |
| Lessee:     | Oxford Nursing Home, Inc.   |
| Term:       | 30 Years  |
| Rental:     | Annual debt service of \$4,500,000 (\$375,000 per month) due under the mortgage loan including debt service coverage ratio requirements for taxes, insurance and reserve for replacement contributions along with additional rent payments to cover overhead costs. |
| Provisions: | Tenant to pay taxes, utilities, insurance, repairs and maintenance.   |

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship of the landlord and tenant. The applicant has stated that there are no comparable properties in their geographical location to measure reasonableness of the rent. The rent is based on a pass-through of the debt service, plus a small mark-up.

Total Project Cost and Financing

Total cost to construct the proposed new 200-bed facility is projected to be \$70,767,883, broken down as follows:

|                            |                     |
|----------------------------|---------------------|
| Land Acquisition           | \$11,300,000        |
| New Construction           | 39,552,174          |
| Design Contingency         | 3,955,217           |
| Construction Contingency   | 1,977,609           |
| Planning Consultant Fees   | 670,000             |
| Architect/Engineering Fees | 1,375,000           |
| Construction Manager Fees  | 300,000             |
| Other Fees(Consultant)     | 430,000             |
| Movable Equipment          | 2,000,000           |
| Telecommunications         | 1,000,000           |
| Financing Costs            | 3,505,920           |
| Interim Interest Expense   | 4,312,880           |
| CON Application Fee        | 2,000               |
| CON Processing Fee         | <u>387,083</u>      |
| Total Project Cost         | <u>\$70,767,883</u> |

Project cost is based on a construction start date of September 1, 2019, with a 24-month construction period.

Exclusive of CON fees, the project cost per bed is \$351,894, compared to a geographic per bed limitation of \$352,000 with a construction midpoint of 2020. The Bureau of Architectural and Engineering Review has determined that allowable project cost per bed of \$351,894 (exclusive of CON Fees) is acceptable.

Land acquisition costs are based on an executed purchase agreement, and an MAI appraisal in support of land value has been submitted by the applicant.

Financing for the project is anticipated as follows:

|                                      |                     |
|--------------------------------------|---------------------|
| Proceeds from the Red Hook Land Sale | \$ 11,300,000       |
| Cash                                 | 3,035,883           |
| Mortgage (6.0% over 30-year term)    | <u>56,432,000</u>   |
| Total Funds                          | <u>\$70,767,883</u> |

The Department is reducing the recommended equity contribution to 20% since the applicant is decertifying 35 beds via the construction of the replacement facility, and total project costs are below the reimbursable maximum bed caps. Therefore, the recommended equity contribution is reduced by \$.50 for each \$1 approved total project cost below the caps.

Project costs will be financed by accumulated funds, proceeds from the Red Hook land sale and a permanent mortgage over 30 years at an interest rate of 6.0%. Greystone has provided a letter of interest for Conover King Realty, LLC as a source of permanent financing. The applicant stated that the project will become eligible for HUD financing three years after Certificate of Occupancy receipt and they intend to apply to HUD at that time.

#### Operating Budget

The applicant has submitted their current year (2016) operations and an operating budget, in 2018 dollars, for the first year subsequent to occupancy in the replacement facility. The budget is summarized as follows:

|                    | <u>Current Year</u> |                    | <u>First Year</u> |                    |
|--------------------|---------------------|--------------------|-------------------|--------------------|
|                    | <u>Per Diem</u>     | <u>Total</u>       | <u>Per Diem</u>   | <u>Total</u>       |
| <u>Revenue</u>     |                     |                    |                   |                    |
| Medicaid           | \$274.87            | \$16,421,663       | \$350.98          | \$18,888,500       |
| Medicare           | \$722.03            | 5,707,610          | \$729.35          | 6,713,700          |
| Commercial         | \$394.15            | 4,040,067          | \$367.26          | 2,600,600          |
| Private Pay/Other  | \$410.76            | 139,659            | \$449.58          | 318,300            |
| Non-Operating Rev. |                     | <u>45,152</u>      |                   | <u>0</u>           |
| Total              |                     | \$26,354,151       |                   | \$28,521,100       |
| <u>Expenses</u>    |                     |                    |                   |                    |
| Operating          | \$243.80            | \$19,074,470       | \$256.01          | \$18,128,300       |
| Capital            | <u>10.98</u>        | <u>859,269</u>     | <u>67.12</u>      | <u>4,752,900</u>   |
| Total              | \$254.78            | \$19,933,739       | \$323.13          | \$22,881,200       |
| Net Income         |                     | <u>\$6,420,412</u> |                   | <u>\$5,639,900</u> |
| Patient days       |                     | 78,238             |                   | 70,810             |
| Occupancy          |                     | 90.96%             |                   | 97.0%              |

The following is noted with respect to the operating budget:

- The Medicare rate is projected based on the full federal rates for the Medicare Prospective Payment System in effect for 2017 and increased by 1% per annum for inflation. The rate also reflects care to HIV/Aids patients with higher acuity. Private pay assumes current rates of payment increased by 1% per annum for inflation. The Medicaid rate is based on the current rate under the Statewide Pricing methodology and reflects an increase due to capital reimbursement on the new building. It is noted that the RHCF does not have any Medicaid designated AIDS specialty beds, but does provide care to AIDS patients, which favorably impacts the casemix index due to higher acuity
- Increase in first year expenses is due to the new lease for the replacement facility.
- Utilization by payor source is projected as follows:

|                   | <u>Current Year</u> | <u>First Year</u> |
|-------------------|---------------------|-------------------|
| Medicaid          | 76.36%              | 76.0%             |
| Medicare          | 10.10%              | 13.0%             |
| Commercial        | 13.10%              | 10.0%             |
| Private Pay/Other | 0.44%               | 1.0%              |

- Breakeven occupancy for the first year after replacement is projected at 77.82%

### Capability and Feasibility

The facility operator, a related party to the realty entity, will provide equity of \$3,035,883 from accumulated fund. BFA Attachment B is the internal balance sheet of Oxford Nursing Home, Inc. as of December 31, 2017, which shows sufficient resources. Proceeds from the sale of the land previously purchased will be used to pay for the new land to be purchased by Conover King Realty, LLC, which is valued at \$11,300,000 per an MAI appraisal submitted by the applicant. The remaining project cost of \$56,432,000 will be satisfied from a bank mortgage at the stated terms. A bank letter of interest has been submitted by the applicant for Conover King Realty, LLC.

Working capital requirements should be minimal as operations transfer to the new facility and revenue streams will not be negatively impacted. Costs associated with relocation of residents and staff are budgeted at \$208,000, since the new facility is approximately 7.2 miles away and residents will be moved by ambulance, which is covered under Medicaid and accounts for most of the patient population.

The submitted budget indicates that excess revenues of \$5,639,900 would be generated in the first year following replacement. The budget appears reasonable.

Implementation of the transition of nursing home (NH) residents to Medicaid managed care is ongoing. Under the managed care construct, Managed Care Organizations (MCOs) negotiate payment rates directly with NH providers. A Department policy paper provided guidance requiring MCOs to pay the Medicaid FFS rate as a benchmark, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. The transition period has been extended out to 2020; hence, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

As shown on BFA Attachment A, the facility has maintained positive working capital and net asset balances and generated an average excess balance of \$5,856,655 over the 2015-2017 periods.

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.**

## Attachments

|                  |  |
|------------------|--|
| BFA Attachment A | Financial Summary, Oxford Nursing Center, Inc      |
| BFA Attachment B | Oxford Nursing Center, 2017 internal balance Sheet |
| BFA Attachment C | Organizational Chart                               |



**Project # 181251-E  
South Nassau Communities Hospital**

**Program: Hospital  
Purpose: Establishment**

**County: Nassau  
Acknowledged: April 10, 2018**

**Executive Summary**

**Description**

South Nassau Communities Hospital (SNCH) is a 455-bed, voluntary not-for-profit, Article 28 acute care teaching hospital located at One Healthy Way, Oceanside, New York (Nassau County). SNCH also operates eight extension clinic sites, an off-campus emergency department (in Long Beach), an Article 36 Certified Home Health Agency (CHHA) and Article 36 Long Term Home Health Care Program (LTHHCP) (both located at the same address in Baldwin). South Nassau University Health System, Inc. (SNUHS, f/k/a Winthrop South Nassau University Health System, Inc.) is the sole corporate member and active parent of SNCH.

Mount Sinai Hospitals Group, Inc. (MSHG) is a voluntary not-for-profit, integrated healthcare delivery system located in New York County that provides acute care hospital services primarily to the residents of metropolitan New York. MSHG is the sole member, active parent and co-operator of The Mount Sinai Hospital, Beth Israel Medical Center d/b/a Mount Sinai Beth Israel, St. Luke's-Roosevelt Hospital Center d/b/a Mount Sinai St. Luke's and Mount Sinai West, and the New York Eye and Ear Infirmary d/b/a New York Eye and Ear Infirmary of Mount Sinai. MSHG's integrated delivery system also includes The Icahn School of Medicine at Mount Sinai, an academic medical center. Mount Sinai Health System, Inc. (MSHS) is the sole member of MSHG.

SNCH request approval for the establishment of MSHG as their active parent/co-operator of the hospital and the parent of their CHHA. Additionally, SNCH requests approval for the

establishment of MSHS as the corporate grandparent of their CHHA. Upon approval of this application, SNCH will be disestablished from SNUHS; Mount Sinai Hospitals Group, Inc. will become the sole corporate member and Mount Sinai Health System, Inc. will become the corporate grandparent of SNCH.

As an active parent and co-operator, Mount Sinai Hospitals Group, Inc. will have the ability to exercise certain rights, powers and authorities over SNCH, which include:

- Approval and appointment of the board members of SNCH or the governing board of a hospital affiliate;
- Appointment and removal of the chief executive officer of SNCH;
- Approval of amendments to the certificates or articles of incorporation and bylaws of SNCH;
- Approval of annual operating and capital budgets of SNCH;
- Approval of a sale, lease, mortgage or encumbrance of any SNCH assets in excess of \$10,000,000;
- Approval of any merger, business consolidation, dissolution of hospital or any subsidiary organization, acquisition or joint venture by SNCH;
- Approval of an establishment of any new line of business proposed for the hospital;
- Approval of any filing at the state or federal level of a bankruptcy petition or the taking of any action regarding insolvency by SNCH;
- Approval of any indebtedness in excess of \$10,000,000 by SNCH;
- Approval of the establishment of an academic affiliation or the amendment of an existing

academic affiliation agreement with any educational institution; and

- Approving and initiating the filing of certificate of need applications by SNCH.

On February 16, 2018, MSHG and SNCH entered into an Affiliation Agreement whereby MSHG agreed to become the sole corporate member of SNCH with active parent powers. The terms include a financial commitment by MSHG to pay \$20 million to SNCH on the Effective Date of Affiliation, plus an additional amount of \$80 million over a five-year period, for an aggregate amount of \$100 million to be used to support Capital Projects consistent with the funding requirements of each year's Final Budget (approximately \$20 million per year). Additionally, though MSHG will have the authority to appoint the SNCH Board, MSHG agreed that during the Initial Period (a minimum five-year period beginning on the Effective Date) the SNCH Board will be composed of the existing SNCH Board, plus two MSHG appointees. During the Initial Period, MSHG will have the right to appoint representatives on the Executive Committee and the Strategic Planning Committee of the SNCH Board. After the Initial Period, MSHG will have full authority to name the SNCH Board, and SNCH will create an advisory board comprised of persons representing the communities served by SNCH.

Also during the Initial Period, two SNCH appointees will serve as trustees on the Board of Trustees of MSHG with the right to vote. One appointee will be the Chair of the SNCH Board and the other will be a nominee chosen by MSHG from a slate of nominees (SNCH Board members) proposed by the SNCH Board. At least one of the two SNCH appointees will serve as a member of the Mount Sinai Health System Executive Committee.

This affiliation is a proactive and strategic plan to ensure the future of health care in communities served by MSHG and SNCH by establishing a coordinated integrated healthcare system with the objectives of improving quality, increasing

access and lowering the costs of healthcare in the communities they serve.

There are no projected changes in staffing, utilization, revenues or expenses for SNCH as a direct result of this project. Upon completion, the South Nassau Communities Hospital will remain a separate not-for-profit corporation licensed under Article 28 and Article 36 of the Public Health Law and Article 31 of the Mental Hygiene Law, maintaining a separate operating certification. There will be no change in either authorized services or the number or type of beds because of this project.

BFA Attachments A and B present the current and proposed organizational charts for SNCH and MSHG.

OPCHSM Recommendation  
Contingent Approval

Need Summary

There are no changes to services or beds as a result of this transaction.

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. MSHG will pay SNCH \$20 million on the effective date of affiliation, and an additional \$80 million over five years to support SNCH capital projects. MSHG will fund this financial commitment from its accumulated funds.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of a photocopy of the amended Restated Certificate of Incorporation for the Mount Sinai Hospitals Group, Inc., acceptable to the Department. (CSL)
3. Submission of a photocopy of a Board of Trustees resolution authorizing the Amended and Restated Bylaws of Mount Sinai Hospital Group, Inc., acceptable to the Department. (CSL)
4. Submission of a photocopy of the executed Restated Certificate of Incorporation of South Nassau Communities Hospital, acceptable to the Department. (CSL)
5. Submission of a photocopy of a resolution of the Shareholders of Winthrop South Nassau University Health System, Inc. approving of the disestablishment of Winthrop South Nassau University Health System, Inc. as the active parent of South Nassau Communities Hospital and its certified home health agency and long term health program or a Certificate of Dissolution of Winthrop South Nassau University Health System, Inc., 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

**August 2, 2018**

## Need and Program Analysis

### Project Proposal

SNCH request approval for the establishment of MSHG as their active parent/co-operator of the hospital and the parent of their CHHA. Additionally, SNCH requests approval for the establishment of MSHS as the corporate grandparent of their CHHA. Upon approval of this application, SNCH will be disestablished from SNUHS and Mount Sinai Hospitals Group, Inc. will become the sole corporate member and Mount Sinai Health System, Inc. will become the corporate grandparent of SNCH.

### Character and Competence

The Mount Sinai Hospitals Group, Inc. Board of Trustees is comprised of the following individuals:

|                       |                    |                       |
|-----------------------|--------------------|-----------------------|
| Peter W. May, Chair   | John B. Hess       | Joel I. Picket        |
| Roberta Abrams        | Steven Hochberg    | Richard Ravitch       |
| Frank J. Bisignano    | James L. Kempner   | Judith O. Rubin       |
| Jeff T. Blau          | John A. Levin      | Andrew M. Saul        |
| Henry M. Calderon     | Marc S. Lipschultz | Robert F. Savage, Jr. |
| Edgar M. Cullman, Jr. | Eric Mindich       | Thomas W. Strauss     |
| Susan R. Cullman      | Michael Minikes    | James S. Tisch        |
| Joel S. Ehrenkranz    | James Neary        | David Windreich       |
| Blaine V. Fogg        | Alice Netter       | John S. Winkleman     |
| Donald J. Gogel       | Bernard Nussbaum   | William H. Wright, II |
| Jerome R. Goldstein   | Lewis C. Pell      | Michael Zimmerman     |

The Mount Sinai Health System, Inc Board of Trustees is comprised of the following individuals:

|                     |                     |                   |
|---------------------|---------------------|-------------------|
| Peter W. May, Chair | Richard A. Friedman | Joel I. Picket    |
| Jeff T. Blau        | Donald J. Gogel     | Richard Ravitch   |
| Susan R. Cullman    | Steven Hochberg     | Thomas W. Strauss |
| Joel S. Ehrenkranz  | John A. Levin       | James S. Tisch    |
| Blaine V. Fogg      | Michael Minikes     |                   |

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.

The following personal disclosures were made relating to healthcare matters or healthcare entities:

- **Mr. Gogel** disclosed a relationship with Clayton, Dubilier & Rice (CD&R), a private equity investment firm. In that capacity, he disclosed two suits involving healthcare entities. In the first, initiated on January 26, 2018, the firm was named in a complaint filed in the United States District Court for the Middle District of Tennessee. The complaint alleged false and misleading public statements in violation of the Securities Act of 1933 and the Securities Exchange Act of 1934. Specifically, the plaintiffs alleged that CD&R sold corporate common stock while in possession of adverse non-public information. In the second suit, initiated on May 10, 2018, CD&R was served with a complaint for a litigation pending in California Superior Court. The plaintiffs alleged that Vantage Medical Group, Inc., a subsidiary of Agilon Health, Inc., a portfolio company of a CD&R fund, received improper transfer of assets from FirstChoice Medial Group, Inc. rendering FirstChoice judgment-proof and that assets should have been available to satisfy an arbitration award. Mr. Gogel reported that CD&R filed a motion to dismiss the first suit and plan to vigorously defend the second.

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.

The following disclosures were made in relation to Mount Sinai-affiliated entities:

- In January 2013, **St. Luke's Roosevelt Hospital** agreed to pay \$1.258M to the United States and \$1.067M to the State of New York to settle certain claims that had been brought by the US and NYS in regard to billing for outpatient psychiatric services between 1998 and 2010 and certain incidental and related issues of inpatient reimbursement from 1998 through 2002.
- The United States Attorney's Office, Southern District issued a Civil Investigative Demand (CID) dated May 20, 2013 to the **New York Eye and Ear Infirmary** (NYEE). The CID was issued pursuant to the False Claims Act and involved post-surgical pathology billing. The Applicant reported that NYEE has provided the requested documents and is responding to requests for information.
- In September 2015, **Beth Israel Medical Center** was placed on Immediate Jeopardy (IJ) status during a survey due to the presence of handcuffs in the security department. The handcuffs were immediately removed the IJ status was subsequently lifted.
- In August 2016, **Mount Sinai Health System** settled a qui tam complaint for \$2.95M (\$1.77M to NYS and \$1.18M to the US). In June 2012, the U.S. Attorney for the Southern District of New York issued a Civil Investigative Demand to Continuum Health Partners requesting documentation relating to claims submitted to Medicaid by the hospital for outpatients insured by Healthfirst, Inc. On June 27, 2014, the United States and the State of New York intervened with the qui tam complaint relating to overpayments that resulted from a (Healthfirst) software error. The complaint alleged violations of the federal False Claims Act by intentionally or recklessly failing to take necessary steps to timely identify claims affected by the software glitch and return overpayments within 60 days.
- In May 2017, **St. Luke's-Roosevelt Hospital Center** (SLR) entered into a Resolution Agreement and three-year corrective action plan and paid a fine of \$387,200 to the U.S. Department of Health and Human Services, Office for Civil Rights (OCR). The agreement was made to resolve allegations of two incidents at the former Spencer Cox HIV clinic at SLR in which patient records including HIV information were faxed to the wrong number in violation of HIPAA.
- On May 16, 2017, the Department issued a Stipulation and Order and \$2,000 fine to **Mount Sinai Hospital** based on an investigation completed on January 25, 2016 regarding allegations of sexual assault of a patient by a physician that resulted a determination of Immediate Jeopardy on January 22, 2016. The Department found that the alleged sexual assault had been reported to a facility staff member but had not been properly escalated according to established protocol. The physician in question was subsequently arrested by NYPD and suspended by the facility, however, efforts to ensure that all staff were retrained on the policy did not begin until January 21, 2016.
- In December 2017 the **Mount Sinai Hospital** settled a False Claim Act qui tam action initiated in 2013 by two employees and the court accepted the settlement in January 2018. Allegations involved a claim that the radiology department falsified doctors' names on claims submitted to Medicare and Medicaid for reimbursement. The hospital denied the claims and the U.S. and New York State governments both declined to join in the matter, however the two relators opted to litigate on their own. Mount Sinai reported that it settled the matter "in order to avoid the delay, uncertainty, inconvenience, and expense of further litigation."

#### Prevention Agenda

Per the applicant, the project is consistent with their Community Service Plan (CSP) implementation by ensuring the future delivery of needed health care services in Nassau County. The hospitals affiliated with MSGH have embraced the Prevention Agenda including:

- Aligning the CSP period with the State cycle;
- Addressing two priorities to prevent chronic diseases (reducing obesity in children and adults, and increasing preventive care and management of chronic disease);
- Giving a stronger emphasis on integrating mental health throughout intervention strategies; and
- Implementing evidence-based interventions.

The hospital states that it will use a comprehensive utilization review and monitoring system for Quality Assurance services, but does indicate how Prevention Agenda activities will be monitored. Community benefit spending (\$380,000) was reported in Community Health Improvement Services in the most recent Schedule H filing.

#### Conclusion

There will be no bed or service changes as a result of this transaction. 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 need and programmatic perspective, approval is recommended.**

## Financial Analysis

#### Capability and Feasibility

There are no project costs, budgets or working capital requirements associated with this application. MSHG will pay SNCH \$20 million on the effective date of affiliation plus an additional \$80 million over five years, for an aggregate amount of \$100 million to support capital projects. MSHG will fund this commitment via accumulated funds. BFA Attachment C is the 2017 consolidated financial statements of Mount Sinai Hospitals Group, Inc., which reveals sufficient liquid resources to meet this obligation. As shown, the entity had positive working capital of \$1,065,925,000, positive net assets of \$2,017,601,000 and positive operating income of \$205,167,000.

BFA Attachment D is the 2017 consolidated financial statements of South Nassau Communities Hospital. As shown, the entity had a positive working capital position, positive net assets position and incurred an operating loss of \$2,584,974 for the period.

The corporation has developed a strategic plan to strengthen and enhance health care services in Nassau County. The affiliation will help strengthen SNCH's access to specialty services and technology. In addition, the operational and administrative strength of Mount Sinai will lead to efficiencies and continued cost reductions.

#### Recommendation

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

## Attachments

|                  |   |
|------------------|---|
| BFA Attachment A | Current Organizational Chart of SNCH & MSHG, Inc.                                   |
| BFA Attachment B | Proposed Organizational Chart   |
| BFA Attachment C | 2017 Consolidated certified financial statement of MSHG, Inc..                      |
| BFA Attachment D | 2017 Consolidated certified financial statement of South Nassau Community Hospital. |



**Project # 172395-E  
Queens Endoscopy ASC, LLC**

**Program:** Diagnostic and Treatment Center    **County:** Queens  
**Purpose:** Establishment    **Acknowledged:** December 22, 2017

**Executive Summary**

**Description**

Queens Endoscopy ASC, LLC, a proprietary, Article 28 freestanding ambulatory surgical center (FASC) located at Utopia Center, Flushing (Queens County), requests indefinite life status. The facility was approved by the Public Health Council (PHC) under CON 111076 as a single-specialty freestanding ambulatory surgery center (FASC) specializing in gastroenterology services. PHC approval was for a five-year limited life and the Center began operations effective April 23, 2013. The applicant is not proposing to add or change any services, or expand or renovate the facility. Neil Brodsky, M.D, who is Board-Certified in Internal Medicine and Gastroenterology, will continue as Medical Director of the FASC.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

Based on CON 111076, Queens Endoscopy ASC, LLC projected 10,065 procedures in Year One and 11,071 procedures in Year Three.

Medicaid procedures were projected at 15.90 % and Charity Care was projected at 2.50%. Based on the Annual Reports submitted by the applicant, the total number of procedures was 13,194 in Year Two (2015) and 12,652 in Year Three (2016). Actual Charity Care in Year Three (2016) was 0.90% and Medicaid was 33.14%.

**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. The proposed budget is as follows:

|            | <u>Year One</u>    |
|------------|--------------------|
| Revenues   | \$11,167,593       |
| Expenses   | <u>\$7,785,824</u> |
| Net Income | \$3,381,769        |

## 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 amended Operating Agreement of Queens Endoscopy ASC, LLC, which is 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

**August 2, 2018**

## Need Analysis

### Analysis

The primary service area is Queens County. The table below provides information on projections and utilization by procedures for Year Two (2015) and Year Three (2016) based on CON 111076

| CON 111076- Procedures | Year 2 (2015) * |        | Year 3 (2016) |        |
|------------------------|-----------------|--------|---------------|--------|
|                        | Projected       | Actual | Projected     | Actual |
| Queens Endoscopy ASC   |                 |        |               |        |
| Total                  | 10,065          | 13,194 | 11,071        | 12,652 |

**\*NOTE:** Number of procedures from 2015 (Year 2) are being used because of an error in the 2014 cost report. The applicant acknowledged the error in which some 2013 cases were incorrectly included in the 2014 Cost report. As a result, information from 2015 is being presented.

The table below provides Year Three utilization, projections and actual, by payor, for CON 111076, and projections for year one following approval.

| Payor            | CON 111076<br>Projected Year<br>3 (2016) | CON 111076<br>Actual Year 3<br>(2016) | CON 172395<br>Projections<br>Year 1 |
|------------------|--|---------------------------------------|-------------------------------------|
| Medicaid FFS     | 1.43%                                    | 1.30%                                 | 0.90%                               |
| Medicaid MC      | 14.47%                                   | 31.84%                                | 22.88%                              |
| Medicare FFS     | 19.85%                                   | 11.30%                                | 14.17%                              |
| Medicare MC      | 1.44%                                    | 11.28%                                | 8.42%                               |
| Commercial MC    | 60.21%                                   | 43.35%                                | 41.11%                              |
| Other (Exchange) | 0.00%                                    | 0.00%                                 | 6.07%                               |
| Private Pay      | .10%                                     | 0.03%                                 | 3.61%                               |
| Charity Care     | 2.50%                                    | 0.90%                                 | 2.84%                               |
| Total            | 100.00%                                  | 100.00%                               | 100.00%                             |

Regarding the center's commitment to provide service to the underinsured of Queens County, the following information was provided to DOH. The center currently has Medicaid Managed Care contracts with the following health plans: Affinity Medicaid, Amerigroup Medicaid, Emblem Medicaid, Fidelis Medicaid, UHC Community Plan Medicaid, VNS Medicaid, and WellCare Medicaid. The center's Medicaid utilization has been consistently above the projected 16% each year of its operation so far and is projected to be at approximately 23% going forward. The center has referral agreements with the following healthcare organizations to provide service to the under-insured: Urban Health Plan, Community Health Network, Queens Hospital Center and Grameen VidaSana. The center is also registered with NYSDOH Cancer Services Program to provide services to the under-insured.

The center has five (5) procedure rooms and is open Monday through Friday from 8 am until 6 pm, and extends its hours as necessary to accommodate patient needs. Queens Endoscopy ASC is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

### Conclusion

The 2015 report by the Ad Hoc Advisory Committee on Freestanding ASCs and Charity Care indicates that "single specialty freestanding ASCs offering endoscopy are likely to serve an older clientele, a large portion of whom are 65 or over and eligible for Medicare; hence, it may be reasonable to expect a lower volume of Medicaid and charity care cases from these providers than from ASCs offering more general surgical services." Although the center's charity care utilization is less than 2 percent, the center has been making reasonable and sustained efforts to provide service to the uninsured in its service area, and its Medicaid volume has been consistently above its original projection of 16% each year of its limited life. Therefore, indefinite life is recommended.

Recommendation

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

## Program Analysis

### Project Proposal

There are no anticipated changes in services. Staffing is expected to remain at current levels and Dr. Neil Brodsky 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.

### 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, approval is recommended.**

## Financial Analysis

### Operating Budget

The applicant has submitted their current year (2017) and the first and third year operating budgets, in 2018 dollars, as shown below:

|                              | <u>Current Year</u>    | <u>Year One</u>        | <u>Year Three</u>      |
|------------------------------|------------------------|------------------------|------------------------|
| <u>Revenues</u>              |                        |                        |                        |
| Medicaid FFS                 | \$91,673               | \$52,063               | \$52,063               |
| Medicaid MC                  | 1,975,855              | 1,279,384              | 1,279,384              |
| Medicare FFS                 | 781,435                | 797,064                | 797,064                |
| Medicare MC                  | 1,651,963              | 890,471                | 890,471                |
| Commercial FFS               | 9,108,108              | 7,355,194              | 7,355,194              |
| Other (Exchange)             | 762,203                | 777,447                | 777,447                |
| Private Pay                  | <u>15,657</u>          | <u>15,970</u>          | <u>15,970</u>          |
| Total Revenues               | \$14,386,894           | \$11,167,593           | \$11,167,593           |
| <br><u>Expenses</u>          |                        |                        |                        |
| Operating                    | \$6,697,361            | \$6,593,878            | \$6,623,980            |
| Capital                      | <u>\$1,214,625</u>     | <u>\$1,191,946</u>     | <u>\$1,180,606</u>     |
| Total Expenses               | \$7,911,986            | \$7,785,824            | \$7,804,586            |
| <br>Net Operating Income     | <br><u>\$6,474,908</u> | <br><u>\$3,381,769</u> | <br><u>\$3,363,007</u> |
| <br>Utilization (Procedures) | <br>12,448             | <br>9,588              | <br>9,588              |
| Cost Per Procedure           | \$635.60               | \$812.14               | \$814.00               |

The following is noted with respect to the submitted budget:

- Revenue and Utilization are decreasing in Year One and Year Three due to the withdrawal of Dr. Steven Batash from membership in the FASC. Dr. Batash was a practicing physician at the Center and the applicant estimated there would be approximately 2,860 fewer cases because of his departure.
- Operating Expenses are based on current year average costs, less the effect of lower utilization due to the departure of Dr. Batash.
- The Center has conservatively based its projected Year One and Year Three revenue based on historical reimbursement rates by payor.
- The applicant indicated that the Center plans to begin recruiting additional community physicians in the near future, but in the interest of projecting a conservative budget they have not included any impact related to such potential new physicians in the projected operating budgets.

### Capability and Feasibility

There are no project costs associated with this application. The submitted budgets indicate net income of \$3,381,769 and \$3,363,007 in the first and third years, respectively. Revenues are based on current reimbursement methodologies. The budgets are reasonable.

BFA Attachment A is the 2015, 2016 and 2017 certified financial statements of Queens Endoscopy ASC, LLC. The facility had an average negative working capital position and an average net asset position from 2015 through 2017. The entity achieved an average net income from operations of \$6,715,340 from 2015 through 2017.

BFA Attachment B is the internal financial statements of Queens Endoscopy ASC, LLC as of April 31, 2018. The facility had a positive working capital position and a positive net asset position through April 31, 2018. The entity achieved a net income from operations of \$2,230,476 through April 30, 2018.

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

Recommendation

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

## Attachments

- BFA Attachment A Financial Summary – 2015, 2016, and 2017 certified financial statements of Queens Endoscopy ASC, LLC
- BFA Attachment B Financial Summary – April 30, 2018 Internal Financial Statements of Queens Endoscopy ASC, LLC



**Project # 181152-E**  
**Roosevelt Surgery Center, LLC d/b/a Manhattan Surgery  
Center**

**Program:** Diagnostic and Treatment Center    **County:** New York  
**Purpose:** Establishment    **Acknowledged:** March 6, 2018

**Executive Summary**

**Description**

Roosevelt Surgery Center, LLC d/b/a Manhattan Surgery Center (the Center), a proprietary, Article 28 diagnostic and treatment center (D&TC) located at 619 West 54<sup>th</sup> Street, New York (New York County), requests approval for indefinite life. The D&TC was approved by the Public Health Council (PHC) under CON 101134 as a multi-specialty freestanding ambulatory surgery center (FASC). PHC approval was for a conditional five-year limited life and the Center began operations effective April 1, 2013. The applicant is not proposing to add or change any services, or expand or renovate the facility.

The Center provides surgical services in the areas of general surgery, interventional pain management, ophthalmology, otolaryngology (ear, nose and throat surgery), and orthopedic surgery, currently utilizing five operating rooms. Gregory J. Pamel, M.D. will continue to serve as the Center's Medical Director. The FASC has a transfer and affiliation agreement with Mount Sinai St. Luke's Roosevelt Hospital for backup services as needed.

OPCHSM Recommendation  
Approval

**Need Summary**

Based on CON 101134, Manhattan Surgery Center projected 6,096 procedures in Year One and 6,647 procedures in Year Three. Medicaid procedures were projected at 5.0 % and Charity Care was projected at 2.0% for Year Three. The total number of procedures was 2,641 in Year One (2014-1<sup>st</sup> full year) and 5,910 in Year Three (2016). Charity Care in Year Three (2016) was 2.34% and Medicaid was 5.11%.

**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. The proposed budget is as follows:

|            |                   |
|------------|-------------------|
|            | <u>Year One</u>   |
| Revenues   | \$13,752,497      |
| Expenses   | <u>12,433,997</u> |
| Net Income | \$1,318,500       |

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval**

Council Action Date

**August 2, 2018**

## Need Analysis

### Analysis

The primary service area is New York County. The table below provides Year Three utilization, projections and actual, by payor, for CON 101134, and projections for year one following approval.

| Payor          | CON 101134<br>Projected Year<br>3 (2016) | CON 101134<br>Actual Year 3<br>(2016) | CON 181152<br>Projections<br>Year 1 |
|----------------|--|---------------------------------------|-------------------------------------|
| Medicaid FFS   | 2.00%                                    | 0.07%                                 | 0.05%                               |
| Medicaid MC    | 2.99%                                    | 5.04%                                 | 5.80%                               |
| Medicare FFS   | 25.00%                                   | 21.90%                                | 22.19%                              |
| Medicare MC    | 1.99%                                    | 8.86%                                 | 8.44%                               |
| Commercial FFS | 15.00%                                   | 62.61%                                | 61.05%                              |
| Commercial MC  | 50.01%                                   | 0.00%                                 | 0.00%                               |
| Private Pay    | 1.01%                                    | 0.91%                                 | 2.04%                               |
| Charity Care   | 2.00%                                    | 0.59%                                 | 0.20%                               |
| Other          | 0.00%                                    | 0.02%                                 | 0.23%                               |
| Total          | 100.00%                                  | 100.00%                               | 100.00%                             |

The table below provides information on projections and utilization by procedures for Year One (2014-1<sup>st</sup> full year) and Year Three (2016) based on CON 101134.

| CON 101134- Procedures   | Year 1 (2014) |        | Year 3 (2016) |        |
|--------------------------|---------------|--------|---------------|--------|
|                          | Projected     | Actual | Projected     | Actual |
| Manhattan surgery Center |               |        |               |        |
| Total                    | 6,096         | 2,641  | 6,467         | 5,910  |

The Table below shows the Center's reported combined Medicaid, Charity Care and Uncompensated Care utilization as originally reported.

| CON 181152         | Projections<br>#101134 | Actual |       |       |       | Projections<br>181152 |
|--------------------|------------------------|--------|-------|-------|-------|-----------------------|
|                    |                        | 2014   | 2015  | 2016  | 2017  |                       |
| Medicaid           | 5.0%                   | 2.84%  | 8.39% | 5.11% | 5.85% | 5.80%                 |
| Charity Care       | 2.0%                   | 1.63%  | 1.23% | 0.59% | 0.19% | 0.20%                 |
| Uncompensated Care |                        |        |       | 3.64% | 2.73% | 3.19%                 |
| Totals             | 7.0%                   | 4.47%  | 9.62% | 9.34% | 8.77% | 9.19%                 |

At the request of DOH, the Center has supplied their documentation for their Uncompensated Care provided in 2016 and 2017. Per our analysis, DOH has reclassified some of these cases as charity care because the Center knew prior to the procedure that little or no payment would be received and did not seek such payment. Some of the reasons for non-payment include: the patient was out-of-network, physicians were out-of-network (even when the center is in-network, if the surgeon is out-of-network, Medicaid will not pay the surgeon or the Center) and implants and/or the procedure performed that were not reimbursable under Medicare/Medicaid guidelines, but the physician deemed them to be medically necessary for the patient.

The table below shows the revised Charity based upon the documentation provided by the center and further analysis done by DOH staff. Based upon these adjusted numbers, the Center has met or surpassed the original combined projections for Medicaid and Charity Care.

| CON 181152   | Projections | Actual |       |       |       | Projections |
|--------------|-------------|--------|-------|-------|-------|-------------|
|              | #101134     | 2014   | 2015  | 2016  | 2017  | 181152      |
| Medicaid     | 5.00%       | 2.84%  | 8.39% | 5.11% | 5.85% | 5.80%       |
| Charity Care | 2.00%       | 1.63%  | 1.23% | 2.34% | 1.90% | 2.10%       |
| Totals       | 7.00%       | 4.47%  | 9.62% | 7.45% | 7.75% | 8.00%       |

Regarding the Center's commitment to provide service to the underinsured of New York County, the following information was provided to DOH. The Center currently has Medicaid Managed Care contracts with the following health plans: Affinity HP, Amida care, Elderplan, Emblem CMO, Fidelis, Healthcare Partners, Healthfirst, HIP, Metroplus, UHC Community Plan and Wellcare. The Center is finalizing contracts with Healthplus, BCBS and VNS. The Center also works with Mount Sinai Ambulatory Ventures, Inc., a member of the Center, to network with Mount Sinai Department heads to reach out to additional community providers, including local FQHCs and Community Health Centers. Jacqueline Jones, M.D., the President of the Center, meets with ASCOA staff, which is affiliated with the Center to discuss increasing Charity Care. The applicant indicated they are committed to provide services to underserved and uninsured populations and has worked to become in-network with several Medicaid Managed Care Plans.

The Center has several initiatives to provide service to the underserved:

- Continuity of Care - no patient covered by an insurance plan the Center does not participate with will be denied care.
- Pediatric ENT- accept all pediatric ENT cases for patients who's insurance is out-of-network or does not cover the full cost of the procedure.
- Breast Cancer Secondary Charity Care – due to the overwhelming cost of care for breast cancer, the Center waives co-payment, co-insurance for those patients who cannot afford additional medical expenses.

In October 2017, the Center became affiliated with the Breast Treatment Task Force, a not-for-profit organization that provides free breast education, screening, diagnostic follow-up and treatment for low income patients. The Center expects to see an increase in its Charity Care utilization due to this initiative and will continue to reach out to the community and to the Center's credentialed physicians to bring additional Charity care cases to the Center in the future. Manhattan Surgery Center, LLC is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

#### Conclusion

Per the PHHPC Ad Hoc Committee recommendation, the department should exercise flexibility to evaluate each ASC according to its totality of its proposed and actual volume of service to the underserved whether Medicaid, Charity Care or a combination of the two. In analyzing the information provided by the Center, the Center has surpassed their original combined projections for service to the underserved populations in their service area of New York County since 2015. The Center has several established initiatives to provide care to the under-insured and continue their outreach efforts to the community to improve upon their commitment, thereby showing reasonable efforts to provide service to the underserved patients in New York County. Therefore, indefinite life is recommended.

#### Recommendation

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

## Program Analysis

### Program Proposal

Manhattan Surgery Center is accredited by the Accreditation Association for Ambulatory Health Care (AAAHC). No additional services are proposed at this time. Staffing is expected to remain at current levels (54.8 FTEs) and Dr. Gregory J. Pamel 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.

### 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, approval is recommended.**

## Financial Analysis

### Operating Budget

The applicant has submitted their current year (2017) and the first and third year operating budgets, in 2018 dollars, as shown below:

| Revenues              | Current Year (2017) |                     | Years One & Three |                     |
|-----------------------|---------------------|---------------------|-------------------|---------------------|
|                       | Per Diem            | Total               | Per Diem          | Total               |
| Medicaid FFS          | \$718.67            | \$2,156             | \$718.67          | \$2,156             |
| Medicaid MC           | \$1,405.58          | \$520,066           | \$1,407.07        | \$530,467           |
| Medicare FFS          | \$1,393.39          | \$1,971,647         | \$1,393.68        | \$2,011,080         |
| Medicare MC           | \$1,146.89          | \$617,028           | \$1,146.89        | \$629,369           |
| Commercial FFS        | \$2,407.62          | \$9,372,881         | \$2,407.62        | \$9,560,339         |
| Private Pay           | \$7,675.92          | \$997,870           | \$7,652.83        | \$1,017,827         |
| All other *           | \$77.13             | \$1,234             | \$78.69           | \$1,259             |
| <b>Total Revenues</b> |                     | <b>\$13,482,882</b> |                   | <b>\$13,752,497</b> |

|                 |                 |                  |                 |                    |
|-----------------|-----------------|------------------|-----------------|--------------------|
| <u>Expenses</u> |                 |                  |                 |                    |
| Operating       | \$1,700.92      | \$10,846,752     | \$1,642.63      | \$10,683,686       |
| Capital         | <u>\$274.47</u> | <u>1,750,311</u> | <u>\$269.11</u> | <u>1,750,311</u>   |
| Total Expenses  | \$1,975.39      | \$12,597,063     | \$1,911.75      | \$12,433,997       |
| Net Income      |                 | <u>\$885,819</u> |                 | <u>\$1,318,500</u> |
| Procedures      |                 | 6,377            |                 | 6,504              |

*\*All Other includes No-Fault, Self-Pay and Workers Compensation.*

Expense and utilization assumptions are based on the current experience of Manhattan Surgery Center. In 2016, 1.89% of total utilization was for Secondary Charity Care, and the Center wrote off \$1,931,284 of procedure fees as Secondary Charity Care, representing 14.97% of the Center's total revenue in 2016. In 2017, the Center wrote off \$1,981,688 of procedure fees as Secondary Charity Care, representing 14.8% of their total revenue in that year. In 2017, the Center experienced 1.90% traditional Charity Care procedure utilization and 5.85% Medicaid procedure utilization.

#### Capability and Feasibility

There are no project costs associated with this application. The submitted budgets indicate net income of \$1,318,500 in the first and third years. Revenues are based on 2017 payer rates and current reimbursement methodologies. The submitted budgets are reasonable.

BFA Attachment B is the 2016 certified financial statements of Roosevelt Surgery Center, LLC. The facility had a negative working capital position due to current payments due on long term loans, and a favorable net asset position. The entity achieved a positive net income from operations of \$754,766 through December 31, 2016.

BFA Attachment C is the internal financial statements of Roosevelt Surgery Center, LLC as of December 31, 2017. The facility had a negative working capital position, due to current payments due on long term loans, and a positive net asset position. The entity achieved a net income from operations of \$841,458 through December 31, 2017.

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

#### Recommendation

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

|                      |
|----------------------|
| <h2>Attachments</h2> |
|----------------------|

|                  |   |
|------------------|---|
| BFA Attachment A | Current and original ownership of Roosevelt Surgery Center.   |
| BFA Attachment B | Financial Summary – December 31, 2016 certified financial statements of Roosevelt Surgery Center LLC. |
| BFA Attachment C | Financial Summary – December 31, 2017 internal financial statements of Roosevelt Surgery Center LLC.  |



Project # 172198-E
Leroy Operating LLC d/b/a
Leroy Village Green Nursing and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Genesee
Acknowledged: October 2, 2017

Executive Summary

Description

Leroy Operating LLC d/b/a Leroy Village Green Health Facility, a New York limited liability company, requests approval to be established as the new operator of Leroy Village Green Residential Health Care Facility, Inc., a 140-bed, proprietary business corporation, Article 28 residential health care facility (RHCF) located at 10 Munson Street, Leroy (Genesee County). There will be no change in beds or services provided.

On July 14, 2017, the current operator, Leroy Village Green Residential Health Care Facility, Inc., entered into an Asset Purchase Agreement (APA) with Leroy Operating LLC for the sale and acquisition of the operating interest of the RHCF upon approval by the Public Health and Health Planning Council (PHHPC). There will be no change in the ownership of the RHCF's real property as a result of this application. The property is currently owned by Ten Munson Street Realty, LLC who closed on the property on October 30, 2017. The current operator has executed a lease agreement with Ten Munson Street Realty, LLC for site control of the facility. Upon PHHPC approval of this application, the existing lease will be assigned to the new operator. There is a relationship between Ten Munson Street Realty, LLC and Leroy Operating LLC in that there is common membership.

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

Table with 2 columns: Shareholders, %
Current Operator: Leroy Village Green Residential Health Care Facility, Inc.
Shareholders: John Bartholomew (51.00%), Michael Brady (8.16%), James Durfee (8.16%), Thomas McAfee (8.17%), Martha Mooney (8.17%), David Springett (8.17%), John Boscoe (8.17%)

Table with 2 columns: Members, %
Proposed Operator: Leroy Operating, LLC
Members: Jonathan Bleier (45%), Jacob Sod (45%), Joel Schwartz (10%)

Ownership of the realty is as follows:

Table with 2 columns: Members, %
Current Realty Owner: Ten Munson Street Realty, LLC
Members: Jonathan Bleier (45%), JLS Equisites, LLC\*\* (45%), Joel Schwartz (10%)

\*\* Holding entity owned by two separate and distinct Trusts setup for the beneficiaries of Jacob and Leah Sod. Jacob Sod is the Trustee of the Trust.

Jonathan Bleier and Jacob Sod have ownership interest in various New York State (NYS) RHCFS. BFA Attachment B presents the ownership interest and financial summary of the proposed members' NYS affiliated RHCFS.

OPCHSM Recommendation  
Contingent Approval.

Need Summary

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

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicant does not intend to utilize any staffing agencies upon their assumption of ownership.

Financial Summary

There are no project costs associated with this application. The purchase price for the RHCFS's operating interest is \$2,800,000 less workers compensation liabilities due at closing. The liabilities are currently valued at \$1,264,745 resulting in an estimated balance due of \$1,535,255 that the proposed members will fund via equity. The proposed members' net worth summaries indicate sufficient resources overall to fund the purchase price; however, liquid resources may not be available from all members proportionate to their proposed ownership interest. Jonathan Bleier and Jacob Sod have provided disproportionate share affidavits attesting to cover any proposed member's equity shortfall needed for the acquisition. The proposed budget is as follows:

|            | <u>Year One</u>   |
|------------|-------------------|
| Revenues   | \$12,082,500      |
| Expenses   | <u>10,862,717</u> |
| Net Income | \$1,219,783       |

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two-year period. [RNR]
4. Submission of an executed lease assignment and assumption agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of a Certificate of Assumed Name, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of a Certificate of Amendment of Articles of Organization of Leroy Operating LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an Operating Agreement of Leroy Operating LLC, which is acceptable to the Department. [CSL]
9. Submission of a lease agreement, which is acceptable to the Department. [CSL]
10. Submission of lease assignment and assumption agreement, which is acceptable to the Department. [CSL]

**Approval conditional upon:**

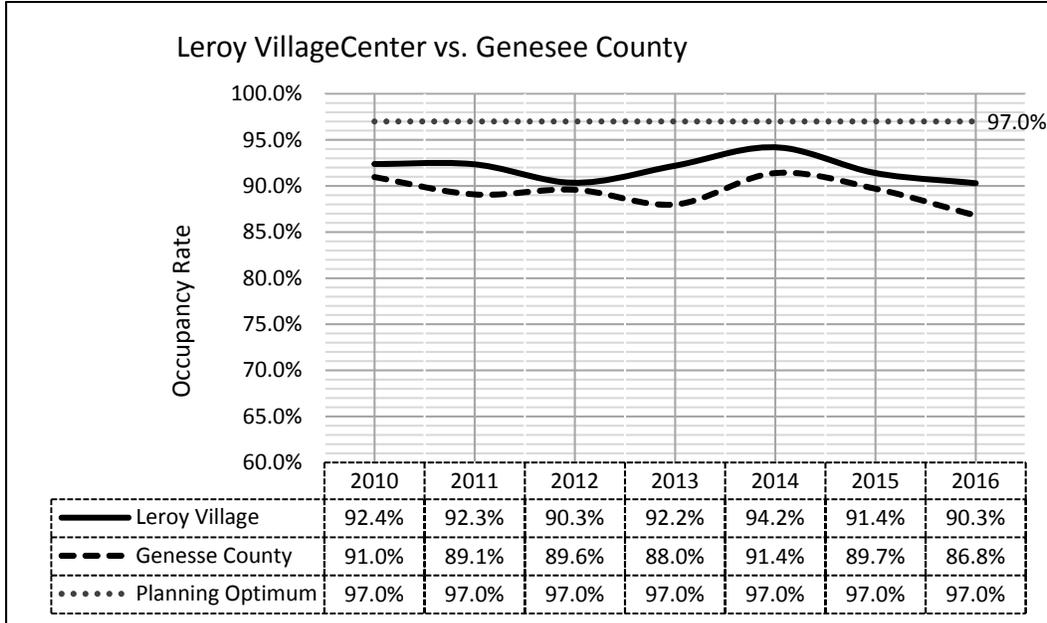
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**August 2, 2018**

# Need Analysis

## Analysis



Leroy Village Green Health Facility utilization was 92.4% in 2010 and 90.3% in 2016, showing a slight decrease over the last six years. The facility and county have been below the 97 percent planning optimum since 2010.

### Medicaid 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.

Leroy Village Green Health Facility Medicaid admissions for 2015 (5.5%) did not exceed Genesee counties threshold of 9.2%. In 2016 Leroy Village Green Health Facility saw 4.7% Medicaid admissions which was below the county's threshold of 8.1%.

### Conclusion

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

### Recommendation

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

## Program Analysis

### Facility Information

|                       | <b>Existing</b>  | <b>Proposed</b>   |
|-----------------------|--|---|
| Facility Name         | Leroy Village Green Residential Health Care Facility, Inc. | Leroy Village Nursing and Rehabilitation Center   |
| Address               | 10 Munson Street Leroy, NY 14482                           | Same  |
| RHCF Capacity         | 140  | Same  |
| ADHC Program Capacity | 0  | Same  |
| Type of Operator      | Corporation  | Limited Liability Company   |
| Class of Operator     | Proprietary  | Proprietary   |
| Operator              | Leroy Village Green Residential Health Care Facility, Inc. | Leroy Operating, LLC<br><br><u>Members</u><br>*Jonathan Bleyer           45.0%<br>*Jacob Sod                   45.0%<br>Joel Schwartz           10.0%<br>*Managing Member |

### Character and Competence - Background

#### **Facilities Reviewed**

##### New York Nursing Homes

|   |                    |
|---|--------------------|
| Greene Meadows Nursing and Rehabilitation Center  | 12/2015 to present |
| Highfields Gardens Care Center of Great Neck      | 09/2010 to present |
| Westchester Center for Rehabilitation and Nursing | 05/2013 to present |
| Pine Haven Home                                   | 07/2016 to present |
| Premier Genesee Center for Nursing and Rehab      | 01/2017 to present |

##### Pennsylvania CCRC and Nursing Home

|                                   |                    |
|-----------------------------------|--------------------|
| Deer Meadows Retirement Community | 12/2014 to present |
|-----------------------------------|--------------------|

##### Pennsylvania Nursing Homes

|  |                    |
|--|--------------------|
| Rosewood Rehabilitation and Nursing Center               | 09/2015 to present |
| Sunny view Nursing and Rehabilitation Center             | 05/2014 to present |
| Meadow View Nursing                                      | 01/2016 to present |
| Wyomissing Health and Rehabilitation Center (PA)         | 05/2016 to present |
| Premiere Armstrong Rehabilitation & Nursing Facility(PA) | 07/2017 to present |
| Deer Meadows Rehabilitation Center                       | 02/2014 to present |

##### Massachusetts Nursing Homes

|   |                    |
|---|--------------------|
| Brigham Health and Rehabilitation Center                  | 06/2016 to present |
| Country Gardens Skilled Nursing and Rehabilitation Center | 06/2016 to present |
| Crawford Skilled Nursing and Rehabilitation Center        | 06/2016 to present |
| Blue Hills Health and Rehabilitation Center               | 06/2016 to present |
| Franklin Health and Rehabilitation Center                 | 06/2016 to present |
| Kathleen Daniel Nursing and Rehabilitation Center         | 06/2016 to present |
| Charlwell House   | 06/2016 to present |
| Kimwell Nursing and Rehabilitation                        | 06/2016 to present |
| Great Barrington Rehabilitation and Nursing Center        | 08/2015 to 09/2017 |
| Timberlyn Nursing and Rehabilitation Center               | 12/2014 to 09/2017 |

##### New Hampshire Nursing Homes

|  |                    |
|--|--------------------|
| Hanover Terrace Health and Rehabilitation Center | 06/2016 to present |
|--|--------------------|

|   |  |
|---|--|
| <u>New Jersey Nursing Homes</u><br>Premier Cadbury of Cherry Hill<br>Includes an Adult Home on same campus                        | 07/2016 to present                       |
| <u>Connecticut Nursing Homes</u><br>Fairview Health of Greenwich<br>Fairview Health of Southport                                  | 10/2012 to 02/2018<br>10/2012 to 02/2018 |
| <u>Florida Nursing Home</u><br>Fort Meyers Rehabilitation and Nursing Center<br>Manatee Springs Rehabilitation and Nursing Center | 01/2016 to present<br>04/2017 to present |
| <u>Minnesota Nursing Homes</u><br>Angels Care Center<br>Crystal Care Center   | 01/2013 to 01/2015<br>01/2013 to 01/2015 |
| <u>NYS Ambulatory Service</u><br>Citywide Mobile Response (EMS)   | 04/2005 to present                       |
| <u>NYS Adult Home</u><br>Genesee Center Adult Home  | 01/2017 to present                       |

### **Individual Background Review**

**Jonathan Bleier** lists his employment as the Chief Financial Officer at Highfield Gardens Care Center, a skilled nursing facility located in Great Neck, NY. He has been employed at this facility in positions of increasing responsibility since June of 2005. Mr. Bleier has a First Rabbinic Degree (BA equivalent) from Tiferes Yisrel Rabbinical College. Mr. Bleier discloses the following health facility ownership interests:

|   |                    |
|---|--------------------|
| Highfield Gardens Care Center of Great Neck [16%]                 | 09/2010 to present |
| Westchester Center for Rehabilitation and Nursing [54.96%]        | 05/2013 to present |
| Greene Meadows Nursing and Rehabilitation Center [23.50%]         | 12/2015 to present |
| Pine Haven Home [47.50%]  | 7/2016 to present  |
| Premier Genesee Center for Nursing and Rehab [50%]                | 1/2017 to present  |
| Sunnyview Nursing and Rehabilitation Center (PA) [33.25%]         | 05/2014 to present |
| Deer Meadows Rehabilitation Center (PA) [40.50%]                  | 12/2014 to present |
| Rosewood Rehabilitation and Nursing Center (PA) [37.50%]          | 09/2015 to present |
| Meadowview (PA) [37.25%]  | 03/2016 to present |
| Wyomissing Health and Rehabilitation Center (PA) [33.33%]         | 05/2016 to present |
| Premier Armstrong Rehabilitation & Nursing Facility (PA) [50.00%] | 07/2017 to present |
| Brigham Health & Rehab Center (MA) [33.33%]                       | 06/2016 to present |
| Country Gardens Skilled Nursing & Rehab Ctr (MA) [33.33%]         | 06/2016 to present |
| Crawford Skilled Nursing & Rehab Ctr (MA) [33.33%]                | 06/2016 to present |
| Blue Hills Health & Rehab Ctr (MA) [33.33%]                       | 06/2016 to present |
| Franklin Health & Rehab Ctr (MA) [33.33%]                         | 06/2016 to present |
| Kathleen Daniel Nursing & Rehab Ctr (MA) [33.33%]                 | 06/2016 to present |
| Charlwell House (MA) [33.33%]                                     | 06/2016 to present |
| Kimwell Nursing & Rehab (MA) [33.33%]                             | 06/2016 to present |
| Timberlyn Nursing and Rehabilitation Center (MA)                  | 12/2014 to 09/2017 |
| Great Barrington Rehabilitation and Nursing Center (MA)           | 08/2015 to 09/2017 |
| Hanover Terrace Health & Rehab Ctr (NH) [33.33%]                  | 06/2016 to present |
| Premier Cadbury of New Jersey (NJ) [30.00%]                       | 07/2016 to present |
| Fort Myers Rehab (FL) [45.00%]                                    | 01/2016 to present |
| Manatee Springs Rehabilitation and Nursing Center (FL) [46.50%]   | 04/2017 to present |
| Citywide Mobile Response (EMS) [25%]                              | 06/2004 to present |
| Genesee Adult Home (50%)  | 01/2017 to present |

**Yaakov (Jacob) Sod** lists his employment as the Vice President of Acquisitions at Fairview Healthcare Management, a management service company located in Southport, Connecticut. He also lists employment at Milrose Capital, an investment group located in Lakewood, New Jersey. Mr. Sod has a BA in Talmudic Law from Midrash Shmuel Talmudic College. Mr. Sod discloses the following health facility ownership interests:

|   |                    |
|---|--------------------|
| Greene Meadows Nursing and Rehabilitation Center [23.50%]         | 12/2015 to present |
| Pine Haven Nursing Home [47.50%]                                  | 7/2016 to present  |
| Premier Genesee Center for Nursing and Rehab [50%]                | 1/2017 to present  |
| Fairview Health of Greenwich (CT)                                 | 10/2012 to 02/2018 |
| Fairview Health of Southport (CT)                                 | 10/2012 to 02/2018 |
| Sunnyview Nursing and Rehabilitation Center (PA) [39.00%]         | 05/2014 to present |
| Deer Meadows Retirement Community (PA) [40.50%]                   | 12/2014 to present |
| Rosewood Rehabilitation and Nursing Center (PA) [37.50%]          | 09/2015 to present |
| Meadow View Nursing (PA) [37.25%]                                 | 01/2016 to present |
| Wyomissing Health and Rehabilitation Center (PA) [33.34%]         | 05/2016 to present |
| Premier Armstrong Rehabilitation & Nursing Facility (PA) [50.00%] | 05/2016 to present |
| Brigham Health & Rehab Center (MA) [33.34%]                       | 06/2016 to present |
| Country Gardens Skilled Nursing & Rehab Ctr (MA) [33.34%]         | 06/2016 to present |
| Crawford Skilled Nursing & Rehab Ctr (MA) [33.34%]                | 06/2016 to present |
| Blue Hills Health & Rehab Ctr (MA) [33.34%]                       | 06/2016 to present |
| Franklin Health & Rehab Ctr (MA) [33.34%]                         | 06/2016 to present |
| Kathleen Daniel Nursing & Rehab Ctr (MA) [33.34%]                 | 06/2016 to present |
| Charlwell House (MA) [33.34%]                                     | 06/2016 to present |
| Kimwell Nursing & Rehab (MA) [33.34%]                             | 06/2016 to present |
| Timberlyn Nursing and Rehabilitation Center (MA)                  | 12/2014 to 09/2017 |
| Great Barrington Rehabilitation and Nursing Center (MA)           | 08/2015 to 09/2017 |
| Hanover Terrace Health & Rehab Ctr (NH) [33.34%]                  | 06/2016 to present |
| Premier Cadbury of Cherry Hill (NJ) [30.00%]                      | 07/2016 to present |
| Fort Meyers Rehabilitation and Nursing Center (FL) [45.00%]       | 12/2015 to present |
| Manatee Springs Rehab & Nursing Ctr (FL) [46.50%]                 | 04/2017 to present |
| Crystal Care Center (MN)  | 12/2013 to 01/2015 |
| Angels Care Center (MN)   | 12/2013 to 01/2015 |

**Joel Schwartz** lists his most recent employment as the General Manager for Medfast Billing, Inc., which is a medical billing company, until May 2016. Since that time, he indicates he is a self-promotor for investment opportunities. He indicates he has a high school diploma. Mr. Schwartz discloses the following health facility ownership interest:

|                                    |                    |
|------------------------------------|--------------------|
| Woods of Manatee Springs (FL) [7%] | 04/2017 to present |
|------------------------------------|--------------------|

**Character and Competence – Analysis**

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

A review of Green Meadows for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation & Order # 17-036 for surveillance findings on July 21, 2016. Deficiencies were found under 10NYCRR 415.12 Quality of Care Highest Practicable Potential.

A review of Premier Genesee Center for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation & Order # 17-058 for surveillance findings on August 17, 2017. Deficiencies were found under 415.12 Quality of Care Highest Practicable Potential.
- A Civil Money Penalty of \$9,428.25 was fined and paid regarding the above issue.

A review of operations for Citywide Mobile Response for the time periods Identified above reveals no enforcements.

A review of Genesee Adult Home for the period identified above reveals the following:

- The facility was fined \$1,332.00 pursuant to Stipulation & Order # ACF 18-048 for surveillance findings on June 30, 2017 & November 10, 2017. Deficiencies were found under 10NYCRR § 1001.12(b)(1-7) Records and reports.

A review of operations for Pine Haven, Highfield Gardens Care Center of Great Neck, and Westchester Center for Rehabilitation and Nursing, for the time period indicated above, reveals no enforcements.

A review of operations and the affidavit submitted by the applicant for Fairview Health in Greenwich, Connecticut indicates the following:

- The facility was fined \$360.00 for surveillance findings on May 12, 2014 class B violation of section 19a-527-1(b)(3).
- An enforcement was issued for a finding with a scope and severity level of G, at \$450 per day from 3/31/15 – 5/15/15 resulting in a total fine of \$12,285.
- The facility was fined \$760 for surveillance findings on April 12, 2017. Deficiencies were for Tags F 309 (Quality of Care) and F 323 (Accident Prevention and Resident Supervision)

A review of operations and the affidavit submitted by the applicant for Fairview Health of Southport, Connecticut indicates:

- The facility was fined \$260 for surveillance findings on January 20, 2015 related to smoking program violations.
- The facility was fined \$2,958 for surveillance findings on September 22, 2015 for findings related to Tag F 323 (Accident Prevention and Resident Supervision).
- The facility was fined 3,363 for survey findings on August 29, 2016 for findings related to Tag F 323 (Accident Prevention and Resident Supervision).
- The facility was fined \$6,821 for survey findings on August 8, 2017 related to Tag F441 (Laundry & Infection Control),

A review of operations and information submitted by the state of Pennsylvania reveals that there were no enforcements for Rosewood Rehabilitation and Nursing Center, Deer Meadows Rehabilitation Center, Wyomissing Health and Rehabilitation Center, Meadow View Nursing, and Premier Armstrong Rehabilitation and Nursing Facility, for the time period above.

A review of operations and information submitted by the state of Pennsylvania for Sunnyview Nursing and Rehabilitation Center revealed there were no enforcements/fines or penalties. However, after that document was signed information on the CMS website indicates there was a fine for \$9,298 assessed on January 2017.

A review of operations and the affidavit submitted by the applicant New Jersey reveals that there were no enforcements for Premier Cadbury of Cherry Hill (Nursing Home) for the time period identified above. For the Adult Home under this name there was a fine of \$11,250 for surveillance findings on January 31, 2017.

A review of operations and information submitted by the state of New Hampshire reveals that there were no enforcements for Hanover Terrace Health and Rehabilitation Center for the time period above.

A review of operations and the affidavit submitted by the applicant for the state of Florida discloses that for Fort Myers Rehabilitation and Nursing Center and Manatee Springs Rehabilitation and Nursing Center there were no enforcements for the timeframe above.

An affidavit submitted by the applicant for Angels Care Center in Minnesota for the period indicated above indicates the following:

The facility was fined \$1,001.60 and there was also a fine of \$27,494 for surveillance findings on November 12, 2014.

An affidavit submitted by the applicant for Crystal Care in Minnesota for the time period identified above reveals there were no enforcements for the timeframe above.

A review of operations and an affidavit submitted by the applicant for Brigham Health and Rehabilitation Center, Kimwell Nursing and Rehabilitation, Timberlyn Nursing and Rehabilitation Center, Great Barrington Rehabilitation and Nursing Center, and Charlwell House, in Massachusetts for the periods identified above indicated there were no enforcements for the timeframe above.

A review of operations and an affidavit submitted by the applicant for Country Gardens Skilled Nursing and Rehabilitation in Massachusetts for the period identified above indicates the following:

- The facility was fined \$8,076 for surveillance findings on February 13, 2017. Deficiencies were for F Tag 225 (Investigate/Reporting) and 3F Tag 323 (Accident Prevention and Resident Supervision).
- The facility was fined \$56,652 for surveillance findings on April 26, 2017. Deficiencies were for F Tag 323 (Accident Prevention and Resident Supervision) and F Tag 152 (Residents right to designate a representative).

It is noted that there a repeat citation for Tag F323 which were enforced. The applicants gave details which indicated these were not repetitive incidents. Since these enforcements are not recurrent in nature, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of operations and an affidavit submitted by the applicant for Crawford Skilled Nursing and Rehabilitation Center in Massachusetts for the period identified above indicates the following:

- The facility was fined \$66,812 for surveillance findings on August 26, 2016. Deficiencies were for F Tag 411 (Dental Services) and F Tag 309 (Quality of Care).

A review of operations and the affidavit signed by the applicant for Blue Hills Health and Rehabilitation Center in Massachusetts for the period identified above indicates the following:

- The facility was fined \$23,679 for surveillance findings on March 26, 2017 Deficiencies were for F Tag 248 (Activities) and F Tag 498 (Proficiency of Nurses Aides).

A review of operations and the affidavit submitted by the applicant for Franklin Health and Rehabilitation Center in Massachusetts for the period identified above indicates the following:

- The facility was fined \$1,950 for surveillance findings on June 22, 2016.
- The facility was fined \$32,697 for surveillance findings on August 23, 2017. Deficiencies were for F Tag 319 (Mental/Psychosocial Treatment) and Tag F323 (Accident Prevention and Resident Supervision).

A review of operations and the affidavit submitted by the applicant for Kathleen Daniel Nursing and Rehabilitation Center in Massachusetts for the period identified above indicates the following:

- The facility was fined \$27,346 for surveillance findings on January 13, 2017. Deficiencies were for F Tag 203 (Documentation transfer/discharge), Tag 204 (Preparation safe/orderly transfer discharge), Tag 225 (Investigate/report allegations), Tag 226 (Develop/Implement Abuse/Neglect Policies) and Tag 353 (Nursing Services).

Quality Review

| Provider Name                                   | Overall | Health Inspection | Quality Measures | Staffing | NYS Quintile |
|---|---------|-------------------|------------------|----------|--------------|
| Highfield Gardens Care Center of Great Neck     | **      | **                | *****            | *        | 2            |
| Westchester Center for Rehabilitation & Nursing | **      | **                | *****            | *        | 3            |
| Greene Meadows Nursing & Rehabilitation Center  | *       | *                 | ****             | ***      | 5            |
| Pine Haven Home                                 | **      | *                 | *****            | ***      | 4            |
| Premier Genesee Center for Nursing and Rehab    | **      | *                 | *****            | ***      | 2            |

**PA**

|   |     |     |       |     |     |
|---|-----|-----|-------|-----|-----|
| Sunnyview Nursing and Rehabilitation Center           | *** | *** | ****  | **  | N/A |
| Deer Meadows Rehabilitation Center                    | *** | **  | ***** | *** | N/A |
| Rosewood Rehabilitation & Nursing Center              | **  | **  | ***   | **  | N/A |
| Meadow View Nursing Center                            | **  | **  | ***   | **  | N/A |
| Wyomissing Health and Rehabilitation Center           | *** | *** | ****  | **  | N/A |
| Premier Armstrong Rehabilitation and Nursing Facility | *** | *** | ****  | *** | N/A |

**MA**

|  |       |       |       |                    |     |
|--|-------|-------|-------|--------------------|-----|
| Brigham Health and Rehabilitation Center LLC       | ***   | ***   | ***   | Data Not Available | N/A |
| Country Gardens Skilled Nrsng & Rehabilitation Ctr | ***** | ***** | ***** | ****               | N/A |
| Crawford Skilled Nursing and Rehabilitation Center | *     | *     | **    | ***                | N/A |
| Blue Hills Health and Rehabilitation Center LLC    | ***   | ***   | ****  | *****              | N/A |
| Franklin Health and Rehabilitation Center LLC      | *     | *     | ***   | *                  | N/A |
| Kathleen Daniel Nursing and Rehabilitation         | **    | *     | **    | ****               | N/A |
| Charlwell House                                    | ****  | ***   | ***   | ****               | N/A |
| Kimwell Nursing and Rehabilitation                 | ****  | ***   | ***** | **                 | N/A |

**FL**

|   |      |      |       |                    |     |
|---|------|------|-------|--------------------|-----|
| Fort Myers Rehabilitation and Nursing Center      | **** | **** | ****  | ****               | N/A |
| Manatee Springs Rehabilitation and Nursing Center | **   | *    | ***** | Data Not Available | N/A |

**NH**

|  |   |   |      |     |     |
|--|---|---|------|-----|-----|
| Hanover Terrace Health & Rehabilitation Center | * | * | **** | *** | N/A |
|--|---|---|------|-----|-----|

**NJ**

|                                |    |   |      |      |     |
|--------------------------------|----|---|------|------|-----|
| Premier Cadbury Of Cherry Hill | ** | * | **** | **** | N/A |
|--------------------------------|----|---|------|------|-----|

Regarding the homes with overall star ratings of 1 or 2, the applicant notes that quality measure ratings are higher. They noted that their staffing ratings have gone down without reductions in staffing. They indicate this is due in part to the change in methodology for the CMS staffing ratings, and they are looking into how they submit staffing information. The applicant feels the staffing rating going down is affecting the overall rating. They have put measures in place for improvement to include CNA classes, which they are able to recruit from. They are implementing new quality measures, in some cases hiring new administrators and new nursing leadership. They noted that at some of the facilities that they have recently purchased, the number of deficiencies have gone down, but the results of the prior owners' surveys are still factored in.

**Project Review**

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicant does not intend to utilize any staffing agencies upon their assumption of ownership.

**Conclusion**

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

**Recommendation**

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

**Financial Analysis**

**Asset Purchase Agreement**

The applicant has submitted an executed asset purchase agreement for the operating interests of the RHCF. The terms of the agreement are summarized below:

|                            |  |
|----------------------------|--|
| Date:                      | July 14, 2017  |
| Seller:                    | Leroy Village Green Residential Health Care Facility, Inc.   |
| Buyer:                     | Leroy Operating LLC  |
| Asset Acquired:            | NH business and operations, all furniture/fixtures, equipment, appliances, tools, instruments, machinery, computers (equipment and hardware), office equipment; trucks, vehicles/other transportation equipment, parts, supplies, and other intangible property; all inventory and supplies; all assignable contracts, leases and other arrangements, menus, policies/procedure manuals, operating manuals, training materials; marketing, sales and promotional materials and intellectual property; all administrative records, financial books and records, employee and payroll records, licenses, certificates, permits, waivers, consents, authorizations, variances, accreditations, certificates of occupancy, utility lease agreements, covenants, commitments, warranties, deposits and reserves, resident medical records, payroll records, assignable warranties, Medicare/Medicaid provider agreements and provider numbers, and all licenses held. |
| Excluded Assets:           | Cash, accounts receivable, non-transferable licenses, marketable securities, any grant awarded by a Governmental Authority related to operation of the facility prior to closing date, funds from all rate adjustments and appeals relating to dates of service prior to Closing regardless of whether funds are received after the Closing Date.  |
| Purchase Price:            | \$2,800,000 less the workers compensation liabilities assumed by Buyer at Closing (currently \$1,264,745) for estimated balance of \$1,535,255.  |
| Payment of Purchase Price: | \$5,000 deposit held in escrow;<br>\$1,264,745 assumed workers compensation liabilities (estimated);<br>\$1,530,255 (estimated) due at closing.  |

The purchase price will be paid as follows:

|  |                    |
|--|--------------------|
| Members' Equity                          | \$1,535,255        |
| Assumed Workers Compensation Liabilities | <u>\$1,264,745</u> |
| Total                                    | \$2,800,000        |

BFA Attachment A, the proposed members' net worth summaries, indicates the availability of sufficient resources overall to fund the equity contribution for the purchase price. However, liquid resources may not be available from all members proportionate to their proposed ownership interest. Jonathan Bleier and Jacob Sod have provided disproportionate share affidavits attesting to cover any proposed member's equity shortfall needed to cover the acquisition of the RHCF operations.

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 the outstanding Medicaid overpayment liabilities.

#### Master Lease Agreement

The applicant has provided the current lease agreement, which will be assigned to Leroy Operating LLC upon PHHPC approval of this application. The terms are summarized as follows:

|            |   |
|------------|---|
| Date:      | July 14, 2017   |
| Premises:  | A 140-bed RHCF located at 10 Munson Street, Leroy, (Genesee County), New York 144828                      |
| Landlord:  | Ten Munson Street Realty, LLC   |
| Tenant:    | Leroy Village Green Health Care Facility, Inc   |
| Terms:     | 10 Years from November 01, 2017 under Commencement Date Rider in Lease Agreement (Exhibit C of agreement) |
| Amount:    | \$202,500 per annum base rent (\$16,875 per month)  |
| Provision: | Triple net (real estate taxes, insurance, maintenance, utilities)   |

#### Assignment and Assumption Agreement - Lease

A draft Assignment and Assumption Agreement has been submitted for the assignment of the current lease related to the RHCF as follows:

|                  |  |
|------------------|--|
| Assignor:        | Leroy Village Green Residential Health Care Facility, Inc.         |
| Assignee:        | Leroy Operating LLC d/b/a Leroy Village Green Health Care Facility |
| Rights assigned: | All rights assigned under the master lease agreement               |

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

#### Operating Budget

The applicant has provided an operating budget, in 2018 dollars, for the first year subsequent to the change of ownership. The budget is summarized below:

| Revenue          | Current Year (2016) |                 | Year One |                 |
|------------------|---------------------|-----------------|----------|-----------------|
|                  | Per Diem            | Total           | Per Diem | Total           |
| Commercial - FFS | \$396.78            | \$1,863,258     | \$400.02 | \$1,982,900     |
| Medicare - FFS   | \$413.31            | \$793,968       | \$0.00   | \$0.00          |
| Medicare - MC    | \$0.00              | \$0.00          | 430.02   | 1,065,600       |
| Medicaid - FFS   | \$179.43            | \$5,570,921     | \$0.00   | \$0.00          |
| Medicaid - MC    | \$0.00              | \$0.00          | \$186.09 | 6,595,200       |
| Private Pay      | \$359.98            | \$2,409,000     | \$359.98 | \$2,409,000     |
| Other Operating  |                     | <u>\$29,808</u> |          | <u>\$29,800</u> |
| Total Revenue    |                     | \$10,666,955    |          | \$12,082,500    |

|                            |                |                    |               |                    |
|----------------------------|----------------|--------------------|---------------|--------------------|
| <u>Expenses</u>            |                |                    |               |                    |
| Operating                  | \$235.89       | \$10,463,369       | \$209.23      | \$10,371,400       |
| Capital                    | <u>\$10.99</u> | <u>487,311</u>     | <u>\$9.91</u> | <u>\$491,317</u>   |
| Total Expenses             | \$246.88       | \$10,950,680       | \$219.14      | \$10,862,717       |
| Net Income                 |                | <u>(\$283,725)</u> |               | <u>\$1,219,783</u> |
| Utilization (Patient Days) |                | 44,357             |               | 49,568             |
| Occupancy                  |                | 87%                |               | 97%                |

The following is noted with respect to the submitted budget:

- The applicant has provided utilization data through to November 30, 2017, which indicates facility occupancy has improved substantially in 2017, increasing to 92.43% overall for the 11-month period. The applicant intends to incorporate a marketing and community outreach program to leverage their existing relationships with upstream and downstream healthcare providers to further increase occupancy in year one.
- Private Pay is projected based on similar facilities in the same geographic area increased by 2.5% annum for inflation to reflect 2017 dollars.
- Medicare is projected based on the full federal rates of the Medicare Prospective Payment System in effect for 2016 increased 2% per annum for inflation to reflect 2017 dollars.
- Medicaid is projected based on the reimbursement methodology under Statewide Pricing, which remains the benchmark rate for Medicaid Managed Care.
- Operating expenses are based on the current year, reflect the average per diems experienced during 2016, and include a \$185,000 reduction in professional fees that the proposed new operator will not need to incur. Staffing is expected to remain at current level.
- Utilization by payor source is as follows:

| <u>Payor</u>     | <u>Current Year</u> | <u>Year One</u> |
|------------------|---------------------|-----------------|
| Commercial - FFS | 10.6%               | 10.0%           |
| Medicare - MC    | 4.3%                | 5.0%            |
| Medicaid - MC    | 70.0%               | 71.5%           |
| Private Pay      | 15.1%               | 13.5%           |
- Breakeven utilization is 87.42% for the first year.

### Capability and Feasibility

There are no project costs associated with this application. The purchase price for the RHCF's operating interest is \$2,800,000 less workers compensation liabilities of \$1,264,745 for a balance due of \$1,535,255. The balance due will be funded via equity from the proposed members. BFA Attachment A is a summary of the, proposed members' net worth, which reveals sufficient resources exist overall for the equity contribution. Proposed members Jonathan Bleier and Jacob Sod have provided disproportionate share affidavits attesting to cover any member's equity shortfall needed to cover the acquisition of the RHCF operations.

The working capital requirement of \$1,810,453, based on two months of the first year's expenses, will be satisfied from proposed members' equity of \$908,103 and financing of \$902,350 at 6% for a five-year term. Milrose Capital has provided a letter of interest at the stated terms. BFA Attachment A shows sufficient resources exist for stated levels of equity, given that disproportionate share affidavits to cover shortfalls have been provided.

The submitted budget indicates that net income of \$1,219,783 will be generated for the first year after the change in ownership. Revenues are estimated to increase from the current year (2016) by approximately \$1,415,545 based on the increase in occupancy (going from 87% to 97%). Overall expenses are expected to decrease from the current year (2016) by \$92k due mostly to a 15% decrease in professional fees. The applicant has provided actual 2017 utilization data through to November 30, 2017, which indicates occupancy has improved substantially, increasing to 92.43% overall for the 11-month period. BFA Attachment E is the budget sensitivity analysis based on the current utilization experience of the facility, which shows that budgeted revenues would decrease by \$458,899 resulting in a net income of \$760,884.

BFA Attachment D is the pro forma balance sheet of Leroy Operating LLC, which shows the operation will start with members' equity of \$3,707,650 as of the first day of operations. Assets include goodwill of \$2,198,950, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated, the total net assets are \$1,508,700.

Implementation of the transition of nursing home (NH) residents to Medicaid managed care is ongoing. Under the managed care construct, Managed Care Organizations (MCOs) negotiate payment rates directly with NH providers. A Department policy paper provided guidance requiring MCOs to pay the Medicaid FFS rate as a benchmark, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. The transition period has been extended out to 2020; hence, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment C, Financial Summary of Leroy Village Green Residential Health Care Facility, Inc., indicates that the facility has experienced positive working capital and equity position for the period shown. The facility had an operating loss of \$283,725 in 2016, which the applicant stated was due to a 6.8% decrease in Resident care revenue (\$805K decrease in Self Pay Revenues from 2015) and a \$261K increase in Bad Debt expense from 2015.

BFA Attachments B, Financial Summary of the proposed members' affiliated RHCfs, shows the facilities have maintained positive working capital, net equity, and net income from operations for the periods shown, except for Premier Genesee Center for Nursing and Rehabilitation (Premier). Premier was previously a county owned RHCf that Jacob Sod and Jonathan Bleier acquired as members of Genesee Center Operating, LLC effective January 1, 2017. The facility's first full year of operation under the new ownership indicates an improvement from net loss of \$2.52 million in 2014 to a net income of \$5,801 in 2017.

#### Conclusion

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

#### Recommendation

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

## Attachments

|                  |   |
|------------------|---|
| BFA Attachment A | Leroy Operating LLC, Proposed Members Net Worth                                   |
| BFA Attachment B | Financial Summary and ownership interest of the proposed members affiliated RHCfs |
| BFA Attachment C | Financial Summary, Leroy Village Green Residential Health Care Facility, Inc.     |
| BFA Attachment D | Pro-forma Leroy Operating, LLC  |
| BFA Attachment E | Budget Sensitivity Analysis   |



Project # 172313-E
Kingston NH Operation LLC d/b/a Ten Broeck Center for Rehabilitation & Healing

Program: Residential Health Care Facility
Purpose: Establishment

County: Ulster
Acknowledged: November 20, 2017

Executive Summary

Description

Kingston NH Operation LLC d/b/a Ten Broeck Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to be established as the new operator of Ten Broeck Commons, a 258-bed, proprietary, Article 28 residential healthcare facility (RHCF) located at One Commons Drive, Lake Katrine (Ulster County). The facility also operates a 10-slot adult day health care program (ADHCP) onsite, which is included in the transaction. TENBC, Inc. is the current RHCF operator and NYMED, Inc. is the current realty owner. Upon Public Health and Health Planning Council (PHHPC) approval, the facility will be known as Ten Broeck Center for Rehabilitation and Nursing. There will be no change in beds or services provided.

On October 3, 2017, TENBC, Inc. and NYMED, Inc. (together as "Sellers") entered into an Asset Purchase Agreement (APA) with Kingston NH Realty LLC for the sale and acquisition of the operating and real estate interests of the nursing facility, to be effectuated upon PHHPC approval. The purchase price for the RHCF's interests is \$37,500,000. Concurrent with the closing of the APA, Kingston NH Realty LLC will enter into an Assignment and Assumption Agreement (AAA) with Kingston NH Operation LLC for the assignment of the RHCF's operating interest for a \$10 fee. The transactions contemplated by the APA and AAA will close simultaneously. The applicant will lease the premises from Kingston NH Realty LLC. There is a relationship between Kingston NH Operation LLC and

Kingston NH Realty LC in that there is identical membership in both entities.

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

Table with 2 columns: Members, %
Current Operator TENBC, Inc.
Lewis Tittertin 50.0%
Anthony Scalera 33.0%
Kathryn Perez 8.5%
Lois Bouren 8.5%

Table with 2 columns: Member, %
Kingston NH Holdings, LLC 100%
Solomon Klein (10.0%)
Ernest Schlesinger (40.0%)
Esther Klein (30.0%)
Mordechai Getz (7.5%)
Avrom Gold (7.5%)
Eugene Mendlowits (5.0%)

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no change to beds or services as a result of this transaction.

### Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicants do not intend to utilize any staffing agencies upon their assumption of ownership.

### Financial Summary

The purchase price for the RHCF's assets is \$37,500,000. Kingston NH Realty LLC will acquire the operating and realty interests and will transfer the operations to Kingston NH Operation LLC through the AAA for a \$10 fee. Kingston NH Realty LLC will finance the

purchase price with \$3,750,000 cash equity, a \$3,750,000 promissory note with TENBC, Inc. (Holder) at 8% interest for a ten-year term, and a bank loan for \$30,000,000 at 6% interest for a five-year term (with a five-year borrower's option) and a 25-year amortization period. A draft promissory note with TENBC, Inc. as the Holder has been provided, and HHC finance has provided a letter of interest for the loan at the stated terms. All proposed realty owners have provided affidavits attesting to fund the balloon payment if acceptable terms are not available at the time of refinancing. The proposed budget is as follows:

|            |                     |
|------------|---------------------|
| Revenues   | \$26,264,100        |
| Expenses   | <u>\$24,474,013</u> |
| Net Income | \$1,790,087         |

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two-year period. [RNR]
4. Submission of an executed Assignment and Assumption Agreement for the operations of the Nursing Home, acceptable to the Department of Health. [BFA]
5. Submission of an executed building lease agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed promissory note, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of a Certificate of Assumed Name, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of a Certificate of Amendment of Articles of Organization of Kingston NH Operation LLC, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of the Articles of Organization of Kingston NH Holding LLC, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the Operating Agreement of Kingston NH Operation LLC, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of a lease, which is acceptable to the Department. [CSL]

13. Submission of a photocopy of an Assignment of Asset Purchase Agreement, which is acceptable to the Department. [CSL]
14. Submission of a photocopy of the Operating Agreement of Kingston NH Holding LLC, which is acceptable to the Department. [CSL]

**Approval conditional upon:**

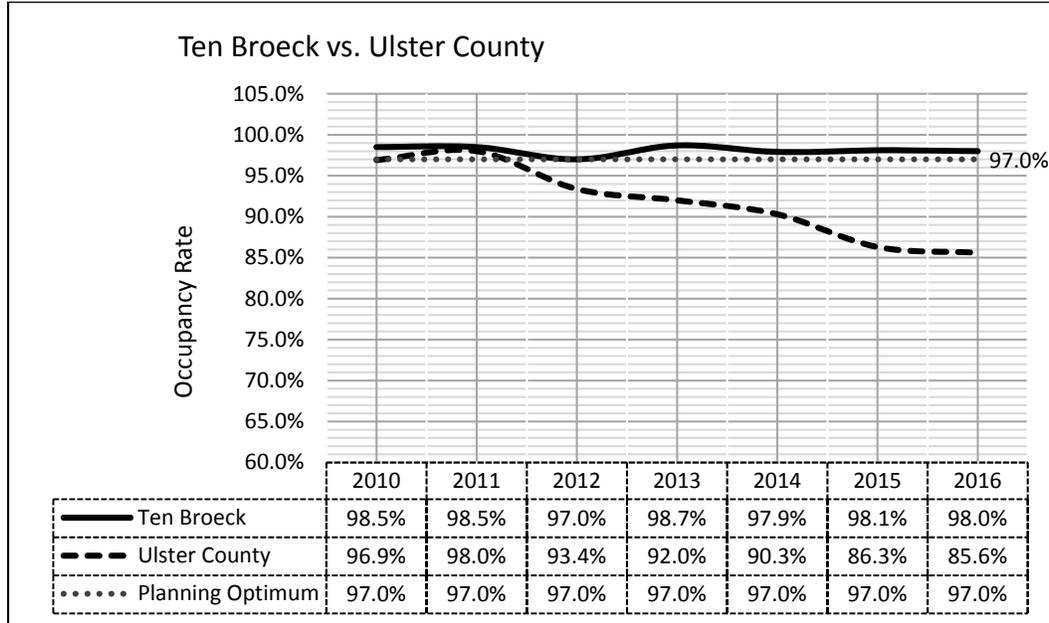
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

**Council Action Date  
August 2, 2018**

# Need Analysis

## Background

The overall occupancy for Ulster County was 85.6% for 2016 and 98% for Ten Broeck Commons as indicated below:



## Medicaid Admissions

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.

The facility's Medicaid admissions of 19.3% for 2015 exceeded Ulster County's 75% threshold rates of 19.1%, but their 2016 Medicaid admissions at 16.9% were below the County's 2016 75% threshold of 19.5%. On review of the facility's 2016 admissions, the current operator advised that there were 11 MLTC's admissions and six Medicaid pending admissions recoded in the OTHER category. Incorporating the additional 17 admissions in 2016, the Medicaid admission rate is 85 admissions from a total of 403 admissions, a rate of 21.09%.

## Conclusion

There will be no change in beds or services in Ulster County as a result of this transaction.

## Recommendation

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

# Program Analysis

## Facility Information

|                       | <b>Existing</b>                             | <b>Proposed</b>  |
|-----------------------|---|--|
| Facility Name         | Ten Broeck Commons                          | Ten Broeck Center for Rehabilitation and Nursing   |
| Address               | One Commons Drive<br>Lake Katrine, NY 12449 | Same   |
| RHCF Capacity         | 258   | Same   |
| ADHC Program Capacity | 10  | Same   |
| Type of Operator      | Corporation                                 | Limited Liability Company  |
| Class of Operator     | Proprietary                                 | Proprietary  |
| Operator              | TENBC, Inc. D/B/A Ten Broeck Commons        | Kingston NH Operation, LLC<br><u>Members</u><br>Esther Klein 30.00%<br>Ernest Schlesinger* 40.00%<br>Solomon Klein* 10.00%<br>Mordechai Getz 7.50%<br>Avrom Gold 7.50%<br>Eugene Mendolowits 5.00%<br><br>* Managing Members |

## Character and Competence - Background

### Facilities Reviewed

|   |                    |
|---|--------------------|
| Dumont Center for Rehabilitation and Nursing Care             | 07/2010 to present |
| Bellhaven Center for Rehabilitation and Nursing Care          | 03/2010 to present |
| St. James Rehabilitation & Healthcare Center                  | 08/2012 to present |
| Westhampton Care Center                                       | 01/2018 to present |
| The Grand Pavillion for Rehab and Nursing at Rockville Centre | 08/2012 to present |
| Greenery Center for Rehab and Nursing (PA)                    | 06/2016 to present |
| Washington Square Healthcare Center (OH)                      | 01/2014 to present |
| Big Bend Woods Healthcare Center (MO)                         | 01/2016 to present |
| Abbey Woods Center for Rehabilitation and Healing (MO)        | 04/2017 to present |

### Individual Background Review

**Esther Klein** is currently employed at Catapult Learning Center, LLC as a teacher's coach. Ms. Klein discloses she has a high school diploma. She discloses the following ownership interest:

|  |                    |
|--|--------------------|
| Westhampton Care Center 3%                                 | 01/2018 to present |
| Abbey Woods Center for Rehabilitation and Healing (MO) 30% | 04/2017 to present |

**Ernest Schlesinger** is the CEO of SightRite, which is an eyecare business and holds positions in regional sales with Solo Med 02, a provider of oxygen, and Dermalite Industries, a manufacturing company. Mr. Schlesinger indicates that he has a high school diploma. He discloses the following health facility ownership interests:

|  |                    |
|--|--------------------|
| Dumont Center for Rehabilitation and Nursing Care (2.50%)          | 07/2010 to present |
| Bellhaven Center for Rehabilitation and Nursing Care (5.00%)       | 03/2010 to present |
| St. James Rehabilitation and Healthcare Center (10%)               | 08/2012 to present |
| The Grand Pavillion for Rehab and Nursing at Rockville Centre (5%) | 08/2012 to present |
| Greenery Center for Rehab & Nursing (PA) (15%)                     | 06/2016 to present |
| Washington Square Healthcare Center (OH) (6%)                      | 01/2014 to present |
| Big Bend Woods Healthcare Center (MO) (10%)                        | 01/2016 to present |
| Abbey Woods Center for Rehabilitation and Healing (MO) (50%)       | 04/2017 to present |

**Solomon Klein** is currently employed at SightRite, an eyecare business. Mr. Klein graduated in 2011 with a Bachelor's degree from Touro College. He discloses the following ownership interest:  
Abbey Woods Center for Rehabilitation and Healing (MO) 6% 04/2017 to present

**Mordechai Getz** is a managing member of Transition Acquisitions, a real estate LLC. Mr. Getz is a licensed real estate broker in good standing in New York. He discloses no formal educational degrees and reports no health facility ownership interests.

**Avrom Gold** is the Director of Purchasing for Apex Healthcare Partners, LLC, a health care management company. Mr. Gold graduated in 1998 with a Bachelor's degree in Accounting from Touro College. He discloses no health facility ownership interests.

**Eugene Mendlowits** is a manager at Adorama, Inc, a camera business. He discloses no formal educational degrees and reports no health facility ownership interests.

#### Character and Competence - Analysis

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

A review of operations at Dumont Center for Rehabilitation and Nursing Care for the period specified reveals the following:

- The facility was fined \$18,000 pursuant to Stipulation and Order NH-16-061 for surveillance findings on April 13, 2015. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii) Resident Rights: Advance Directives, 415.5(g) Quality of Life: Social Service, 415.12 Quality of Care: Highest Practical Potential, 415.26 Administration: 490 Administration, and 415.15(a) Administration: Medical Director.
- The facility incurred a Civil Money Penalty of \$40,000 for the Immediate Jeopardy on April 13, 2015.

Since there were no other enforcements, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of operations at Big Woods Healthcare Center (MO) for the period specified reveals the following:

- A Civil Money Penalty of \$17, 605 was assessed, which was reduced and paid in the amount of \$11, 400 in regard to Survey findings on July 05, 2016.

A review of operations at Abbey Woods Center for Rehabilitation and Healing (MO) for the period identified above reveals the following:

- A Civil Money Penalty of \$6,500 was paid in regard to survey findings on July 18, 2017.

The state of Missouri reported that none of the violations were repetitive in nature.

Since there were no other enforcements, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of operations at Bellhaven Center for Rehabilitation and Nursing, St. James Rehabilitation and Healthcare Center, The Grand Pavilion for Rehabilitation at Rockville Center, Westhampton Care Center, Greenery Center for Rehab and Nurisng(PA), and Washington Square Nursing Center(OH) for the time periods identified above reveals that there were no enforcements, and no civil money penalties.

## Quality Review

| Provider Name                                  | Overall | Health Inspection | Quality Measures | Staffing Rating | NYS Quintile |
|--|---------|-------------------|------------------|-----------------|--------------|
| Dumont Center for Rehabilitation and Nursing   | *****   | ****              | *****            | **              | 5            |
| Bellhaven Center for Rehab & Nursing Care      | ***     | **                | *****            | ***             | 3            |
| St James Rehab & Health Care Center            | **      | ***               | *****            | *               | 1            |
| The Grand Pavilion for R&N at Rockville Centre | **      | **                | *****            | *               | 4            |
| Westhampton Care Center                        | ****    | ***               | *****            | **              | 5            |

### MO

|   |    |    |      |    |     |
|---|----|----|------|----|-----|
| Big Bend Woods Healthcare Center                  | *  | *  | **** | ** | N/A |
| Abbey Woods Center for Rehabilitation and Healing | ** | ** | **   | ** | N/A |

### OH

|                                     |       |      |       |     |     |
|-------------------------------------|-------|------|-------|-----|-----|
| Washington Square Healthcare Center | ***** | **** | ***** | *** | N/A |
|-------------------------------------|-------|------|-------|-----|-----|

### PA

|                                       |    |   |       |    |     |
|---------------------------------------|----|---|-------|----|-----|
| Greenery Center for Rehab and Nursing | ** | * | ***** | ** | N/A |
|---------------------------------------|----|---|-------|----|-----|

With regard to the nursing homes with an overall star rating of 1 or 2, the operators have implemented new policies, increased meetings to include the medical director participation in quality assurance meetings, realigned the nurse management team to provide maximum coverage, and have been conducting mock surveys. In regard to facilities with low staffing ratings, the operators have been converting LPN's to RN's and hiring additional RN's and LPN's. They expect this to have a positive effect on the staffing component of the star ratings.

Specific to Big Bend Woods Healthcare Center, as a result of the one star for health inspection the Administrator, Director of Nursing and Assistant Director of Nursing have all been replaced.

Specific to the Greenery Center for Rehab and Nursing, ownership was assumed in June of 2016 and it was a one-star facility at that time. Currently the operator is re-evaluating staffing ratios. They expect that the new staffing pattern will have a direct correlation and a positive impact on the ratings.

### Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicants do not intend to utilize any staffing agencies upon their assumption of ownership.

### Conclusion

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

### Recommendation

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

## Financial Analysis

### Asset Purchase Agreement

The applicant submitted an executed APA to acquire the RHCF interests, as summarized below:

|                                |   |
|--------------------------------|---|
| Date:                          | October 3, 2017   |
| Sellers:                       | NYMED, Inc. and TENBC, Inc.   |
| Purchaser:                     | Kingston NH Realty, LLC   |
| Assets Acquired (Operations):  | All tangible Personal Property associated with the RHCF operations including: all tangible assets (furniture/fixtures, equipment, materials and supplies); telephone, fax numbers; websites domain names; manufactures' and vendors' warranties; business trade names, service/trademarks and logos; seller's rights in any agreements; seller's book and records, licenses, certificates and approvals to do business; resident funds held in trust in connection with the nursing home; Medicaid and Medicare provider numbers; all goodwill; plus the business associated with the Nursing home including the adult day care and outpatient services programs. |
| Assets Acquired (Real Estate): | All seller's right, title and interest in and to the Real Property (land, buildings and improvements) located at One Commons Drive, Lake Katrine, NY (Ulster County).   |
| Excluded Assets (Operations):  | All seller's cash, cash equivalents, bank deposits or similar cash items, insurance policies accounts receivable generated prior to the closing date, deposits or prepaid charges and expenses, any rights to refunds, settlements and retroactive adjustments for periods ending on or prior to the closing date, and any intellectual property/rights, personal, tangible and intangible property identified by the Seller.   |
| Excluded Assets (Real Estate): | N/A   |
| Assumed Liabilities:           | None  |
| Purchase Price:                | \$37,500,000  |
| Payment of the Purchase Price: | \$1,000,000 deposit at execution held in escrow;<br>\$3,750,000 TENBC promissory note (paid over 10 years on quarterly basis);<br>\$32,750,000 due at closing.  |

The applicant indicated that the \$37,500,000 purchase price will be allocated between the operating company and the realty company upon closing of this transaction.

The realty entity's financing plan is as follows:

|   |                     |
|---|---------------------|
| Equity  | \$3,750,000         |
| Promissory Note (TENBC, Inc. as Holder) (8% interest, 10 years)                 | \$3,750,000         |
| Loan (6% interest, 5 years with 5-year borrower's option, 25-year amortization) | <u>\$30,000,000</u> |
| Total   | <u>\$37,500,000</u> |

HHC has provided a letter of interest for the loan at the above stated terms.

All proposed realty entity members have provided affidavits attesting to fund the balloon payment if acceptable terms are not available at the time of refinancing.

### Assignment and Assumption Agreement

The applicant submitted a draft AAA for the assignment of the RHCF operations, summarized below:

|                     |  |
|---------------------|--|
| Assignor:           | Kingston NH Realty LLC   |
| Assignee:           | Kingston NH Operation LLC  |
| Assets Transferred: | All the acquired operating assets listed in the asset purchase agreement |
| Excluded Assets:    | All the excluded operating assets listed in the asset purchase agreement |
| Purchase Price:     | \$10   |

The applicant submitted an affidavit, 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 overpayment liabilities.

### Lease Rental Agreement

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

|             |   |
|-------------|---|
| Premises:   | A 258-bed nursing home located at One Commons Drive, Lake Katrine, NY (Ulster County) |
| Lessor:     | Kingston NH Realty, LLC   |
| Lessee:     | Kingston NH Operation, LLC  |
| Term:       | 30 years  |
| Rental:     | \$3,750,000 per year  |
| Provisions: | Lessee pays all real estate taxes, utilities, insurance and maintenance costs         |

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

### Operating Budget

The applicant submitted an operating budget, in 2018 dollars, for the first year after the change in operator, summarized below:

|                           | Current Year (2016) |                     | Year One |                     |
|---------------------------|---------------------|---------------------|----------|---------------------|
|                           | Per Diem            | Total               | Per Diem | Total               |
| <u>Inpatient Revenue</u>  |                     |                     |          |                     |
| Medicaid FFS              | \$224.91            | \$13,260,318        | \$0      | \$0                 |
| Medicaid MC               | \$0                 | \$0                 | \$228.74 | \$13,581,500        |
| Medicare FFS              | \$539.08            | \$4,873,320         | \$0      | \$0                 |
| Medicare MC               | \$0                 | \$0                 | \$539.93 | \$4,932,300         |
| Commercial FFS            | \$280.72            | \$3,606,438         | \$249.97 | \$2,968,400         |
| Private Pay               | \$348.59            | \$4,083,010         | \$400.03 | \$4,384,700         |
| Other Operating Revenue   |                     | \$73,924            |          | \$29,800            |
| Non-Operating Revenue     |                     | \$141,772           |          | \$0                 |
| Total Inpatient Revenue   |                     | \$26,038,782        |          | \$25,896,700        |
| <u>Outpatient Revenue</u> |                     |                     |          |                     |
| Commercial FFS            | \$120               | \$97,080            | \$168.94 | \$185,835           |
| Medicaid MC               | \$120               | \$99,360            | \$119.84 | \$134,820           |
| Private Pay               | \$120               | \$24,240            | \$169.62 | \$46,745            |
| Total Outpatient Revenue  |                     | \$220,680           |          | \$367,400           |
| Total Revenue             |                     | <u>\$26,259,462</u> |          | <u>\$26,264,100</u> |

|                            |                |                    |                |                    |
|----------------------------|----------------|--------------------|----------------|--------------------|
| <u>Expense</u>             |                |                    |                |                    |
| Operating                  | \$244.85       | \$22,663,061       | \$224.40       | \$20,497,400       |
| Capital                    | <u>\$38.16</u> | <u>\$3,532,410</u> | <u>\$43.53</u> | <u>\$3,976,613</u> |
| Total Expenses             | \$283.01       | \$26,195,471       | \$267.93       | \$24,474,013       |
| Net Income/(Loss)          |                | <u>\$63,991</u>    |                | <u>\$1,790,087</u> |
| Utilization (patient days) |                | 98.29%             |                | 97.00%             |
| Breakeven Occupancy        |                | 98.04%             |                | 90.29%             |

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

- The Year One and Year Three Medicare Managed Care rate is more conservative than the facility's existing rate as it reflects the average Medicare Managed Care rate per one applicant member's experience operating his other NYS affiliated RHCF.
- The applicant projects no staff reductions. Expenses will be reduced as follows: employee benefits decrease by \$191,042 reflecting a move to a traditional W/C plan from a self-insured plan; professional fees decrease by \$1,499,983 due to a reduction in management fees paid to a related party by current operator; non-meds/surgical supplies are reduced by \$813; purchased services decrease by \$662; and other direct expenses decrease by \$421,243, which includes a Year One write-off of old receivables prior to sale based on a proposed member's experience with efficiently operating other NYS skilled nursing facilities.
- Taking the expense reductions into consideration, breakeven utilization is 85,025 patient days (90.29% occupancy).
- Utilization by payor source during the first year after the change in operator is as follows:

|                | <u>Current Year</u> | <u>Year One</u> |
|----------------|---------------------|-----------------|
| Medicaid FFS   | 63.7%               | 0%              |
| Medicaid MC    | 0%                  | 65.0%           |
| Medicare FFS   | 9.8%                | 0%              |
| Medicare MC    | 0%                  | 10%             |
| Commercial FFS | 13.9%               | 13%             |
| Private Pay    | 12.6%               | 12%             |

#### Capability and Feasibility

The overall purchase price for the RHCF operations and real estate is \$37,500,000 to be allocated between the operations and realty at closing. The realty entity will finance the purchase price via members' equity of \$3,750,000, a \$3,750,000 promissory note to TENBC, Inc. (Holder) at the above stated terms, and a \$30,000,000 loan from HHC finance at the above stated terms.

Working capital requirements are estimated at \$4,079,002 based on two months of first year expenses. The working capital requirement will be met with \$2,044,002 in members' equity, apportioned equivalent to their ownership percentages. The remaining \$2,035,000 will be provided through a working capital loan at 6% interest with a five-year term. HHC finance provided a letter of interest for the proposed working capital financing. BFA Attachment A is the personal net worth statements of the proposed members of Kingston NH Operating, LLC. It is noted that the proposed realty and operating entities have identical members with identical ownership interest percentages. Given this identical membership, the personal net worth statements indicate the availability of sufficient funds overall for the equity contributions to meet the purchase price and working capital requirements. However, liquid resources may not be available in proportion to the members proposed ownership interest. Eugene Mendlowits has provided an affidavit stating he is willing to contribute personal resources disproportionate to his ownership interest to meet all equity requirements.

The submitted budget projects \$1,790,087 of net income in year one after the change in ownership. Revenues are based on the current reimbursement methodologies. The submitted budget appears reasonable.

Implementation of the transition of nursing home (NH) residents to Medicaid managed care is ongoing. Under the managed care construct, Managed Care Organizations (MCOs) negotiate payment rates directly with NH providers. A Department policy paper provided guidance requiring MCOs to pay the Medicaid FFS rate as a benchmark, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. The transition period has been extended out to 2020; hence, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment B is a summary of Ten Broeck Commons' 2014-2017 certified financial statements. As shown, the entity had an average positive working capital position and an average positive net asset position for the respective periods. The entity incurred an average operating income of \$2,178,406 for the period 2014-2017.

BFA Attachment C is the pro forma balance sheet of Kingston NH Operating LLC, which indicates a positive members' equity of \$2,244,002 as of the first day of operations.

BFA Attachments D and E are, respectively, the percentage ownership and financial summaries of proposed member Ernest Schlesinger's NYS affiliated nursing homes. As shown, all facilities had both average positive working capital and net asset position from 2014 through December 31, 2017. Also, the entities incurred average net income from 2014 through December 31, 2017.

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

Recommendation

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

## Attachments

|                  |  |
|------------------|--|
| BFA Attachment A | Personal Net Worth Statements - Proposed Members of Kingston NH Operating LLC d/b/a Ten Broeck Center for Rehabilitation and Nursing |
| BFA Attachment B | Financial Summary - Ten Broeck Commons for period 1/1/2014 – 12/31/2017  |
| BFA Attachment C | Pro Forma Balance Sheet of Kingston NH Operating, LLC d/b/a Ten Broeck Center for Rehabilitation and Nursing                         |
| BFA Attachment D | Mr. Ernest Schlesinger's affiliated NYS RHCfs and ownership percentages  |
| BFA Attachment E | Financial Summary - Affiliated nursing homes for the period 1/1/2014 – 12/31/2017  |



Project # 181046-E  
Martine Center for Rehabilitation and Nursing

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

**County:** Westchester  
**Acknowledged:** March 29, 2018

**Executive Summary**

**Description**

Schnur Operations Associates LLC d/b/a Martine Center for Rehabilitation and Nursing, a 200-bed, proprietary, Article 28 residential health care facility (RHCF) located at 12 Tibbets Avenue, White Plains (Westchester County), requests approval to transfer 2% ownership interest from one withdrawing member to one new member, and transfer 33% ownership interest from one existing member to five new members. Jeffrey Sicklick, a current 2% member, will transfer his ownership interest to one new member and withdraw from ownership in the RHCF. Light Operational Holdings Associates LLC, a current 98% member, will transfer 33% ownership interest in the facility to five new members, retaining 65% ownership interest in the facility, with to internal membership interests.

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

| <u>Schnur Operations Associates LLC</u>           |                |                 |
|---|----------------|-----------------|
| <u>Members</u>                                    | <u>Current</u> | <u>Proposed</u> |
| Light Operational Holdings Associates LLC*        | 98%            | 65%             |
| Jeffrey Sicklick                                  | 2%             | 0%              |
| Amir Abramchik                                    | 0%             | 10%             |
| David Greenberg                                   | 0%             | 10%             |
| Elliot Kahan                                      | 0%             | 10%             |
| Aaron Gittleson                                   | 0%             | 2%              |
| Aharon Lantzitsky                                 | 0%             | 2%              |
| Sol Blumenfeld                                    | 0%             | 1%              |
| <u>*Members of Light Operational Holdings LLC</u> |                |                 |
| Kenneth Rozenberg                                 |                | 95%             |
| Beth Rozenberg                                    |                | 5%              |

**OPCHSM Recommendation**  
Contingent Approval

**Need Summary**  
There will be no Need recommendation of this project.

**Program Summary**  
No negative information has been received concerning the character and competence of the proposed applicants. No changes in the program or physical environment are proposed in this application.

**Financial Summary**  
There are no project costs associated with this application. The total purchase price for the 33% transfer of ownership is \$10 and has been paid in full, and the purchase price for the 2% transfer of ownership is \$10 and has been paid in full. No budget analysis was necessary as this is a 35% change in ownership, the current member holding a majority interest retains a majority interest in the proposed ownership structure, and the RHCF is not proposing to change its business model. The facility has no outstanding Medicaid liabilities.

## 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 fully executed Consulting Agreement, acceptable to the Department. [CSL]
2. Submission of a photocopy the amended Operating Agreement for Schnur Operations Associates, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's executed Assignment of Lease, acceptable to the Department. [CSL]
4. Submission of a photocopy of the amended Operating Agreement for Light Operational Holdings Associates, LLC, 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

**August 2, 2018**

## Program Analysis

### Facility Information

|                       | <b>Existing</b>   | <b>Proposed</b>   |
|-----------------------|---|---|
| Facility Name         | Martine Center for Rehabilitation and Nursing   | Same  |
| Address               | 12 Tibbits Avenue<br>White Plains, New York 10606   | Same  |
| RHCF Capacity         | 200   | Same  |
| ADHC Program Capacity | N/A   | Same  |
| Type of Operator      | Limited Liability Company   | Same  |
| Class of Operator     | Proprietary   | Same  |
| Operator              | Schnur Operations Associates, LLC   | Schnur Operations Associates, LLC   |
|                       | <u>Members</u><br>Jeffrey Sicklick 2%<br>Light Operational Holdings Associates, LLC 98%<br>Kenneth Rozenberg (95%)<br>Beth Rozenberg (5%) | <u>Members</u><br>Amir Abramchik 10%<br>David Greenburg 10%<br>Elliot Kahan 10%<br>Aharon Lantzitsky 2%<br>Aaron Gittleson 2%<br>Sol Blumenfeld 1%<br>Light Operational Holdings Associates, LLC 65%<br>*Kenneth Rozenberg (95%)<br>Beth Rozenberg (5%)<br><br>*Managing Member |

### Character and Competence - Background

#### **Facilities Reviewed**

##### Nursing Homes

|   |                    |
|---|--------------------|
| Fulton Center for Rehabilitation and Health Care [10%]  | 04/2012 to present |
| Richmond Center for Rehab and Specialty Health Care [2%]  | 04/2012 to present |
| Corning Center for Rehabilitation and Health Care [11%]   | 06/2013 to present |
| Ontario Center for Rehabilitation and Healthcare [95%]  | 11/2014 to present |
| Chittenango Center for Rehabilitation and Health Care<br>(Currently known as The Grand Rehabilitation and Nursing at Chittenango) | 05/2011 to 07/2016 |
| Rome Center for Rehabilitation and Health Care<br>(Currently known as The Grand Rehabilitation and Nursing at Rome)               | 05/2011 to 08/2016 |
| Schenectady Center for Rehabilitation and Nursing [50%]   | 09/2017 to present |
| Slate Valley Center for Rehabilitation and Nursing [50%]  | 09/2017 to present |
| Troy Center for Rehabilitation and Nursing [50%]  | 09/2017 to present |
| Onondaga Center for Rehabilitation and Nursing [50%]  | 09/2017 to present |
| New Paltz Center for Rehabilitation and Nursing [50%]   | 09/2017 to present |
| Glens Falls Center for Rehabilitation and Nursing [50%]   | 09/2017 to present |
| Carthage Center for Rehabilitation and Nursing [50%]  | 09/2017 to present |
| Steuben Center for Rehabilitation and Health Care [5%]  | 07/2014 to present |
| Warren Center for Rehabilitation and Nursing [95%]  | 01/2016 to present |
| Brooklyn Center for Rehabilitation and Healthcare [2.5%]  | 06/2008 to present |

### **Individual Background Review**

**Amir Abramchik** is a licensed nursing home administrator in good standing in New York, New Jersey and Rhode Island. Mr. Abramchik has been employed by Centers for Specialty Care since 2007; his current position is Chief Operating Officer. Mr. Abramchik discloses the following health facility interests with associated ownership percentages:

|   |                    |
|---|--------------------|
| Fulton Center for Rehabilitation and Health Care [10%]  | 04/2012 to present |
| Richmond Center for Rehab and Specialty Health Care [2%]  | 04/2012 to present |
| Corning Center for Rehabilitation and Health Care [11%]   | 06/2013 to present |
| Ontario Center for Rehabilitation and Healthcare [95%]  | 11/2014 to present |
| Chittenango Center for Rehabilitation and Health Care<br>(Currently known as The Grand Rehabilitation and Nursing at Chittenango) | 05/2011 to 07/2016 |
| Rome Center for Rehabilitation and Health Care<br>(Currently known as The Grand Rehabilitation and Nursing at Rome)               | 05/2011 to 08/2016 |
| Schenectady Center for Rehabilitation and Nursing [50%]   | 09/2017 to present |
| Slate Valley Center for Rehabilitation and Nursing [50%]  | 09/2017 to present |
| Troy Center for Rehabilitation and Nursing [50%]  | 09/2017 to present |
| Onondaga Center for Rehabilitation and Nursing [50%]  | 09/2017 to present |
| New Paltz Center for Rehabilitation and Nursing [50%]   | 09/2017 to present |
| Glens Falls Center for Rehabilitation and Nursing [50%]   | 09/2017 to present |
| Carthage Center for Rehabilitation and Nursing [50%]  | 09/2017 to present |

**David Greenberg** is a licensed nursing home administrator in good standing in New York, and New Jersey. Mr. Greenberg has been employed as the administrator of record at Boro Park Center for Rehabilitation and Health Care in Brooklyn since 2011. Previously he was employed as Administrator of Wartburg Lutheran Home. Mr. Greenberg discloses the following nursing home ownership interests:

|  |                    |
|--|--------------------|
| Corning Center for Rehabilitation and Health Care [5%] | 06/2013 to present |
| Steuben Center for Rehabilitation and Health Care [5%] | 07/2014 to present |
| Warren Center for Rehabilitation and Nursing [95%]     | 01/2016 to present |

**Elliot Kahan** lists his employment as Owner/Operator of Your Personal Touch since September 2007. The applicant indicates that this is a marketing consulting company focused on healthcare; providing marketing and promotional concepts to skilled nursing facilities, licensed home care agencies, certified home care agencies and managed long-term care companies. Mr. Kahan discloses no health facility interests.

**Aharon Lantzitsky** is a licensed nursing home administrator in good standing in New York and Massachusetts. Mr. Lantzitsky lists his employment as Regional Administrator for Centers Healthcare since April of 2016. Prior to this he was employed as an Administrator/ Regional Administrator for Marquis Health Services located in New Jersey. Mr. Gittleson discloses no health facility interests.

**Aaron Gittleson** lists employment as Finance Director at Centers Healthcare since 2011. Prior to this he was a student at Farleigh Dickinson University. Mr. Gittleson discloses no health facility interests.

**Sol Blumenfeld** is a licensed nursing home administrator in good standing in New York. Mr. Blumenfeld has been the Administrator at Brooklyn Center for Rehabilitation and Residential Health Care since 2014. Prior to this he was employed as Administrator at Bushwick Center for Rehabilitation and Health Care. Mr. Blumenfeld discloses the following nursing home ownership interest:

|  |                    |
|--|--------------------|
| Brooklyn Center for Rehabilitation and Healthcare [2.5%] | 03/2007 to present |
|--|--------------------|

## Character and Competence - Analysis

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

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

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2013, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(h)(1)(2) Quality of Care Accidents/Supervision; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
  - A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
  - A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
  - A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on July 25, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-16-34 issued on January 5, 2016 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.*

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

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
  - A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-16-118 issued March 9, 2016 for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.
- The facility was fined \$12,000 pursuant to a Stipulation and Order NH-17-051 issued September 11, 2017 for surveillance findings on June 9, 2017. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential; 415.15(b)(2)(iii) Resident Assessment
- A federal CMP of \$7,803.25 was assessed for the June 9, 2017 surveillance findings

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of the operations of Onondaga Center for Rehabilitation and Nursing for the period identified above reveals the following:

- The facility was fined pursuant to a Stipulation and Order NH-18-025 for surveillance findings on February 9, 2018. Deficiencies were found under 10NYCRR 415.12(J) Nutrition/Hydration Status Maintenance; 415.12 (m) (2) Residents are Free From Significant Medication Errors; 412.12(m)(2) Residents are Free From Significant Medication Errors; 415.12 (c) (1) &(2) Treatment / Service to Prevent Pressure Ulcer
- A CMP in the amount of \$26,393.25 has been imposed for February 9, 2018 survey findings.

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

- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-18-005 for surveillance findings on November 17, 2017. Deficiencies were found under 10NYCRR 415.12(m)(2) Quality of Care No Significant Medication Errors.

A review of the operations of Warren Center for Rehabilitation and Nursing for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-18-007 for surveillance findings on December 11, 2017. Deficiencies were found under 10NYCRR 415.12(h)(2) Quality of Care Adequate Supervision to Prevent Accidents
- A federal CMP in the amount of \$7,023.25 was assessed for December 11, 2017 survey findings.

A review of the operations of New Paltz Center for Rehabilitation and Nursing for the period identified above reveals the following:

- A CMP in the amount of \$6,884.50 was assessed on February 27, 2018 for Federal Life Safety Code findings: K 353 Sprinkler System

A review of operations for Ontario Center for Rehabilitation and Health Care, Schenectady Center for Rehabilitation and Nursing, Slate Valley Center for Rehabilitation and Nursing, Troy Center for Rehabilitation and Nursing, Glens Falls Center for Rehabilitation and Nursing, Carthage Center for Rehabilitation and Nursing, Corning Center for Rehabilitation and Healthcare, and Brooklyn Center for Rehabilitation and Residential Health Care for the periods identified above, reveals there were no enforcements.

#### Quality Review

| <b>Provider Name</b>                              | <b>Overall Rating</b> | <b>Health Inspection Rating</b> | <b>Quality Measure Rating</b> | <b>Staffing Rating</b> | <b>NYS Quintile</b> |
|---|-----------------------|---------------------------------|-------------------------------|------------------------|---------------------|
| Fulton Center for Rehabilitation and Healthcare   | *                     | *                               | ****                          | ***                    | 3                   |
| Richmond Center for Rehab and Specialty HC        | **                    | *                               | ****                          | ****                   | 3                   |
| Corning Center for Rehabilitation and Healthcare  | **                    | *                               | ***                           | ****                   | 5                   |
| Ontario Center for Rehabilitation and Healthcare  | *                     | *                               | ***                           | ***                    | 5                   |
| Schenectady Center for Rehabilitation and Nursing | ****                  | ***                             | *****                         | ***                    | 4                   |

| <i>Provider Name</i>                               | <i>Overall Rating</i> | <i>Health Inspection Rating</i> | <i>Quality Measure Rating</i> | <i>Staffing Rating</i> | <i>NYS Quintile</i> |
|--|-----------------------|---------------------------------|-------------------------------|------------------------|---------------------|
| Slate Valley Center for Rehabilitation and Nursing | ***                   | ***                             | ****                          | ***                    | 5                   |
| Troy Center for Rehabilitation and Nursing         | ****                  | ***                             | ****                          | ****                   | 4                   |
| Onondaga Center for Rehabilitation and Nursing     | **                    | *                               | ****                          | ****                   | 5                   |
| New Paltz Center for Rehabilitation and Nursing    | ****                  | ***                             | ***                           | ****                   | 1                   |
| Glens Falls Center for Rehabilitation and Nursing  | ***                   | **                              | *****                         | ***                    | 3                   |
| Carthage Center for Rehabilitation and Nursing     | ***                   | **                              | *****                         | ***                    | 2                   |
| Steuben Center for Rehabilitation and Healthcare   | **                    | **                              | ***                           | ***                    | 4                   |
| Warren Center for Rehabilitation and Nursing       | ***                   | **                              | ***                           | ****                   | 5                   |
| Brooklyn Ctr for Rehab and Residential Hlth Care   | ****                  | ****                            | ****                          | **                     | 5                   |

The proposed operator was asked to explain the low 5-star ratings and their plan to correct the issues identified. The operator has stated they have implemented initiatives to recruit and retain employees providing direct care services. They also plan on employing a combination of measures to correct deficiency issues, including in-service education, changes to policies and procedures when necessary, implementation of weekly observation and auditing of staff practices, and monthly review of the findings by the quality assurance committee.

The proposed operator was asked to explain why Richmond Center for Rehabilitation and Specialty Care had dropped from a 4 Star overall rating to a 2 Star overall rating. The operator stated that this change was due to receiving two deficiencies involving the same resident during a survey in June 2017. The operator feels that this was attributable to an isolated incident and that corrective actions have been implemented that will prevent a recurrence of this type of issue occurring again.

#### Conclusion

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

#### Recommendation

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

## Financial Analysis

### Membership Transfer Agreements

Executed purchase option agreements between each buyer and seller for the partial transfer of ownership have been submitted, as detailed below.

|                       |  |
|-----------------------|--|
| Execution Date:       | November 7, 2017   |
| Asset Transferred:    | 33% Membership and Ownership interest in Schnur Operations Associates LLC  |
| Seller:               | Light Operational Holdings Associates LLC  |
| Buyers:               | Amir Abramchik, David Greenberg, Elliot Kahan, Aaron Gittleson, and Sol Blumenfeld                                       |
| Percentage Purchased: | Amir Abramchik (10.0%), David Greenberg (10.0%), Elliot Kahan (10.0%), Aaron Gittleson (2.0%), and Sol Blumenfeld (1.0%) |
| Purchase Price:       | Total purchase price is \$10 for the 33% ownership transfer (paid).  |

|                       |  |
|-----------------------|--|
| Execution Date:       | November 7, 2017   |
| Asset Transferred:    | 2% Membership and Ownership interest in Schnur Operations Associates LLC |
| Seller:               | Jeffrey Sicklick   |
| Buyers:               | Aharon Lantzitsky  |
| Percentage Purchased: | 2.0%   |
| Purchase Price:       | Total purchase price is \$10 for the 2% ownership transfer (paid).       |

### Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the two transfer of ownership transactions is \$20 and has been paid in full. BFA Attachment A is the personal net worth statements of the proposed new shareholders, which shows sufficient liquid resources to cover the purchase price.

No budget analysis was necessary as this is a 35% change in ownership, the current member holding a majority interest retains a majority interest in the proposed ownership structure, and the RHCF is not proposing to change its business model. The facility has no outstanding Medicaid liabilities.

BFA Attachment C is a financial summary for Martine Center for Nursing and Rehabilitation. As shown, the facility had positive working capital and net asset positions but generated a net operating loss of \$1,902,023 for the period. The operating losses were due primarily to corporate overhead expenses and losses from patient accounts incurred by the facility's prior owners. As shown, the facility had average positive working capital and net asset positions and reported operating net income of \$203,640 for the year ended 12/31/2017.

BFA Attachment D is financial summaries for RHCFs owned by the proposed members. The facilities have maintained positive net income from operations, positive net assets and positive net working capital for the periods shown, except for the following:

- Brooklyn Center for Rehabilitation and Residential Health Care, which had a negative working capital position as of 12/31/2016 due to accrued payroll benefit costs and vendor payables that will be paid out over more than one year and should not be considered current liabilities. Brooklyn Center's internal 12/31/2017 financial statements reported positive net income, net asset and net working capital positions.
- Richmond Center for Rehabilitation and Nursing, which had a negative working capital position as of 12/31/2015 and 12/31/2016. The facility had recorded a current liability for \$1.2 million for accrued benefit time that will pay out over more than one year and should not be considered a current liability. Richmond Center's preliminary 12/31/2017 financial statements report positive net income, net assets and net working capital positions.

- Warren Center for Rehabilitation and Nursing, which had a negative working capital position as of 12/31/2016 and 12/31/2017. The facility indicates that accrued benefit time and certain vendor payables will be paid out over periods longer than one year and should not be considered current liabilities.

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

Recommendation

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

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## Attachments

- BFA Attachment A Schnur Operations Associates, LLC- Proposed Members Net Worth
- BFA Attachment B Organization Chart for Schnur Operations Associates LLC
- BFA Attachment C Financial Summary, Martine Center for Nursing and Rehabilitation
- BFA Attachment D Affiliated Residential Health Care Facilities – Financial Summaries



**Project # 181112-E**  
**Clinton Square Operations, LLC d/b/a Bishop Rehabilitation  
and Nursing Center**

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

**County:** Onondaga  
**Acknowledged:** February 16, 2018

**Executive Summary**

**Description**

Clinton Square Operations, LLC is a New York limited liability partnership that operates Bishop Rehabilitation and Nursing Center, a 440-bed, Article 28 Residential Health Care Facility (RHCF) located at 918 James Street, Syracuse (Onondaga County). Clinton Square Operations, LLC requests approval to transfer 100% interest from the two current members to one new sole member, Clinton Square Operations Holdings, LLC, a Delaware limited liability company. There will be no change in the name of the facility, and no change in beds or services. Clinton Square Operations, LLC will continue to lease the premises from Clinton Square Realty, LLC.

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

| <u>Current</u>                 |     |
|--------------------------------|-----|
| Clinton Square Operations, LLC |     |
| <u>Members</u>                 |     |
| Edward Farbenblum              | 99% |
| Orly Farbenblum                | 1%  |

| <u>Proposed</u>                         |      |
|---|------|
| Clinton Square Operations, LLC          |      |
| <u>Members</u>                          |      |
| Clinton Square Operations Holdings, LLC | 100% |
| Edward Farbenblum (99%)                 |      |
| Orly Farbenblum (1%)                    |      |

The introduction of a second level LLC is for liability purposes and is an acceptable legal model.

OPCHSM Recommendation  
Contingent Approval

Need Summary  
There will be no Need recommendation of this project.

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.

Financial Summary  
There are no project costs or budgets associated with this proposal.

## 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 Operating Agreement of Clinton Square Operations, LLC, which is acceptable to the Department. [CSL]
2. Submission of a certificate of assumed name, which is acceptable to the Department. [CSL]
3. Submission of a Certificate of Amendment of Articles of Organization of Clinton Square Operations, LLC, which is acceptable to the Department. [CSL]
4. Submission of a Certificate of Amendment of Certificate of Formation of Clinton Square Operations Holdings, LLC, which is acceptable to the Department. [CSL]
5. Submission of an Application for Authority of Clinton Square Operations Holdings, LLC, which is acceptable to the Department. [CSL]
6. Submission of an Operating Agreement of Clinton Square Operations Holdings, LLC, which is 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

**August 2, 2018**

## Program Analysis

### Facility Information

|                   | <b>Existing</b>  | <b>Proposed</b>   |
|-------------------|--|---|
| Facility Name     | Bishop Rehabilitation and Nursing Center   | Same  |
| Address           | 918 James Street<br>Syracuse NY  | Same  |
| RHCF Capacity     | 440 (5 Ventilator beds)  | Same  |
| ADHCP Capacity    | N/A  | Same  |
| Type of Operator  | LLC  | LLC   |
| Class of Operator | Proprietary  | Proprietary   |
| Operator          | Clinton Square Operations, LLC<br><u>Members</u><br>Edward Farbenblum 99.00%<br>Orly Lieberman 1.00% | Clinton Square Operations, LLC<br><u>Member</u><br>Clinton Square Operations Holding, LLC 100%<br>Edward Farbenblum (99.0%)<br>Orly Farbenblum (1.0%) |

### Character and Competence - Background

#### **Facility Reviewed**

|  |                    |
|--|--------------------|
| Autumn View Health Care Facility, LLC                  | 05/2017 to present |
| Brookhaven Health Care Facility, LLC                   | 05/2017 to present |
| Garden Gate Health Care Facility, LLC                  | 05/2017 to present |
| Harris Hill Nursing Facility, LLC                      | 05/2017 to present |
| North Gate Health Care Facility, LLC                   | 05/2017 to present |
| Seneca Health Care Center, LLC                         | 05/2017 to present |
| Chautauqua Nursing & Rehabilitation Center             | 01/2015 to present |
| Golden Hill Nursing & Rehabilitation Center            | 10/2012 to present |
| Susquehanna Nursing & Rehabilitation Center            | 06/2008 to present |
| The Hamptons Center for Rehabilitation & Nursing       | 06/2008 to present |
| Autumn Woods Residential Health Care Facility LLC (MI) | 05/2017 to present |
| Privilege Care Diagnostic & Treatment Center           | 06/2008 to present |

#### **Individual Background Review**

**Edward Farbenblum** is employed at Golden Hill Advisors d/b/a VestraCare, Inc as an advisor. He graduated from Cordoza Law School at the Yeshiva University with a Juris Doctorate degree. He is an Attorney at Law licensed through New York State with a license in good standing. Mr. Farbenblum discloses the following ownership interests in health facilities:

|  |                    |
|--|--------------------|
| Autumn View Health Care Facility, LLC (10%)                  | 05/2017 to present |
| Brookhaven Health Care Facility, LLC (10%)                   | 05/2017 to present |
| Garden Gate Health Care Facility, LLC (10%)                  | 05/2017 to present |
| Harris Hill Nursing Facility, LLC (10%)                      | 05/2017 to present |
| North Gate Health Care Facility, LLC (10%)                   | 05/2017 to present |
| Seneca Health Care Center, LLC (10%)                         | 05/2017 to present |
| Chautauqua Nursing & Rehabilitation Center (21%)             | 01/2015 to present |
| Golden Hill Nursing & Rehabilitation Center (39.4898%)       | 10/2012 to present |
| Susquehanna Nursing & Rehabilitation Center (14.498%)        | 02/2005 to present |
| Privilege Care Diagnostic & Treatment Center (9.9%)          | 04/2008 to present |
| The Hamptons Center for Rehabilitation & Nursing (16%)       | 10/2007 to present |
| Autumn Woods Residential Health Care Facility LLC (10%) (MI) | 05/2017 to present |
| Bishop Rehabilitation and Nursing Center                     | 12/2017 to present |

**Orly Liberman** is employed as a Psychotherapist. She graduated from St. John's University with a Master's of Education degree. She holds a Mental Health Counseling Permit through New York State with a license in good standing. Mrs. Lieberman discloses the following ownership interests in health facilities:

|  |                    |
|--|--------------------|
| Autumn View Health Care Facility, LLC (10%)                  | 05/2017 to present |
| Brookhaven Health Care Facility, LLC (10%)                   | 05/2017 to present |
| Garden Gate Health Care Facility, LLC (10%)                  | 05/2017 to present |
| Harris Hill Nursing Facility, LLC (10%)                      | 05/2017 to present |
| North Gate Health Care Facility, LLC (10%)                   | 05/2017 to present |
| Seneca Health Care Center, LLC (10%)                         | 05/2017 to present |
| Autumn Woods Residential Health Care Facility LLC (10%) (MI) | 05/2017 to present |
| Bishop Rehabilitation and Nursing Center                     | 12/2017 to present |

#### Character and Competence – Analysis

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

A review of operations for The Hamptons Center for the period identified above reveals the following:

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

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps a reasonably prudent operator would take to prevent the recurrence of the violation.

The review of operations of Autumn View Health Care Facility, Brookhaven Health Care Facility, Garden Gate Health Care Facility, North Gate Health Care Facility, Seneca Health Care, Chautauqua Nursing and Rehabilitation Center, Golden Hill Nursing and Rehabilitation Center, Harris Hill Nursing Facility, ,Bishop Rehabilitation and Nursing Center, Susquehanna Nursing and Rehabilitation Center and Clinton Square Nursing and Rehabilitation for the period identified above reveals that there were no enforcements or civil money penalties.

The review of operations at Privilege Care Diagnostic & Treatment Center for the periods identified above, reveals that there were no enforcements. This information was provided by the Division of Hospitals & Diagnostic Treatment Centers.

Since there were no enforcements, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

## Quality Review

| <b>Provider Name</b>                               | <b>Overall Rating</b> | <b>Health Inspection Rating</b> | <b>Quality Measure Rating</b> | <b>Staffing Rating</b> | <b>NYS Quintile</b> |
|--|-----------------------|---------------------------------|-------------------------------|------------------------|---------------------|
| Autumn View Health Care Facility LLC               | *****                 | ****                            | *****                         | ****                   | 1                   |
| Brookhaven Rehab and Health Care Center LLC        | ****                  | ***                             | *****                         | Data Not Available     | 1                   |
| Garden Gate Health Care Facility                   | *****                 | ****                            | *****                         | ****                   | 1                   |
| Harris Hill Nursing Facility LLC                   | *****                 | ****                            | *****                         | ****                   | 1                   |
| North Gate Health Care Facility                    | *****                 | ***                             | *****                         | ****                   | 1                   |
| Seneca Health Care Center                          | *****                 | ***                             | *****                         | ****                   | 1                   |
| Chautauqua Nursing and Rehabilitation Center       | ****                  | ***                             | *****                         | **                     | 3                   |
| Golden Hill Nursing and Rehabilitation Center      | *****                 | ****                            | *****                         | **                     | 2                   |
| Susquehanna Nursing and Rehab Center LLC           | **                    | *                               | *****                         | **                     | 4                   |
| The Hamptons Center for Rehabilitation and Nursing | ****                  | ***                             | *****                         | ***                    | 5                   |
| Bishop Rehabilitation and Nursing Center           | *                     | *                               | ***                           | Data Not Available     | 5                   |

### MI

|                                 |     |     |       |   |     |
|---------------------------------|-----|-----|-------|---|-----|
| Autumn Woods Residential Health | *** | *** | ***** | * | N/A |
|---------------------------------|-----|-----|-------|---|-----|

Regarding the 2-star ratings at Susquehanna, the applicant indicates this is based on older survey since their 2018 survey has not yet been conducted. For the staffing rating at this facility and the other facilities with 2 stars for staffing the applicant indicates the issue is in the way data was reported to CMS and that data will be validated prior to submission in the future. Additionally, Golden Hill Nursing and Rehabilitation Center did have one staffing related deficiency, which was corrected.

The subject facility is included in the review, since the applicants have current ownership. The applicant indicates that since they have taken over this facility they hired additional staff and increased the wages of all staff at the facility. They expect the ratings to increase with the next survey.

### Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicant does not intend to utilize any staffing agencies upon their assumption of ownership.

### Conclusion

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

### Recommendation

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

## Financial Analysis

### Financial Analysis

There are no project costs or budgets associated with this proposal. It is noted that the applicant recently acquired ownership of Bishop Rehabilitation and Nursing Center (previously known as James Square Nursing and Rehabilitation Centre) effective December 15, 2017 (CON 172264)

### Capability and Feasibility

There are no project costs or budgets associated with this application. BFA Attachment A is a summary of Bishop Rehabilitation and Nursing Center's 2016 certified and internal financials of as of July 31, 2017. As shown, the entity had a negative working capital position and a negative net asset position for the respective periods. The entity incurred an operating loss of \$1,525,074 for 2016 and a loss of \$2,245,026 as of July 31, 2017. The negative working capital and the operating losses were related to quality of care issues experienced by the existing operator that led to a self-imposed new admissions limitation. This limitation was not counterbalanced by a reduction in expenses, which led to the overall operating loss and negative working capital position. This issue will be addressed by the proposed new operators of the facility.

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

BFA Attachment A    Financial Summary of Bishop Rehabilitation and Nursing Center



Project # 181144-E  
Park Terrace Care Center

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

**County:** Queens  
**Acknowledged:** March 7, 2018

**Executive Summary**

**Description**

Park Terrace Care Center, Inc. (the Center), a 200-bed, proprietary, Article 28 residential health care facility (RHCF) located at 59-20 Van Doren Street, Rego Park (Queens County), requests approval to transfer 45.1% ownership interest (90.2 shares) from one withdrawing shareholder to one existing shareholder. One of the current shareholders of the RHCF, Abraham N. Klein, died in 2012 bequeathing all his ownership interest in the Center to his wife, Sarah Dinah Klein, the Executrix of his estate. In accordance with the terms of her husband's Last Will and Testament, Mrs. Klein is assigning her late husband's shares in the Center to her daughter-in-law, Golda Rivka Klein, for a purchase price of \$4,907,903. There will be no change in services due to the shareholder change.

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

| <u>Current Ownership</u>  |               |              |
|---------------------------|---------------|--------------|
| <u>Stockholders</u>       | <u>Shares</u> | <u>%</u>     |
| Abraham N. Klein (Estate) | 90.2          | 45.1%        |
| Golda Rivka Klein         | 19.8          | 9.9%         |
| Liebel Rubin              | <u>90.0</u>   | <u>45.0%</u> |
| <b>Total</b>              | <b>200</b>    | <b>100%</b>  |

| <u>Proposed Ownership</u> |               |             |
|---------------------------|---------------|-------------|
| <u>Stockholders</u>       | <u>Shares</u> | <u>%</u>    |
| Golda Rivka Klein         | 110           | 55%         |
| Liebel Rubin              | <u>90</u>     | <u>45%</u>  |
| <b>Total</b>              | <b>200</b>    | <b>100%</b> |

OPCHSM Recommendation  
Approval

**Need Summary**

There will be no Need recommendation of this application.

**Program Summary**

No negative information has been received concerning the character and competence of the proposed applicant identified as a new member. No changes in the program or physical environment are proposed in this application.

**Financial Summary**

There are no project costs associated with this application. The purchase price for 90.2 shares in the Center is \$4,907,903 and will be met via the terms of an executed promissory note that provides for a 28-year maturity date with interest computed on the unpaid principal balance at the IRS Long-term Applicable Federal Rate (AFR) for Quarterly Payments (3.02% as of June 2018) computed based on the rate at the time of closing. Interest only will be payable quarterly commencing January 1, 2018, with principal for the note payable due by January 1, 2046.

No budget analysis was necessary, as this is an assignment of 45.10% ownership interest in the RHCF via an Assignment and Assumption Agreement with Sara Dinah Klein, Executrix of decedent shareholder's estate. The other current shareholder is remaining in the ownership structure, and the facility is not proposing to change its business model, which has historically been profitable.

## 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 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

**August 2, 2018**

## Program Analysis

### Facility Information

|                       | <b>Existing</b>                | <b>Proposed</b>                 |
|-----------------------|--------------------------------|---------------------------------|
| Facility Name         | Park Terrace Care Center       | Same                            |
| Address               | 59 20 Van Doren Street         | Same                            |
| RHCF Capacity         | 200                            | Same                            |
| ADHC Program Capacity | N/A                            | Same                            |
| Type of Operator      | Corporation                    | Same                            |
| Class of Operator     | Proprietary                    | Same                            |
| Operator              | Park Terrace Care Center Inc.  | Same                            |
|                       | <u>Current Stock Ownership</u> | <u>Proposed Stock Ownership</u> |
|                       | Liebel Rubin 45.1%             | *Liebel Rubin 45%               |
|                       | Golda Klein 9.9%               | Golda Klein 55%                 |
|                       | Estate of Abraham Klein 45.0%  | 100%                            |
|                       | 100.0%                         | *Managing Member                |

### Character and Competence

#### **Facilities Reviewed**

|   |                   |
|---|-------------------|
| Park Terrace Care Center                      | 09/2016 – current |
| Queens Nassau Nursing Home                    | 09/2016 – current |
| Northern Manhattan Rehabilitation and Nursing | 01/2018 – current |

#### **Individual Background Review**

Golda Klein is concurrently employed as Senior Fiscal Analyst at both Park Terrace Care Center and Queens Nassau Nursing Home. She has held these positions since 2015, prior to this Ms. Klein was not employed, taking time off to raise her family. Ms. Klein discloses the following nursing home ownership interests:

|   |                   |
|---|-------------------|
| Park Terrace Care Center [9.9%]                       | 09/2016 – current |
| Queens Nassau Nursing Home [9.9%]                     | 09/2016 – current |
| Northern Manhattan Rehabilitation and Nursing [6.10%] | 01/2018 – current |

### Character and Competence - Analysis

No negative information has been received concerning the character and competence for the new member.

A review of the operations of Park Terrace Care Center for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-17-034 for surveillance findings on 12/23/16. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care- Pressure Sores/ Prevention.

A review of the operations of Queens Nassau Rehabilitation and Nursing Center for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-18-018 for surveillance findings on 1/24/18. Deficiencies were found under 10 NYCRR 415.12 (h)(1) & (2) Free of Accident Hazards/Supervision/Devices
- A Federal CMP of \$6,893.25 was paid for the surveillance findings from 1/24/18

The review of operations of Northern Manhattan Rehabilitation and Nursing for the period indicated above reveals that there were no enforcements.

### Quality Review

| <b>Provider Name</b>                            | <b>Overall Rating</b> | <b>Health Inspection Rating</b> | <b>Quality Measure Rating</b> | <b>Staffing Rating</b> | <b>NYS Quintile</b> |
|---|-----------------------|---------------------------------|-------------------------------|------------------------|---------------------|
| Park Terrace Care Center                        | ***                   | **                              | *****                         | Data Not Available     | 3                   |
| Queens Nassau Rehabilitation and Nursing Center | *****                 | ****                            | *****                         | ***                    | 3                   |
| Northern Manhattan Rehab and Nursing Center     | ***                   | ***                             | *****                         | *                      | 2                   |

The subject facility is included because the applicant already has ownership interest.

### Project Review

This application proposes a transfer of a total of 90.20 shares from one withdrawing shareholder to Golda Klein. The transfer is from the estate of Abraham Klein who died in 2012 with his ownership interest bequeathed to his wife, Sara Dinah Klein, who was appointed executrix of his estate. Golda Klein is the Kleins' daughter-in-law.

Although Ms. Golda Klein does have current ownership interest in this facility as well as two others, she had not been previously reviewed by the Department or approved by the Public Health and Health Planning Council (PHHPC). The acquisition of the additional shares necessitates PHHPC approval.

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

### Conclusion

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

### Recommendation

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

## Financial Analysis

### Assignment and Assumption Agreement

The applicant has submitted an executed Assignment and Assumption Agreement for shares in the RHCF, to be effectuated upon final approval by the Public Health and Health Planning Council. The terms are summarized below:

|                            |   |
|----------------------------|---|
| Date:                      | January 1, 2018   |
| Assignor:                  | Estate of Abraham N. Klein by Sara Dinah Klein (Executrix)                                |
| Assignee:                  | Golda Rivka Klein   |
| Shares Acquired:           | 90.2 shares of stock (45.1%)  |
| Purchase Price:            | \$4,907,903   |
| Payment of Purchase Price: | Promissory Note for the full amount executed on 1/1/2018, with a pledge from the Assignee |

The promissory note provides for a 28-year term with interest computed based on the IRS Long-term AFR for Quarterly Payments determined at the time of closing (3.02% as of June 2018). Interest only will be payable quarterly commencing January 1, 2018, with principal for the note payable due by January 1, 2046. On January 1, 2018, a pledge agreement was signed between Golda Rivka Klein and the Estate of Abraham N. Klein (via Sara Dinah Klein as Executrix), whereby Golda Rivka Klein pledged her assigned shares as collateral to secure her obligation under the Promissory Note.

### Capability and Feasibility

The purchase price for the 90.2 shares in Park Terrace Care Center, Inc. is \$4,907,903 and will be met via a promissory note at the stated terms. There are no project costs with this transaction. BFA Attachment A is the personal net worth statement of Golda Rivka Klein, which shows the availability of sufficient liquid resources.

No budget analysis was necessary as this is an assignment of 45.1% ownership interest in the RHCF via an Assignment and Assumption Agreement from the estate of the decedent shareholder via Sara Klein as Executrix of the estate. The other current shareholder, Liebel Rubin, is remaining in the ownership structure, and the facility is not proposing to change its business model, which has historically been profitable.

BFA Attachment B is a financial summary of Park Terrace Care Center, Inc. for 2016 and 2015 (certified) and the internal financials for the months ending December 31, 2017 and March 31, 2018, which show the facility had a positive working capital position, positive net income and a positive net asset position for the periods shown.

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

### Recommendation

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

## Attachments

|                  |   |
|------------------|---|
| BFA Attachment A | Net Worth Statement of Proposed Member  |
| BFA Attachment B | 2015 and 2016 certified financial summary and internals as of December 31, 2017 and March 31, 2018 - Park Terrace Care Center, Inc. |



Project # 181165-E
Queens Nassau Rehabilitation and Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Queens
Acknowledged: March 9, 2018

Executive Summary

Description

Queens Nassau Nursing Home, Inc. d/b/a Queens Nassau Rehabilitation and Nursing Center (Queens Nassau), a 200-bed, proprietary, Article 28 residential health care facility (RHCF) located at 520 Beach 19th Street, Far Rockaway (Queens County), requests approval to transfer 40.1% ownership interest (80.2 shares) from one withdrawing shareholder to one existing shareholder. One of the current shareholders of the RHCF, Abraham N. Klein, died in 2012 bequeathing all his ownership interest in Queens Nassau to his wife, Sara Dinah Klein, the Executrix of his estate. In accordance with the terms of her husband's Last Will and Testament, Mrs. Klein is assigning her late husband's shares in Queens Nassau to her daughter-in-law, Golda Rivka Klein, for a purchase price of \$4,384,774. There will be no change in services due to the shareholder change.

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

Table with 3 columns: Stockholders, Shares, % under Current Ownership. Rows include Abraham N. Klein (Estate), Liebel Rubin, Golda Rivka Klein, and Total.

Table with 3 columns: Stockholders, Shares, % under Proposed Ownership. Rows include Liebel Rubin, Golda Rivka Klein, and Total.

OPCHSM Recommendation
Approval

Need Summary

There will be no Need recommendation of this project.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicant identified as a new member. No changes in the program or physical environment are proposed in this application.

Financial Summary

There are no project costs associated with this application. The purchase price for 80.2 shares in Queens Nassau is \$4,384,774 and will be met via the terms of an executed promissory note that provides for a 28-year maturity date with interest computed on the unpaid principal balance at the IRS Long-term Applicable Federal Rate (AFR) for Quarterly Payments (3.02% as of June 2018) computed based on the rate at the time of closing. Interest only will be payable quarterly commencing January 1, 2018, with principal for the note payable due by January 1, 2046.

No budget analysis was necessary, as this is an assignment of 40.10% ownership interest in the RHCF via an Assignment and Assumption Agreement with Sara Dinah Klein, Executrix of decedent shareholder's estate. The other current shareholder is remaining in the ownership structure, and the facility is not proposing to change its business model, which has historically been profitable.

## 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 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

**August 2, 2018**

# Program Analysis

## Facility Information

|                         | <b>Existing</b>  | <b>Proposed</b>     |          |                     |          |              |       |               |     |             |      |             |     |                         |       |                  |  |  |
|-------------------------|--|---------------------|----------|---------------------|----------|--------------|-------|---------------|-----|-------------|------|-------------|-----|-------------------------|-------|------------------|--|--|
| Facility Name           | Queens Nassau Rehabilitation and Nursing   | Same                |          |                     |          |              |       |               |     |             |      |             |     |                         |       |                  |  |  |
| Address                 | 520 Beach 19 <sup>th</sup> Street<br>Far Rockaway, NY 11691  | Same                |          |                     |          |              |       |               |     |             |      |             |     |                         |       |                  |  |  |
| RHCF Capacity           | 200  | Same                |          |                     |          |              |       |               |     |             |      |             |     |                         |       |                  |  |  |
| ADHC Program Capacity   | N/A  | Same                |          |                     |          |              |       |               |     |             |      |             |     |                         |       |                  |  |  |
| Type of Operator        | Corporation  | Same                |          |                     |          |              |       |               |     |             |      |             |     |                         |       |                  |  |  |
| Class of Operator       | Proprietary  | Same                |          |                     |          |              |       |               |     |             |      |             |     |                         |       |                  |  |  |
| Operator                | Queens-Nassau Nursing Home Inc.  | Same                |          |                     |          |              |       |               |     |             |      |             |     |                         |       |                  |  |  |
|                         | <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;"><u>Stockholders</u></th> <th style="text-align: left;"><u>%</u></th> <th style="text-align: left;"><u>Stockholders</u></th> <th style="text-align: left;"><u>%</u></th> </tr> </thead> <tbody> <tr> <td>Liebel Rubin</td> <td>50.0%</td> <td>*Liebel Rubin</td> <td>50%</td> </tr> <tr> <td>Golda Klein</td> <td>9.9%</td> <td>Golda Klein</td> <td>50%</td> </tr> <tr> <td>Estate of Abraham Klein</td> <td>40.1%</td> <td>*Managing Member</td> <td></td> </tr> </tbody> </table> | <u>Stockholders</u> | <u>%</u> | <u>Stockholders</u> | <u>%</u> | Liebel Rubin | 50.0% | *Liebel Rubin | 50% | Golda Klein | 9.9% | Golda Klein | 50% | Estate of Abraham Klein | 40.1% | *Managing Member |  |  |
| <u>Stockholders</u>     | <u>%</u>   | <u>Stockholders</u> | <u>%</u> |                     |          |              |       |               |     |             |      |             |     |                         |       |                  |  |  |
| Liebel Rubin            | 50.0%  | *Liebel Rubin       | 50%      |                     |          |              |       |               |     |             |      |             |     |                         |       |                  |  |  |
| Golda Klein             | 9.9%   | Golda Klein         | 50%      |                     |          |              |       |               |     |             |      |             |     |                         |       |                  |  |  |
| Estate of Abraham Klein | 40.1%  | *Managing Member    |          |                     |          |              |       |               |     |             |      |             |     |                         |       |                  |  |  |

## Character and Competence-Background

### Facilities Reviewed

|   |                   |
|---|-------------------|
| Park Terrace Care Center                      | 09/2016 – current |
| Queens Nassau Nursing Home                    | 09/2016 – current |
| Northern Manhattan Rehabilitation and Nursing | 01/2018 – current |

### Individual Background Review

Golda Klein is concurrently employed as Senior Fiscal Analyst at both Park Terrace Care Center and Queens Nassau Nursing Home. She has held these positions since 2015, prior to this Ms. Klein was not employed, taking time off to raise her family. Ms. Klein discloses the following nursing home ownership interests:

|   |                   |
|---|-------------------|
| Park Terrace Care Center [9.9%]                       | 09/2016 – current |
| Queens Nassau Nursing Home [9.9%]                     | 09/2016 – current |
| Northern Manhattan Rehabilitation and Nursing [6.10%] | 01/2018 – current |

## Character and Competence - Analysis

No negative information has been received concerning the character and competence for the new member.

A review of the operations of Park Terrace Care Center for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-17-034 for surveillance findings on 12/23/16. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care-Pressure Sores/ Prevention.

A review of the operations of Queens Nassau Rehabilitation and Nursing Center for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-18-018 for surveillance findings on 1/24/18. Deficiencies were found under 10 NYCRR 415.12(h)(1) & (2) Free of Accident Hazards/Supervision/Devices.
- A Federal CMP of \$6,893.25 was paid for the surveillance findings from 1/24/18

The review of operations of Northern Manhattan Rehabilitation and Nursing for the period indicated above reveals that there were no enforcements.

## Quality Review

| <b>Provider Name</b>                            | <b>Overall Rating</b> | <b>Health Inspection Rating</b> | <b>Quality Measure Rating</b> | <b>Staffing Rating</b> | <b>NYS Quintile</b> |
|---|-----------------------|---------------------------------|-------------------------------|------------------------|---------------------|
| Park Terrace Care Center                        | ***                   | **                              | *****                         | Data Not Available     | 3                   |
| Queens Nassau Rehabilitation and Nursing Center | *****                 | ****                            | *****                         | ***                    | 3                   |
| Northern Manhattan Rehab and Nursing Center     | ***                   | ***                             | *****                         | *                      | 2                   |

The subject facility is included because the applicant already has ownership interest.

## Project Review

This application proposes a transfer of a total of 80.20 shares from one withdrawing shareholder to Golda Klein. The transfer is from the estate of Abraham Klein who died in 2012 with his ownership interest bequeathed to his wife, Sara Dinah Klein, who was appointed executrix of his estate. Golda Klein is the Kleins' daughter-in-law.

Although Ms. Golda Klein does have current ownership interest in this facility as well as two others, she had not been previously reviewed by the Department or approved by the Public Health and Health Planning Council (PHHPC). The acquisition of the additional shares necessitates PHHPC approval.

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

## Conclusion

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

## Recommendation

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

## Financial Analysis

### Assignment and Assumption Agreement

The applicant submitted an executed Assignment and Assumption Agreement for the shares in the RHC, to be effectuated upon final approval by the Public Health and Health Planning Council. The terms are summarized below:

|                            |   |
|----------------------------|---|
| Date:                      | January 1, 2018   |
| Assignor:                  | The Estate of Abraham N. Klein by Sara Dinah Klein (Executrix)                            |
| Assignee:                  | Golda Rivka Klein   |
| Shares Acquired:           | 80.2 shares of stock (40.1%)  |
| Purchase Price             | \$4,384,774   |
| Payment of Purchase Price: | Promissory Note for the full amount executed on 1/1/2018, with a pledge from the Assignee |

The promissory note provides for a 28-year term with interest computed based on the IRS Long-term AFR for Quarterly Payments determined at the time of closing (3.02% as of June 2018). Interest only will be payable quarterly commencing January 1, 2018, with principal for the note payable due by January 1, 2046. On January 1, 2018, a pledge agreement was signed between Golda Rivka Klein and the Estate of Abraham N. Klein (via Sara Dinah Klein as Executrix), whereby Golda Rivka Klein pledged her assigned shares as collateral to secure her obligation under the Promissory Note.

#### Capability and Feasibility

The purchase price for the 80.2 shares in Queens Nassau Nursing Home, Inc. is \$4,384,784 and will be met via a promissory note at the stated terms. There are no project costs with this transaction. BFA Attachment A is the personal net worth statement of Golda Rivka Klein, which shows the availability of sufficient liquid resources.

No budget analysis was necessary as this is an assignment of 40.1% ownership interest in the RHCF via an Assignment and Assumption Agreement from the estate of the decedent shareholder via Sara Klein as Executrix of the estate. The other current shareholder, Liebel Rubin, is remaining in the ownership structure, and the facility is not proposing to change its business model, which has historically been profitable.

BFA Attachment B is a financial summary of Queens Nassau Nursing Home, Inc. d/b/a Queens Nassau Rehabilitation and Nursing Center for 2016 and 2015 (certified) and the internal financials for the for the year ending December 31, 2017, which show the facility had a positive working capital position, positive net income and a positive net asset position for the periods shown.

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

#### Recommendation

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

## Attachments

- BFA Attachment A Net Worth Statement of Proposed Member
- BFA Attachment B 2015 and 2016 Certified and 2017 Internal Financial Summary of Queens Nassau Nursing Home, Inc. d/b/a Queens Nassau Rehabilitation and Nursing Center



Project # 181182-E
MARNC Operating LLC d/b/a Massena Rehabilitation & Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: St. Lawrence
Acknowledged: March 16, 2018

Executive Summary

Description

MARNC Operating, LLC d/b/a Massena Rehabilitation & Nursing Center, a New York (NY) limited liability company, requests approval to be established as the operator of St. Regis Nursing Home, Inc., a 160-bed plus two respite bed, Article 28 residential health care facility (RHCF) located at 89 Grove Street, Massena (St. Lawrence County). St. Regis Nursing Home & Health Related Facility, Inc., a proprietary business corporation, is the current operator of the facility. There will be no change in beds or services provided.

On December 6, 2017, St. Regis Nursing Home and Health Related Facility, Inc. entered into an Operations Transfer Agreement (OTA) with MARNC Operating, LLC for the sale and acquisition of the operating interests of the facility for \$0. Concurrent with the APA, Kent Grove Realty Corporation, the current RHCF realty owner, entered into a Real Estate and Asset Purchase Agreement (REAPA) with MARNC Realty, LLC for the sale and acquisition of the RHCF's real property for \$13,700,000. The transactions contemplated by the OTA and REAPA will close simultaneously upon CON approval by the Public Health and Health Planning Council. There is a relationship between MARNC Operating, LLC and MARNC Realty, LLC in that the entities have identical ownership. The applicant will lease the premises from MARNC Realty, LLC. Also, the real estate entity will purchase a small adjacent property located at 40 Kent Street that has a small shed used for storage. This site will not be

leased to the operating entity and will not be used for nursing home purposes.

The current and proposed ownership of the nursing home is as follows:

Table with 2 columns: Shareholders and Percentage. Includes St. Regis Nursing Home & Health Related Facility, Inc. as the current operator, and Estate of Henry Dobies (40%), Estate of Haig Bogosian (40%), and John Bogosian (20%) as current shareholders.

Table with 2 columns: Members and Percentage. Includes MARNC Operating, LLC as the proposed operator, and Batia Zagelbaum (40.00%), Esther Barth (37.50%), Chaya Zagelbaum (15.00%), Yoel Zagelbaum (3.75%), and Yechiel Zagelbaum (3.75%) as proposed members.

OPCHSM Recommendation
Contingent Approval

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

Program Summary
No negative information has been received concerning the character and competence of the proposed applicants identified as new members. No changes in the program or physical environment are proposed in this application. No

administrative services or consulting agreements are proposed in this application. The applicant does not intend to utilize any staffing agencies upon their assumption of ownership.

#### Financial Summary

The purchase price for the operations is \$0. The purchase price for the real estate transactions is \$13,735,000 in total, apportioned at \$13,700,000 for the RHCF property and \$35,000 for the adjacent parcel. Funding will be met as follows: Equity Deposit (held in Escrow) \$400,000; a \$1,650,000 Promissory Note to the Sellers for a

three-year term with interest only payments at 5% and principal due on the three-year anniversary date; Equity (Members) of \$725,000, and a bank loan of \$10,960,000 at 6% interest for a 30-year term. The proposed budget is as follows:

|            |                   |
|------------|-------------------|
| Revenues   | \$11,787,748      |
| Expenses   | <u>11,535,589</u> |
| Net Income | \$252,159         |

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two-year period. [RNR]
4. Submission of a promissory note, acceptable to the Department of Health. [BFA]
5. Submission of an executed bank loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed lease rental agreement, acceptable to the Department of Health. [BFA]
7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed Articles of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
10. Submission of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

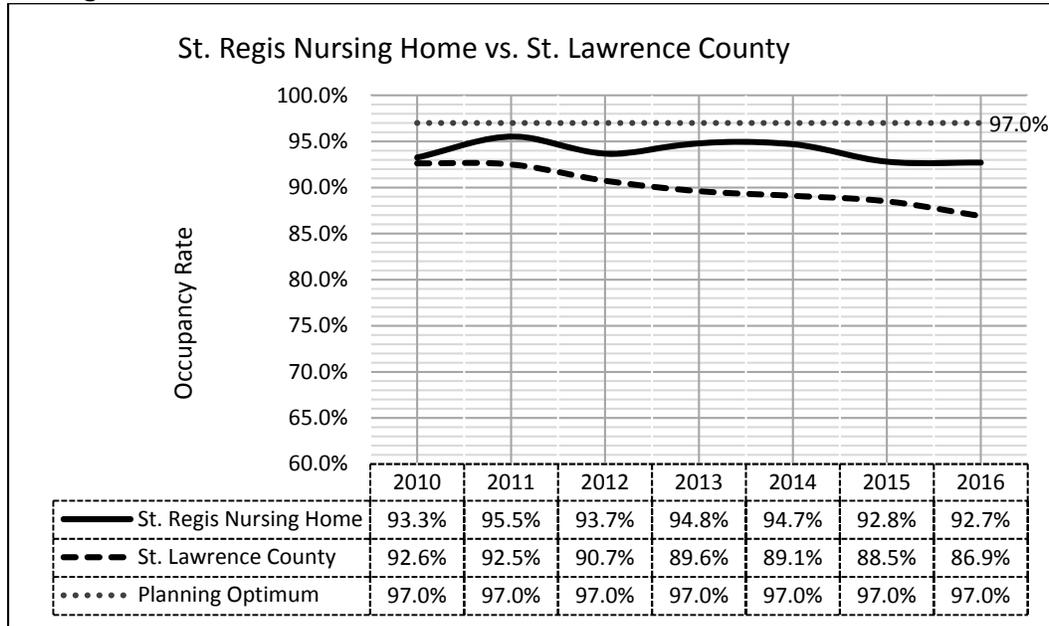
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**August 2, 2018**

# Need Analysis

## Background



The 2016 occupancy was 86.9% for St. Lawrence County and 92.7% for the St. Regis Nursing Home.

## Medicaid Admissions

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.

The facility's Medicaid admissions of 13.70% in 2015 and 20.90% in 2016 were lower than the St. Lawrence County's 75% threshold rates of 17.6% in 2015 and 21.70% in 2016.

## Conclusion

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

## Recommendation

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

## Program Analysis

### Facility Information

|                       | <b>Existing</b>              | <b>Proposed</b>   |
|-----------------------|------------------------------|---|
| Facility Name         | St. Regis Nursing Home, Inc. | Massena Rehabilitation and Nursing Center   |
| Address               | 89 Grove Street Massena, NY  | Same  |
| RHCF Capacity         | 160 (2 respite beds)         | Same  |
| ADHC Program Capacity | N/A                          | Same  |
| Type of Operator      | Corporation                  | LLC   |
| Class of Operator     | Proprietary                  | Same  |
| Operator              | OMOP, LLC                    | MARNC Operating, LLC<br><u>Members</u><br>Batia Zagelbaum 40.0%<br>Esther R. Barth 37.5%<br>Chaya Walden 15.0%<br>Yechiel Zagelbaum 3.75%<br>Yoel Zagelbaum 3.75% |

### Character and Competence - Background

#### **Facilities Reviewed**

|   |                    |
|---|--------------------|
| Tarrytown Hall Care Center                        | 04/2008 to present |
| Alpine Rehabilitation and Nursing Center          | 07/2009 to present |
| Norwich Rehabilitation and Nursing Center         | 01/2011 to present |
| Highland Rehabilitation and Nursing Center        | 02/2013 to present |
| Utica Rehabilitation and Nursing Center           | 02/2015 to present |
| Delhi Rehabilitation and Nursing Center           | 01/2018 to present |
| Yorktown Rehabilitation and Nursing Center        | 04/2018 to present |
| Cambridge Rehabilitation and Nursing Center (MA)  | 09/2010 to present |
| Medford Rehabilitation and Nursing Center (MA)    | 04/2012 to present |
| Rehabilitation and Nursing Center at Everett (MA) | 01/2013 to 07/2017 |

#### **Individual Background Review**

**Batia Zagelbaum** is currently employed as a Midwife for Maternal Resources OB, PC. She holds a Certified Nurse-Midwife License in both NY and NJ, a Nurse Practitioner Obstetrics/Gynecology in NY, and a RN license in NY and NJ. All are in good standing. Ms. Zagelbaum discloses the following ownership interest:

Orchard Manor Rehabilitation & Nursing Center [9% currently; 17.5% pending] 03/2017 - present

**Esther Barth** has no employment history for the past 10 years, and she holds no professional licenses. Ms. Barth discloses the following ownership interest:

Orchard Manor Rehabilitation & Nursing [8% currently; 37.5% pending] 03/2017 - present  
Gowanda Rehabilitation and Nursing Center [pending]

**Chaya Walden** is employed in the Accounts Payable office at Windsor Healthcare Management. She holds no professional licenses. Ms. Walden discloses the following ownership interest:

Orchard Manor Rehabilitation & Nursing Center [7% currently; 15% pending] 03/2017 - present  
Gowanda Rehabilitation and Nursing Center [pending]

**Yechiel Zagelbaum** has been a pediatrician in private practice in Brooklyn, NY since 2002. Dr. Zagelbaum is a New York State Physician with license in good standing; and current certification in general pediatrics. Mr. Zagelbaum discloses the following health facility ownership interests:

|   |                    |
|---|--------------------|
| Tarrytown Hall Care Center [13.5%]                      | 04/2008 to present |
| Alpine Rehabilitation and Nursing Center [5%]           | 07/2009 to present |
| Norwich Rehabilitation and Nursing Center [15%]         | 01/2011 to present |
| Highland Rehabilitation and Nursing Center [10%]        | 02/2013 to present |
| Utica Rehabilitation and Nursing Center [5%]            | 02/2015 to present |
| Delhi Rehabilitation and Nursing Center [2%]            | 01/2018 to present |
| Yorktown Rehabilitation & Nursing Center [10%]          | 04/2018 to present |
| Cambridge Rehabilitation and Nursing Center [10%] (MA)  | 09/2010 to present |
| Medford Rehabilitation and Nursing Center [10%] (MA)    | 04/2012 to present |
| Rehabilitation and Nursing Center at Everett [5%] (MA)  | 01/2013 to 07/2017 |
| Orchard Manor Rehabilitation & Nursing Center [pending] |                    |
| Gowanda Rehabilitation and Nursing Center [pending]     |                    |

**Yoel Zagelbaum** is an Attorney with the NYS Bar Association and a Patent attorney in good standing. Mr. Zagelbaum is currently the President at Riverside Abstract, LLC, which is a Title Insurance business. He discloses the following ownership interests:

|   |                    |
|---|--------------------|
| Tarrytown Hall Care Center [13.5%]                      | 04/2008 to present |
| Alpine Rehabilitation and Nursing Center [5%]           | 07/2009 to present |
| Norwich Rehabilitation and Nursing Center [15%]         | 01/2011 to present |
| Highland Rehabilitation and Nursing Center [10%]        | 02/2013 to present |
| Utica Rehabilitation and Nursing Center [5%]            | 02/2015 to present |
| Delhi Rehabilitation and Nursing Center [2%]            | 01/2018 to present |
| Cambridge Rehabilitation and Nursing Center [10%] (MA)  | 09/2010 to present |
| Medford Rehabilitation and Nursing Center [10%] (MA)    | 04/2012 to present |
| Orchard Manor Rehabilitation & Nursing Center [pending] |                    |
| Gowanda Rehabilitation and Nursing Center [pending]     |                    |

#### Character and Competence - Analysis

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

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

- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-17-055 issued for surveillance findings on September 12, 2017. A deficiency was found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential.
- The facility incurred a Civil Monetary Penalty of \$7,023.25 for the immediate jeopardy associated with the survey.

A review of Highland 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-18-002 issued for surveillance findings on September 12, 2017. A deficiency was found under 10 NYCRR 415.5(h)(4) Environment Comfortable and Safe Temperature Level.

A review of Utica Rehabilitation and Nursing Center for the period identified above revealed the following:

- The facility was fined \$6,000 pursuant to a Stipulation & Order #18-001 for surveillance findings on December 21, 2016, March 25, 2016 and June 30, 2017. Deficiencies were found under 10 NYCRR 415.12 Quality of Care- Highest Practicable Potential; 415.26 Administration; and 415.4(b)(3) Staff Treatment of Residents/ Investigate. The noted Stipulation & Order omitted F tags 415.12 Quality of Care- Highest Practicable Potential and 415.26 Administration.

- An assessment of the underlying causes of the above enforcement indicates that although the deficiency cited under 10NYCRR 415.4(b)(3) was recurrent in nature, they were for low level D deficiencies.
- The facility incurred a Civil Monetary Penalty of \$11,731.85 for the immediate jeopardy associated with the survey.

A review of operations for Alpine Rehabilitation and Nursing Center, Tarrytown Hall Care Center, Delhi Rehabilitation and Nursing Center and Yorktown Rehabilitation and Nursing Center for the periods identified above revealed that there were no enforcements.

An affidavit submitted by the applicant for Medford Rehabilitation and Nursing Center, Massachusetts revealed that the facility paid an enforcement of \$96,785 for findings on 2/27/13. Deficiencies were cited under §483.25 – Quality of Care with a scope and severity of L. The affidavit submitted by the applicant revealed that a federal CMP was assessed (\$177,600 per CMS website) for June 8, 2016 survey findings. The applicant disclosed that this is still in the appeal process, and no fine has been paid.

An affidavit submitted by the applicant for Rehabilitation and Nursing Center at Everett, Massachusetts revealed that the facility paid an enforcement of \$49,400 for findings on 6/4/13. Deficiencies were cited under §483.10(b)(3) (d)(2) – Informed of Health Status / Medical Condition with a scope and severity of G.

An affidavit submitted by the applicant for Cambridge Rehabilitation and Nursing Center, Massachusetts for the period identified above revealed that the facility was fined \$2,275 pursuant to surveillance findings on 1/12/15. Deficiencies were cited under §483.20(k)(3)(ii) – Qualifications of Facility Staff with a scope and severity of G.

The affidavits provided by the applicant for the above facilities indicate that none of the Massachusetts facilities have repeat deficiencies.

#### Quality Review

| Provider name                                   | Overall | Health Inspection | Quality Measures | Staffing | NYS Quintile |
|---|---------|-------------------|------------------|----------|--------------|
| Highland Rehabilitation and Nursing Center      | **      | **                | *****            | *        | 2            |
| Utica Rehabilitation & Nursing Center           | **      | *                 | *****            | ***      | 5            |
| Tarrytown Hall Care Center                      | ****    | ****              | *****            | *        | 4            |
| Norwich Rehabilitation & Nursing Center         | *       | *                 | ****             | **       | 4            |
| Alpine Rehabilitation and Nursing Center        | **      | **                | ***              | ***      | 4            |
| Orchard Manor Rehabilitation and Nursing Center | *       | *                 | ****             | *        | 5            |
| Yorktown Rehabilitation & Nursing Center        | *****   | *****             | *****            | **       | **           |

#### MA

|   |      |    |       |      |     |
|---|------|----|-------|------|-----|
| Cambridge Rehabilitation & Nursing Center | **** | ** | ***** | **** | N/A |
| Medford Rehabilitation and Nursing Center | *    | *  | ****  | ***  | N/A |

Delhi Rehabilitation and Nursing Center, a new facility, is not included on the above chart, because according to Medicare.gov, all ratings are shown as “Too New to Rate.”

Regarding the homes with overall Star ratings of 1 or 2, the applicant notes that quality measure ratings are higher, which they attribute to the programs they have put into place. It is stated that new management and clinical leadership personnel have been hired, who have implemented new policies and systems to increase the level of care and overall performance of their facilities. The applicants stated that they have increased formal staff training, both at orientation and annually. They noted that their staffing ratings have went down without reductions in staffing. They indicate this is due in part to the change in methodology for the CMS staffing ratings.

#### Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicant does not intend to utilize any staffing agencies upon their assumption of ownership.

#### 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

#### Operations Transfer Agreement

The applicant has submitted an executed OTA for to RHCF operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

|                      |  |
|----------------------|--|
| Date:                | December 6, 2017   |
| Old Operator:        | St. Regis Nursing Home and Health Related Facility, Inc.   |
| New Operator:        | MARNC Operations, LLC  |
| Assets Acquired:     | Assumed contracts, patient trust funds, provider agreements, resident agreements, the name “St. Regis Nursing and Health Related Facility, Inc.” dba St. Regis Nursing Home or St. Regis Nursing Home, Inc. and any other trade services marks used in the operation of the Facility and the website material. |
| Assumed Liabilities: | None   |
| Purchase Price”:     | \$0  |

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

## Real Estate Purchase Agreements

The applicant has submitted executed real estate purchase agreements for the RHCF and adjacent parcel sites, summarized below:

### 89 Grove Street Site:

|                            |   |
|----------------------------|---|
| Date:                      | December 6, 2017  |
| Premises:                  | The RHCF property located at 89 Grove Street, Massena, New York,  |
| Seller:                    | Kent Grove Realty Corporation   |
| Purchaser:                 | MARNC Realty, LLC   |
| Purchase Price:            | \$13,700,000  |
| Payment of Purchase Price: | \$400,000 deposit (in Escrow); \$1,650,000 Promissory Note executed at Closing; Balance due via cash or immediately available funds at Closing. |

Kent Grove Realty Corporation is owned as follows: Estate of Haig Bogosian 50%, Margaret Dobies 25% and Margaret Herman 25%.

### 40 Kent Street Site:

|                            |   |
|----------------------------|---|
| Date:                      | December 6, 2017  |
| Premises:                  | The property located at 40 Kent Street, Massena, New York |
| Seller:                    | J&H Associates  |
| Purchaser:                 | MARNC Realty, LLC   |
| Purchase Price:            | \$35,000  |
| Payment of Purchase Price: | \$35,000 cash at Closing.                                 |

The realty entity's financing plan for the real estate transactions is as follows:

|  |                   |
|--|-------------------|
| Deposits (Equity, held in Escrow)  | \$400,000         |
| Promissory Note (5% interest only, principal due at three-year anniversary date) | 1,650,000         |
| Equity   | 725,000           |
| Loan (6% interest rate for a 30-year term)                                       | <u>10,960,000</u> |
| Total  | \$13,735,000      |

### Lease Rental Agreement

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

|             |   |
|-------------|---|
| Premises:   | A 160-bed nursing home located at 89 Grove Street, Massena, New York.   |
| Lessor:     | MARNC Realty, LLC   |
| Lessee:     | MARNC Operating, LLC  |
| Term:       | 10 years  |
| Rental:     | Rent shall be equal to the Lessor's debt service on the initial permanent financing of the Demised Premises. The rent shall be equal to approximately \$788,529 annually. |
| Provisions: | Lessee shall be responsible for real estate taxes, insurance, maintenance and utilities.  |

The lease agreement will be a non-arm's length lease arrangement in that the realty and operating entities have identical membership and ownership interests. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity.

## Operating Budget

The applicant has submitted the current year (2016) operations and an operating budget, in 2018 dollars, for the first year after the change in operator, summarized below:

|                            | <u>Current Year</u> |                  | <u>Year One</u> |                  |
|----------------------------|---------------------|------------------|-----------------|------------------|
|                            | <u>Per Diem</u>     | <u>Total</u>     | <u>Per Diem</u> | <u>Total</u>     |
| <u>Revenues</u>            |                     |                  |                 |                  |
| Medicaid FFS               | \$136.91            | \$5,226,086      | \$169.97        | \$5,335,305      |
| Medicaid MC                | \$145.59            | 712,648          | \$200.00        | 2,555,000        |
| Medicare FFS               | \$399.58            | 1,475,646        | \$518.26        | 2,270,000        |
| Private                    | \$451.04            | 3,701,657        | \$217.50        | 1,508,362        |
| Respite                    |                     | 0                | \$217.30        | 119,081          |
| Other *                    |                     | <u>94,643</u>    |                 | <u>0</u>         |
| Total Revenues             |                     | \$11,210,680     |                 | \$11,787,748     |
| <u>Expenses</u>            |                     |                  |                 |                  |
| Operating                  | \$183.46            | \$10,084,112     | \$187.20        | \$10,385,589     |
| Capital                    | <u>20.26</u>        | <u>1,113,547</u> | <u>20.73</u>    | <u>1,150,000</u> |
| Total Expenses             | \$203.72            | \$11,197,659     | \$207.93        | \$11,535,589     |
| Net Income                 |                     | <u>\$13,021</u>  |                 | <u>\$252,159</u> |
| Utilization (patient days) |                     |                  |                 |                  |
| RHCF                       |                     | 54,967           |                 | 55,480           |
| Respite                    |                     | <u>4</u>         |                 | <u>548</u>       |
| Total Patient Days         |                     | 54,971           |                 | 56,028           |
| RHCF Occupancy             |                     | 94.13%           |                 | 95.00%           |
| Breakeven Occupancy        |                     |                  |                 | 92.97%           |

\* Other Revenue: TV rental, cafeteria, insurance refund, DSRIP payments and miscellaneous.

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

- Expenses for Year One have been adjusted for modifications to operating efficiencies based on the applicant's experience in similar facilities. Expense assumptions are more reflective of 2017 full year operational costs adjusted for the new operator's anticipated modifications for efficiencies and enhancements.
- FTE's are stable or increasing slightly for select direct care staff (nursing, PT, social workers), and decreasing for housekeeping, food service and clerical/administrative and OT staff. Salaries and wages are increasing to reflect a staffing model that is necessary to provide support to the clinical team in anticipation of providing services to higher-acuity patients. The applicant intends to serve higher-acuity residents, which requires staff qualified to provide more intense services justifying higher wages.
- Utilization broken down by payor source during the current year (2016) and the first year after the change in operator is as follows:

|              | <u>Current Year</u> | <u>Year One</u> |
|--------------|---------------------|-----------------|
| Medicaid FFS | 69.45%              | 56.58%          |
| Medicaid MC  | 8.91%               | 23.03%          |
| Medicare     | 6.72%               | 7.89%           |
| Private Pay  | 14.92%              | 12.50%          |

- Medicaid Managed Care utilization is increasing while Private Pay is decreasing, reflective of the 2017 utilization of the facility and the effect of anticipated operational changes under new ownership.
- Reimbursement rates for Year One reflect the most current reimbursement rates for all payor sources. The Medicaid rate is based on the January 1, 2018 Pricing rate.

## Capability and Feasibility

The purchase price for the operations is \$0. The purchase price for the real estate transactions is \$13,735,000 in total, apportioned at \$13,700,000 for the RHCF property and \$35,000 for the adjacent parcel. Funding will be met as follows: Equity Deposit (held in Escrow) \$400,000; a \$1,650,000 Promissory Note to the Sellers for a three-year term with interest only payments at 5% and principal due on the three-year anniversary date; Equity (Members) of \$725,000, and a bank loan of \$10,960,000 at 6% interest for a 30-year term. Greystone has provided a letter of interest for the bank loan at the stated terms.

The working capital requirement is estimated at \$1,922,598 based on two months of Year One expenses. The applicant will finance \$961,299 at an interest rate of 6% for a five-year term. The remaining \$961,299 will be met via equity from the proposed members of MARNC Operating, LLC. Greystone has provided a letter of interest to finance the working capital loan at the stated terms. BFA Attachment A is the personal net worth statements of the proposed members of MARNC Operating, LLC, which indicates the availability of sufficient funds for the equity contribution. Yachiel Zagelbaum and Yoel Zagelbaum have submitted affidavits indicating that they will provide equity disproportionate to their ownership interests to cover any equity shortfall of any other member. BFA Attachment C is the pro forma balance sheet of MARNC Operating, LLC, which indicates a positive net asset position of \$961,299.

The submitted budget projects \$252,159 of net income in the first year after the change in ownership. Revenues are based on the current reimbursement methodologies. The submitted budget appears reasonable.

Implementation of the transition of nursing home (NH) residents to Medicaid managed care is ongoing. Under the managed care construct, Managed Care Organizations (MCOs) negotiate payment rates directly with NH providers. A Department policy paper provided guidance requiring MCOs to pay the Medicaid FFS rate as a benchmark, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. The transition period has been extended out to 2020; hence, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment B is a financial summary of St. Regis Nursing Home from 2015 through 2017. As shown, the entity had an average negative working capital position, average negative net asset position and an average net loss of \$5,784 from 2015 through 2017. The applicant has indicated that the reasons for the negative working capital positions, negative net asset positions and the average net losses are the result of the following: the facility implemented wage increases from 2015 through 2017; paid a CMS fine of \$43,980.30 in 2017 due to a self-reported deficiency; and the current operator made facility and equipment repairs, replacing equipment to maintain facility operations in accordance with their standards.

BFA Attachment D is the financial summary of the affiliated NYS facilities the proposed members own. As shown, most of the facilities had average positive working capital positions, average positive net asset positions and average net incomes from 2015 through 2017. Alpine Rehabilitation experienced a slight negative working capital in 2015; however, due to operational efficiencies implemented by the owners, there were significant improvements in 2016 and 2017. Highland Rehab experienced a slight operating loss in 2016 due to the facility picking up prior year write-offs, and Tarrytown experienced a slightly negative working capital in 2015 due to higher than average maintenance costs.

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

## Recommendation

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

## Attachments

- BFA Attachment A Personal net worth statements- Proposed members
- BFA Attachment B Financial Summary- St. Regis Nursing Home
- BFA Attachment C Pro Forma Balance Sheet
- BFA Attachment D Financial Summaries- Other owned facilities
- BFA Attachment E Organizational Chart with Operating and Realty Entity Membership



**Project # 181084-E  
Willcare**

**Program:** Certified Home Health Agency  
**Purpose:** Establishment

**County:** Erie  
**Acknowledged:** February 9, 2018

**Executive Summary**

**Description**

LHC Group, Inc., a Delaware corporation authorized to do business in New York State (NYS), requests approval to be established as a new controlling person of two certified home health agencies (CHHAs), Western Region Health Corporation (Western Region) and Litson Certified Care, Inc. (Litson Certified), and two licensed home care service agencies (LHCSA) that are being consolidated into one. The two LHCSAs are Willcare, Inc. LHCSA and Litson Health Care, Inc. LHCSA. Upon final approval by the Public Health and Health Planning Council (PHHPC), the Litson LHCSA will be consolidated into Willcare LHCSA's license and Litson LHCSA will surrender its current operating license. Willcare, Inc. LHCSA, which owns 100% of the stock of Litson Health Care, Inc. LHCSA, will become the single corporate operator holding a single license, with two sites, to provide the LHCSA services formerly provided by both Willcare, Inc. LHCSA and Litson Health Care, Inc. LHCSA in their respective service areas. All three agencies are authorized to do business in NYS under the assumed name "Willcare".

Western Region serves Allegany, Chautauqua and Erie Counties and has a main CHHA office located at 346 Delaware Avenue, Buffalo (Erie County). Litson Certified serves Dutchess, Greene, Orange, Putnam, Sullivan, Ulster, and Westchester Counties and has a main CHHA office located at 700 Corporate Boulevard, Newburg (Orange County). Litson LHCSA has offices located in Middletown, Lake Katrine and

Poughkeepsie and serves the residents of Dutchess, Putnam, Rockland, Sullivan, Ulster, Westchester, and Bronx Counties. Willcare LHCSA has offices in Buffalo, Niagara Falls, Jamestown and Olean and serves the residents of Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, and Wyoming Counties. The services and operations of all four agencies will remain the same. All policies and procedures, staffing, and referral relationships will continue uninterrupted. The leases will not change.

BFA Attachment B presents the organizational chart before and after the proposed change.

OPCHSM Recommendation  
Contingent Approval

Need Summary  
There will be no changes to services or counties as a result of this application.

Program Summary  
Review of the Personal Qualifying Information indicates that the applicant has the required character and competence.

Financial Summary  
There are no project costs associated with this application or changes to the operating budgets.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a copy of the by-laws of Western Region Health Corporation, acceptable to the Department. (CSL)
2. Submission of a copy of the by-laws of Litson Certified Care, Inc., acceptable to the Department. (CSL)
3. Submission of a copy of the by-laws of Willcare, Inc., acceptable to the Department. (CSL)
4. Submission of a copy of the by-laws of Litson Health Care, Inc., 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

**August 2, 2018**

## Need and Program Analysis

### Program Description

Almost Family, Inc., a publicly traded business corporation formed in Delaware, requests approval to become a wholly-owned subsidiary of LHC Group, Inc., under Article 36 of the Public Health Law. Upon approval, LHC Group, Inc. will become the indirect owner of two Certified Home Health Agencies. Additionally, LHC Group, Inc will become the indirect owner of a consolidated Licensed Home Care Service Agency.

Currently, Almost Family, Inc is the grandparent corporation and ultimate controlling entity and stockholder of National Health Industries, Inc., which is the sole parent of Bracor, Inc. Bracor, Inc. is the sole parent and 100% stockholder of Western Region Health Corporation, d/b/a Willcare (Certified Home Health Agency, Long Term Home Health Program). Western Region Health Corporation d/b/a Willcare is the owner of Litson Certified Care, Inc. d/b/a Willcare (Certified Home Health Agency) and Willcare, Inc d/b/a Willcare (Licensed Home Care Service Agency). Willcare, Inc. d/b/a Willcare is the owner of Litson Health Care, Inc. d/b/a This project proposes for LHC Group, Inc. to become the parent of Almost Family, Inc. (BFA Attachment A – Before and After Organizational Charts).

### **NYS CHHAs and LTHHCPs**

Western Region serves Allegany, Chautauqua and Erie Counties and has a main CHHA office located at 346 Delaware Avenue, Buffalo (Erie County). Litson Certified serves Dutchess, Greene, Orange, Putnam, Sullivan, Ulster, and Westchester Counties and has a main CHHA office located at 700 Corporate Boulevard, Newburg (Orange County). This project will have no impact on the operating certificates of Western Region Health Corporation d/b/a Willcare and Litson Certified Care, Inc. d/b/a Willcare.

Western Region Health Corporation d/b/a Willcare also operates a Long Term Home Health Care Program which serves Allegany. Liston Certified Care, Inc. d/b/a Willcare submitted a letter to the Department dated March 20, 2018 stating they are no longer operating the Long Term Home Health Care Program in Ulster County.

### **NYS LHCSAs**

Litson LHCSA has offices located in Middletown, Lake Katrine and Poughkeepsie and serves the residents of Dutchess, Putnam, Rockland, Sullivan, Ulster, Westchester, and Bronx Counties. Willcare LHCSA has offices in Buffalo, Niagara Falls, Jamestown and Olean and serves the residents of Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, and Wyoming Counties.

The aforementioned LHCSAs will be consolidated into one agency. Liston Health Care, Inc. d/b/a Willcare will surrender its operating certificate and Willcare will be issued a license for a second site, which will provide the approved services and serve the approved counties currently on Litson Health Care, Inc's license.

Character and Competence

LHC Group, Inc. is authorized to issue forty million shares of Common Stock and five million shares of Preferred Stock. As of February 28, 2018, there were 18,285,192 shares of common stock issued and outstanding.

The Board of Directors of LHC Group, Inc. is comprised of the following individuals:

|   |   |
|---|---|
| <p><b>Keith G. Myers</b>, Director, Chairman &amp; CEO<br/>Chairman of the Board, CEO, LHC Group, Inc.</p> <p><u>Affiliation</u><br/>LHC Group, Inc. (June 14, 2005 – Present)</p>  | <p><b>Donald D. Stelly</b>, RN (LA) – President &amp; COO<br/>President, COO, LHC Group, Inc.</p> <p><u>Affiliation</u><br/>LHC Group, Inc. (September 2011 – Present)</p>                                  |
| <p><b>Joshua L. Proffitt</b>, Esq. (GA) – Executive Vice President &amp; CFO<br/>Executive Vice President, CFO, LHC Group, Inc.</p>   | <p><b>Wilbert J. Tauzin II</b>, Esq. (LA) – Director<br/>Founder, owner and manager, Tauzin Strategic Networks, LLC</p> <p><u>Affiliation</u><br/>LHC Group, Inc. (2004 – Present)</p>                      |
| <p><b>Monica F. Azare</b>, Esq. (LA, NY) – Director<br/>Deputy General Counsel, Verizon Communications</p> <p><u>Affiliation</u><br/>LHC Group, Inc. (November 2007 – Present)</p>  | <p><b>Ronald T. Nixon</b> – Director<br/>President, The Catalyst Group, Inc.</p> <p><u>Affiliation</u><br/>LHC Group, Inc. (2001 – Present)</p>   |
| <p><b>John L. Indest</b> – Director<br/>Retired</p> <p><u>Affiliations</u><br/>LHC Group, Inc. (2000 – Present)<br/>Our Lady of Lourdes Regional Medical Center (Hospital) (Louisiana, January 2011 – Present)</p>  | <p><b>Richard A. MacMillan</b>, Attorney (LA, MS), RN (LA, MS) – Secretary &amp; Senior VP<br/>Secretary, Senior Vice President and Senior Counsel, Legislative and Regulatory Affairs, LHC Group, Inc.</p> |
| <p><b>William B. Turner</b> – President<br/>President, Acadia Healthcare</p> <p><u>Affiliations</u><br/>Acadia Healthcare (Tennessee) (February 2011 – Present)<br/>LHC Group, Inc. (Louisiana) (August 2014 – Present)<br/>Surgery Partners (Florida) (January 2016 – Present)<br/>National Association of Psychiatric Health Systems (Washington DC) (2004 – Present)</p> | <p><b>Tyree G. Wilburn</b> – Director<br/>Co-Founder, Managing Partner, The Yearling Funds</p> <p><u>Affiliations</u><br/>Almost Family, Inc. (1996 – Present)<br/>Merit Health Systems (2003 – 2012)</p>   |
| <p><b>Walter E. Reed III</b>, CPA (KY) – Director<br/>Founder, Chairman of the Board, Springstone, LLC</p> <p><u>Affiliations</u><br/>Almost Family, Inc. (Kentucky) (2000 – Present)<br/>Springstone, LLC (Owner of Psychiatric Hospitals) (Kentucky) (2010 – Present)</p>   | <p><b>Clifford S. Holtz</b> – Director<br/>Chief Operating Officer, American Red Cross</p> <p><u>Affiliations</u><br/>Almost Family, Inc (November 2017 – Present)</p>                                      |

|  |   |
|--|---|
| <p><b>Jonathan D. Goldberg, Esq. (KY) – Director</b><br/> Managing Partner, Goldberg &amp; Simpson, PLLC</p> <p><u>Affiliation</u><br/> Almost Family, Inc. (1997 – Present)</p> | <p><b>Cletus S. Guenther – Officer</b><br/> President, Principal Financial Officer, Almost Family, Inc.</p> <p><u>Affiliations</u><br/> Almost Family, Inc. (1992 – Present)<br/> National Health Industries, Inc. (1992 – Current)</p> |
|--|---|

The applicant has provided the attached list of legal actions taken against LHC Group, Inc. (See Programmatic Attachment A – LHC Group, Inc. Legal Actions).

A current compliance review of the operations of the facilities/agencies in which Almost Family, Inc. has ownership interest was performed as part of this review. Almost Family, Inc. has ownership interest in 332 agencies across 26 states. Compliance history was received for the Certified Home Health Agencies and Licensed Home Care Service Agencies involved in this project. Additionally, the applicant provided a list of enforcement actions taken against Almost Family, Inc. providers. (See Programmatic Attachment B – Almost Family, Inc. Enforcement Actions)

A seven-year review of the operations of the facilities/agencies in which LHC Group, Inc. has ownership interest was performed as part of this review. (See Programmatic Attachment C – LHC Group, Inc. Facilities). One out-of-state department did not respond to the request for compliance information, but of the twenty-six which did respond, no enforcement actions were reported.

A seven-year review of the operations of the facilities/agencies in which Surgery Partners has ownership interest was performed as part of this review. The Department received compliance reports from thirteen out of thirty-one states, no enforcement actions were reported. (See Programmatic Attachment D – Surgery Partners Healthcare Facilities).

Mr. Tauzin, II disclosed that he was a minority shareholder investor in Cure Care, Inc., which filed Chapter 7 bankruptcy in the Southern District of California. The bankruptcy was discharged on June 1, 2017.

In addition, Mr. Tauzin, II supplied the following statement regarding his disclosures. "...Companies by which I am or have been employed or with which I am or have been affiliated as a corporate director, stockholder, manager or member are, like all large companies, routinely and continuously engaged in civil and administration litigation..." and further states "To the best of my knowledge, none of that litigation relates in any way to the provision of health care services to patients or to the operation of any health care facility or agency."

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

The Mississippi Board of Nursing and the Louisiana State Board of Nursing indicate no issues with the licensure of the health professionals associated with this application. The Kentucky Board of Accountancy indicates no issues with the licensure of the CPA associated with this application.

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

The Division of Home and Community Based Services reviewed the compliance histories of the affiliated Willcare certified home health agencies, long term home health care program, and licensed home care services agencies located in New York State, for the past seven years.

An enforcement action was taken in 2013 against Western Region Health Corporation, d/b/a Willcare, based on a November 2012 survey, citing violations in Governing Authority; Patient Referral, Admission, and Discharge; Patient Assessment and Plan of Care; Policies and Procedures of Service Delivery; and Personnel. This action was resolved with a \$5,500 civil penalty.

It has been determined that the certified home health agencies, long term home health care programs, and licensed home care service agencies have exercised sufficient supervisory responsibility to protect the health, safety, and welfare of patients and to prevent the recurrence of code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation, and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

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

| <b>CHHA Quality of Patient Care Star Ratings</b> as of July 5, 2018                 |                               |
|---|-------------------------------|
| <b>New York Average:</b> 3 out of 5 stars <b>National Average:</b> 3 out of 5 stars |                               |
| <b>CHHA Name</b>  | <b>Quality of Care Rating</b> |
| Litson Certified Care, Inc d/b/a Willcare   | 3 out of 5 stars              |
| Western Region Health Corporation d/b/a Willcare                                    | 4.5 out of 5 stars            |

Recommendation

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

## Financial Analysis

Financial Analysis

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 36 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.

Capability and Feasibility

There are no project costs associated with this application or changes to the operating budgets. BFA Attachment A presents the 2017 certified financial statements of LHC Group, Inc. and Subsidiaries. As shown, the entity has maintained positive working capital, positive net asset position, and a net operating income of \$60,386,000 as of December 31, 2017.

Conclusion

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

Recommendation

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

## Attachments

|                           |  |
|---------------------------|--|
| BFA Attachment A          | Financial Summary, LHC Group, Inc. as of December 31, 2017 |
| BFA Attachment B          | Organizational Chart                                       |
| Programmatic Attachment A | LHC Group, Inc. Legal Actions                              |
| Programmatic Attachment B | Almost Family, Inc. Enforcement Actions                    |
| Programmatic Attachment C | LHC Group, Inc. Facilities                                 |
| Programmatic Attachment D | Surgery Partners Healthcare                                |

**Application Number:** 161026  
**Name of Agency:** Foundation for the Elderly Inc. d/b/a Atlantis Home Care  
**Address:** Far Rockaway  
**County:** Queens  
**Structure:** Not-For-Profit Corporation

Description of Project:

Foundation for the Elderly Inc. d/b/a Atlantis Home Care, a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. This LHCSA is associated with Rockaway Manor Assisted Living.

The Board of Directors of Foundation for the Elderly Inc. d/b/a Atlantis Home Care is as follows:

|   |   |
|---|---|
| <p><b>Simcha Strohli</b> – President<br/>         Director, Rabbinical College of Bobover<br/>         Affiliation:<br/> <ul style="list-style-type: none"> <li>Rockaway Manor Home for Adults (1992 – Present)</li> </ul> </p>   | <p><b>Norman Neiger</b> – Vice President<br/>         President, Lausanne Watch Company, Inc.<br/>         Affiliation:<br/> <ul style="list-style-type: none"> <li>Rockaway Manor Home for Adults (1993 – Present)</li> </ul> </p>       |
| <p><b>Naftali Reiner</b> – Treasurer<br/>         External Affairs, Lutheran Medical Center<br/>         Affiliation:<br/> <ul style="list-style-type: none"> <li>Rockaway Manor Home for Adults (2014 – Present)</li> </ul> </p> | <p><b>Benzion Yosef Reinhold</b> – Director<br/>         Office Manager, Congregation Machie Shalom<br/>         Affiliation:<br/> <ul style="list-style-type: none"> <li>Rockaway Manor Home for Adults (2013 – Present)</li> </ul> </p> |
| <p><b>Menachem M. Einhorn</b> – Director<br/>         Maintenance Supervisor, Camp Shaiva<br/>         Affiliation:<br/> <ul style="list-style-type: none"> <li>Rockaway Manor Home for Adults (2014 – Present)</li> </ul> </p>   | <p><b>Moses Steinberg</b> – Director<br/>         Self-Employed, Real Estate</p>  |
| <p><b>Abraham Fisch</b>, CPA – Director<br/>         Owner, Abraham Fisch CPA</p>   |   |

A search of the individuals and entity named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List. The Office of the Professions of the State Education Department indicates no issue with the licensure of the professional associated with this application.

A seven-year review of the operations of Rockaway Manor Home for Adults (Adult Home) was performed as part of this review. The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant will be restricted to serving the residents of the associated Assisted Living Program in Queens County from an office located at 145 Beach 8th Street, Far Rockaway, New York 11691.

The applicant proposes to provide the following health care services:

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

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

OPCHSM Recommendation: Approval with Condition

Condition

- The Agency is restricted to serving the residents of the associated Assisted Living Program.

**Application Number:** 172165  
**Name of Agency:** Utica LHCSA, LLC d/b/a Oneida Home Care  
**Address:** Utica  
**County:** Oneida  
**Structure:** Limited Liability Company

Description of Project:

Utica LHCSA LLC d/b/a Oneida Home Care, a limited liability company, requests approval for a change in operator of a licensed home care services agency under Article 36 of the Public Health Law.

Loretto Properties Corporation d/b/a Loretto-Utica Home Care, a not-for-profit corporation, was originally approved as a home care services agency by the Public Health Council at its November 18, 1994 meeting and subsequently licensed as 9471L001 on September 7, 1995.

This LHCSA will be associated with the Assisted Living Program, Utica Assisted Living. After approval, the LHCSA and the ALP will have identical ownership.

The membership of Utica LHCSA LLC d/b/a Oneida Home Care is as follows:

**Kenneth N. Rozenberg** – 1%  
**Utica KR Holding LLC** – 99%  
    **Kenneth N. Rozenberg** (95%)  
    **Beth Rozenberg** (5%)

**Kenneth N. Rozenberg**, EMT, LNHA  
Chief Executive Officer, Centers Health Care  
Chief Executive Officer, Bronx Center for Rehabilitation and Healthcare

Affiliations:

|  |                                      |
|--|--------------------------------------|
| Amazing Home Care  | (LHCSA, 5/2006-present)              |
| Argyle Center for Independent Living                           | (AH, 2/2014-present)                 |
| Bannister Center for Rehabilitation and Health Care            | (Rhode Island, RHCF, 2/2016-present) |
| Beth Abraham Center for Rehabilitation and Nursing             | (RHCF, 3/2017-present)               |
| Boro Park Center for Rehabilitation and Healthcare             | (RHCF, 5/2011-present)               |
| Bronx Center for Rehabilitation & Health Care                  | (RHCF, 10/1997-present)              |
| The Bronx Center for Renal Dialysis                            | (D&TC, 1/2011-present)               |
| Brooklyn Center for Rehabilitation and Residential Health Care | (RHCF, 5/2007-present)               |
| Buffalo Center for Rehabilitation & Nursing                    | (RHCF, 6/2014-present)               |
| Bushwick Center for Rehabilitation and Health Care             | (RHCF, 6/2008-present)               |
| Bushwick Center for Renal Dialysis                             | (D&TC, 6/2014-present)               |
| Centers Home Care of Otsego                                    | (CHHA, 1/2018-present)               |
| Centers Home Health Revival – Bronx                            | (CHHA, 7/2008-present)               |
| Centers Home Health Revival – Buffalo                          | (CHHA, 9/2016-present)               |
| Centers Plan for Healthy Living                                | (MLTC, 1/2013-present)               |
| Cooperstown Center for Rehabilitation and Nursing              | (RHCF, 1/2018-present)               |
| Corning Center for Rehabilitation and Healthcare               | (RHCF, 7/2013-present)               |
| Ellicot Center for Rehabilitation                              | (RHCF, 12/2012-present)              |
| Essex Center for Rehabilitation and Healthcare                 | (RHCF, 3/2014-present)               |
| Far Rockaway Center for Rehabilitation and Nursing             | (RHCF, 4/2017-present)               |
| Fulton Center for Rehabilitation and Healthcare                | (RHCF, 4/2012-present)               |
| The Grand Rehabilitation and Nursing at Chittenango            | (RHCF, 5/2011-5/2017)                |
| The Grand Rehabilitation and Nursing at Pawling                | (RHCF, 8/2004-3/2016)                |
| The Grand Rehabilitation and Nursing at Queens                 | (RHCF, 10/2004-3/2016)               |

|   |                                       |
|---|---------------------------------------|
| The Grand Rehabilitation and Nursing at Rome                | (RHCF, 5/2011-5/2017)                 |
| Holliswood Care Center                                      | (RHCF, 11/2010-4/2013)                |
| Holliswood Center for Rehabilitation and Healthcare         | (RHCF, 4/2013-present)                |
| Hope Center for HIV and Nursing Care                        | (RHCF, 4/2015-present)                |
| Indian River Rehabilitation and Nursing Center              | (RHCF, 12/2014-present)               |
| Kingston Center for Rehabilitation and Health Care          | (Rhode Island, RHCF, 10/2016-present) |
| Martine Center for Rehabilitation and Nursing               | (RHCF, 3/2017-present)                |
| Northwoods Rehabilitation and Nursing Center at Moravia     | (RHCF, 11/2014-3/2016)                |
| Oak Hill Center for Rehabilitation and Healthcare           | (Rhode Island, RHCF, 7/2017-present)  |
| Oneida Center for Rehabilitation and Nursing                | (RHCF, 1/2018-present)                |
| Park View Center for Rehabilitation and Health Care         | (Rhode Island, RHCF, 5/2016-present)  |
| Richmond Center for Rehabilitation and Specialty Healthcare | (RHCF, 4/2012-present)                |
| Senior Care EMS   | (Ambulance, 6/2005-present)           |
| Steuben Center for Rehabilitation and Healthcare            | (RHCF, 7/2014-present)                |
| Triboro Center for Rehabilitation and Nursing               | (RHCF, 8/2013-present)                |
| University Center for Rehabilitation and Nursing            | (RHCF, 8/2001-present)                |
| Washington Center for Rehabilitation and Healthcare         | (RHCF, 2/2014-present)                |
| Waterfront Health Care Center                               | (RHCF, 8/2011-12/2012)                |
| Williamsbridge Manor Nursing Home                           | (RHCF, 11/1996-present)               |

**Beth Rozenberg**

Retired (1995)

Affiliations:

|   |                                       |
|---|---------------------------------------|
| Bannister Center for Rehabilitation and Health Care     | (Rhode Island, RHCF, 2/2016-present)  |
| Beth Abraham Center for Rehabilitation and Nursing      | (RHCF, 3/2017-present)                |
| Boro Park Center for Rehabilitation and Healthcare      | (RHCF, 4/2016-present)                |
| Bronx Center for Rehabilitation & Health Care           | (RHCF, 9/2013-present)                |
| Far Rockaway Center for Rehabilitation and Nursing      | (RHCF, 4/2017-present)                |
| Hope Center for HIV and Nursing Care                    | (RHCF, 4/2015-present)                |
| Kingston Center for Rehabilitation and Health Care      | (Rhode Island, RHCF, 10/2016-present) |
| Martine Center for Rehabilitation and Nursing           | (RHCF, 3/2017-present)                |
| Northwoods Rehabilitation and Nursing Center at Moravia | (RHCF, 3/2016-present)                |
| Oak Hill Center for Rehabilitation and Healthcare       | (Rhode Island, RHCF, 7/2017-present)  |
| Park View Center for Rehabilitation and Health Care     | (Rhode Island, RHCF, 5/2016-present)  |
| University Center for Rehabilitation and Nursing        | (RHCF, 11/2002-present)               |
| Williamsbridge Manor Nursing Home                       | (RHCF, 12/2004-present)               |

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

The Bureau of Professional Credentialing has indicated that Kenneth Rozenberg's NHA license #04036 is in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The information provided by the Bureau of Emergency Medical Services indicated that Kenneth N. Rozenberg holds an EMT license (#082942) and there has never been any disciplinary action taken against this individual or his license.

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

**New York Nursing Homes**

|  |                    |
|--|--------------------|
| Beth Abraham Center for Rehabilitation and Nursing             | (3/2017-present)   |
| Boro Park Center for Rehabilitation and Healthcare             | (5/2011-present)   |
| Bronx Center for Rehabilitation & Health Care                  |                    |
| Brooklyn Center for Rehabilitation and Residential Health Care |                    |
| Buffalo Center for Rehabilitation & Nursing                    | (12/2015-present)  |
| Bushwick Center for Rehabilitation and Health Care             | (5/2011-present)   |
| Corning Center for Rehabilitation and Healthcare               | (7/2013-present)   |
| Daughters of Jacob Nursing Home                                | (8/2013-9/2016)    |
| Delaware Nursing and Rehabilitation Center                     | (6/2014-12/2015)   |
| Ellicott Center for Rehabilitation                             | (12/2012-present)  |
| Essex Center for Rehabilitation and Healthcare                 | (3/2014-present)   |
| Far Rockaway Center for Rehabilitation and Nursing             | (4/2017-present)   |
| Fulton Center for Rehabilitation and Healthcare                | (4/2012-present)   |
| The Grand Rehabilitation and Nursing at Chittenango            | (5/2011-5/2017)    |
| The Grand Rehabilitation and Nursing at Pawling                | (3/2011-3/2016)    |
| The Grand Rehabilitation and Nursing at Rome                   | (5/2011-5/2017)    |
| The Grand Rehabilitation and Nursing at Queens                 | (3/2011-3/31/2016) |
| Granville Center for Rehabilitation and Nursing                | (12/2014-present)  |
| Holliswood Care Center   | (3/2011-4/2013)    |
| Holliswood Center for Rehabilitation and Healthcare            | (4/2013-present)   |
| Hope Center for HIV and Nursing Care                           | (4/2015-present)   |
| Martine Center for Rehabilitation and Nursing                  | (3/2017-present)   |
| Northwoods Rehabilitation and Nursing Center at Moravia        | (11/2014-present)  |
| Queens Center for Rehabilitation and Residential Healthcare    | (3/2011-3/31/2016) |
| Richmond Center for Rehabilitation and Specialty Healthcare    | (4/2012-present)   |
| Steuben Center for Rehabilitation and Healthcare               | (7/2014-present)   |
| Triboro Center for Rehabilitation and Nursing                  | (9/2016-present)   |
| University Center for Rehabilitation and Nursing               |                    |
| Washington Center for Rehabilitation and Healthcare            | (2/2014-present)   |
| Wartburg Nursing Home  | (3/2011-5/2011)    |
| Waterfront Health Care Center                                  | (8/2011-12/2012)   |
| Williamsbridge Manor Nursing Home                              |                    |

**Rhode Island Nursing Homes**

|  |                   |
|--|-------------------|
| Oak Hill Center for Rehabilitation and Healthcare (RI)   | (7/2017-present)  |
| Kingston Center for Rehabilitation and Health Care (RI)  | (10/2016-present) |
| Park View Center for Rehabilitation and Health Care (RI) | (5/2016-present)  |
| Bannister Center for Rehabilitation and Health Care (RI) | (2/2016-present)  |

**Skilled Nursing Facilities**

|   |                  |
|---|------------------|
| Cooperstown Center for Rehabilitation and Nursing | (1/2018-present) |
| Oneida Center for Rehabilitation and Nursing      | (1/2018-present) |

**Certified Home Health Agencies**

|                                       |                  |
|---------------------------------------|------------------|
| Centers Home Health Revival – Bronx   |                  |
| Centers Home Health Revival – Buffalo | (9/2016-present) |

**Long Term Home Health Care Program**

|                             |                  |
|-----------------------------|------------------|
| Centers Home Care of Otsego | (1/2018-present) |
|-----------------------------|------------------|

**Licensed Home Care Services Agency**

Amazing Home Care

**Diagnostic & Treatment Centers**

The Bronx Center for Renal Dialysis

Bushwick Center for Renal Dialysis LLC (6/2014-present)

**Adult Home**

Argyle Center for Independent Living (2/2014-present)

**Managed Long Term Care Plan**

Centers Plan for Healthy Living (1/2013-present)

**Ambulance**

Senior Care EMS

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

- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-18-006 for complaint survey findings on November 27, 2017. Deficiencies were found under tag 309-G-Harm. Specifically, Resident #1 had multiple doctor's orders that were not carried out including orders for lab tests of blood and urine and scheduling for an outpatient surgical appointment. Additionally, Medical Doctor #2 examined Resident #1 on two occasions and did not document resident status or MD recommendations in Resident #'s medical record. Medical Doctor #2 also recommended transfer of Resident #1 to the hospital. Medical Doctor #2 did not write a doctor's order for the transfer, did not direct staff to transfer the resident and did not take necessary steps to accomplish transfer of the resident to the hospital.

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

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

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

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

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

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
- A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
- A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
- A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

A review of operations of **Northwoods Rehabilitation and Nursing Center at Moravia** for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on October 6, 2017. Deficiencies were found under tags F-Treatment/Services to prevent/heal pressure sores and G-Harm. Resident #1 was not provided with adequate pressure relief to prevent pressure ulcers and when she developed a pressure ulcer, it was not assessed and treated timely. In addition, when the pressure ulcer worsened, the physician was not notified timely. This resulted in actual harm that is not immediate jeopardy.
  - A federal CMP of \$11,053.25 was assessed for the October 6, 2017 survey findings.

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

- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-18-005 for complaint survey findings on November 17, 2017. Deficiencies were found under tag 333-G-Harm-Residents are free of Significant Med Errors. The facility did not ensure to administer the correct concentration/dosage of Methadone as ordered by the medical provider, resulting in Narcan (treatment for Opioid overdose) administration and hospital admission for Resident #1.
- A federal CMP of \$14,505 was assessed for the November 17, 2017 survey findings.

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

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
  - A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12 and 415.12(b)(2)(iii) Quality of Care: Accidents.
- The facility was fined \$12,000 pursuant to a Stipulation and Order issued for surveillance findings on June 9, 2017. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential and 415.12(h)(2) Resident Assessment.
- The facility was fined \$12,000 pursuant to a Stipulation and Order NH-17-051 for recertification survey findings on June 9, 2017. Deficiencies were found under tags 309-G-Harm-Provide Care/Services for Highest Well Being and 386-G-Harm-Physical Visits-Review Care/Notes/Orders. Specifically, ongoing assessment, monitoring and medical/surgical follow-up of a mass on the left side of a resident's neck was not provided to the resident in a timely manner. The resident was eventually diagnosed with Stage IV Squamous Cell Cancer of the neck and treatment was delayed because of the late diagnosis. The facility did not ensure that the unit physician reviewed and followed up on the resident's entire plan of care and identified the development of a Stage IV cancerous tumor.
  - A federal CMP of \$7,803.25 was assessed for the June 9, 2017 survey findings.

A review of the operations of **The Grand Rehabilitation and Nursing at Chittenango** for the period identified above reveals the following:

- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

A review of the operations of **The Grand Rehabilitation and Nursing at Rome** for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

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

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of **Waterfront Center for Rehabilitation and Healthcare** (nka Ellicott Center for Rehabilitation) for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.
- A federal CMP of \$1,625 was assessed for the September 27, 2011 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.
- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-17-046 issued August 16, 2017 for surveillance findings on May 11, 2017. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.

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

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

The applicant attests to the following for **Oak Hill Center for Rehabilitation and Healthcare (Rhode Island)**.

- Civil Monetary Penalties (CMPs) of \$210,084 were imposed as a result of the following survey findings on December 20, 2017:
  - F0600—S/S: J—483.12(a)(1)—Free From Abuse and Neglect
  - F0686—S/S: J—483.25(b)(1)(i)(ii)—Treatment/Services to Prevent/Health Pressure Ulcer
  - F0692—S/S: J—483.25(g)(1)-(3)—Nutrition/Hydration Status Maintenance

- F0695—S/S: J—483.25(i)—Respiratory/Tracheostomy Care and Suctioning
- CMPs of \$12,960 were imposed as a result of the following survey finding on January 11, 2018
  - F0689—S/S: J—483.25(d)(1)(2)—Free of Accident Hazards/Supervision/Devices

The information provided by the Bureau of Emergency Medical Services and Trauma Systems has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

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

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

The applicant will be restricted to serving the residents of the associated Assisted Living Program in Oneida County from an office located at 1445 Kemble Street, Utica, New York 13501.

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.

Recommendation: **Approval with Contingency and Condition**

Contingency

1. A copy of the articles of organization of Utica LHCSA, LLC, which is acceptable to the Department. (CSL)

Condition

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

**Application Number:** 181393  
**Name of Agency:** Community Care Companion, Inc.  
**Address:** Smithtown  
**County:** Suffolk  
**Structure:** For-Profit Corporation

Description of Project:

Community Care Companion, Inc. d/b/a Community Care Home Health Services, a business corporation, requests approval for a change in ownership, and consolidation/merger of a licensed home care services agency under Article 36 of the Public Health Law.

This application seeks Public Health and Health Planning Council approval for a change in ownership and consolidation/merger of two LHCSAs (see below) into their existing LHCSA through a Purchase and Sale Agreement. Upon approval, the applicant will consolidate offices, eliminate overlapping counties from the licenses to the extent possible. In addition, all the sites of services will provide the same services for continuity. The two LHCSA being purchased and merged/consolidated into the Community Care Companions, Inc. are:

- J & P Watson, Inc. d/b/a Interim Healthcare Svcs. Of Rockland & Orange Co. was previously approved by the Public Health Council at its July 29, 1994 meeting and subsequently licensed as 9538L001 effective August 1, 1994. Two additional sites were subsequently issued for this provider: 9538L002 effective January 31, 2003 and 9538L003 effective February 16, 2005.
- Interim Healthcare of Rochester, Inc. d/b/a Interim Healthcare of Western NY was previously approved by the Public Health Council at its November 11, 2001 meeting and subsequently licensed as 1060L001 effective February 15, 2002. An additional site was subsequently issued for this provider: 1060L002.

Community Care Companion, Inc proposes to operate as a Franchisee of Interim Healthcare, Inc. (including Community Care Companion, Inc d/b/a Community Care Home Health Services existing LHCSA licenses 1820L001 and 1820L002 not previously approved as a Franchisee of Interim Healthcare of New York).

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

**Alexander J. Caro – 100 Shares**

President, Community Care Companion, Inc.  
President, Aron Security, Inc.

Vice President, Central Insurance Agency

Affiliation:

- Community Care Companion, Inc. (LHCSA)  
(06/07-Present)

**Mark A. Gatien – 100 Shares**

Vice President, Community Care Companion, Inc.  
Affiliation:

- Community Care Companion, Inc. (LHCSA)  
(06/07-Present)

The Board of Directors is comprised of the following individuals:

Alexander J. Caro – President

Mark A. Gatien – Vice President

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

A seven-year review of the operations of the Community Care Companion, Inc. d/b/a Community Care Home Health Services (LHCSA) was performed as part of this review. The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Community Care Companion, Inc d/b/a Community Care Home Health Services (License number: 18201L001) proposes to continue to serve the residents of the following counties from an office located at 300 West Main Street, Smithtown, New York 11787:

- Nassau
- Suffolk

To remove overlapping counties of service, the applicant will remove Queens County from the above office location. Queens County is currently served by the applicants Woodhaven office location (License Number 1820L002).

Community Care Companion, Inc d/b/a Community Care Home Health Services (License number: 18201L002) proposes to continue to serve the residents of the following counties from an office located at 87-08 87th Street, Woodhaven, New York 11421:

- Bronx
- Queens
- Kings
- Richmond
- New York

Community Care Companion, Inc d/b/a Community Care Home Health Services will close their existing office located at 99 Railroad Station Plaza, Suite 216, Hicksville, New York 11801 (License number: 1820L003), which serves Nassau, Queens and Suffolk counties. Nassau and Suffolk counties are already served by the applicant's Smithtown office location (License number: 18201L001) and Queens County is served by the applicant's Woodhaven office location (License Number 1820L002).

Community Care Companion, Inc. d/b/a Interim Healthcare of New York proposes to continue to serve the residents of the following counties from an office located at 508 Airport Executive Park, Nanuet, New York 10954 (currently license number 9538L001):

- Dutchess
- Rockland
- Westchester
- Orange
- Sullivan
- Putnam
- Ulster

To remove overlapping counties of service, the applicant will remove Bronx, Nassau and Suffolk counties from the above office location.

Community Care Companion, Inc. d/b/a Interim Healthcare of New York proposes to continue to serve the residents of the following counties from an office located at 19 Court Street, STE 206, White Plains, New York 10601 (currently license number 9538L003):

- Dutchess
- Rockland
- Westchester
- Orange
- Sullivan
- Putnam
- Ulster

To remove overlapping counties of service, the applicant will remove Bronx, Nassau and Suffolk counties from the above office location.

Upon approval the applicant proposes to close the existing office located at 207 Hallock Road, STE 201, Stony Brook, New York 11790 (currently license number 9538L002), which serves Nassau, Queens and Suffolk counties, as these counties will be served by their existing Smithtown Office.

Community Care Companion, Inc. d/b/a Interim Healthcare of New York proposes to continue to serve the residents of the following counties from an office located at 1 South Washington Street, Suite 200, Rochester, New York 14614 (currently license number 1060L001):

- Genesee
- Ontario
- Livingston
- Steuben
- Monroe
- Wayne

Community Care Companion, Inc. d/b/a Interim Healthcare of New York proposes to continue to serve the residents of the following counties from an office located at 69 Delaware Avenue, Suite 1200, Buffalo, New York 14202 (currently license number 1060L002):

- Erie
- Niagara

The applicant proposes to provide the following services at all their sites:

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

Recommendation: **Contingent Approval**

Contingencies

1. A copy of the by-laws of the applicant, which is acceptable to the Department. (CSL)
2. A copy of the franchise agreement of the applicant, which is acceptable to the Department. (CSL)



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel

**Date:** June 13, 2018

**Subject:** Restated Certificate of Incorporation of The Frederick Ferris Thompson Hospital

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The Frederick Ferris Thompson Hospital (the "Hospital") has restated its Certificate of Incorporation for tax purposes, to consolidate previous amendments, and to clarify the Article 28 purposes of the corporation, among other reasons. Please see the attached letter from Scott R. Leuenberger, counsel to the Hospital, for further details.

The Hospital presents the proposed restatement to PHHPC for approval and PHHPC approval is required pursuant to Article 8 of the New York Not-For-Profit Corporation Law.

There is no legal objection to the proposed Restated Certificate of Incorporation of The Frederick Ferris Thompson Hospital.

Attachments

SCOTT R. LEUENBERGER, ESQ.  
[sleuenberger@bsk.com](mailto:sleuenberger@bsk.com)  
P: 315.218.8393  
F: 315.218.8467

June 13, 2018

**VIA ELECTRONIC MAIL: ERIC.MANTEY@HEALTH.NY.GOV**

New York State Department of Health  
Attn: Eric Mantey

Re: *Restated Certificate of Incorporation of The Frederick Ferris Thompson Hospital*

Dear Mr. Mantey:

We represent The Frederick Ferris Thompson Hospital (the "Hospital"), a New York not-for-profit corporation that maintains and operates a hospital as defined in Article 28 of the Public Health Law of the State of New York. The Board of Directors of the Hospital has determined that it is in the best interests of the Hospital to amend and restate the Hospital's Certificate of Incorporation to clarify the Hospital's purposes, set forth its status under the Not-for-Profit Corporation Law, add provisions required under the Internal Revenue Code with respect to its tax exempt status, add a provision limiting the liability of the Hospital's directors and officers, and to consolidate past amendments in one document.

The Hospital is located in Canandaigua, NY which is located in Ontario County. The Hospital draws patients from the all of the counties surrounding Ontario County, additionally, it operates extension clinics outside of Ontario County; however, the Hospital's current Certificate of Incorporation states that it will only provide services to the residents of Ontario County. Therefore, the Board of Directors has determined that it is in the best interests of the Hospital to clarify its purpose statement to make it clear that the Hospital can provide services to residents of the Finger Lakes region and surrounding regions of New York State.

Attached please find a copy of the proposed Restated Certificate of Incorporation of the Hospital approved by the Hospital's Board of Directors and its corporate Member, and executed by the President of the Hospital. Also attached please find a complete copy of the Hospital's current Certificate of Incorporation with all amendments.

We respectfully request the approval of the Department of Health through the Public Health and Health Planning Council of the proposed Restated Certificate of Incorporation of the Hospital.

New York State Department of Health  
June 13, 2018  
Page 2

Thank you for your assistance with this matter. Please contact me at (315) 218-8393 if any additional documents are required to process this request or if you have any questions.

Very truly yours,

BOND, SCHOENECK & KING, PLLC



Scott R. Leuenberger, Esq.

**RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**THE FREDERICK FERRIS THOMPSON HOSPITAL**

*Under Section 805 of the Not-for-Profit Corporation Law*

THE UNDERSIGNED, being the President of The Frederick Ferris Thompson Hospital (the "Corporation"), does hereby certify:

1. The name of the Corporation is The Frederick Ferris Thompson Hospital (the "Corporation").

2. The Corporation's Certificate of Incorporation was filed by the Department of State on March 7, 1903 (the "Certificate of Incorporation").

3. The Corporation was formed under the Membership Corporation Law and is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law (the "N-PCL") and is a charitable corporation as defined in Section 201 of the N-PCL.

4. The amendments to the Certificate of Incorporation as set forth herein are intended to set forth the Corporation's status under the N-PCL, amend the description of the purposes of the Corporation, add certain provisions describing certain powers of the Corporation and certain limitations on those powers, add provisions regarding the use of the Corporation's net earnings, add a provision addressing the dissolution or liquidation of the Corporation, and add a provision limiting the liability of the Corporation's directors or officers to the fullest extent permitted by the N-PCL.

5. The Certificate of Incorporation as now in full force and effect is hereby amended to provide Article numbers for the various Articles of the Certificate of Incorporation as follows: FIRST, SECOND, THIRD, etc.; and to effect the following changes authorized in Section 801 of the N-PCL:

A. The first paragraph of the current Certificate of Incorporation sets forth the purposes of the Corporation and reads as follows:

That the particular object for which the proposed Corporation is to be formed is to provide necessary and proper facilities for the medical and surgical treatment of residents of Ontario County.

B. The Corporation's purpose statement shall be set forth in Article "FIRST" and shall be amended to read as follows:

FIRST: The Corporation is formed for the charitable purposes of: (1) owning, maintaining and operating a hospital as defined in Article 28 of the Public Health Law of the State of New York, (2) providing other necessary and proper facilities for the provision of health care to the residents of the Finger Lakes region and surrounding region, and (3)

continuously improving the health of the residents and communities of the Finger Lakes region and surrounding region.

The Corporation shall not engage in any activities for the pecuniary profit or financial gain of its directors or officers.

Nothing herein shall be construed as authorizing the Corporation to engage in or include among its purposes either directly or indirectly, any of the activities described in Sections 404(a) through 404(v), except for (o) and (t), of the New York Not-for-Profit Corporation Law (the "N-PCL").

C. The second paragraph of the Certificate of Incorporation currently reads as follows:

That the name of the said Corporation is to be "The Frederick Ferris Thompson Hospital."

D. The second paragraph of the Certificate of Incorporation shall be labeled Article "SECOND" and shall be amended to read as follows:

SECOND: The name of the corporation is The Frederick Ferris Thompson Hospital (the "Corporation").

E. The third paragraph of the Certificate of Incorporation currently provides for the principal office of the Corporation. The third paragraph shall be labeled Article "THIRD" and shall be amended to read as follows:

THIRD: The principal office of the Corporation shall be located in the City of Canandaigua, County of Ontario and State of New York.

F. The fourth paragraph of the Certificate of Incorporation currently reads as follows:

That the number of its directors shall be seventeen.

G. The fourth paragraph of the Certificate of Incorporation shall be labeled Article "FOURTH" and shall be amended to read as follows:

FOURTH: The Corporation shall be operated by a Board of Directors, the number of which is to be no less than three (3).

H. The fifth paragraph of the Certificate of Incorporation currently sets forth the names and addresses of the initial directors of the Corporation and shall be omitted in its entirety.

I. A new Article FIFTH shall be added to the Certificate of Incorporation to add language to address: (1) that the Corporation is organized exclusively for purposes specified in Section 501(c)(3) of the Internal Revenue Code; (2) that no part of the Corporation's net earnings nor any distribution of assets on the dissolution of the Corporation shall inure to the benefit of any private person; (3) that no substantial part of the activities of the Corporation shall be carrying on propaganda, otherwise influencing

legislation or participating in any political campaign; (4) the distribution of the Corporation's assets in the event of the Corporation's liquidation; and (5) the distribution of the Corporation's income in any taxable year in which the Corporation is a private foundation as described in Code Section 509(a). Article FIFTH of the Certificate of Incorporation shall read as follows:

FIFTH: The following language relates to the Corporation's tax exempt status and is not a statement of purposes or powers. Consequently, this language limits but does not expand or alter the Corporation's purposes or powers set forth in Article FIRST above:

- (a) Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for one or more of the purposes specified in Section 501(c)(3) of the Internal Revenue Code of 1986 or any successor statute thereto (the "Code") and shall not carry on any other activities not permitted to be carried on by (a) a corporation exempt from federal income tax under Code Section 501(c)(3) or (b) by a corporation, contributions to which are deductible under Code Section 170(c)(2).
- (b) No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its directors, officers or any other private persons, except that the Corporation shall be authorized to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its purposes as set forth in this Certificate of Incorporation.
- (c) No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Code Section 501(h)), and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.
- (d) In the event of dissolution or final liquidation of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all the lawful debts and liabilities of the Corporation, distribute all the assets of the Corporation to one or more of the following categories of recipients as the Board of Directors of the Corporation shall determine:
  - i. A not-for-profit affiliate of the Corporation, as long as such affiliate organization shall then qualify as an organization exempt from federal income taxation under Code Section 501(a) as an organization described in Code Section 501(c)(3); or
  - ii. if the Corporation's not-for-profit affiliate(s) fails to qualify as an organization exempt from federal income taxation under Code Section 501(a) as an organization described in Code

Section 501(c)(3) then a non-profit organization or organizations having similar aims and objectives as the Corporation and which may be selected as an appropriate recipient of such assets, as long as such organization or each of such organizations shall then qualify as an organization exempt from federal income taxation under Code Section 501(a) as an organization described in Code Section 501(c)(3).

- (e) In any taxable year in which the Corporation is a private foundation as described in Code Section 509(a), the Corporation shall distribute its income for said period at such time and in such manner as not to subject it to tax under Code Section 4942; and the Corporation shall not (a) engage in any act of self-dealing as defined in Code Section 4941(d); (b) retain any excess business holdings as defined in Code Section 4943(c); (c) make any investments in such manner as to subject the Corporation to tax under Code Section 4944; or (d) make any taxable expenditures as defined in Code Section 4945(d).

J. The sixth paragraph of the Certificate of Incorporation currently sets forth the time for holding the Corporation's annual meeting and shall be deleted in its entirety.

K. A new Article SIXTH shall be added to the Certificate of Incorporation to provide that the Corporation is a charitable corporation under the N-PCL. Article SIXTH shall read as follows:

SIXTH: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the N-PCL and is a charitable corporation as defined in Section 201 of the N-PCL.

L. A paragraph setting forth the reserved powers of the Member(s) of the Corporation was added to the Certificate of Incorporation by the Certificate of Amendment of Certificate of Incorporation filed with the New York State Department of State on May 13, 1998. This paragraph shall be labeled Article SEVENTH of the Certificate of Incorporation.

M. A new Article EIGHTH shall be added to the Certificate of Incorporation to provide for limits to the personal liability of directors and officers to the Corporation, and shall read as follows:

EIGHTH: Directors or officers of the Corporation shall not be personally liable to the Corporation for monetary damages because of their breach of duty as directors or officers unless such liability is based upon a judgment or other final adjudication adverse to the director or officer which establishes (i) that the acts or omissions of the director or officer were in bad faith or involved intentional misconduct or a knowing violation of the law that were material to the cause of action so adjudicated, (ii) that the director or officer personally gained in fact a financial profit or other advantage to which the director or officer was not legally entitled, or (iii) that the acts of the director or officer violated Section 719 of the N-PCL.

If the N-PCL is amended to authorize the further elimination or limitation of the liability of directors or officers, the limitation on personal liability established by this Certificate of Incorporation shall be further expanded to the fullest extent permitted by the amended N-PCL.

N. A new Article NINTH shall be added to the Certificate of Incorporation setting forth the Secretary of State of the State of New York as the designated agent of the Corporation upon whom process may be served, and shall read as follows:

NINTH: The Secretary of State of the State of New York is hereby designated as the 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 the Secretary of State is: The Frederick Ferris Thompson Hospital, 350 Parrish Street, Canandaigua, New York 14424.

6. The amendments to the Certificate of Incorporation were authorized by unanimous consent of the Board of Directors of the Corporation, and were also approved by the unanimous consent of the sole Member of the Corporation.

7. The amendments to the Certificate of Incorporation were approved by the Public Health and Health Planning Council in accordance with Section 804(a)(i) of the N-PCL, a copy of such approval is attached hereto, and by the Office of the New York State Attorney General in accordance with Section 804(a)(ii) of the N-PCL, a copy of such approval is attached hereto. The Corporation is not required to provide notice to any other agency or department of the State of New York pursuant to Section 804(a)(i) of the N-PCL.

8. The Certificate of Incorporation is hereby restated to set forth its entire text, as amended, as follows:

FIRST: The Corporation is formed for the charitable purposes of: (1) owning, maintaining and operating a hospital as defined in Article 28 of the Public Health Law of the State of New York, (2) providing other necessary and proper facilities for the provision of health care to the residents of the Finger Lakes region and surrounding region, and (3) continuously improving the health of the residents and communities of the Finger Lakes region and surrounding region.

The Corporation shall not engage in any activities for the pecuniary profit or financial gain of its directors or officers.

Nothing herein shall be construed as authorizing the Corporation to engage in or include among its purposes either directly or indirectly, any of the activities described in Sections 404(a) through 404(v), except for (o) and (t), of the New York Not-for-Profit Corporation Law (the "N-PCL").

SECOND: The name of the corporation is The Frederick Ferris Thompson Hospital (the "Corporation").

THIRD: The principal office of the Corporation shall be located in the City of Canandaigua, County of Ontario and State of New York.

FOURTH: The Corporation shall be operated by a Board of Directors, the number of which is to be no less than three (3).

FIFTH: The following language relates to the Corporation's tax exempt status and is not a statement of purposes or powers. Consequently, this language limits but does not expand or alter the Corporation's purposes or powers set forth in Article FIRST above:

- (a) Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for one or more of the purposes specified in Section 501(c)(3) of the Internal Revenue Code of 1986 or any successor statute thereto (the "Code") and shall not carry on any other activities not permitted to be carried on by (a) a corporation exempt from federal income tax under Code Section 501(c)(3) or (b) by a corporation, contributions to which are deductible under Code Section 170(c)(2).
- (b) No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its directors, officers or any other private persons, except that the Corporation shall be authorized to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its purposes as set forth in this Certificate of Incorporation.
- (c) No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Code Section 501(h)), and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.
- (d) In the event of dissolution or final liquidation of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all the lawful debts and liabilities of the Corporation, distribute all the assets of the Corporation to one or more of the following categories of recipients as the Board of Directors of the Corporation shall determine:
  - i. A not-for-profit affiliate of the Corporation, as long as such affiliate organization shall then qualify as an organization exempt from federal income taxation under Code Section 501(a) as an organization described in Code Section 501(c)(3); or
  - ii. if the Corporation's not-for-profit affiliate(s) fail to qualify as an organization exempt from federal income taxation under Code Section 501(a) as an organization described in Code Section 501(c)(3) then a non-profit organization or organizations having similar aims and objectives as the Corporation and which may be selected as an appropriate recipient of such assets, as long as such organization or each of such organizations shall then qualify as an organization exempt from federal income taxation under Code Section 501(a) as an organization described in Code Section 501(c)(3).

- (e) In any taxable year in which the Corporation is a private foundation as described in Code Section 509(a), the Corporation shall distribute its income for said period at such time and in such manner as not to subject it to tax under Code Section 4942; and the Corporation shall not (a) engage in any act of self-dealing as defined in Code Section 4941(d); (b) retain any excess business holdings as defined in Code Section 4943(c); (c) make any investments in such manner as to subject the Corporation to tax under Code Section 4944; or (d) make any taxable expenditures as defined in Code Section 4945(d).

SIXTH: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the N-PCL and is a charitable corporation as defined in Section 201 of the N-PCL.

SEVENTH: In addition to all other rights and powers of membership prescribed by New York law, this Certificate of Incorporation and/or the Bylaws of the Corporation, the following governance and management powers shall be reserved to the Member(s):

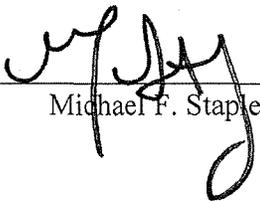
- (a) To approve the statement of mission and philosophy adopted by the Corporation and to require that the Corporation operate in conformance with its mission and philosophy;
- (b) To elect and remove, with or without cause, the President of the Corporation;
- (c) To amend or repeal the Certificate of Incorporation or Bylaws, and to adopt any new or restated Certificate of Incorporation or Bylaws of the Corporation;
- (d) To approve any plan of merger, consolidation, dissolution or liquidation of the Corporation;
- (e) To appoint, fix the number of and remove, with or without cause, the directors of the Corporation;
- (f) To approve the debt of the Corporation, in excess of an amount to be fixed from time to time by the Member(s), except for debt necessary to finance the cost of compliance with operational or physical plant standards required by applicable law, and encumbrances on corporate real estate to secure payment of debt to be incurred;
- (g) To approve the sale, acquisition, lease, transfer, mortgage, pledge or other alienation of real or personal property of the Corporation in excess of an amount to be fixed from time to time by the Member(s);
- (h) To approve the capital and operating budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation;
- (i) To approve settlements of litigation when such settlements exceed applicable insurance coverage of the amount of any applicable self-insurance fund;
- (j) To approve any corporate reorganization of the Corporation and the establishment, merger, consolidation, reorganization or dissolution of any organizational relationship of the Corporation, including but not limited to subsidiary corporations, partnerships or joint ventures of the Corporation; and

- (k) To approve the strategic plan of the Corporation provided that such right of approval shall not permit the Member(s) to exercise any governance authority of the Corporation that may become subject to regulation by the New York State Department of Health under applicable regulations unless the Member(s) have received establishment approval from the Public Health and Health Planning Council.

EIGHTH: Directors or officers of the Corporation shall not be personally liable to the Corporation for monetary damages because of their breach of duty as directors or officers unless such liability is based upon a judgment or other final adjudication adverse to the director or officer which establishes (i) that the acts or omissions of the director or officer were in bad faith or involved intentional misconduct or a knowing violation of the law that were material to the cause of action so adjudicated, (ii) that the director or officer personally gained in fact a financial profit or other advantage to which the director or officer was not legally entitled, or (iii) that the acts of the director or officer violated Section 719 of the N-PCL. If the N-PCL is amended to authorize the further elimination or limitation of the liability of directors or officers, the limitation on personal liability established by this Certificate of Incorporation shall be further expanded to the fullest extent permitted by the amended N-PCL.

NINTH: The Secretary of State of the State of New York is hereby designated as the 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 the Secretary of State is: The Frederick Ferris Thompson Hospital, 350 Parrish Street, Canandaigua, New York 14424.

IN WITNESS WHEREOF, the undersigned has made and signed this certificate this \_\_\_ day of May, 2018 and affirms that the statements contained therein are true under penalty of perjury.

  
\_\_\_\_\_  
Michael F. Stapleton, Jr., President

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**RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**THE FREDERICK FERRIS THOMPSON HOSPITAL**

Under Section 805 of the Not-for-Profit Corporation Law

---

DRAWDOWN ACCOUNT #42  
BS&K BOX #92

Cust Ref: 783528

Filed by: Scott R. Leuenberger, Esq.  
Bond, Schoeneck & King, PLLC  
One Lincoln Center  
Syracuse, NY 13202

***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 February 25, 2010.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State



STATE OF NEW YORK

STATE BOARD OF CHARITIES

OFFICE AT THE CAPITOL

CAPITOL POST OFFICE BOX 17  
TELEPHONE 769 CHANEL

ALBANY, N.Y. January 14, 1903.

-----  
In the matter of the :  
Incorporation :  
of :  
The Frederick Ferris Thompson Hospital. :  
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WHEREAS, Application has been made to the State Board of Charities for its approval of the incorporation of The Frederick Ferris Thompson Hospital, and

12 WHEREAS, On due inquiry and investigation, it appears to said Board desirable and proper that such Frederick Ferris Thompson Hospital shall be so incorporated,

NOW, THEREFORE, In pursuance of and in conformity with the provisions of Chapter 559 of the Laws of the State of New York, passed May 8, 1895, the said State Board of Charities hereby certifies that it approves of the incorporation of the said Frederick Ferris Thompson Hospital, the certificate of incorporation of which is hereunto annexed.

IN WITNESS WHEREOF, the said Board has this 14th day of January, 1903, caused these presents to be subscribed by its officers and its official seal to be hereunto affixed.

*M. R. Steward*

President.

Attest,

*Rosalind Steward*  
Secretary.

In the Matter of the proposed Incorporation

of

"The Frederick Ferris Thompson Hospital"

The annexed Certificate and the incorporation of the  
Hospital therein described are hereby approved.

Dated October 14, 1902.

*J. W. D. ...*

Justice of the Supreme Court

of the State of New York,

in and for the 7th Judicial District.

*J*

TO THE STATE BOARD OF CHARITIES OF THE STATE OF NEW YORK:-

We, whose names are hereto subscribed, being all natural persons, of full age, citizens of the United States and residents of the State of New York, and desiring to become a Corporation for the purpose of erecting, establishing and maintaining a Hospital, do hereby, for that purpose and pursuant to the provisions of Article 6 of The Membership Corporations Law of the State of New York, certify:

That the particular object for which the proposed Corporation is to be formed is to provide necessary and proper facilities for the medical and surgical treatment of residents of Ontario County.

That the name of the said Corporation is to be "The Frederick Ferris Thompson Hospital".

That its principal office is to be located in the village of Canandaigua, County of Ontario and State of New York.

That the number of its directors shall be seventeen.

That the names and places of residence of the persons to be its directors until its first annual meeting are as follows,

|                        |                   |
|------------------------|-------------------|
| Edward G. Hayes,       | Canandaigua, N.Y. |
| Dwight R. Burrell,     | Canandaigua, N.Y. |
| John H. Jewett,        | Canandaigua, N.Y. |
| Frank A. Christian,    | Canandaigua, N.Y. |
| Clark Williams,        | New York City,    |
| Orlando J. Hallenbeck, | Canandaigua, N.Y. |
| Frank P. Warner,       | Canandaigua, N.Y. |
| Matthew R. Carson,     | Canandaigua, N.Y. |
| Albert L. Beahan,      | Canandaigua, N.Y. |
| Fred W. McClellan,     | Canandaigua, N.Y. |

|                       |                   |
|-----------------------|-------------------|
| Harry C. Buell,       | Canandaigua, N.Y. |
| Jean L. Burnett,      | Canandaigua, N.Y. |
| Leonard A. Parkhurst, | Canandaigua, N.Y. |
| Peter P. Turner,      | Canandaigua, N.Y. |
| Charles F. Milliken,  | Canandaigua, N.Y. |
| John H. Pratt,        | Manchester, N.Y.  |
| Alfred M. Head,       | Victor, N.Y.      |

That the time for holding its annual meetings shall be the first Thursday of each November.

Dated at Canandaigua, N.Y., October 1st, 1902.

Edward G. Hayes      Joseph R. Russell

John H. Pratt      Frank A. Christian

Alfred M. Head      Orlando J. Wattenbick

Frank P. Warner      Matthew R. Larsons

Albert L. Graham      J. E. McCallan

Harry C. Buell      Jean L. Burnett

Leonard A. Parkhurst      Peter P. Turner

Charles F. Milliken      John H. Pratt

Alfred M. Head

4

STATE OF NEW YORK:  
: SS:-  
COUNTY OF ONTARIO:

On this first day of October, 1902, before me, the subscriber, personally appeared Edward G. Hayes, Dwight R. Burrell, Jean H. Jewett, Frank A. Christian, Orlando J. Hallenbeck, Frank P. Warner, Matthew R. Carson, Albert L. Beaman, Fred R. McClellan, Harry C. Buell, Peter P. Turner, Charles E. Milliken and Alfred M. Hens, to me known to be the same persons described in and who executed the foregoing Certificate, and they severally acknowledged to me that they executed the same.

*Horace W. Fitch*

Notary Public in and for  
Yates Co., with certificate  
Filed in Ontario County.

STATE OF NEW YORK:  
: SS:-  
COUNTY OF ONTARIO:

On this second day of October, 1902, before me, the subscriber, personally appeared Jean L. Burnett, to me known to be the same person described in and who executed the foregoing Certificate, and he acknowledged to me that he executed the same.

*Horace W. Fitch*

Notary Public in and for  
Yates Co., with certificate  
Filed in Ontario County.

STATE OF NEW YORK :  
COUNTY OF NEW YORK: SS:-  
CITY OF NEW YORK :

On this 11<sup>th</sup> day of October, 1902, before me, the subscriber, personally appeared Clark Williams, to me known to be the same person described in and who executed the foregoing Certificate, and he acknowledged to me that he executed the same.

*[Signature]*

NOTARY PUBLIC KINGS CO. CORRECTED  
CERTIFICATE FILED IN  
N. Y. COUNTY.

5  
*[Handwritten scribble]*

STATE OF NEW YORK:  
COUNTY OF ONTARIO: SS:

On this 31<sup>st</sup> day of October, 1902, before me, the  
subscriber, personally appeared John H. Pratt, to me known to be  
the same person described in and who executed the foregoing  
Certificate, and he acknowledged to me that he executed the  
same.

  
Notary Public in and for Ontario County.

STATE OF NEW YORK:  
COUNTY OF ONTARIO: SS:-

On this 31<sup>st</sup> day of October, 1902, before me,  
the subscriber, personally appeared Leonard A. Parkhurst, to me  
known to be the same person described in and who executed the  
foregoing Certificate, and he acknowledged to me that he exe-  
cuted the same.

*Horace W. Fitch*

Notary Public in and for  
Yates Co., with certificate  
filed in Ontario County.

6

STATE OF NEW YORK

ONTARIO COUNTY

In the matter of the Incorporation of

THE

FREDERICK HERRIS THOMPSON

HOSPITAL.

CERTIFICATE OF INCORPORATION.

STATE OF NEW YORK,  
OFFICE OF SECRETARY OF STATE,

Filed and Recorded MAR 7 - 1903

*J. M. Thompson*  
Deputy Secretary of State

***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 February 25, 2010.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

WE, THE UNDERSIGNED, a majority of the directors of THE FREDERICK FERRIS THOMPSON HOSPITAL a membership corporation, organized and existing under and by virtue of the laws of the State of New York, desiring to change the number of directors of said corporation, pursuant to Section 14 of the Membership Corporations Law, do hereby certify:

That such corporation was organized for the purpose of providing necessary and proper facilities for the medical and surgical treatment of residents of Ontario County;

That an annual meeting of such corporation was duly held on the 11<sup>th</sup> day of June 1904;

121 That at such meeting the members of said corporation by a majority vote determined to increase the number of its directors from seventeen to twenty-five, as more fully appears by the certificate of the Chairman and of the Secretary of such meeting hereto annexed and made a part of this certificate.

IN WITNESS WHEREOF, we have made, signed and acknowledged this certificate in duplicate the 11<sup>th</sup> day of June, 1904.

Edward G. Hays  
Matthew R. Leason  
Dwight R. Bunnell  
Charles H. Milliken  
John H. Smith  
Alfred M. Mead  
John L. Burnett  
Harry E. Birell  
Peter P. Towner  
Leonard A. Parshurst  
Frank A. Christian

STATE OF NEW YORK, :  
: SS.  
COUNTY OF ONTARIO. :

On this 11<sup>th</sup> day of June, 1904, before me personally came

*Edward G. Payne, Matthew P. Carson, Deight R. Durrell, Charles F. Milliken, John H. Furset, Alfred M. Mead, Jean L. Burnett, Harry C. Burt, Peter P. Turner, Leonard A. Parkhurst, Frank A. Christian*

to me personally known to be the persons described in and who made and signed the foregoing certificate, and severally duly acknowledged to me that they made, signed and executed the same for the purposes therein set forth.

*Robert F. Thompson*  
Notary Public

WE, THE UNDERSIGNED, *Edward G. Hayes,*  
Chairman, and *Frank A. Christian,* Secretary  
of an annual meeting of the members of THE FREDERICK FERRIS  
THOMPSON HOSPITAL, held on the *11<sup>th</sup>* day of June, 1904, do  
hereby certify:

That said meeting was organized by choosing the under-  
signed *Edward G. Hayes,* as Chairman,  
and the undersigned *Frank A. Christian,* as Secretary.

That upon motion duly made and seconded, the follow-  
ing resolution was offered:

R E S O L V E D : That the Directors of THE FREDERICK  
FERRIS THOMPSON HOSPITAL be increased from seventeen as provided  
in the Certificate of Incorporation, to twenty-five, and that  
the directors of said corporation be and they hereby are, author-  
ized and directed to sign, acknowledge and file a supplemental  
certificate specifying such increase, pursuant to Section 14  
of the Membership Corporations Law.

That such resolution was duly adopted by a majority  
vote of all of the members of the corporation present at such  
meeting and voting either in person or by proxy thereon.

IN WITNESS WHEREOF, we have hereunto made and signed  
this certificate this *11<sup>th</sup>* day of June, 1904.

*Edward G. Hayes*  
Chairman.

*Frank A. Christian*  
Secretary.

STATE OF NEW YORK )

COUNTY OF ONTARIO )

SS:

*Edward G. Hayes*, Chairman, and *Frank A. Christian*, Secretary, being severally duly sworn, each deposes and says, that he has read the foregoing certificate subscribed by him and knows the contents thereof; and that the same is true and correct of his own knowledge.

*Edward G. Hayes*

Chairman,

Severally sworn to before me

this 11<sup>th</sup> day of June, 1904.

*Frank A. Christian*

Secretary.

*Robert F. Thompson*  
Notary Public

Book 52 Page 215121

CERTIFICATE

OF INCREASE OF DIRECTORS  
OF THE FREDERICK FERRIS  
THOMPSON HOSPITAL.

Dated: June 11<sup>th</sup>, 1904.

STATE OF NEW YORK,  
OFFICE OF SECRETARY OF STATE,

Filed and  
Recorded  
JUN 14 1904

*John Morgan*

Deputy Secretary of State

ROLLINS & ROLLINS  
ATTORNEYS AT LAW  
No. 32 NASSAU STREET - NEW YORK

***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 February 25, 2010.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

CERTIFICATE FOR THE PURPOSE OF CHANGING THE TIME OF THE ANNUAL MEETING OF THE FREDERICK FERRIS THOMPSON HOSPITAL, A MEMBERSHIP CORPORATION OF THE STATE OF NEW YORK.

We, Edward G. Hayes and Frank A. Christian, both residing in the Village of Canandaigua, Ontario County, New York, for the purpose of changing the time of the annual meeting of the Frederick Ferris Thompson Hospital, a membership corporation having its principal office in said Village of Canandaigua, from the first Thursday of November to the second Friday of October, do hereby certify, pursuant to Section 15 of Article 1 of the Membership Corporations Law:

109

That the said Frederick Ferris Thompson Hospital was heretofore duly incorporated under and by virtue of the Membership Corporations Law of the State of New York, and that the number of members thereof is thirty-five. That the said Edward G. Hayes is President and the said Frank A. Christian is the Secretary of said corporation. That at a regular annual meeting of the members of the said corporation, held on November 1, 1906, more than one-half of the members of said corporation being there and then present and voting, it was decided to change the date of the annual meeting of said corporation from the first Thursday of November to the second Friday of October of each year thereafter. That the following is a correct transcript of the minutes of said meeting relating to such change of time.

"Minutes of the fourth annual meeting of the members of the Frederick Ferris Thompson Hospital held at the Hospital on Thursday, November 1, 1906.

The President called the meeting to order.

The Secretary called the roll. Present: Dr. Andruss, Dr. Buell, Dr. Burrell, Miss Carson, Dr. Carson, Mr. Christian, Miss Coleman, Mr. Donovan, Dr. Hallenbeck, Mr. Hayes, Mr. Hutchens (by proxy duly filed), Dr. Jewett, Mrs. Jewett, Mrs. Kent, Dr. Mead, Dr. Pratt, Mrs. Simmons, Mrs. Smith, Dr. Warner and Miss Williams.

On motion duly made and seconded it was unanimously

Resolved: That the date of the annual meeting of the Members

of the Frederick Ferris Thompson Hospital be changed from the first Thursday of November to the second Friday of October of each year hereafter.

Resolved further, that the President and Secretary of the corporation be and they are hereby authorized and directed to execute, on behalf of said corporation, the supplemental certificate of incorporation necessary to effect such change of date, and to affix the corporate seal thereto, and to certify, verify and file the same as required by law."

Dated August 5, 1907.

Frederick Ferris Thompson Hospital

by Edward G. Hayes

President

Frank A. Christian

Secretary

STATE OF NEW YORK  
SS:  
COUNTY OF ONTARIO

On this 6<sup>th</sup> day of August, 1907, before me, the subscriber, personally appeared Edward G. Hayes and Frank A. Christian, to me known to be the same persons described in and who executed the foregoing certificate, and they severally acknowledged to me that they executed the same; and the said Edward G. Hayes and Frank A. Christian, having been duly sworn depose and say that they have read the foregoing certificate and know the contents thereof, and that the same is true to the knowledge of the deponents.

Edward G. Hayes

Sworn to before me this

6<sup>th</sup> day of August, 1907.

Frank A. Christian

A. D. Burgess

Notary Public.

Book 69 Page 287 109

CERTIFICATE FOR THE PURPOSE  
OF CHANGING THE TIME OF THE  
ANNUAL MEETING OF THE FREDERICK  
FERRIS THOMPSON HOSPITAL, A  
MEMBERSHIP CORPORATION OF THE  
STATE OF NEW YORK.

J. R. -----

M. J. M.  
Dated August 5, 1907.

STATE OF NEW YORK.  
Office of SECRETARY OF STATE.

Filed and  
recorded AUG 12 1907

John S. Whalen  
SECRETARY OF STATE

***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 February 25, 2010.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State



STATE OF NEW YORK }  
                          } SS:  
COUNTY OF ONTARIO }

Frank H. Hamlin and Alfred W. Armstrong, M.D., being severally  
duly sworn, each for himself, depose and says that the said Frank  
H. Hamlin is the President of the Frederick Ferris Thompson Hospital  
and that the said Alfred W. Armstrong, M.D., is the Secretary  
thereof; that they were authorized to execute and file the fore-  
going certificate of amendment changing the time of holding the  
annual meeting of the Frederick Ferris Thompson Hospital pursuant  
to Section 30 of the Membership Corporations Law by the concurring  
vote of a majority of the members of the corporation present at a  
special meeting held on the 9th day of September, 1949, upon notice  
pursuant to Section 43 of the Membership Corporations Law of the  
State of New York, and that they subscribed such certificate by  
virtue of such authority.

*Frank H. Hamlin*

*Alfred W. Armstrong*

Sworn to before me this  
27<sup>th</sup> day of October, 1949.

*John R. Dexter*

*Notary Public  
Ontario County No 975  
Commission expires 2/30/50*

17/0 = Canandaigua  
514 1000000  
5219 C 47 A

CERTIFICATE OF CHANGE OF  
TIME OF ANNUAL MEETING

D OF  
FREDERICK FERRIS THOMPSON  
HOSPITAL

STATE OF NEW YORK,  
DEPARTMENT OF STATE

FILED OCT 31 1949

TAX \$

FILING FEE \$

*None*  
*25*

*Thomas J. Herron*  
Secretary of State

By *[Signature]*

F. F. Thompson Hospital  
Canandaigua, New York.

5219-47

***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 February 25, 2010.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

Certificate of Report of Existence  
of

The Frederick Ferris Thompson Hospital  
Exact Name of Corporation

Pursuant to Section 67 of the Membership Corporations Law

1. The name of the corporation is The Frederick Ferris Thompson Hospital. The  
Name of Corporation

original name was The Frederick Ferris Thompson Hospital

If name has been changed, insert original name.

2. The certificate of incorporation was filed in the Department  
of State on 1-27-1950.

Date of Incorporation

3. The corporation was formed pursuant to Chapter 559.  
Cite Incorporation Statute

4. The existence of the foregoing corporation is hereby continued.

Frank H. Hamilton  
President

To be signed by an officer,  
trustee, director or five  
members in good standing.

State of New York }  
County of } SS.:

On this 9<sup>th</sup> day of October, 1950, before me  
personally appeared Frank H. Hamilton to me personally known  
and known to me to be the person(s) described in and who executed  
the foregoing certificate, and ( he ) ( they ) thereupon acknowledged  
to me that ( he ) ( they ) executed the same for the uses and purposes  
therein mentioned.

**A. MUNSON WHEELER**  
Notary Public in the State of New York  
Ontario County No. 671, N. Y.  
Commission Expires March 30, 1951

A. Munson Wheeler  
Notary Public  
County of Ontario

NOTE: If the foregoing acknowledgment is taken without the State of  
New York, the signature of the notary public should be  
authenticated by a certificate of the clerk of the county in  
which such notary has power to act, or other proper officer.

1950  
92-  
3E X

Certificate of Report of  
Existence of

The Frederick Ferris  
Thompson Hospital

*[Handwritten initials]*

Exact Name of Corporation

Pursuant to Section 57  
of the  
Membership Corporations  
Law

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED OCT 13 1950

TAX \$ None

FILING FEE \$ 5-

*Thomas J. Curran*

Secretary of State

By *[Handwritten signature]*

The Frederick Ferris Thompson  
Hospital

Canandaigua, New York.

***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 February 25, 2010.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

F 980513000 676

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
THE FREDERICK FERRIS THOMPSON HOSPITAL

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the President and Secretary of The Frederick Ferris Thompson Hospital (the "Corporation"), hereby certify:

1. The name of the Corporation is: The Frederick Ferris Thompson Hospital.
2. The Corporation was formed by Certificate of Incorporation filed with the Department of State on March 7, 1903 pursuant to Chapter 559 of the Laws of 1895.
3. The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law and is and shall hereafter remain a Type B corporation under Section 201 of said Law.
4. To reserve certain governance and management powers to the member(s) of the Corporation (the "Member(s)"), the Certificate of Incorporation of the Corporation is hereby amended to add a new paragraph thereto, to read in full as follows:

In addition to all other rights and powers of membership prescribed by New York law, this Certificate of Incorporation and/or the Bylaws of the Corporation, the following governance and management powers shall be reserved to the Member(s):

(a) To approve the statement of mission and philosophy adopted by the Corporation and to require that the Corporation operate in conformance with its mission and philosophy;

(b) To elect and remove, with or without cause, the President of the Corporation;

(c) To amend or repeal the Certificate of Incorporation or Bylaws, and to adopt any new or restated Certificate of Incorporation or Bylaws, of the Corporation;

(d) To approve any plan of merger, consolidation, dissolution or liquidation of the Corporation;

(e) To appoint, fix the number of and remove, with or without cause, the directors of the Corporation;

(f) To approve the debt of the Corporation, in excess of an amount to be fixed from time to time by the Member(s), except for debt necessary to finance the cost of compliance with operational or physical plant standards required by applicable law, and encumbrances on corporate real estate to secure payment of debt to be incurred;

(g) To approve the sale, acquisition lease, transfer, mortgage, pledge, or other alienation of real or personal property of the Corporation in excess of an amount to be fixed from time to time by the Member(s);

(h) To approve the capital and operating budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation;

(i) To approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund;

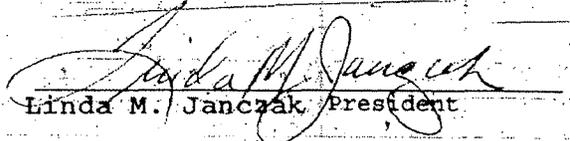
(j) To approve any corporate reorganization of the Corporation and the establishment, merger, consolidation, reorganization or dissolution of any organizational relationship of the Corporation, including but not limited to subsidiary corporations, partnerships or joint ventures of the Corporation; and

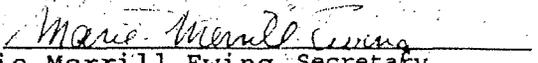
(k) To approve the strategic plan of the Corporation, provided that such right of approval shall not permit the Member(s) to exercise any governance authority of the Corporation that may become subject to regulation by the New York State Department of Health under applicable regulations unless the Member(s) have received establishment approval from the Public Health Council.

5. The foregoing amendments to the Certificate of Incorporation were authorized by the affirmative vote of a majority of all the members of the Corporation entitled to vote thereon, with such vote being at least equal to a quorum.

6. 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 of State shall mail a copy of any such process is: The Frederick Ferris Thompson Hospital, 350 Parrish Street, Canandaigua, New York 14424.

IN WITNESS WHEREOF, the undersigned have subscribed this Certificate of Amendment this 27 day of March, 1998, and hereby affirm that the statements contained herein are true under the penalties of perjury.

  
Linda M. Janczak, President

  
Marie Merrill Ewing, Secretary

2

F 980513000676

MAY 13 3 07 PM '98

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

THE FREDERICK FERRIS THOMPSON HOSPITAL

Under Section 803 of the Not-for-Profit Corporation Law

JFW

1-cc

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED MAY 13 1998

TAX \$

BY: JFW

ONTARIO

3

Robert C. Scutt

HARRIS BEACH & WILCOX

A LIMITED LIABILITY PARTNERSHIP

THE GRANITE BUILDING

130 EAST MAIN STREET

ROCHESTER, NEW YORK 14604-1687

980513000698



## MEMORANDUM

**To:** Public Health and Health Planning Council

**From:** Richard J. Zahnleuter, General Counsel

**Date:** June 8, 2018

**Subject:** Proposed Dissolution of Genesee Valley Group Health Association

---

Genesee Valley Group Health Association ("GVGHA") requests Public Health and Health Planning Council (PHHPC) approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Law § 1002(c) and § 1003, as well as 10 NYCRR Part 650.

GVGHA's attorney, Philip J. Murphy, informs that GVGHA operated a number of diagnostic and treatment centers and then closed those centers and surrendered its operating certificates pursuant to an approved closure plan. As such, the corporation now seeks to wind-up and dissolve. The required documents; a Verified Petition, Plan of Dissolution, and a Certificate of Dissolution are included for PHHPC's review. A letter from Mr. Murphy is included for your review. Lastly, please note the Plan of Dissolution indicates that GVGHA will use its remaining assets to pay existing creditors "in full".

There is no legal objection to the proposed dissolution, Verified Petition, Plan of Dissolution, and the Proposed Certificate of Dissolution.

Attachments.

HINMAN  
STRAUB  
ATTORNEYS AT LAW

121 STATE STREET  
ALBANY, NEW YORK 12207-1693  
TEL: 518-438-0751  
FAX: 518-438-4751

PHILIP J. MURPHY  
DIRECT PHONE 518-689-7218  
E-MAIL: PMURPHY@HINMANSTRAUB.COM

May 11, 2018

Colleen Leonard  
Executive Secretary  
Public Health and Health Planning Council  
Empire State Plaza  
Corning Tower, Room 1805  
Albany, New York 12237

Via FedEx

Re: Dissolution of Genesee Valley Group Health Association

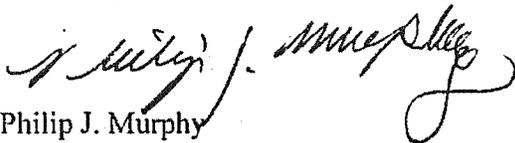
Dear Ms. Leonard:

Genesee Valley Group Health Association ("GVGHA") is hereby requesting approval to dissolve. GVGHA is a New York not-for-profit corporation that previously operated free-standing diagnostic and treatment centers in Western New York. Pursuant to approved closure plans, GVGHA has ceased operations and surrendered its operating certificates.

GVGHA is now requesting approval to dissolve. I have enclosed a copy of the proposed Verified Petition.

Please contact me if you require any additional information with regard to this request.

Very truly yours,

  
Philip J. Murphy

PJM:sd  
Enclosure

**PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS OF  
GENESEE VALLEY GROUP HEALTH ASSOCIATION**

The Board of Directors ("Directors") of Genesee Valley Group Health Association (the "Corporation") does hereby resolve and recommend to the Member for approval that the Corporation be dissolved. The Directors agreed to this resolution by unanimous written consent on April 30, 2018. All of the Directors determined that dissolution was advisable and in the best interest of the Corporation. They adopted the following plan (the "Plan"):

1. Upon resolution of the Board of Directors adopting the Plan, the Directors shall submit the Plan to a vote of the Member for approval.

2. Approval of the dissolution must be obtained from the New York State Public Health and Health Planning Council.

3. The Corporation has assets that are not legally required to be used for any particular purpose. The assets of the Corporation and their fair market value are as follows:

|                           |                  |
|---------------------------|------------------|
| Cash and Cash Equivalents | \$ 639,000       |
| Prepaid Expenses          | 582,000          |
| Real Estate               | <u>1,870,000</u> |
| Total                     | \$ 3,091,000     |

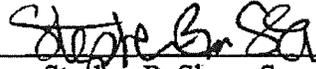
4. The assets of the Corporation shall be used to pay creditors and to satisfy the liabilities of the Corporation to Excellus Health Plan, Inc. Excellus Health Plan, Inc. shall forgive any debt that cannot be paid from the assets of the Corporation after all other creditors are paid in full.

5. The Corporation has liabilities of \$40,884,000 as listed below:

|                                   |                  |
|-----------------------------------|------------------|
| Accounts Payable                  | \$ 2,920,000     |
| Due to Excellus Health Plan, Inc. | 34,941,000       |
| Workers Compensation              | 1,064,000        |
| Retirement Benefits               | <u>1,959,000</u> |
| Total                             | \$ 40,884,000    |

6. Within two hundred seventy days after the date on which the Attorney General approved the Plan of Dissolution and Distribution of Assets, the Corporation shall carry out the Plan.

I, Stephen R. Sloan, Secretary of the Genesee Valley Group Health Association, hereby certify under penalties of perjury that the within Plan of Dissolution was approved and authorized by all of the directors by unanimous written consent, and the Plan of Dissolution and Distribution of Assets was approved by the Member without a meeting by unanimous written consent.



\_\_\_\_\_  
Stephen R. Sloan, Secretary

Dated the 30<sup>th</sup> day of April, 2018.

**JOINT UNANIMOUS WRITTEN CONSENT  
OF  
THE SOLE MEMBER  
AND  
THE BOARD OF DIRECTORS  
OF  
GENESEE VALLEY GROUP HEALTH ASSOCIATION**

The undersigned, being the sole member and all of the directors of Genesee Valley Group Health Association (the "Corporation"), hereby adopt the following resolutions by unanimous written consent and in lieu of holding a meeting:

RESOLVED, that the sole member and Board of Directors of the Corporation have determined that is in the best interest of the Corporation to dissolve the Corporation; and it is further

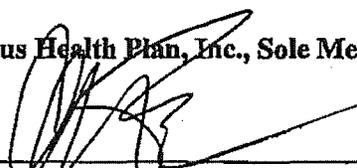
RESOLVED, that the sole member and Board of Directors of the Corporation do hereby adopt the Plan of Dissolution attached to this Joint Unanimous Written Consent; and it is further

RESOLVED, that the one or more of the appropriate officers of the Corporation, or their authorized designees, are hereby authorized and directed to prepare, execute, and file with the Secretary of State of the State of New York a Certificate of Dissolution; and it is further

RESOLVED, that the one or more of the appropriate officers of the Corporation, or their authorized designees, are hereby authorized and directed to cause to be done all such actions as may be deemed necessary or appropriate in order to carry out the Plan of Dissolution of the Corporation, and to fully effectuate the purposes thereof, and to file the Certificate of Dissolution with the New York Secretary of State.

Excellus Health Plan, Inc., Sole Member

Date: 4/30/2018

By:   
Christopher C. Booth, Chief Executive Officer

**Directors:**

Date: 4/30/2018

By:   
Christopher C. Booth

Date: 4/30/18

By:   
Dorothy A. Coleman

Date: 4/30/18

By:   
Stephen R. Sloan

**CERTIFICATE OF DISSOLUTION  
OF  
GENESEE VALLEY GROUP HEALTH ASSOCIATION**

Under Section 1003 of the Not-for-Profit Corporation Law

I, Paul T. Eisenstat, the Chief Executive officer hereby certify:

1. The name of the corporation is Genesee Valley Group Health Association.
2. The Certificate of Incorporation of Genesee Valley Group Health

Association was filed by the New York State Department of State on September 1, 1972.

3. The names and addresses of the officers and directors of the corporation and the title of each are as follows:

| <u>Name</u>            | <u>Title</u>                        | <u>Address</u>  |
|------------------------|-------------------------------------|---|
| Christopher C. Booth   | Director                            | 10 Northstone Rise<br>Pittsford, NY 14534             |
| Dorothy A. Coleman     | Director/Chief Financial<br>Officer | 19 East Boulevard<br>Rochester, NY 14610              |
| Stephen R. Sloan       | Director/Secretary                  | 35 Thomas Grove<br>Pittsford, NY 14534                |
| Paul T. Eisenstat      | Chief Executive Officer             | 3 Lusk Farm Circle<br>Pittsford, NY 14534             |
| Stephen H. Cohen, M.D. | President                           | 43 Whitecliff Drive<br>Pittsford, NY 14534            |
| Stephen Lasalle, II    | Chief Operating Officer             | 81 East Pointe<br>Fairport, NY 14450                  |
| Margaret M. Cassady    | Assistant Secretary                 | 4767 Cornish Heights<br>Parkway<br>Syracuse, NY 13215 |
| James C. Haefner       | Assistant Treasurer                 | 3 Millwood Court<br>Pittsford, NY 14534               |

4. At the time of dissolution, the corporation is a charitable corporation.
5. At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets pursuant to Section 1002, the corporation held no assets required to be used for a restricted purpose.
6. The corporation elects to dissolve.
7. The Plan of Dissolution and Distribution of Assets of the corporation was approved by the joint unanimous written consent of the sole Member and the Board of Directors.
8. The corporation will file with the Attorney General a petition for approval of the Certificate of Dissolution with the original Certified Plan of Dissolution.
9. On \_\_\_\_\_, 2018, the Attorney General of the State of New York approved the Plan of Dissolution and Distribution of Assets. A copy of the Attorney General's approval is attached pursuant to Section 1003(a)(8) of the Not-for-Profit Corporation Law.
10. The Public Health and Health Planning Council of New York State must approve the dissolution and such approval is attached.
11. The corporation has carried out the Plan of Dissolution and Distribution of Assets.
12. Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General will be stamped below.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of  
Dissolution of Genesec Valley Group Health Association, Inc. this 27<sup>th</sup> day of May,  
2018.

  
\_\_\_\_\_  
Paul T. Eisenstat, Chief Executive Officer

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
COUNTY OF MONROE

-----  
In the Matter of the Application of  
GENESEE VALLEY GROUP HEALTH ASSOCIATION  
for Approval of the Plan of Dissolution and Distribution of  
Assets Pursuant to Section 1002 of the  
Not-For-Profit Corporation Law.

VERIFIED PETITION  
OAG No.

-----  
TO: THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
Rochester Regional Office  
144 Exchange Boulevard  
Rochester, New York 14614-2176

Petitioner, Genesee Valley Group Health Association, by Paul T. Eisenstat, Chief  
Executive Officer the corporation, respectfully alleges:

1. Genesee Valley Group Health Association ("Petitioner") whose principal address is located in Monroe County was incorporated under Section 805 of the New York Not-for-Profit Corporation Law. The Certificate of Incorporation of Petitioner was filed by the New York State Department of State on September 1, 1972 under the name Genesee Valley Group Health Association. Copies of the Petitioner's Certificate of Incorporation and all Amendments thereto, and its Bylaws are attached hereto as Exhibits "A" and "B", respectively.

2. The names of the officers and directors of the Petitioner and their places of residence are as follows:

| <u>Name</u>          | <u>Title</u>                        | <u>Address</u>                            |
|----------------------|-------------------------------------|---|
| Christopher C. Booth | Director                            | 10 Northstone Rise<br>Pittsford, NY 14534 |
| Dorothy A. Coleman   | Director/Chief Financial<br>Officer | 19 East Boulevard<br>Rochester, NY 14610  |
| Stephen R. Sloan     | Director/Secretary                  | 35 Thomas Grove<br>Pittsford, NY 14534    |

|                        |                         |   |
|------------------------|-------------------------|---|
| Paul T. Eisenstat      | Chief Executive Officer | 3 Lusk Farm Circle<br>Pittsford, NY 14534             |
| Stephen H. Cohen, M.D. | President               | 43 Whitecliff Drive<br>Pittsford, NY 14534            |
| Stephen Lasalle, II    | Chief Operating Officer | 81 East Pointe<br>Fairport, NY 14450                  |
| Margaret M. Cassady    | Assistant Secretary     | 4767 Cornish Heights<br>Parkway<br>Syracuse, NY 13215 |
| James C. Haefner       | Assistant Treasurer     | 3 Millwood Court<br>Pittsford, NY 14534               |

3. The purposes as set forth in the Certificate of Incorporation of Petitioner are described as follows:

(a) To establish, own, operate and maintain diagnostic and treatment centers as such term is defined in the New York State Public Health Law and the regulations issued pursuant thereto, and to establish, own, operate and maintain such diagnostic and treatment centers, and any extension clinics or part-time clinics thereof, as such terms are defined in the Public Health Law and the regulations issued thereunder, as may be approved in accordance with the Public Health Law.

(b) To do anything and everything necessary, suitable, proper or incidental to the foregoing purposes, or which may be done by a corporation organized for such purposes under the law of the State of New York, together with all the powers now or hereafter granted to it by the State of New York.

(c) The Petitioner was organized exclusively to serve a public purpose and it shall be and remain subject to supervision and control pursuant to the applicable provisions of Article 28 of the Public Health Law.

4. The Petitioner is a charitable corporation.

5. The assets of the Petitioner and their fair market value are as follows:

|                           |                  |
|---------------------------|------------------|
| Cash and Cash Equivalents | \$ 639,000       |
| Prepaid Expenses          | 582,000          |
| Real Estate               | <u>1,870,000</u> |
| Total                     | \$ 3,091,000     |

6. The Petitioner has liabilities of \$40,844,000 as listed below:

|                                   |                  |
|-----------------------------------|------------------|
| Accounts Payable                  | \$ 2,920,000     |
| Due to Excellus Health Plan, Inc. | 34,941,000       |
| Workers Compensation              | 1,064,000        |
| Retirement Benefits               | <u>1,959,000</u> |
| Total                             | \$ 40,884,000    |

7. The Petitioner plans to dissolve. Its assets shall be distributed in accordance with the Plan of Dissolution and Distribution of Assets.

8. The Petitioner no longer owns, operates or maintains any diagnostic and treatment centers and has surrendered its operating certificates to the New York State Department of Health pursuant to approved Closure Plans.

9. The Plan of Dissolution has been adopted and the filing of a Certificate of Dissolution has been authorized by the unanimous written consent of Excellus Health Plan, Inc., as sole Member, and the Board of Directors of Genesee Valley Group Health Association. A copy of the Plan, certified by the Secretary, and the Joint Unanimous Written Consent of the Sole Member and the Board of Directors are attached as Exhibits "C" and "D", respectively.

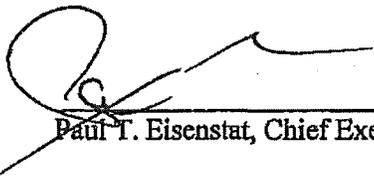
10. Approval of the New York State Public Health and Health Planning Council is attached as Exhibit "E".

11. No prior application for approval of a Plan of Dissolution and Distribution of Assets of Petitioner has been made.

WHEREFORE, Petitioner requests that the Attorney General approve the Plan of Dissolution and Distribution of Assets of Genesee Valley Group Health Association, a not-for-profit corporation, pursuant to Section 1002 of the Not-for-Profit Corporation Law.

IN WITNESS WHEREOF, Petitioner has caused this Petition to be executed on April 30,

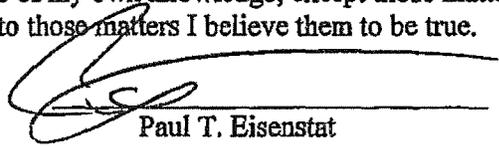
2018 by:

  
\_\_\_\_\_  
Paul T. Eisenstat, Chief Executive Officer

VERIFICATION

STATE OF NEW YORK            )  
  SS  
COUNTY OF MONROE         )

Paul T. Eisenstat, being duly sworn, deposes and says: I am the Chief Executive Officer of Genesee Valley Group Health Association, the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

  
Paul T. Eisenstat

Sworn to before me this 30th  
day of April, 2018.

  
Notary Public

STEPHEN R. SLOAN  
Notary Public, State of New York  
Qualified in Monroe County  
No. 02SL4783868  
Commission Expires Feb. 28, 2022

F 020215000255

RESTATED CERTIFICATE OF INCORPORATION  
OF  
GENESEE VALLEY GROUP HEALTH ASSOCIATION

Under Section 805 of the Not-for-Profit Corporation Law

PATRICIA BONINO and DAVID KLEIN, being respectively the President and Secretary of Genesee Valley Group Health Association, do hereby certify:

1. The name of the corporation is GENESEE VALLEY GROUP HEALTH ASSOCIATION.

2. The Certificate of Incorporation was filed by the Department of State on September 1, 1972.

3. The Certificate of Incorporation is hereby amended to revise the corporate purposes primarily by deleting those provisions relating to operation of a prepaid health care plan and a health services corporation, <sup>omit</sup> to delete the names and addresses of the initial directors, <sup>from Article "SEVENTH"</sup> to change members of the corporation, <sup>designate the Secretary of State as agent of the corporation for service of process and to</sup> and to change the post office address to which the Secretary of State shall mail a copy of any process served upon him.

4. The text of its Certificate of Incorporation is hereby restated, as amended, to read as herein set forth in full:

FIRST: The name of the corporation is GENESEE VALLEY GROUP HEALTH ASSOCIATION.

SECOND: The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law. The corporation is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation

will be distributable to, or inure to the benefit of, its members, directors or officers, except to the extent permitted by law. All income and earnings of the corporation shall be used exclusively for its corporate purposes.

THIRD: The purposes for which the corporation is formed are:

- (a) To establish, own, operate and maintain diagnostic and treatment centers, as such term is defined in the New York State Public Health Law and the regulations issued pursuant thereto, and to establish, own, operate and maintain such diagnostic and treatment centers, and any extension clinics of part-time clinics thereof, as such terms are defined in the Public Health Law and the regulations issued thereunder, as may be approved in accordance with the Public Health Law.
- (b) To do anything and everything necessary, suitable, proper or incidental to the foregoing purposes, or which may be done by a corporation organized for such purposes under the law of the State of New York, together with all the powers now or hereafter granted to it by the State of New York.
- (c) The corporation has been organized exclusively to serve a public purpose and it shall be and remain subject to supervision and control pursuant to the applicable provisions of Article 28 of the Public Health Law.

FOURTH: The corporation is a Type B corporation

FIFTH. The office of the corporation is to be located in Monroe County.

SIXTH. The activities of the corporation are principally to be conducted within the State of New York.

SEVENTH. *[Intentionally left blank.]*

EIGHTH. ~~SEVENTH~~. The member of the corporation is Excellus Health Plan, Inc.

NINTH ~~EIGHTH~~. The Secretary of State of the State of New York is hereby designated the agent of this corporation upon whom process against this corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against this corporation served upon him as agent of this corporation is:

800 Carter Street  
Rochester, New York 14621

TENTH. ~~NINTH~~. All approvals and consents required by law will be endorsed hereon or annexed hereto prior to delivery to the Department of State for filing.

ELEVENTH. ~~TENTH~~. Each of the subscribers is of the age of nineteen years or over.

TWELFTH. ~~ELEVENTH~~. The corporation shall neither have nor exercise any power, nor engage in any activity, that would invalidate its status (a) as a corporation exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1950, as amended, or (b) as a corporation contributions to which are tax-deductible under 170(c)(2) of said Code.

THIRTEENTH. ~~TWELFTH~~. No part of the activities of the corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation; nor shall it in any manner or to

any extent participate in any political campaign on behalf of any candidate for public office or engage in any activities that are unlawful under applicable federal, state or local law.

FOURTEENTH, ~~THIRTEENTH~~. Upon the dissolution of the corporation, the assets of the corporation shall be distributed solely to one or more organizations described in Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, and which are not private foundations as described in Section 509 of such Code.

5. The amendment and restatement of the Certificate of Incorporation was authorized by unanimous written consent of the entire board of directors and by the unanimous written consent of the members of Genesee Valley Group Health Association.

We have signed and verified this Certificate this 19<sup>th</sup> day of December, 2001.

  
\_\_\_\_\_  
Patricia Bonino  
President

  
\_\_\_\_\_  
David Klein  
Secretary

4



State of New York  
**Department of Health**  
Corning Tower, Empire State Plaza  
Albany, New York 12237

ANTONIA C. NOVELLO, M.D., M.P.H., DR. P.H.  
*Commissioner*

Phone: (518) 474-2011  
Fax: (518) 474-5450

CONSENT  
TO FILING A CERTIFICATE OF INCORPORATION  
BY THE  
COMMISSIONER

I, ANTONIA C. NOVELLO, M.D., M.P.H., DR. P.H., Commissioner of Health of the State of New York, do this <sup>30th</sup> day of January 2002, consent to the filing with the Secretary of State of the Restated Certificate of Incorporation of Genesee Valley Group Health Association as executed on the 19<sup>th</sup> day of December, 2002, pursuant to Sections 804(a)(i) and 805 of the Not-for-Profit Corporation Law and Section 98-1.4 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

A handwritten signature in cursive script, appearing to read "Antonietta Novello".

ANTONIA C. NOVELLO, M.D., M.P.H., DR. P.H.  
Commissioner of Health

5



STATE OF NEW YORK  
INSURANCE DEPARTMENT  
AGENCY BUILDING ONE  
EMPIRE STATE PLAZA  
ALBANY, NY 12257

January 10, 2002

Cheryl P. Hogan, Esq.  
Hinman Straub  
121 State Street  
Albany, NY 12207-1693

RE: Genesee Valley Group Health Association  
Restated Certificate of Incorporation

Dear Ms. Hogan:

Under cover of your letter of December 27, 2001, you submitted for this Department's review and approval a Restated Certificate of Incorporation of Genesee Valley Group Health Association. The Restated Certificate of Incorporation eliminates all corporate powers that would allow the Association to operate as an Article 43 health service corporation. We have no objections to the filing of this Restated Certificate of Incorporation.

Please send us an original certified copy of the Restated Certificate of Incorporation after it has been filed with the Secretary of State.

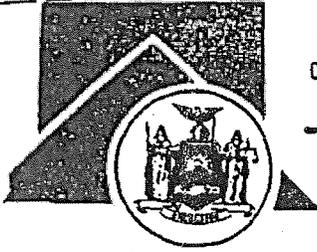
Very truly yours,

Nancy E. Schoep  
Associate Attorney  
Office of General Counsel  
Albany Office

NES: slb



6



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

January 31, 2002

Christopher C. Booth  
Hinman Straub  
121 State Street  
Albany, New York 12207-1693

Re: Proposed Restated Certificate:  
Genesee Valley Group Health Association

Dear Mr. Booth:

The proposed restated certificate of incorporation of the above referenced corporation, dated December 19, 2001, does not require the formal approval of the Public Health Council, since, pursuant to Section 804(a)(i) of the Not-for-Profit Corporation Law, the certificate neither adds, changes or eliminates a purpose, power or provision the inclusion of which requires the Council's approval, nor does it change the name of the corporation.

The original certificate of incorporation included provisions relating to the operation of a prepaid comprehensive health care plan or plans pursuant to Article 44 of the Public Health Law and a health service corporation, including the ownership of facilities for the provision of health services, pursuant to Article 43 of the Insurance Law. The proposed restated certificate would delete those provisions relating to operation of a prepaid health services plan and a health service corporation. The corporation will continue to be authorized to operate diagnostic and treatment centers established in accordance with Article 28 of the Public Health Law. The Public Health Council, at its April 2001 meeting approved a merger between Genesee Valley Group Health Association (the surviving corporation) and Health Services Association of Central New York, Inc. consolidating the administration and operations of the licensed Article 28 facilities. In a companion application the Public Health Council approved the merger of Univera Healthcare-CNY, Inc., Health Care Plan, Inc. and Univera Healthcare Southern Tier, Inc. into Excellus.

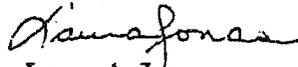
The original certificate of incorporation was subject to Public Health Council approval because its purposes included the establishment of one or more facilities subject to Article 28 of the Public Health Law. Genesee Valley Group Health Association is retaining its

7

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Article 28 powers and purposes. The revision is a technical change to accurately reflect that Genesee Valley Group Health Association is not certified as either a comprehensive prepaid health services plan or a health service corporation under Article 44 of the Public Health Law or Article 43 of the Insurance Law, respectively. Therefore, the restated certificate does not require the approval of the Public Health Council to delete the Article 43 and Article 44 purposes.

Sincerely,



Laura A. Jonas  
Senior Attorney

Enclosure

cc: Ms. Westervelt

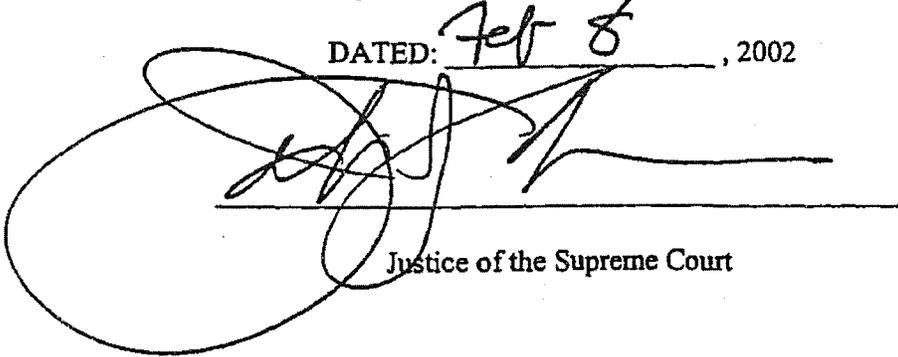
APPROVAL

of a

Justice of the Supreme Court

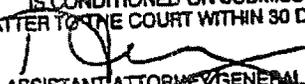
I, Honorable John J. Ark, a Justice of the Supreme Court of the Seventh  
Judicial District of New York, do hereby approve the foregoing Restated Certificate of  
Incorporation of Genesee Valley Group Health Association pursuant to Section 805 of the Not-  
for-Profit Corporation Law and consent that the same be filed.

DATED: Feb 8, 2002



Justice of the Supreme Court

THE ATTORNEY GENERAL HAS NO OBJECTION  
TO THE GRANTING OF JUDICIAL APPROVAL  
HEREON, ACKNOWLEDGES RECEIPT OF  
STATUTORY NOTICE AND DEMANDS SERVICE  
OF THE FILED CERTIFICATE. SAID NO OBJECTION  
IS CONDITIONED ON SUBMISSION OF THE  
MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

  
ASSISTANT ATTORNEY GENERAL  
DONALD P. SEGAL

2/4/02  
DATE

9



INFO 9H

CERTIFICATE OF INCORPORATION  
OF  
GENESEE VALLEY GROUP HEALTH ASSOCIATION  
Under Section 402  
of the  
Not-for-Profit Corporation Law

The undersigned, for the purpose of forming a corporation under Section 402 of the Not-for-Profit Corporation Law, hereby certify:

1. The name of the corporation is GENESEE VALLEY GROUP HEALTH ASSOCIATION.
2. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law. The corporation is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation will be distributable to, or inure to the benefit of, its members, directors or officers, except to the extent permitted by law. All income and earnings of the corporation shall be used exclusively for its corporate purposes.
3. The purposes for which the corporation is formed are:
  - (a) To promote, organize, establish, maintain, manage and operate a prepaid comprehensive health care plan or plans, as that term is defined in the public health law.
  - (b) To promote, organize, establish, maintain, manage and operate any other non-profit plan or plans under which subscribers and their families, in groups or as individuals, under agreements with the corporation, may be provided with health service.

5

(c) To engage in any or all of the activities of a health service corporation permitted by law; including, without limitation, the exercise of any of all of the powers of a medical expense indemnity, dental expense indemnity, or hospital service corporation; and including, without limitation, the ownership of facilities for the provision of health services, provided, however, that before any such facility is established or operated the prior approval of the Public Health Council for such establishment or operation shall be obtained.

(d) To enter into contracts, including contracts for the leasing of hospital facilities, with individuals, partnerships, associations, and corporations -- including hospital, hospital service, non-profit medical, and professional service corporations. -- both public and private, for the purpose of providing professional medical service and hospital service, and as may be necessary to effectuate the foregoing purposes.

(e) To do anything and everything necessary, suitable, proper or incidental to the foregoing purposes, or which may be done by a corporation organized for such purposes under the law of the State of New York, together with all the powers now or hereafter granted to it by the State of New York.

(f) The corporation has been organized exclusively to serve a public purpose and it shall be and remain subject to supervision and control pursuant to the applicable provisions of Article 28 of the Public Health Law.

4. The corporation is a Type B corporation.

5. The office of the corporation is to be located in the City of Rochester, County of Monroe.

6. The activities of the corporation are principally to be conducted within the State of New York.

7. The names and addresses of the initial directors are:

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| <u>Name</u>            | <u>Address</u>   |
|------------------------|--|
| Harold W. Bales, M.D.  | Strong Memorial Hospital<br>260 Crittenden Boulevard<br>Rochester, New York 14620                |
| Richard Castle         | Castle Company, Div. of<br>Sybron Corp.<br>1777 East Henrietta Road<br>Rochester, New York 14620 |
| Angelo A. Costanza     | Central Trust Company<br>44 Exchange Street<br>Rochester, New York 14614                         |
| Frank Holley           | Marine Midland Bank<br>One Marine Midland Plaza<br>Rochester, New York 14639                     |
| John D. Hostutler      | Industrial Management Council<br>12 Mortimer Street<br>Rochester, New York 14604                 |
| John Leermakers        | Eastman Kodak Company<br>343 State Street<br>Rochester, New York 14650                           |
| Donald E. McConville   | Eastman Kodak Company<br>343 State Street<br>Rochester, New York 14650                           |
| Robert W. Miller       | Eastman Kodak Company<br>343 State Street<br>Rochester, New York 14650                           |
| C. Dupha Reeves, M.D.  | 201 Church Street<br>Newark, New York 14513  |
| Clifford Reffler, M.D. | Strong Memorial Hospital<br>260 Crittenden Boulevard<br>Rochester, New York 14620                |
| Paul Smith             | Urban League of Rochester, Inc.<br>80 Main Street West<br>Rochester, New York 14614              |
| Donald W. Spratt, M.D. | 1283 Portland Avenue<br>Rochester, New York 14620  |

Name

Address

Charles Swan

North East Area Development,  
Inc.  
1771 Culver Road  
Rochester, New York 14609

William G. von Berg

Sybron Corporation  
1100 Midtown Tower  
Rochester, New York 14604

Herbert W. Watkins

Graflex, Inc.  
1750 Monroe Avenue  
Rochester, New York 14603

John R. Wilson, Jr.

Rochester Products/General  
Motors Division  
1000 Lexington Avenue  
Rochester, New York 14606

James Colombo

Retail Store Employees Union  
AFL-CIO, Local 345  
40 West Avenue  
Rochester, New York 14611

8. The members of the corporation are Rochester Hospital Service Corporation and Genesee Valley Medical Care, Inc.

9. The post office address to which the Secretary of State shall mail a copy of any notice required by law is:

41 Chestnut Street  
Rochester, New York 14604

10: All approvals and consents required by law will be endorsed hereon or annexed hereto prior to delivery to the Department of State for filing.

11. Each of the subscribers is of the age of nineteen years or over.

12. The corporation shall neither have nor exercise any power, nor engage in any activity, that would invalidate its status (a) as a corporation exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1950, as amended, or (b) as a corporation contributions to which are tax-deductible under 170(c)(2) of said Code.

13. No part of the activities of the corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation; nor shall it in any manner or to any extent participate in any political campaign on behalf of any candidate for public office, or engage in any activities that are unlawful under applicable federal, state or local law.

14. Upon the dissolution of the corporation, the assets of the corporation shall be distributed solely to one or more organizations described in Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, and which are not private foundations as described in Section 509 of such Code.

IN WITNESS WHEREOF, each subscriber has signed this  
certificate this 15th day of February 1972.

*William G. von Berg*  
William G. von Berg  
8 Old Landmark Drive  
Rochester, New York 14618

*C. Dupha Reeves, M.D.*  
C. Dupha Reeves, M.D.  
201 Church Street  
Newark, New York 14513

STATE OF NEW YORK )  
COUNTY OF MONROE ) ss:

On this 15th day of February 1972, before  
me personally came William G. von Berg, to me known to be  
the individual described in and who executed the foregoing  
instrument, and he duly acknowledged to me that he executed  
the same.

*Dorothy E. McMahon*

DOROTHY E. Mc MAHON  
NOTARY PUBLIC, State of New York, Monroe County  
Commission Expires March 30, 1972.

**BYLAWS  
OF  
GENESEE VALLEY GROUP HEALTH ASSOCIATION**

**Approved: September 8, 1972  
Amended: February 24, 1975  
July 28, 1975  
September 26, 1975  
October 27, 1975  
December 17, 1979  
August 2, 1982  
August 17, 1987  
April 25, 1988  
April 2, 2003  
October 27, 2009  
February 4, 2013**

## ARTICLE I

### Name and Purpose

1. The name of the Corporation is GENESEE VALLEY GROUP HEALTH ASSOCIATION.
2. The purposes of the Corporation are to organize, own and operate health facilities to provide diagnostic and therapeutic services for diagnosis, treatment and preventive care of well, injured and sick persons.

## ARTICLE II

### Office and Place of Business

1. The office and principle place of business of the Corporation is to be located in the City of Rochester, New York.

## ARTICLE III

### Member

1. The Member of the Corporation is Excellus Health Plan, Inc.
2. Membership in the Corporation shall be effected and evidenced by designation in the Certificate of Incorporation.

## ARTICLE IV

### Meetings of Members

1. **Place.** Meetings of the members of the Corporation may be held at such a place as may be stated in the notice of the meeting.
2. **Annual Meeting.** The annual meeting of sole member of the Corporation entitled to vote shall be held at the location specified by the Board of Directors, during the first six months of each calendar year or such other date as may be determined by the Board of Directors, for the election of Directors and the transaction of such other business as may properly come before such meeting.
3. **Special Meeting.** A special meeting of the member of the Corporation may be called at any time by the President or by a majority of the Board of Directors. Upon receipt of a specification in writing setting forth the time, place and purposes of a proposed special meeting signed by the President or by a majority of the Board of Directors, the Secretary shall prepare, sign and mail to each member of the Corporation the notice provided for in Section 4 of this Article.

4. **Notice of Meetings.**

(a) **Annual Meeting.** At least (10) days prior to the date fixed under Section 2 of this Article for the holding of the annual meeting of members, written notice of the time, place and purposes of such meeting shall be mailed to each member of the Corporation.

(b) **Special Meeting.** At least (10) days prior to the date fixed for the holding of any special meeting of members, written notice of the time, place and purposes of such meeting shall be mailed to each member of the Corporation.

(c) **Waiver of Notice.** Notwithstanding the provisions of subsection (a) and (b) of this Section 4, notice of any meeting of members need not be given to any member who submits a signed waiver of notice, whether before or after the meeting, or who attends the meeting without protest.

5. **Quorum.** Presence through a duly designated representative of each member of the Corporation shall constitute a quorum for the transaction of business at any annual or special meeting of members.

6. **Voting.** Each member of the Corporation shall be entitled to one vote upon each subject properly submitted to vote.

## ARTICLE V

### **Board of Directors**

1. **Number and Term.** The business, property and affairs of the Corporation shall be managed by a Board of Directors composed of not less than three or more than 7 persons as determined from time to time by resolution of the Board of Directors, who shall be elected annually by the members of the Corporation at their annual meeting.

2. **Vacancies.** Vacancies in the Board of Directors may be filled for the unexpired term by majority vote of the remaining Directors at any meeting of the Board.

3. **Powers of Directors.** The Board of Directors shall, in addition to and not in limitation of all of the general powers necessary or incidental to the management of the business, property, and affairs of the Corporation, have the power:

(a) To elect or appoint the officers and agents of the Corporation and to determine their respective duties, subject to the provisions of these Bylaws.

(b) To remove any officer or agent which it has the power to appoint or elect.

(c) To appoint committees and to determine their respective duties, subject to the provisions of these Bylaws.

(d) To enter into, approve, or ratify Agreements or Contracts on behalf of the Corporation.

4. **Additional Powers, Duties and Responsibilities.** The Board of Directors shall have and may exercise full power in the management of the business and affairs of the Corporation. Duties and responsibilities of the Board will also include the following:

(a) To make policy.

(b) To approve the budget and the program of the Corporation.

(c) To appoint a President who shall be responsible to the Board for receiving, collecting and distributing funds and for carrying on the program of the Corporation.

(d) To be the governing authority, as that term is defined in the Public Health Law and regulations adopted thereunder, of any health care facility or facilities established and operated by the Corporation to further its purposes.

(e) As such governing authority, the Board shall carry out the duties imposed upon a governing authority by parts 751 and 752 of the State Hospital Code, which duties are as follows:

- To establish policies for the management and operation of the health facility;
- To provide a safe physical plant equipped with adequate facilities and services;
- To appoint members of the Medical Staff;
- To approve the bylaws; rules and regulations of the Medical Staff;
- To establish committees to carry out the functions and responsibilities set forth in these bylaws;
- To establish a formal liaison with the Medical Staff;
- To appoint a qualified administrator and delegate to him executive authority and responsibility;
- To provide for an annual audit;
- To enter into contracts with members of the Medical Staff;
- To keep a record of all minutes of board and committee meetings;
- To appoint the head of the clinical departments or services; and
- To appoint a qualified medical director.

5. **Indemnification of Directors and Officers.** The Corporation shall provide for indemnification and advancement of expenses of directors and officers liable in any civil or criminal action or proceeding, including one in the right of the Corporation, except that no indemnification may be made to or on behalf of any director or officer if a judgment or other final adjudication adverse to the director or officer establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were

material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

## ARTICLE VI

### Meetings of Board of Directors

1. **Place.** Meetings of the Board of Directors shall be held at such place as may be stated in the notice of the meeting.
2. **Regular Meeting.** Regular Meetings of the Board of Directors shall be held at such times and at such places as the Board shall determine by resolution.
3. **Special Meetings.** Special Meetings of the Board of Directors may be called at any time by the President or by any member of the Board.
4. **Notice of Meeting.**
  - (a) **Regular Meeting.** Regular meetings of the board may be held without notice.
  - (b) **Special Meeting.** At least two (2) days prior to the date set for a Special Meeting, notice of the time, place and purposes of such meeting shall be given to each Director. Such notice may be given by telephone, telegram, in writing, or by any other reasonable method and shall be sent to the address listed on the records of the Corporation.
5. **Quorum.** Presence in person of a majority of the Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

## ARTICLE VII

### Officers

1. **Officers.** The Officers of the Corporation shall consist of a Chief Executive Officer, a President, a Secretary, a Chief Financial Officer, and a Treasurer. The Board may at any time, appoint other officers or agents as it deems necessary or proper in the interests of the Corporation.
2. **Election.** The officers of the Corporation shall be elected by the Board at its first meeting following each annual meeting of the members of the Corporation and shall hold office for a term of one year and until their successors are elected and qualified; provided, however, that the President shall serve at the pleasure of the Board of Directors.
3. **Vacancies.** A vacancy in any office shall be filled by the Board of Directors without undue delay.

4. **Duties of Officers.**

(a) **Chief Executive Officer.** The Chief Executive Officer shall preside at all meetings of the Board of Directors. He or she shall appoint all committees of the Board except those Committees appointed by specific resolution of the Board. He or she shall be ex-officio a member of all committees of the Board.

(b) **President.** The President shall supervise generally the management of the affairs of the Corporation subject to the supervision of the Board of Directors and the Chief Executive Officer.

(c) **Secretary.** The Secretary shall make and keep accurate records of the proceedings of the Board of Directors, shall attend to the giving and serving of all notices of the corporation required by law or these Bylaws, and shall have authority to attest and countersign contracts and other documents of the Corporation where such countersignature or attestation may be required. The Secretary shall perform such other duties as may be assigned by the Board of Directors.

(d) **Chief Financial Officer.** Subject to the direction of the Board of Directors, the Chief Financial Officer shall be responsible for the care and custody of the funds of the Corporation. The Chief Financial Officer shall keep or cause to be kept full and accurate accounts and records of the receipt and disbursement of funds, and shall perform all other duties assigned by the Board of Directors.

(e) **Treasurer.** Subject to the direction of the Board of Directors, the Treasurer shall be responsible for the care and custody of the funds of the Corporation, shall be responsible for all moneys received by the Corporation and for all payments made on its behalf, and shall perform all other duties assigned by the Board of Directors.

**ARTICLE VIII**

**Seal**

The seal of the Corporation shall be circular in form, with the name of the Corporation on the circumference and the year of its incorporation in the center.

**ARTICLE IX**

**Amendments**

These Bylaws may be repealed, altered or amended by a majority vote of the Board of Directors, and a majority vote of the members, provided written notice of the intention to propose such repeal, alteration or amendment has been given in writing to each Director of the Board and each member of the Corporation at least ten (10) days prior to the meeting at which such action is proposed to be taken.

**ARTICLE X**

**Effective Date**

These Bylaws shall become effective upon their approval by the Board of Directors and by the Members of the Corporation.



## MEMORANDUM

**To:** Public Health and Health Planning Council  
**From:** Richard J. Zahneuten, General Counsel  
**Date:** July 10, 2018  
**Subject:** Proposed Dissolution of Ruby Weston Manor (f/k/a M G Nursing Home, Inc.)

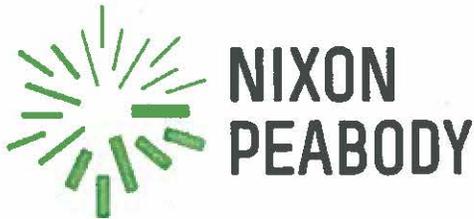
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Ruby Weston Manor ("RWM") requests Public Health and Health Planning Council (PHHPC) approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Law § 1002(c) and § 1003, as well as 10 NYCRR Part 650.

RWM's attorney, Anita L. Pelletier, informs that RWM sold the facility in 2013 pursuant to project #112031; a project approved by PHHPC that received full, final approval in April, 2013. Since that time the corporation has worked to wind-up and dissolve. The required documents; a Verified Petition, Plan of Dissolution, and a Certificate of Dissolution are included for PHHPC's review. Letters from Ms. Pelletier are included for your review. Lastly, Form 990s for the corporation are included for your review.

There is no legal objection to the proposed dissolution, Verified Petition, Plan of Dissolution, and the Certificate of Dissolution.

Attachments.



NIXON PEABODY LLP  
ATTORNEYS AT LAW

NIXONPEABODY.COM  
@NIXONPEABODYLLP

Anita L. Pelletier  
Counsel  
T 585-263-1164  
apelletier@nixonpeabody.com

Nixon Peabody LLP  
1300 Clinton Square  
Rochester, NY 14604-1792  
585-263-1000

April 27, 2018

**VIA FEDERAL EXPRESS**

Richard Zahnleuter, Esq.  
General Counsel  
New York State Department of Health  
Corning Tower, 24<sup>th</sup> Floor  
Empire State Plaza,  
Albany, NY 12237



RE: ***Ruby Weston Manor***  
**Approval of Plan of Dissolution and Distribution of Assets pursuant to N-PCL**  
**Section 1002**

Dear Mr. Zahnleuter:

We are writing to respectfully request the approval of the enclosed Verified Petition for the Plan of Dissolution and Distribution of Assets in connection with the dissolution of Ruby Weston Manor (the "Corporation").

The Corporation ceased operations and sold its skilled nursing facilities in 2013 upon consent of PHHPC (copy enclosed) and approval by the New York State Attorney General's Office and Supreme Court. Since the sale of its facilities the Corporation worked toward winding up its affairs to dissolve.

At this time the Corporation requests consent to dissolve. Copies the following proposed materials in support of the Corporation's application for approval are enclosed:

1. Verified Petition, with all available exhibits; and
2. Plan of Dissolution and Distribution of Assets (Exhibit O of Petition).

Thank you for your time and attention to this matter. Should you require any additional information please do not hesitate to contact me.

Very truly yours,

Anita L. Pelletier

Enclosures





NIXON PEABODY LLP  
ATTORNEYS AT LAW

NIXONPEABODY.COM  
@NIXONPEABODYLLP

Anita L. Pelletier  
Counsel  
T 585-263-1164  
apelletier@nixonpeabody.com

Nixon Peabody LLP  
1300 Clinton Square  
Rochester, NY 14604-1792  
585-263-1000



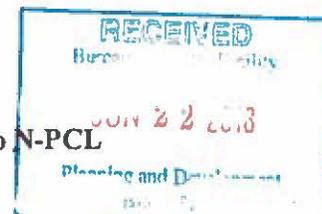
June 21, 2018

VIA FEDERAL EXPRESS

Richard Zahnleuter, Esq.  
General Counsel  
New York State Department of Health  
Corning Tower, 24<sup>th</sup> Floor  
Empire State Plaza,  
Albany, NY 12237



RE: *Ruby Weston Manor*  
Approval of Plan of Dissolution and Distribution of Assets pursuant to N-PCL  
Section 1002



Dear Mr. Zahnleuter:

Enclosed please find a signed copy of the Verified Petition in connection with the dissolution of Ruby Weston Manor (the "Corporation"). Also enclosed is a signed copy of the proposed Certificate of Dissolution for the Corporation.

We previously provided a draft petition in April 2018 and this submission is provided in response to previous discussions with your office.

Thank you for your time and attention to this matter. Should you require any additional information, please do not hesitate to contact me.

Very truly yours,

Anita L. Pelletier

Enclosures

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
The Capitol Albany, New York 12224-0341

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In the Matter of the Application of

RUBY WESTON MANOR

VERIFIED PETITION

For Approval of Plan of Dissolution and Distribution of  
Assets pursuant to Section 1002 of the Not-for-Profit  
Corporation Law

---

AG #: \_\_\_\_\_

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK

Petitioner, Ruby Weston Manor, by its attorneys, Nixon Peabody LLP, Anita L. Pelletier, Esq.,  
for its Petition herein respectfully alleges:

1. The name of Petitioner is Ruby Weston Manor. The principal office was located in Kings County, New York. Petitioner was formed on September 13, 1991 under Section 402 of the Not-for-Profit Corporation Law of the State of New York. A copy of Petitioner's Certificate of Incorporation and By-laws are attached as Exhibit A and Exhibit B, respectively.

2. The names and residence addresses of the directors and officers of Petitioner are listed below.

| <u>Name/Address</u>   | <u>Title</u>       |
|---|--------------------|
| Howard K. Williams<br>405 Blvd. Media Luna<br>Veredas Del Parque 3104<br>Carolina, PR 00987 | Director/Chair     |
| Colin McCammon<br>1181 President Street<br>Brooklyn, NY 11225                               | Director/Secretary |
| Dr. Bertholet Desir<br>14 Brower Lane<br>Rockville Centre, NY 11570                         | Director           |

3. Petitioner is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.

4. As stated in Petitioner's Certificate of Incorporation, as amended, its purposes are as follows:

- To serve the aged, disabled, and chronically impaired persons by establishing and operating a residential health care facility consisting of skilled nursing home beds, and health related beds, pursuant to Article 28 of the Public Health Law of the State of New York...
- To provide, on a nonprofit basis, nursing home facilities and services for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care where no adequate housing exists for such groups pursuant to Section 232 of the National Housing Act, as amended...

5. Petitioner has approximately \$5.3 million in funds deposited in escrow accounts at CitiBank, as well as approximately \$292,000 in universal settlement funds from the New York State Department of Health, which funds are currently held by Bond Schoeneck & King PLLC.

6. Petitioner has liabilities of \$37,248, and a description of those liabilities is as follows:

| <u>Due To</u>                 | <u>Amount</u> | <u>Service</u>   |
|-------------------------------|---------------|--|
| Bond Schoeneck & King PLLC    | \$31,187      | Legal Fees Fees associated with NYS Department of Health litigation matter |
| Ruffo Tabora Mainello & McKay | \$ 5,906      | Legal Fees associated with NYS Department of Health litigation matter      |
| Heveron & Company             | \$ 650        | Accounting Fees for 2017 IRS and NYS filings                               |

7. Petitioner estimates that the accounting fees relating to its dissolution will not exceed \$3,000 and that the legal fees will not exceed \$10,000.

8. Petitioner has no assets restricted for a particular use.

9. A copy of Petitioner's 2017 Form 990 is attached hereto as Exhibit C.

10. Petitioner no longer conducts activities and ceased operations in 2013 when it sold its skilled nursing home facility and real property located at 2237 Linden Boulevard, Brooklyn, New York, pursuant to: (i) an Order of the Supreme Court of the State of New York, County of Kings entered into the Kings County Clerk's office on December 19, 2011 (the "2011 Order") with respect to the sale of the real estate; and (ii) an Order of the Supreme Court of the State of New York, County of Queens entered into the Queens County Clerk's office on May 22, 2013 (the "2013 Order") with respect to the sale of the facility. Copies of the 2011 Order and 2013 Order are attached hereto as Exhibit D. Proceeds from the sale of the facility and real estate were deposited in escrow accounts until certain liabilities were resolved.

11. Petitioner plans to dissolve. Its net assets will be distributed in accordance with a plan of dissolution and distribution of assets as more particularly described below.

12. Pursuant to Petitioner's purposes as set forth in its Certificate of Incorporation, Petitioner's Board of Directors determined that it is just and proper to distribute any remaining net assets after payment of any liabilities and expenses ("Net Assets") to Brooklyn Community Foundation (the "Recipient"), which is a charitable organization engaged in activities substantially similar to Petitioner's activities and is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

13. The Recipient is a well-established and fiscally sound not-for-profit organization providing assistance to the Brooklyn community. The current mission of the Recipient includes sparking lasting social change, mobilizing people, capital and expertise for a fair and just Brooklyn. Distribution of Petitioner's assets to the Recipient will be to establish a permanently endowed fund that supports activities that benefit the elderly, including programs and research to keep elderly individuals in their homes. The proposed distribution would also include establishing an advisory board that will review funding applications to recommend to the Recipient's Board of Directors, with a request that Petitioner's current Board members be invited to participate on the advisory board. A copy of the Recipient's Amended and Restated Certificate of Incorporation, together with its New York Application for Authority, and IRS Determination Letter confirming its exempt status are attached hereto as Exhibits E and F, respectively. A copy of the Recipient's most recent IRS Form 990 is included as Exhibit G.

14. Petitioner's Board of Directors, by unanimous written consent of the entire Board, authorized and adopted a Plan of Dissolution and Distribution of Assets (the "Plan") and authorized the winding up of the affairs of Petitioner in accordance with Section 1003 of the Not-for-Profit Corporation Law. A copy of the written consent of the Board and the Plan adopted by the Board are attached hereto as Exhibits H and I, respectively.

15. Petitioner requested that Marcus Garvey Nursing Home, Inc., Petitioner's sole member (the "Member"), approve the Plan by correspondence dated April 12, 2018. As of the date of this Petition, no response to this request was received.

16. The New York State Department of Health approved the Plan as well as the Certificate of Dissolution of the Corporation. A copy of the consent is attached hereto as Exhibit J.

17. No previous application for approval of the Plan has been made.

[REMAINDER OF PAGE BLANK]

WHEREFORE, Petitioner requests that the Attorney General approve the Plan of Dissolution and Distribution of Assets of Ruby Weston Manor, a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1002.

Dated: June 21, 2018

NIXON PEABODY LLP



By: \_\_\_\_\_

Anita L. Pelletier, Esq.  
1300 Clinton Square  
Rochester, New York 14604

VERIFICATION

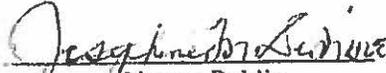
STATE OF NEW YORK )  
COUNTY OF KINGS ) ss:

I, Colin McCammon, being duly sworn deposes and says:

I am the Secretary of Ruby Weston Manor, the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof, and the same is true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

  
Name: Colin McCammon  
Title: Secretary

Sworn to before me this 25<sup>th</sup>  
day of May, 2018

  
Notary Public

JOSEPHINE M DISMORE  
Notary Public, State of New York  
No. 01DM871903  
Qualified in Kings County  
Commission Expires 09/10/2018

Part 72  
At a term of the Supreme Court, held in and for the  
County of Kings on the 22 day of  
December, 2011.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

In the Matter of the Application

Of

RUBY WESTON MANOR,

Petitioner,

For an Order Pursuant to Sections 510 and 511 of the New York  
Not-for-Profit Corporation Law

ORDER

Index No. 28280 / 1

2011 DEC 19 AM 11:33  
KINGS COUNTY CLERK  
RECEIVED

Upon reading and filing of the Verified Petition (the "Petition") of Ruby Weston Manor (the "Petitioner"), dated December 15, 2011, requesting an Order, pursuant to Sections 510 and 511 of the Not-For-Profit Corporation Law, approving the sale of all or substantially all of the assets of the Petitioner as described in the Petition herein, in particular the sale of real property located at 2237 Linden Boulevard, Brooklyn, County of Kings, State of New York, to Alliance Health Property, LLC, for the sum of \$26,500,000, as more fully set forth in the Contract of Sale and First Amendment to the Contract of Sale included as an Exhibit to the Petition and as more fully described in the Petition, in accordance with Sections 510 and 511 of the Not-for-Profit Corporation Law.

NOW, THEREFORE, it is hereby

ORDERED, that Petitioner is hereby authorized to transfer real property located at 2237 Linden Boulevard, Brooklyn, County of Kings, State of New York, Block 4335, Lot 1, 42, 44, 46 and 48 (the "Real Property"), to Alliance Health Property, LLC, for the sum of \$26,500,000, as described in the Petition; and it is further

ORDERED, that Petitioner shall use the proceeds from the sale of the Real Property to pay certain liabilities as set forth in Exhibit C to the Petition (the "Approved Liabilities"), a copy of which is attached to this Order; and it is further

ORDERED, that any net proceeds remaining after payment of the Approved Liabilities shall be deposited into an escrow fund maintained at the law firm of Nixon Peabody LLP pending further order of this Court on notice to the Attorney General; and it is further

ORDERED, that that Petitioner may make interim disbursements from such escrow account prior to further submission to this Court only upon the written consent of the Attorney General; and it is further

ORDERED, that a signed copy of this Order will be provided to the Attorney General; and it is further

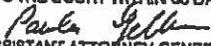
ORDERED, that the Attorney General's office will be notified when the transaction has been completed, abandoned or is still pending after ninety (90) days of the date of this Order.

Enter,

~~Date: 1/11/11~~  
~~XXXX~~

  
\_\_\_\_\_  
J.S.C.  
HON. ANTHONY CUTRONA

THE ATTORNEY GENERAL HEREBY APPEARS HEREIN,  
HAS NO OBJECTION TO THE GRANTING OF  
JUDICIAL APPROVAL HEREON, ACKNOWLEDGES  
RECEIPT OF STATUTORY NOTICE, AND DEMANDS  
SERVICE OF ALL PAPERS SUBMITTED HEREIN  
INCLUDING ALL ORDER, JUDGMENTS AND  
ENDORSEMENTS OF THE COURT, SAID NO OBJECTION  
IS CONDITIONED ON SUBMISSION OF THE MATTER  
TO THE COURT WITHIN 30 DAYS HEREAFTER.

  
ASSISTANT ATTORNEY GENERAL  
  
DATE 12-16-11

**Ruby Weston Manor  
Use of Sale Proceeds**

|   |                       |                    |
|---|-----------------------|--------------------|
| Real Estate Closing Proceeds              |                       | 26,500,000         |
| <b>Paid at Closing</b>                    |                       |                    |
| Mortgage Payoff                           | (19,500,000)          |                    |
| Final Water/Utilities Bills               | (65,000)              |                    |
| Closing Expenses                          | (408,425)             |                    |
| 1199 SEIU Judgment (settlement amt)       | <u>(1,500,000) *</u>  |                    |
|   |                       | (21,471,425)       |
| <b>Credits to Buyer</b>                   |                       |                    |
| A/P Assumed by Buyer                      | (1,064,575) **        |                    |
| Third Party Liability Assumed by Buyer    | <u>(3,183,881) **</u> |                    |
|   |                       | (4,248,456)        |
| <br>Net Proceeds from Real Estate Closing |                       | <br><u>780,119</u> |

\*Subject to 1199 SEIU approval.

\*\*As may be adjusted by amounts accrued between submission of petition and closing.

SEQUENCE NO. ~~135~~

At a term of the Supreme Court, held in and for the County of Queens on the 21 day of May, 2013.

PRESENT: HON. ALLAN B. WEISS *For* HON. DENIS J. BUTLER

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

In the Matter of the Application

OF

RUBY WESTON MANOR,

Petitioner,

For an Order Pursuant to Sections 510 and 511 of the New York Not-for-Profit Corporation Law

**ORDER**

Index No. 9484/2013

2013 MAY 22 11:09:26

QUEENS COUNTY CLERK  
FILED & RECORDED

Upon reading and filing of the Verified Petition (the "Petition") of Ruby Weston Manor (the "Petitioner"), dated April 3, 2013, requesting an Order, pursuant to Sections 510 and 511 of the Not-Fur-Profit Corporation Law, approving the sale of all or substantially all of the assets of the Petitioner as described in the Petition herein, in particular the sale of assets relating to the operation of a skilled nursing facility with 240 beds including, but not limited to, furniture, fixtures, equipment and business value, located at 2237 Linden Boulevard, Brooklyn, County of Kings, State of New York (the "Facility"), for the sum of \$4,500,000, to Alliance Health Associates, Inc., as more fully set forth in the Asset Purchase Agreement, First Amendment to Asset Purchase Agreement and Second Amendment to Asset Purchase Agreement included as exhibits to the Petition and as more fully described in the Petition, in accordance with Sections 510 and 511 of the Not-for-Profit Corporation Law.

NOW, THEREFORE, it is hereby

ORDERED, that Petitioner is hereby authorized to transfer the assets relating to the operation of a skilled nursing facility with 240 beds including, but not limited to, furniture,

fixtures, equipment and business value, located at 2237 Linden Boulevard, Brooklyn, County of Kings, State of New York (the "Facility") to Alliance Health Associates, Inc., for the sum of \$4,500,000, as described in the Petition; and it is further

ORDERED, that Petitioner shall use the proceeds from the sale of the Facility to pay certain liabilities as set forth in Exhibit T to the Petition (the "Approved Liabilities"), a copy of which is attached to this Order; and it is further

ORDERED, that any net proceeds remaining after payment of the Approved Liabilities shall be deposited into an escrow fund maintained by a third-party escrow agent pending dissolution and shall not be distributed without further order of this Court on notice to the Attorney General; and it is further

ORDERED, that that Petitioner may make interim disbursements from such escrow account prior to further submission to this Court only upon the written consent of the Attorney General; and it is further

ORDERED, that a signed copy of this Order will be provided to the Attorney General; and it is further

ORDERED, that the Attorney General's office will be notified when the transaction has been completed, abandoned or is still pending after ninety (90) days of the date of this Order.

Dated: 5/21/, 2013

ENTER:

[Signature]  
J.S.C.  
HON. ALLAN B. WEISS

2013  
MAY 21 9:16  
QUEEN'S COUNTY CLERK  
FILED & RECORDED

THE ATTORNEY GENERAL HEREBY APPEARS HEREIN, HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE, AND DEMANDS SERVICE OF ALL PAPERS SUBMITTED HEREIN INCLUDING ALL ORDER, JUDGMENTS AND ENDORSEMENTS OF THE COURT. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

[Signature]  
[Signature]

14310625.2

Paula Gellman 5-20-13  
ASSISTANT ATTORNEY GENERAL DATE  
Paula Gellman

**Ruby Weston Manor  
Liabilities to Pay at Closing**

|                            |                     |
|----------------------------|---------------------|
| Marcus Garvey Nursing Home | \$300,000.00        |
| Simplex Grinell Settlement | 1,000.00            |
| Tumclty & Spler LLP        | 23,520.00           |
| Nixon Peabody LLP          | 93,563.09           |
| Escrow Agent Fees          | <u>10,000.00</u>    |
|                            | <u>\$428,083.09</u> |

**Written Consent  
of the  
Ruby Weston Manor Board of Directors**

The undersigned being all of the directors of Ruby Weston Manor ("RWM") adopt the following by unanimous written consent:

WHEREAS, RWM was formed to operate a nursing home in Brooklyn, New York, and in 2013, RWM sold its facility and real estate (the "Sale"); and

WHEREAS, the proceeds from the Sale were deposited in escrow accounts until certain liabilities were resolved; and

WHEREAS, RWM also received universal settlement funds from the New York State Department of Health, which funds are currently being held in escrow at Bond Schoeneck & King PLLC; and

WHEREAS, the RWM Board desires to begin winding up its affairs and distribute its remaining assets so that the mission and purposes of RWM may continue in the Brooklyn community; and

WHEREAS, a summary regarding the current status of the assets and liabilities of RWM as well as the proposed distribution of remaining assets was previously provided to the Board of Directors; and

WHEREAS, after discussions with the New York State Attorney General, Charities Bureau, the Board of Directors decided to modify the proposed distribution of assets previously approved by the Board.

NOW, THEREFORE, it is

RESOLVED: that the proposed Plan of Dissolution and Distribution of Assets in the form attached to this written consent is approved; and it is further

RESOLVED: that the officers of RWM are each hereby authorized and empowered to execute such documents, to make necessary, non-material amendments to such documents and to do any and all acts necessary to effectuate the foregoing resolutions; and it is further

**[REMAINDER OF PAGE LEFT BLANK]**

IN WITNESS WHEREOF, the undersigned have signed this consent and direct that it be filed with the minutes of the proceedings of Ruby Weston Manor.

Dated: 6/6/2018

/s/ Howard K. Williams  
Howard K. Williams

Dated: 6/13/2018

/s/ Colin L. McCammon  
Colin L. McCammon

Dated: \_\_\_\_\_

\_\_\_\_\_  
Dr. Bertholet Desir

IN WITNESS WHEREOF, the undersigned have signed this consent and direct that it be filed with the minutes of the proceedings of Ruby Weston Manor.

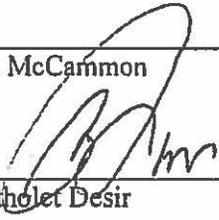
Dated: \_\_\_\_\_

\_\_\_\_\_  
Howard K. Williams

Dated: \_\_\_\_\_

\_\_\_\_\_  
Colin L. McCammon

Dated: 7/5/18

  
\_\_\_\_\_  
Dr. Bertholet Desir

**PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS  
OF  
RUBY WESTON MANOR**

The Board of Directors of Ruby Weston Manor (“RWM”) has considered the advisability of voluntarily dissolving RWM and has determined that dissolution is in the best interests of RWM.

1. RWM’s current assets consist of approximately \$5.3 million in funds deposited in escrow accounts at CitiBank, as well as approximately \$292,000 in universal settlement funds from the New York State Department of Health, which funds are currently held by Bond Schoeneck & King PLLC.
2. RWM has liabilities of \$37,248, and a description of those liabilities is as follows:

| <u>Due To</u>                 | <u>Amount</u> | <u>Service</u>   |
|-------------------------------|---------------|--|
| Bond Schoeneck & King PLLC    | \$31,187      | Legal Fees Fees associated with NYS Department of Health litigation matter |
| Ruffo Tabora Mainello & McKay | \$ 5,906      | Legal Fees associated with NYS Department of Health litigation matter      |
| Heveron & Company             | \$ 650        | Accounting Fees for 2017 IRS and NYS filings                               |

3. RWM proposes to distribute its remaining assets in the approximate amount of \$ \_\_\_\_\_ to Brooklyn Community Foundation (the “Recipient”).
4. The Recipient is a charitable organization engaged in activities substantially similar to RWM’s activities consistent with any specific dissolution requirement specified in RWM’s Certificate of Incorporation (as amended). The Board reviewed the Recipient’s Certificate of Incorporation, including all filed amendments, as well as the Recipient’s 2016 Form 990 as part of the approval process. The Board also confirmed that the Recipient is current on its registration and financial filings with the Charities Bureau.
5. In addition to Attorney General, approval of this Plan is required by the New York State Department of Health and a copy of the approval will be attached to the Verified Petition submitted to the Attorney General.
6. Within two hundred seventy days after the date on which the Attorney General approves this Plan, RWM shall carry it out. After the Plan is carried out, a Certificate of Dissolution shall be signed by an authorized officer of RWM and all required approvals shall be attached thereto.

**Exhibit J**

DOH Consent

*Pending*



CERTIFICATE OF DISSOLUTION  
OF  
RUBY WESTON MANOR

*(Name of Corporation)*

Under Section 1003 of the Not-for-Profit Corporation Law

**FIRST:** The name of the corporation is

Ruby Weston Manor

If the name of the corporation has been changed, the name under which it was formed is

**SECOND:** The certificate of incorporation was filed with the Department of State on  
09/13/91

**THIRD:** The name and address of each officer and director of the corporation is:

Howard K. Williams - 405 Blvd. Media Luna, Veredas Del Parque 3104, Carolina, PR 00987 - Director/Chair  
Colin McCammon - 1181 President Street, Brooklyn, New York 11225 - Director/Secretary  
Dr. Bertholet Desir - 14 Brower Lane, Rockville Centre, New York 11570 - Director

**FOURTH:** The corporation is a *(check the appropriate box)*

charitable corporation  non-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

*(Check the appropriate statement)*

assets which are legally required to be used for a particular purpose.  
 no assets which are legally required to be used for a particular purpose.

**SIXTH:** The corporation elects to dissolve.

**SEVENTH:** *(Check the appropriate statement)* The dissolution was authorized by

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

**EIGHTH:** *(Check the appropriate statement)*

- 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 approval of the Attorney General is attached.
- 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 a Justice of the Supreme Court. A copy of the Court's Order is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

X   
*(Signature)*

Colin McCammon

*(Print or Type Name of Signer)*

Secretary/ Director

*(Capacity of Signer)*



CERTIFICATE OF DISSOLUTION  
OF  
RUBY WESTON MANOR

*(Name of Corporation)*

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: NIXON PEABODY, LLP

Address: 1300 CLINTON SQUARE

City, State and Zip Code: ROCHESTER, NEW YORK 14604

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at [www.dos.ny.gov](http://www.dos.ny.gov).
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is \$30, made payable to the Department of State.

For DOS Use Only