

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

**AGENDA**

*August 2, 2018*

*Immediately following the Committee on Codes, Regulations and Legislation Meeting  
(Codes scheduled to begin at 10:00 a.m.)*

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

**I. INTRODUCTION OF OBSERVERS**

Jeffrey Kraut, Chair

**II. APPROVAL OF MINUTES**

June 7, 2018 Meeting Minutes

**III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

**A. Report of the Department of Health**

Sally Dreslin, Executive Deputy Commissioner of Health

**B. Report of the Office of Primary Care and Health Systems Management Activities**

Daniel Sheppard, Deputy Commissioner, Office of Primary Care and Health Systems Management

**IV. PUBLIC HEALTH SERVICES**

**Report on the Activities of the Public Health Committee**

Jo Ivey Boufford, M.D., Chair of the Public Health Committee

**V. REGULATION**

**Report of the Committee on Codes, Regulations and Legislation**

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

**For Adoption**

18-04 Amendment of Parts 402, 403, 700, 763, 765, 766, 793, 794, and 1001 of Title 10 NYCRR (Criminal History Record Checks and Advanced Home Health Aides)

**\*\*\*To Be Distributed Under Separate Cover\*\*\***

**For Information**

18-10 Amendment of Sections 405.7 and 751.9 of Title 10 NYCRR (Patients' Bill of Rights)

**VI. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS**

**Report of the Committee on Establishment and Project Review**

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

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

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

**CON Applications**

**Hospice Services - Construction**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>           | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|--|---------------------------------------|
| 1. | 181260 C             | Hudson Valley Hospice<br>(Dutchess County) | Contingent Approval                   |

**Residential Health Care Facilities - Construction**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>      | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|---------------------------------------|---------------------------------------|
| 1. | 181155 C             | Oxford Nursing Home<br>(Kings County) | Contingent Approval                   |

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

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

**NO APPLICATIONS**

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

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

**NO APPLICATIONS**

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

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

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

**CON Applications**

**Ambulatory Surgery Center - Construction**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|--|---------------------------------------|
| 1. | 181206 C             | OMNI Surgery Center<br>(Oneida County)<br>Dr. Martin – Abstained at EPRC | No Recommendation                     |

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

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

**CON Applications**

**Ambulatory Surgery Centers – Establish/Construct**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>             | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|--|---------------------------------------|
| 1. | 172395 E             | Queens Endoscopy ASC, LLC<br>(Queens County) | Contingent Approval                   |

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

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|--|---------------------------------------|
| 1. | 181112 E             | Clinton Square Operations, LLC<br>d/b/a Bishop Rehabilitation<br>and Nursing Center<br>(Onondaga County) | Contingent Approval                   |
| 2. | 181144 E             | Park Terrace Care Center<br>(Queens County)  | Approval                              |
| 3. | 181165 E             | Queens Nassau Rehabilitation and<br>Nursing Center<br>(Queens County)                                    | Approval                              |

## Certificates

### Restated Certificate of Incorporation

**Applicant**

The Frederick Ferris Thompson Hospital

**E.P.R.C. Recommendation**

Approval

### Certificate of Dissolution

**Applicant**

Genesee Valley Group Health Association

**E.P.R.C. Recommendation**

Approval

Ruby Weston Manor

Approval

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

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

### **CON Applications**

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

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|--|---------------------------------------|
| 1. | 172313 E             | Kingston NH Operation LLC d/b/a<br>Ten Broeck Center<br>for Rehabilitation & Healing<br>(Ulster County)<br>Ms. Carver-Cheney – Recusal | Contingent Approval                   |
| 2. | 181046 E             | Martine Center for Rehabilitation<br>and Nursing<br>(Westchester County)<br>Dr. Kalkut - Recusal                                       | Contingent Approval                   |
| 3. | 181182 E             | MARNC Operating LLC<br>d/b/a Massena<br>Rehabilitation & Nursing Center<br>(St. Lawrence County)<br>Mr. La Rue – Recusal               | Contingent Approval                   |

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

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

**CON Applications**

**Ambulatory Surgery Center – Establish/Construct**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|--|---------------------------------------|
| 1. | 181152 E             | Roosevelt Surgery Center, LLC<br>d/b/a Manhattan Surgery Center<br>(New York County)<br>Dr. Martin – Abstained at EPRC | Approval                              |

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

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

**CON Applications**

**Acute Care Services – Establish/Construct**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|--|---------------------------------------|
| 1. | 181251 E             | South Nassau Communities<br>Hospital<br>(Nassau County)<br>Dr. Martin – Recusal<br>Dr. Bennett – Opposed at EPRC | Contingent Approval                   |

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

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|--|---------------------------------------|
| 1. | 181084 E             | Willcare<br>(Erie County)<br>Ms. Baumgartner - Recusal<br>Dr. Bennett – Abstained at EPRC<br>Dr. Gutiérrez - Abstained at EPRC | Contingent Approval                   |

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

**CON Applications**

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

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|--|---------------------------------------|
| 1. | 172198 E             | Leroy Operating LLC d/b/a Leroy Village Green Nursing and Rehabilitation Center (Genesee County) | Disapproval                           |

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

**HOME HEALTH AGENCY LICENSURES**

**Affiliated with Assisted Living Programs (ALPs)**

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

**Changes of Ownership with Consolidation**

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

**VII. NEXT MEETING**

September 27, 2018 - NYC  
October 11, 2018 – NYC

**VIII. ADJOURNMENT**

**State of New York**  
**Public Health and Health Planning Council**

**Minutes**  
**June 7, 2018**

The meeting of the Public Health and Health Planning Council was held on Thursday, June 7, 2018 at the New York State Department of Health Offices, 90 Church Street, 4<sup>th</sup> Floor CR 4A/4B. Dr. Gary Kalkut presided.

**COUNCIL MEMBERS PRESENT**

|                            |                                  |
|----------------------------|----------------------------------|
| Ms. Judy Baumgartner       | Dr. Glenn Martin                 |
| Dr. John Bennett           | Ms. Ellen Rautenberg             |
| Dr. Howard Berliner        | Mr. Peter Robinson               |
| Dr. Lawrence Brown         | Ms. Nilda Soto                   |
| Ms. Kathleen Carver-Cheney | Dr. Anderson Torres              |
| Dr. Angel Gutierrez        | Dr. Patsy Yang                   |
| Dr. Gary Kalkut            | Commissioner Zucker – Ex-officio |
| Mr. Harvey Lawrence        |                                  |

**DEPARTMENT OF HEALTH STAFF PRESENT**

|  |  |
|--|--|
| Mr. Charles Abel                           | Mr. George Macko – via video Albany    |
| Dr. Jeanne Alicandro                       | Mr. Eric Mantey – via video Albany     |
| Ms. Suzanne Barg – via video Albany        | Ms. Sylvia Pirani                      |
| Mr. Christopher Chin – via video Albany    | Ms. Tracy Raleigh                      |
| Ms. Barbara DelCogliano – via video Albany | Ms. Gilda Riccardi – via video Albany  |
| Ms. Alejandra Diaz – via video Albany      | Mr. Daniel Sheppard                    |
| Dr. Marcus Friedrich                       | Mr. Mark Schweitzer – via video Albany |
| Mr. Mark Furnish                           | Ms. Lisa Thomson                       |
| Mr. Brad Hutton                            | Ms. Lisa Ullman                        |
| Ms. Celeste Johnson                        | Mr. Richard Zahnleuter                 |
| Ms. Colleen Leonard                        |  |

**INTRODUCTION**

Dr. Kalkut called the meeting to order and welcomed Commissioner Zucker, Council members, meeting participants and observers.

**APPROVAL OF THE MINUTES OF APRIL 12, 2018**

Dr. Kalkut asked for a motion to approve the April 12, 2018 Minutes of the Public Health and Health Planning Council meeting. Dr. Gutiérrez motioned for approval which was seconded by Dr. Torres. The minutes were unanimously adopted. Please refer to page 3 of the attached transcript.

**REGULATION**

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

**Report of the Committee on Codes, Regulation and Legislation**

**For Information**

18-03 Amendment of Section 405.4 of Title 10 NYCRR (Medical Staff – Sepsis Protocols)

18-04 Amendment of Parts 402, 403, 700, 763, 765, 766, 793, 794, and 1001 of Title 10 NYCRR (Criminal History Record Checks and Advanced Home Health Aides)

Dr. Gutiérrez described For Information the proposed Amendment of Section 405.4 of Title 10 NYCRR (Medical Staff – Sepsis Protocols) and the proposed Amendment of Parts 402, 403, 700, 763, 765, 766, 793, 794, and 1001 of Title 10 NYCRR (Criminal History Record Checks and Advanced Home Health Aides). Please see pages 3 and 4 of the transcript.

Dr. Kalkut then moved to the next item on the agenda and introduced Mr. Robinson to give the Report of the Committee on Establishment and Project Review.

**PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS**

**Report of the Committee on Establishment and Project Review**

Mr. Peter Robinson, Chair, Establishment and Project Review Committee

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

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

**CON Applications**

**Acute Care Services - Construction**

| <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>                     | <b><u>Council Action</u></b> |
|----------------------|--|------------------------------|
| 181108 C             | White Plains Hospital Center<br>(Westchester County) | Contingent Approval          |

Mr. Robinson called application 181108 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 45 of the attached transcript.

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

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

**CON Applications**

**Acute Care Services - Construction**

| <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>                                | <b><u>Council Action</u></b> |
|----------------------|---|------------------------------|
| 172064 C             | NYU Langone Hospitals<br>(Kings County)<br>Dr. Kalkut – Recusal | Contingent Approval          |

Mr. Robinson called application 172064 and noted for the record that Dr. Kalkut has a conflict and has exited the meeting room. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with Dr. Kalkut’s recusal. Dr. Kalkut returned to the meeting room. Please see pages 5 and 6 of the attached transcript.

**Acute Care Services - Construction**

| <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>  | <b><u>Council Action</u></b> |
|----------------------|---|------------------------------|
| 181054 C             | United Memorial Medical Center<br>Bank Street Campus<br>(Genesee County)<br>Ms. Baumgartner - Recusal | Approval                     |

Mr. Robinson called application 181054 and noted that Ms. Baumgartner has declared a conflict and has exited the meeting room. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with Ms. Baumgartner’s recusal. Ms. Baumgartner returned to the meeting room. Please see page 6 of the attached transcript.

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

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

**NO APPLICATIONS**

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

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

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

**CON Applications**

**Acute Care Services - Construction**

| <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>Council Action</u></b> |
|----------------------|--|------------------------------|
| 181051 C             | South Nassau Communities Hospital<br>(Nassau County)<br>Dr. Martin - Recusal | Contingent Approval          |

Mr. Robinson called application 1810511 and noted that Dr. Martin has declared a conflict and has exited the meeting room. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with Dr. Martin's recusal. Dr. Martin returned to the meeting room. Please see pages 6 and 7 of the attached transcript.

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

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

**CON Applications**

**Ambulatory Surgery Centers – Establish/Construct**

| <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>Council Action</u></b> |
|----------------------|--|------------------------------|
| 181066 B             | Greece ASC, LLC d/b/a<br>Cornerstone Eye Surgery Center<br>(Monroe County) | Contingent Approval          |

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

| <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>                                 | <b><u>Council Action</u></b> |
|----------------------|--|------------------------------|
| 172413 B             | Oneida Health Roswell Park<br>Oncology, LLC<br>(Madison County)  | Contingent Approval          |
| 172423 B             | MediDental Group LLC d/b/a<br>MediDental Care<br>(Queens County) | Contingent Approval          |
| 181137 E             | CFDSHC, Inc.<br>(Albany County)                                  | Contingent Approval          |

**Hospice Services – Establish/Construct**

| <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>                                 | <b><u>Council Action</u></b> |
|----------------------|--|------------------------------|
| 181065 E             | The Caring Coalition of Central<br>New York<br>(Onondaga County) | Contingent Approval          |

Mr. Robinson called applications 181066, 172413, 172423, 181137, and 181065 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries. Please see pages 7 through 9 of the transcript.

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

| <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>Council Action</u></b> |
|----------------------|--|------------------------------|
| 171416 E             | Oak Hill Operating Co., LLC d/b/a<br>Oak Hill<br>Rehabilitation and Nursing Care<br>Center<br>(Tompkins County)        | Contingent Approval          |
| 171417 E             | River View Facility Operations,<br>LLC d/b/a River View<br>Rehabilitation and Nursing Care<br>Center<br>(Tioga County) | Contingent Approval          |

Mr. Robinson called application 171416 and 171417 and noted that Ms. Carver-Cheney has declared a conflict and has exited the meeting room. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with Ms. Carver-Cheney’s recusal. Ms. Carver-Cheney returned to the meeting room. Please see pages 9 and 10 of the attached transcript.

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

| <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>Council Action</u></b> |
|----------------------|--|------------------------------|
| 172292 E             | Grand Mohawk Valley, LLC d/b/a<br>The Grand Rehabilitation<br>and Nursing at Mohawk<br>(Herkimer County)           | Contingent Approval          |
| 181218 E             | Heritage Operating Associates,<br>LLC d/b/a<br>The Grand Rehabilitation<br>and Nursing at Utica<br>(Oneida County) | Contingent Approval          |

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

| <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>Council Action</u></b> |
|----------------------|--|------------------------------|
| 181047 E             | Gamzel NY, Inc. d/b/a Centers<br>Home Health Care of Downstate<br>(Kings County) | Contingent Approval          |
| 181085 E             | QC – Medi New York, Inc. d/b/a<br>Kindred at Home<br>(Saratoga County)           | Contingent Approval          |

**Certificates**

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

| <b><u>Applicant</u></b>                 | <b><u>Council Action</u></b> |
|---|------------------------------|
| Century Medical and Dental Center, Inc. | Approval                     |
| St. James Mercy Foundation, Inc.        | Approval                     |
| St. James Mercy Hospital                | Approval                     |

**Certificate of Amendment of the Articles of Organization**

| <b><u>Applicant</u></b> | <b><u>Council Action</u></b> |
|-------------------------|------------------------------|
| Yonkers Gardens LLC     | Approval                     |

**Certificate of Dissolution**

| <u>Applicant</u>         | <u>Council Action</u> |
|--------------------------|-----------------------|
| Keser Services, Inc.     | Approval              |
| Menorah Foundation, Inc. | Approval              |

Mr. Robinson called applications 172292, 181218, 181047, 181085, and the above listed certificates. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries. Please see pages 10 and 11 of the transcript.

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

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

**CON Applications**

**Ambulatory Surgery Centers – Establish/Construct**

| <u>Number</u> | <u>Applicant/Facility</u>  | <u>Council Action</u> |
|---------------|--|-----------------------|
| 181103 B      | WNY Medical Management<br>(Erie County)<br>Ms. Baumgartner – Recusal | Contingent Approval   |

Mr. Robinson called application 181103 and noted that Ms. Baumgartner has declared a conflict and has exited the meeting room. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with Ms. Baumgartner’s recusal. Ms. Baumgartner returned to the meeting room. Please see pages 11 through 13 of the attached transcript.

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

| <u>Number</u> | <u>Applicant/Facility</u>                                 | <u>Council Action</u> |
|---------------|---|-----------------------|
| 181119 E      | Premium Health<br>(Kings County)<br>Dr. Kalkut - Interest | Approval              |

Mr. Robinson called applications 181119 and noted for the record that Dr. Kalkut has declared an interest. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries. Please see pages 13 and 14 of the transcript.

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

| <u>Number</u> | <u>Applicant/Facility</u>  | <u>Council Action</u> |
|---------------|--|-----------------------|
| 172293 E      | Grand Batavia, LLC d/b/a<br>The Grand Rehabilitation<br>and Nursing at Batavia<br>(Genesee County)<br>Ms. Baumgartner - Interest | Contingent Approval   |

Mr. Robinson called applications 172293 and noted for the record that Ms. Baumgartner has declared an interest. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries. Please see page 14 of the transcript.

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

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

**NO APPLICATIONS**

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

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

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

**CON Applications**

**Ambulatory Surgery Centers – Establish/Construct**

| <u>Number</u> | <u>Applicant/Facility</u>   | <u>Council Action</u> |
|---------------|---|-----------------------|
| 181278 E      | Liberty Endoscopy Center<br>(New York County)<br>Dr. Martin – Recusal | Approval              |

Mr. Robinson called application 181278 and noted that Dr. Martin has declared a conflict and has exited the meeting room. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with Dr. Martin’s recusal. Dr. Martin returned to the meeting room. Please see pages 14 and 15 of the attached transcript.

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

| <u>Number</u> | <u>Applicant/Facility</u>  | <u>Council Action</u> |
|---------------|--|-----------------------|
| 1. 181120 E   | Chapin Acquisition I, LLC d/b/a Jamaica Estates Nursing and Rehabilitation Center (Queens County)<br>Mr. La Rue – Recusal (not present at the meeting) | Contingent Approval   |

Mr. Robinson called application 181120 and noted for the record that Mr. La Rue had declared a conflict and is not present at the meeting. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries. Please see pages 15 and 16 of the transcript.

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

| <u>Number</u> | <u>Applicant/Facility</u>                    | <u>Council Action</u>     |
|---------------|--|---------------------------|
| 1. 171041 E   | Shining Star Home Health Care (Kings County) | Deferred two PHHPC Cycles |

Mr. Robinson called applications 171041 and motioned for Deferral for two PHHPC Cycles. Dr. Gutiérrez seconded the motion. The motion to defer carried. Please see page 16 of the attached transcript.

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

| <u>Number</u> | <u>Applicant/Facility</u>   | <u>Council Action</u> |
|---------------|---|-----------------------|
| 1. 172408 E   | Prospect Acquisition III, LLC d/b/a Responsive Home Health Care (Kings County)<br>Mr. La Rue – Recusal (not present at the meeting) | Contingent Approval   |
| 181191 E      | Always There Home Care (Ulster County)<br>Mr. La Rue – Recusal (not present at the meeting)   | Contingent Approval   |

Mr. Robinson called applications 172408 and 181191 and noted for the record that Mr. La Rue had declared a conflict and is not present at the meeting. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries. Please see pages 16 and 17 of the transcript.

**HOME HEALTH AGENCY LICENSURES**

**New LHCSAs – Affiliated with Assisted Living Programs (ALPs)**

|        |  |          |
|--------|--|----------|
| 162303 | Western NY Care Services, LLC<br>(Erie County)<br>Ms. Baumgartner – Interest       | Approval |
| 171385 | Home Care for Generations, LLC<br>d/b/a Generations Home Care<br>(Rockland County) | Approval |
| 172286 | Magnolia Home Care Services,<br>(Rockland County)                                  | Approval |

Mr. Robinson called applications 162303, 171385 and 172286 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries. Please see pages 17 and 18 of the transcript.

**New LHCSAs – Affiliated with Assisted Living Programs (ALPs)**

|        |  |                     |
|--------|--|---------------------|
| 161033 | 2600 Niagara Falls Boulevard AL<br>Operating Company, LLC d/b/a<br>Elderwood Home Care at<br>Wheatfield<br>(Niagara County)<br>Ms. Baumgartner – Recusal | Contingent Approval |
| 162292 | 571 Main Street Operating<br>Company, LLC<br>d/b/a Elderwood Home Care at<br>Williamsville<br>(Erie County)<br>Ms. Baumgartner – Recusal                 | Contingent Approval |

Mr. Robinson called applications 161033 and 12292 72293 and noted for the record that Ms. Baumgartner has declared a conflict and has exited the meeting room. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries with Ms. Baumgartner’s recusals. Ms. Baumgartner returned to the meeting room. Please see pages 18 and 19 of the transcript.

## Dialysis Centers – Establish/Construct

|    | <u>Number</u> | <u>Applicant/Facility</u>  | <u>Council Action</u> |
|----|---------------|--|-----------------------|
| 1. | 172364 E      | True North IV DC, LLC<br>(Queens County)<br>Mr. Kraut – Recusal (not present<br>at the meeting)<br>Dr. Strange – Recusal (not present<br>at the meeting) | Tabled                |
| 2. | 172411 E      | True North V DC, LLC<br>(Kings County)<br>Mr. Kraut – Recusal (not present<br>at the meeting)<br>Dr. Strange – Recusal (not present<br>at the meeting)   | Tabled                |

Mr. Robinson called applications 172364 and 172411 and motioned for approval. Dr. Gutiérrez seconded the motion. There was discussion among the members. Dr. Kalkut suspended the discussion and introduced Dr. Zucker to give the Department’s report. Please see pages 19 through 32 of the attached transcript.

### **REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

Next, Dr. Kalkut introduced Dr. Zucker to give a report on the Department of Health report.

#### Flu

Dr. Zucker began his report and spoke on the topic of the flu and stated that recently declared that flu no longer is prevalent in New York State and that the healthcare workers in the State who are not vaccinated against influenza are no longer required to wear masks in the areas where patients are typically present. Governor Cuomo called on the Health Department to take very aggressive actions to increase the vaccination rate and an Executive Order was issued that suspended the section of State Education Law that limits the authority of pharmacists to administer immunizations to anyone under the age of 18 and anyone from age two on up and authorized enhanced reimbursement for counties statewide to further expand their flu vaccination efforts at the local level.

## Lyme and Tick-Borne Diseases

Dr. Zucker advised that the Governor launched a Lyme and Tick-Borne Disease Control Plan. The efforts will focus on tick population control methods, increasing public awareness and access to available data and created a working group to participate in Lyme disease summit in the coming weeks. Tick control methods will include the application of an eco-friendly tick control treatment on the park lens in the Hudson Valley, in the Capital Region, the Southern Tier, where the public is at the highest risk of exposure and Lyme disease. Additionally the State will expand the use of a forposted tickicide at deer treatment feeding stations that help to control tick spread by the white-tailed deer. While the deer feed on the corn at the station, there are these treated roller brushes with insecticide that go against the animal's neck, the head and ears where many of the adult ticks tend to feed. The Department is also developing a campaign focused on disseminating information about tick borne diseases and prevention, specifically targeting the high risk groups such as hunters and hikers. This issue of ticks is something which has been paramount in the years past and the Department is working hard on it again this year. The Department is also actively pursuing an exciting innovative private research partnership to develop a better diagnostic test that will ultimately lead to more effective treatments. Finally, the Department has posted current and retrospective tick collection and testing results to our health data New York website which is opening up the data to the public so that the public can get as much information as they need. This information was previously shared just with local health departments and state park managers to aid in their education and prevention campaigns, and we want more transparency. Given the considerable interest in this information from providers from researchers and advocates, the Department has obviously made this information available to the public.

## Health Connector

Dr. Zucker next announced that the Department recently launched the New York State Health Connector which is a web-based application that allows quick access to a wide range of health information such as the cost of various medical procedures, the frequency of those procedures that are performed at hospitals, and this empowers consumers to make more informed healthcare decisions. It is powered by the All Payer database. This new website which also features healthcare services, it looks at utilization data and it's a tremendous resource for policy makers, for researchers who are interested in identifying the needs and the resources in the communities throughout the state as well.

## eWic

Dr. Zucker also announced there was another new and exciting technology breakthrough at the Department which was the launch of eWIC, an electronic benefit transfer card which eliminates paper checks and provides a more convenient way for families on the Woman, Infants, and Children's program to shop for WIC foods. eWIC is currently in the pilot launch phase, has been implemented in the capital region and we expect to have the technology introduced statewide by this time next year. The person who used this went through the line

literally within minutes and she had said it took her sometimes 15 to 20 minutes to get through the line. eWIC works like a debit card. It allows shopping with WIC benefits more discreet, it will allow WIC vendors to be reimbursed faster. The new eWIC technology allows families to roll over any unused benefits from a shopping trip towards future use. In addition to eWIC, the Department has launched a new mobile application called WIC TO GO to make shopping for WIC foods easier. WIC TO GO allows users to scan the barcode on a product to see if it is WIC eligible. Users can also check their account balance, they can view their upcoming WIC appointments, and they can locate WIC vendors and clinics.

### New York State of Health

Dr. Zucker noted that the Department has also wrapped up another successful open enrollment period for the New York State of Health, the state's official health plan marketplace. This was the fifth open enrollment period and over 4.3 million New Yorkers enrolled in the plan between November 1, 2017 and January 31, 2018. The significant take-away from this year's enrollment period was the combined qualified health plan and essential plan enrollment which increased to nearly a million people. A reflected increase of about 84,000 between 2017 and 2018. The marketplace programs enrollment increased by nearly 700,000 in the past year, and New York has seen a significant corresponding reduction in the number of uninsured from 10 percent in 2013 when the marketplace opened to below 5 percent in 2017.

### Medicaid Redesign

Dr. Zucker announced that the Medicaid redesign efforts also reached a significant milestone recently. The Department excelled in the first federal Medicaid performance review. The review focused on four key statewide performance measures. Statewide metrics performance, success of statewide projects, total Medicaid spending, and managed care plan expenditures. As part of the program established in 2014, New York was required to submit a statewide report card to CMS for detailing performance.

### New York State Pain Management

Dr. Zucker stated that in May the Department convened the first meeting of the New York State Pain Management Steering Committee. The purpose of this Committee is to work with clinicians and other stakeholders to make recommendations on pain management issues while taking into consideration the CDC guidelines for prescribing opioids for chronic pain.

### Cancer Prevention

Dr. Zucker stated that the Governor's Office announced more than \$43 million will be awarded to support cancer prevention and early detection programs statewide over the next five years. The programs receiving these funds participating the cancer services program which aims to reduce disparities in breast cancer, cervical, colorectal cancer incidences and mortality through free cancer screening for low income populations. The cancer prevention in action program which is tasked with engaging the community stakeholders to reinforce health behaviors and

reduce cancer risks. The Department recognizes there is a lot of challenges on this. The Governor has charged the Department to move forward on addressing the issues of cancer and to make sure that New York is tackling it on the small fronts

Summer Heat

Lastly, Commissioner Zucker noted that summer is around the corner and heat wave will surely happen at some point. The exposure to heat waves and extreme heat events can be harmful to health and we know that our friends and our neighbors with preexisting conditions, which small children and the elderly, are most vulnerable during these conditions. There are those on a fixed income or they do not have resources and may not turn on the air conditioner when it gets really hot and if they are elderly leads to some of the challenges. Dr. Zucker encouraged people to check on our neighbors. The Department of Health’s research indicates that in the past decade alone the average summer temperature has risen about one to two degrees in most areas of New York State and the number of days with maximum temperatures above 95 has been increasing, putting New Yorkers at much higher risk of heat related illnesses. New York offers home energy assistance cooling benefit, assistance program and maintain an interactive map of the public cooling centers across the state that are available in case there is a heat wave. There is information on the web and the Department is available to address concerns you may have in your community.

Commissioner Zucker concluded his report. To read the complete report, please see pages 32 through 43 of the attached transcript.

**Dialysis Centers – Establish/Construct**

|    | <u>Number</u> | <u>Applicant/Facility</u>  | <u>Council Action</u> |
|----|---------------|--|-----------------------|
| 1. | 172364 E      | True North IV DC, LLC<br>(Queens County)<br>Mr. Kraut – Recusal (not present at the meeting)<br>Dr. Strange – Recusal (not present at the meeting) | Tabled                |
| 2. | 172411 E      | True North V DC, LLC<br>(Kings County)<br>Mr. Kraut – Recusal (not present at the meeting)<br>Dr. Strange – Recusal (not present at the meeting)   | Tabled                |

The Council returned to applications 172364 and 172411 with a motion for approval. The motion to approve failed. A second motion to disapprove the applications was made by Dr. Berliner and seconded by Ms. Rautenberg failed. The applications were tabled. Please see pages 43 through 51 of the transcript for the members complete discussion.

## **Office of Public Health Activities**

Dr. Kalkut introduced Mr. Hutton to give the Office of Public Health report.

Mr. Hutton spoke on the topics of maternal mortality, the new laboratory building for the Wadsworth Center and the Department's efforts to ensure that the Department is reaccredited by the Public Health Accreditation Board in 2019. Mr. Hutton also gave a report on the recent joint meeting for the Public Health Committee and the Ad Hoc Committee to Lead the Prevention Agenda.

Mr. Hutton stated that at the end of April, Governor Cuomo announced a series of initiatives aimed at addressing a high rate of maternal mortality in New York State especially among black women and other women of color. The main components of the new initiative include establishing a task force on maternal mortality. The taskforce will provide expert advice on improving maternal outcomes, addressing racial and economic disparities, and reducing the frequency of maternal mortality and morbidity in New York State. The second component is establishing a maternal mortality review board at the Governor's direction to review each maternal death in New York. The third initiative is to host the best practice summit with hospitals and OBGYNs. The summit will address statistics, best practices, community awareness, medical school curricula, graduate medical education, and practicing physician training with the goal of implementing immediate measures and identifying future action items to improve care and management. Coordinating organizations of finalizing details and other organizations will be invited soon. There will also be a pilot program for the expansion of Medicaid coverage for doulas. The Department will pilot the expansion of Medicaid coverage for doulas which are non-medical birth coaches to assist a woman before, during, and after childbirth if needed.

Mr. Hutton stated that another initiative is to support a centering pregnancy demonstration. New York will increase support for a program similar to doulas included in the Governor's State of the State. The first 1000 days of life initiative. It's known as centering pregnancy. Programs designed to enhance pregnancy outcomes through a combination of prenatal education and social support and has been associated with reduced incidence of preterm birth and low birth rate, as well as lower incidence of gestational diabetes and post-natal depression, higher breastfeeding rates and better interpregnancy. The Department will also be requiring continuing medical education calling on the state board of medicine to require appropriate practitioners to participate and continuing medical education on maternal mortality and disparate racial outcomes. The Department will also expand the long-standing New York State perinatal quality collaborative. This is a collaboration with hospitals across New York to review best practices to address most recently hemorrhaging and implementing new clinical guidelines to reduce maternal mortality.

Mr. Hutton discussed the Wadsworth Laboratory. Funds to build the new Wadsworth Center were approved as part of the 2018-19 state budget. \$600 million this year in addition to last year's \$150 million. The lab will be built in the capital district, but the exact location is still being finalized. Site decision is being based on multiple factors including the results of a study currently being performed by a local design and engineering firm.

Mr. Hutton spoke on the topic of reaccreditation by the Public Health Accreditation Board. The Department was accredited by the Public Health Accreditation Board in 2014 for five years. New York was the first large state health department to achieve this recognition. Several months ago, the Department kicked off our effort to be ready for reaccreditation in 2019. As part of the effort, the Department will need to demonstrate that the public health governing entity in our case PHHPC, is informed and engaged with the Department. Staff are working with Council staff to describe how the Department will inform you about our activities, programs, and public health challenges, and the Department will work with the Council to make informed decisions concerning health departments direction and public health policy.

Lastly, Mr. Hutton gave a brief report on the recent meeting of the Ad Hoc Committee to Lead the Prevention Agenda. The Department is in the process of updating the Prevention Agenda for the next six years under the direction of the Ad Hoc Committee. In February the Department reviewed data on the health status and proposed priorities, our focus areas and goals, and then we went out and collected feedback from stakeholders about those proposals. There were over 200 individuals and organizations respond to an online survey. Members of the Ad Hoc Committee conducted 20 or more in person meetings to collect additional feedback. Dr. Zucker also solicited feedback from several of our other State Agencies. The five revised priority areas are preventing chronic disease, promote a healthy and safe environment, promote healthy women, infants, and children, prevent infectious diseases, promote wellbeing and prevent mental and substance use disorders. There was also a lot of feedback on the effort to make healthy aging a cross-cutting principle of the updated plan. The next steps are that the Department will lead efforts to develop priority area-specific plans with measurable objectives, evidence-based interventions, and information on how the priorities supports healthy aging and addresses another cross-cutting area, the social determinants of health. There will be draft plans by Labor Day and the report will presented to PHHPC in the Fall for review and approval so that the next plan can be launched on time for January 2019.

Mr. Hutton concluded his report, to view the complete report, please see pages 51 through 60 of the attached transcript.

### **Office of Quality and Patient Safety**

Dr. Kalkut introduced Dr. Alicandro and Dr. Friedrich to give the Office of Quality and Patient Safety report.

Dr. Friedrich updated the Council on stroke care and New York State stroke designation program and presented a power point presentation. New York currently has 120 hospitals designated as stroke centers which is a voluntary program. EMS uses the designation from New York to then determine to which hospitals the stroke patients are being transported and so far, the data shows that over 90 percent of the stroke care in New York is happening in these New York State stroke designated centers. Clinical guidelines evolve, and this program has not been updated since the beginning in 2004. The Department has no guide in working through that program. The Department does not have the authority to be the only entity to designate, and that

lead to hospitals going beyond the New York State designation and going to these accreditation agencies and getting their own accreditation besides what we are doing here in New York State. There are approximately 10 hospitals what the Department calls comprehensive stroke centers, they provide a higher level of care. New York State currently does not recognize that accreditation. The Department feels the need to update the current approach and not only recognizing these primary stroke centers while thinking about other levels of care as well. Stroke care is important in New York and we must make sure that from the Department's way of thinking to provide the right framework for hospitals to function in higher levels of care capacities going forward.

Dr. Friedrich noted that that the Department would like to put regulations forward to think about the accreditation process to include other accrediting agencies and organizations. Stroke data is very important, ensuring every patient receives the right care at the right time at the right spot and with these interventions. The Department considers the operationalization of transfer processes for suspected stroke but does not interject since New York has a very wellfunctioning EMS services, but the Department could also provide some framework on how to make sure that in every area of the state there is enough support for these transfer services and stroke care. In an effort to discuss to consider regulations, the Department over the past couple of months went around the State and talking to several stakeholders. The hospital associations support changes in the regulations and revamping the New York State stroke designation program. The Department has a physician led stroke advisory group that meets on a regular basis and are going through certain baseline criteria of how this could look like. There will be a listening tour for rural hospitals providing them with a similar rationale behind what we are putting forth today and really partnering with one of the hospital.

Dr. Alicandro stated the Department is working on addressing some of the challenges and limitations that are in the stroke program both from listening to the stakeholders as well as the stroke advisory group. The interventions are really time critical and a short window to implement both thrombolysis that primary stroke centers implement, but also the advanced technology for endovascular clot retrieval really is time dependent as well, it is important that the patient gets to the right place in a timely fashion and those are the things the Department is developing in a proposal. In the proposed regulation, the Department would have oversight capability and more ability to oversee the entire system. New York State would set criteria for stroke center certification that the accrediting organizations would then use to go out and certify the programs. Those criteria are being worked on currently with our stroke advisory group. A key requirement that was put forward by most stakeholders and that the Department feels strongly about is that the Department continue to have access to the comprehensive data that the Department receives now from the primary centers, but would receive them from all levels of centers as well as measurement of time intervals in transfer arrangements so the Department can make certain the system is functioning appropriately to get patients the time critical care they need. The regulation would require that stroke centers participate in quality initiatives around stroke care. There is currently the Coverdale Program which is a quality improvement collaborative that about half of the hospitals participate in. There would also be a requirement that hospitals participate in some form of quality improvement activity that one but have one in

place to move forward. The Department would establish a process for withdrawing designation that we currently do not have codified, and recognize a transition period which was critical to our stakeholders for existing stroke centers, particularly those that have sought certification at higher levels already and have that certification as well as those designated by New York State who would now need to be accredited, go through an accrediting agency for certification.

Dr. Alicandro stated the regulation would provide the approved accrediting organizations that would be permitted or approved to function in the State to certify the stroke centers. Those approved organizations would then certify the programs that the hospital by reviewing the applications and doing onsite reviews for all the different levels. The Department would still designate, ultimately have the ultimate say in designation based on the recommendation from the accrediting organizations. Currently there are four accrediting organizations that certify stroke programs. The Department's envisions that they would apply to New York State for a time limited approval that would be subject to reevaluation. To certify these programs in New York State we would review their applications that would include criteria such as staff that conducts reviews, their experience, things of that nature that we're developing currently with the stroke advisory group. The designation process would have to have built in redesignation reviews and most of these organizations in a two or three year timeframe do revisit the programs to ensure that they are continuing to provide quality stroke care.

Currently the three levels that the Department is considering did not include the thrombectomy capable stroke centers. Thrombectomy is limited to zero to six hours after stroke symptoms begin. In some cases it can be extended in certain eligible patients. The time frames for transport to an appropriate center in areas that do not have these clusters of comprehensive centers could be excessive. Thrombectomy capable centers are the mid-tier. Right now, the Department looks at primary stroke centers who can administer thrombolysis to patients who are eligible. Thrombectomy capable centers can retrieve the clot, but do not have necessarily neurosurgical capabilities for clipping aneurisms or inserting coils for aneurisms in the face of sub-hemorrhage.

Dr. Alicandro noted that data collection criteria that the Department would require of accrediting organizations is that the Department would be able to have access to all the required data and measures that the Department is developing with the advisory group and that facilities would be able to submit data just once. The Department does not want to duplicate effort for hospitals, so there would be one platform that data were submitted that the Department would have access to and that all hospitals with any level would provide the data so that we can look at timely treatment but also how the system is functioning with transfers and things of that nature. The data requirements are being looked at by a subgroup of the stroke advisory group at what data would best give us a picture of what is happening in the system. The timeframe for stroke centers to transition is a key issue from hospitals that the Department has heard going around the State. Currently the Department has been proposing that they have two years to initiate certification with an accrediting organization. This would mean having an agreement with an organization. The Department has discussed having consultative visit first for those that are designated by New York State so they would know what the additional requirements would be and be able to be prepared for that. Following the agreement phase, they would have an

additional year to complete the certification process. This timeframe also aligns with the current accrediting organizations timeframe so that those hospitals that are currently certified already by an outside organization would have their recertification time period to recertify. The Department stipulates that existing stroke centers that have not initiated the process in two years from when the regulations are approved would then lose their designation until they achieve that outside certification.

Dr. Friedrich and Dr. Alicandro concluded their presentation and answered questions from members. To review the complete report, please see pages 60 through 83 of the transcript.

**ADJOURNMENT:**

Dr. Kalkut announced the upcoming PHHPC meetings and adjourned the meeting.

1                                   **NEW YORK STATE DEPARTMENT OF HEALTH**  
2                                   **PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**

3                                   **JUNE 7, 2018**

4                                   **TRANSCRIPT**

5  
6           GARY KALKUT:    Good morning. I'm Dr. Gary Kalkut, and I  
7 have the privilege to call to order the meeting of the Public  
8 Health and Health Planning Council and welcome its members.  
9 Commissioner Zucker who will be here shortly and participants  
10 and observers. I'd like to remind council members, staff, and  
11 the audience that this meeting is subject to the open meeting  
12 law and is broadcast over the internet. The website, webcasts  
13 are accessed at the Department of Health website, NYHEALTH.gov.  
14 The on-demand webcast will be available no later than seven days  
15 after the meeting for a minimum of 30 days and then a copy will  
16 be retained in the Department for four months. Here are some  
17 suggestions, groundrules, to make this a successful meeting; we  
18 have synchronized captioning. It is important that people do not  
19 talk over each other. Captioning cannot be done correctly with  
20 two people speaking at the same time. First time you speak, I'd  
21 ask you to state your name and briefly identify yourself as a  
22 council member or DOH staff. This will be of assistance to the  
23 broadcasting company in recording the meeting. All microphones  
24 are hot, meaning they pick up every sound. They need to be, the

1 button needs to be pushed for the light to come on and then  
2 they're operational. I ask that you avoid the rustling of papers  
3 next to the microphone and also be sensitive to personal  
4 conversations and sidebars. Microphones will pick that up. As a  
5 reminder to our audience there is a form that needs to be filled  
6 out before you enter the meeting room which records your  
7 attendance at meetings. It is required by the joint commission  
8 on public ethics in accordance with executive law section 166.  
9 The former is also posted on the Department's website,  
10 NYHEALTH.gov under CON. So in the future you can fill out the  
11 form prior to the council meetings. Thank you for your  
12 cooperation in fulfilling our duties as prescribed by law.

13 For today's meeting there will be Department of Health  
14 reports. Dr. Zcker will join and provide a report on DOH  
15 activities. Mr. Sheppard is foregoing his report due to timing  
16 and to ensure the council maintains a quorum. Mr. Hutton will  
17 give a report on the Office of Public Health Activities and Dr.  
18 Jean Alicando will give a report on the Office of Quality and  
19 Patient Safety Activities. Dr. Gutierrez will present two  
20 regulations for information. The Establishment and Project  
21 Review recommendations and establishment actions will be  
22 reporting on a number of CON applications reviewed at the  
23 committee on May 17 and include the applications presented  
24 today. For conflicts; members of the council and most of our

1 guests who regularly attend are now familiar with the  
2 reorganization of the agenda by topics or categories which  
3 captures the roles and responsibilities of the council. The  
4 reorganization includes the batching of CON applications. I'd  
5 like to move to adoption of the minutes. It's for the April 12  
6 Public Health Council minutes. Can I have a motion? Dr.  
7 Gutierrez. Dr. Torres. All in favor?

8

9 [Aye]

10 No? Abstain? Minutes are passed. I'd like to turn to Dr.  
11 Gutierrez for presentation on the Codes Committee.

12

13 ANGEL GUTIERREZ: Good morning again. My name is Angel  
14 Gutierrez. I chair the committee on Code, Regulations and  
15 Legislation. We met this morning, and listened to the  
16 presentation from Dr. Marcus Friedrich on a proposal that would  
17 amend section 405.4 of Title 10 pertaining to hospital evidence-  
18 based protocols for the early recognition and treatment of  
19 patients with severe sepsis and septic shock. That was presented  
20 only for information; no vote was made on that particular  
21 presentation. And Dr. Friedrich is here present to answer  
22 questions from the council. Any questions? If not I'll move on  
23 to the next one. The next item was also for information and it  
24 pertained to advanced home health aides. This proposal would

1 revise several parts of Title 10 regarding advanced home health  
2 aide authorization to perform advanced tasks with appropriate  
3 training and under supervision by registered nurses employed in  
4 home care services agencies, enhanced assisted living residences  
5 and hospice programs. Representing the Department was Lisa Ulman  
6 who presented commentary on the proposal. This was only for  
7 information. We did not vote on it, and Ms. Ulman is available  
8 for questions from the council. If not, I conclude my report,  
9 Mr. Chair.

10

11 GARY KALKUT: I'd like to move now to the report from the  
12 Establishment and Project Review Committee. Mr. Robinson.

13

14 PETER ROBINSON: Thank you Dr. Kalkut. I'm going to  
15 incorporate the applications that we reviewed this morning as  
16 well as those from the last meeting of the Establishment and  
17 Project Review Committee. Just a point of information, there  
18 are 14 members of the council present; 13 votes are required in  
19 order to approve an application today. Failing to get to a 13  
20 vote threshold will mean that the application is not approved.  
21 Make that point.

22 OK, this is category one, an application 181108C, White  
23 Plains Hospital Center. To construct a new hospital outpatient  
24 building with bridge connectivity to the main hospital. The

1 Department has recommended approval with conditions and  
2 contingencies, as does the committee and I so move.

3 Second.

4

5 GARY KALKUT: We have a motion, a second. Any discussion  
6 or questions for staff? Not seeing any, I would call for a vote.  
7 All in favor, aye.

8

9 [Aye]

10 Opposed? Abstain? The motion carries.

11

12 PETER ROBINSON: OK. This application we note a recusal  
13 by Dr. Kalkut. This is application 172064C, NYU Langone Hospital  
14 in Kings County. To construct a multi-specialty ambulatory  
15 surgery center to be located at 56-10 Second Avenue in Brooklyn.  
16 The Department recommends approval with conditions and a  
17 contingency. As does the committee. May I have a motion  
18 Moved.

19 And a second?

20 Thank you. Any questions from the Council?

21 All in favor?

22

23 [Aye]

1 Any opposed? That motion carries. Please have Dr. Kalkut  
2 return and we'll note the recusal of Ms. Baumgartner for the  
3 next application.

4 181054C, United Memorial Medical Center Bank Street Campus,  
5 in Genesee County. This is to certify two additional chemical  
6 dependency rehabilitation beds and convert two chemical  
7 dependents detoxification beds to two chemical dependents  
8 rehabilitation beds resulting in a total of 22 chemical  
9 dependents rehabilitation beds. The Department is recommending  
10 approval with a condition. And the committee similarly recommend  
11 an approval with a condition, and I so move.

12 Second.

13 GARY KALKUT: We have a motion and a second. Any  
14 questions? Let me call the vote, ... OK. Call for a vote. All in  
15 favor?

16

17 [Aye]

18 Opposed? Abstain? Motion carries.

19

20 PETER ROBINSON: Have Ms. Baumgartner to return and ask  
21 Dr. Martin to recuse himself.

22 Application 181051C, South Nassau Community Hospital in  
23 Nassau County. To construct a four story addition to the main  
24 campus of the hospital and convert 14 med-surg beds to six ICU

1 beds and eight CCU beds. The Department has recommended  
2 approval with contingencies and the committee just did so this  
3 morning, and I so move.

4 Second.

5

6 GARY KALKUT: Questions for the staff? All in favor?

7

8 [Aye]

9 Opposed? Abstain? The motion carries.

10

11 PETER ROBINSON: Thank you. I'm going into batching now,  
12 so be patient with me if any of the members of the council wish  
13 to call out an application for separate consideration, please do  
14 so. Application 181066B, Greece Ambulatory Surgery Center, d/b/a  
15 Cornerstone Eye Surgery Center in Monroe County. Establish and  
16 construct a new single specialty ambulatory surgery center for  
17 ophthalmology to be located at 135 Canal Landing Boulevard in  
18 Greece. The Department is recommending approval with an  
19 expiration of the operating certificate five years from the date  
20 of it's issuance with conditions and contingencies. And the  
21 committee did the same.

22 Application 172413B, Oneida Health Roswell Park Oncology  
23 LLC, Madison County. To establish and construct a new cancer  
24 cure diagnostic and treatment center to be located at 601 Seneca

1 Street in Oneida. Here the Department recommends approval with  
2 conditions and contingencies as does the committee.

3 Application 172423B, Medi-Dental Group, LLD, d/b/a Medi-  
4 Dental Care in Queens County. To establish and construct a  
5 diagnostic and treatment center to be located at 22-46 31<sup>st</sup> St.  
6 Astoria for the provision of dental services. Here the  
7 Department recommends approval with conditions and  
8 contingencies, as does the committee.

9 Application 181137E, CFDSHC Inc., in Albany County, to  
10 establish CFDSHC Inc., of the new operator of an existing  
11 article 28 diagnostic and treatment center currently operated by  
12 the Center for Disability Services Inc. Here the Department  
13 recommends approval with conditions and contingencies as did the  
14 committee.

15 Application 181065E, the Caring Coalition of Central New  
16 York in Onondaga County. To merge Comfort Care of Cayuga County,  
17 Inc., d/b/a Hospice of the Finger Lakes into Hospice of Central  
18 New York, Hospice and Palliative Care Associates. Department  
19 recommends approval with a condition and contingencies as did  
20 the committee. I'm going to pause there and make those motions.

21

22 GARY KALKLUT: Thank you. Can I have a second? Questions  
23 for the staff from the council? Seeing none, call for a vote.

24 All in favor of these?

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[Aye]

Opposed? Abstain? The motion carries.

PETER ROBINSON: Thank you. Noting a conflict and  
recusal by Ms. Carver-Cheney who is leaving the room. And this  
is for this application and the next one. Application 171416E,  
Oakhill Operating Company, LLC, d/b/a Oakhill Rehabilitation and  
Nursing Care Center in Tompkins County. This is to establish  
Oakhill Operating Company as the new operator of the 60 bed  
residential healthcare facility located at 604 Hudson Street,  
Ithaca that is currently operated as Oakhill Manor Nursing Home.  
Department recommends approval with conditions and contingencies  
as did the committee.

Application 171417E, Riverview Facility Operations LLC,  
d/b/a Riverview Rehabilitation and Nursing Care Center in  
(Tioga) This is to establish Riverview Facility Operations LLC  
as the new operator of the 77 bed residential healthcare  
facility located at 510 5<sup>th</sup> Avenue, O(s)wego [sic] that is  
currently operated as Riverview Manor Healthcare Center. The  
Department Recommends approval with conditions and  
contingencies. As does the committee. I move both of those  
applications.

1 GARY KALKUT: Second from Dr. Gutierrez. Questions from  
2 the council? Seeing none I call for a vote. All in favor?

3

4 [Aye]

5 Opposed? Abstain? Motion carries.

6

7 PETER ROBINSON: Thank you. I'm going to continue with  
8 the batching.

9 Application 172292E, Grand Mohawk Valley, LLC d/b/a the  
10 Grand Rehabilitation and Nursing at Mohawk, in Herkimer County.  
11 Establish Grand Mohawk Valley LLC d/b/a the Grand Rehabilitation  
12 and Nursing at Mohawk as the new operator of Mohawk Valley Care  
13 Center. The Department recommends approval with a condition and  
14 contingencies, as did the committee.

15 181218E, Heritage Operating Associates, LLC, d/b/a the  
16 Grand Rehabilitation and Nursing at Utica in Oneida County. This  
17 is to establish Heritage Operating Associates LLC as the new  
18 operator of the 220 bed residential healthcare facility located  
19 at 1657 Sunset Avenue, Utica. Currently operated as the  
20 Heritage Healthcare Center, part of Faxton-St. Lukes. The  
21 Department recommends approval with conditions and  
22 contingencies, as did the committee.

23 Application 181047E, Gamzel New York Inc., d/b/a Centers  
24 Home Health Care of Downstate in Kings County. This is to

1 transfer 100 percent ownership interest from the sole  
2 shareholder to one new shareholder. Here the Department  
3 recommends approval with a condition and contingencies as did  
4 the committee.

5 181085E, QCMedi New York Inc., d/b/a Kindred at Home,  
6 Saratoga County. Request a change in indirect ownership at the  
7 great grandparent level for five article 36 CHHAs that it  
8 operates. The Department recommends approval with a condition  
9 and contingency as did the committee. Committee also moved on  
10 Certificates of Amendment to the Certificate of Incorporation  
11 for Century Medical and Dental Center Inc., to modify it's  
12 purposes. St. James Mercy Foundation inc., a name change; St.  
13 James Mercy Hospital, name change; Certificate of Amendment to  
14 the Articles of Organization, Yonkers Garden LLC, amend the  
15 address; and Certificates of Dissolution for Kesser Services  
16 Inc., and Menorah Foundation Inc. The Department recommends  
17 approval as did the committee and I so move.

18 Second.

19

20 GARY KALKUT: Questions? Let me call for a vote, all in  
21 favor of these applications?

22

23 [Aye]

24 Opposed? Abstain? Motion carries.

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PETER ROBINSON: Noting in this application a conflict and recusal by Ms. Baumgartner. This is to request indefinite life for CON 092069 and certify and construct a multispecialty ambulatory surgery extension clinic to be located at 3112 Sheridan Dr., Amherst. I'm going to note here that at the committee's request the Department has added the following standard limited life contingency to this application. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department. Reports will be due within 60 days of the conclusion of each year of operation as identified by the effective date on the operating certificate issued at project completion. Each report is for a full operational year and is not calendar year based. For example if the operating certificate effective date is June 15, 2018, the first report is due to the department now later than August 15, 2019. Reports must include actual utilization including procedures, breakdown of visits by payer source, percentage of charity care visits by - percentage of charity care provided by visits, number of patients who needed follow up care in a hospital within seven days after ambulatory surgery. The number of emergency transfers to a hospital, number of nosocomial infections recorded, a brief list of all efforts to make to secure charity cases, and a brief

1 description of contract negotiations with Medicaid managed care  
2 plans. The Department is recommending approval with conditions  
3 and contingencies including the one noted above. The committee  
4 approval for indefinite life with an expiration of the operating  
5 certificate for the extension clinic located at 3112 Sheridan  
6 Drive, Amherst, three years from the date of issuance with  
7 conditions and contingencies was recommended, and I so move.  
8 Second.

9

10 GARY KALKUT: Comments? Questions? All in favor?

11

12 [Aye]

13 Opposed? Abstain? Motion carries.

14

15 PETER ROBINSON: Thank you. Application 181119E, Premium  
16 Health in Kings County. This is request for indefinite life for  
17 CON number 102147, Safety Net. An interest declared by Dr.  
18 Kalkut. The Department recommends approval as does the  
19 committee, and I so move.

20 Second.

21

22 GARY KALKUT: OK, Any questions for the committee? All in  
23 favor?

24

1 [Aye]

2 Opposed? Abstain? Motion carries.

3

4 PETER ROBINSON: Thank you. Application 172293E, Grand  
5 Batavia LLC, d/b/a/ the Grand Rehabilitation and Nursing at  
6 Batavia in Genesee County. An interest declared by Ms.  
7 Baumgartner. This is to establish Grand Batavia LLC, d/b/a the  
8 Grand Rehabilitation and Nursing at Batavia as the new operator  
9 of Batavia Healthcare Center. The Department recommends  
10 approval with a condition and contingencies, as does the  
11 committee, and I so move.

12

13 GARY KALKUT: Questions for the staff? Seeing none. All in  
14 favor?

15

16 [Aye]

17 Opposed? Abstain? Motion carries.

18

19 PETER ROBINSON: The next application has a conflict and  
20 recusal by Dr. Martin.

21 This is application 181278E, Liberty Endoscopy Center in  
22 New York County. We Just covered that at the last meeting. This  
23 is to transfer a total of 24 percent ownership interest to six  
24 new members which amends and supersedes project number 172325.

1 The Department recommends approval with a condition as did the  
2 committee, and I so move.

3 Second.

4

5 GARY KALKUT: Any questions? All in favor?

6

7 [Aye]

8 Opposed? Abstain? Motion carries.

9

10 PETER ROBINSON: Thank you. So Mr. LaRue is not here so  
11 we don't need to note him. Application 181120E, Chapin  
12 Acquisition One LLC d/b/a Jamaica Estates Nursing and  
13 Rehabilitation Center in Queens County. To establish Chapin  
14 Acquisition One, LLC as the new operator of the 200 bed  
15 residential healthcare facility. Located at 164-11 Chapin  
16 Parkway in Jamaica, currently operated as Margaret Teats Center  
17 for Nursing Care Inc. The Department recommends approval with a  
18 condition and a contingency. I am going to keep going? Should I  
19 do this separately? And I so move.

20 Second.

21

22 GARY KALKUT: Questions? All in favor?

23

24 [Aye]

1           Opposed? Abstain? Motion carries.

2

3           PETER ROBINSON:        I'm going to note, application 171041E,  
4   Shining Star Home Healthcare in Kings County. This is a request  
5   for a three year extension of a limited life for CON 072094E.  
6   The Department recommends disapproval based on lack of  
7   demonstrating financial feasibility. The committee recommended  
8   deferral for two PHHPC cycles, and I make that motion.  
9   Second.

10

11          GARY KALKUT:    Thank you. Any questions? All in favor?

12

13   [Aye]

14          Opposed? Abstain? Motion carries.

15

16          PETER ROBINSON:       Going to just run through these since  
17   Mr. LaRue is not here. 172408E, Prospect Acquisition III, LLC,  
18   d/b/a Responsive Home Healthcare in Kings County. To establish  
19   Prospect Acquisition III LLC as the new operator of the  
20   certified home health agency located at 1000 Gates Ave., fourth  
21   floor, Brooklyn currently operated as Center Lights Certified  
22   Home Health Agency. The Department recommended approval with a  
23   condition and contingencies, as did the committee. Application  
24   181191E, Always There Home Care in Ulster County. To establish

1 Catholic Healthcare System d/b/a Archcare as the sole corporate  
2 member of Always There Family Home Health Services, an existing  
3 certified home health agency located a 918 Ulster Avenue in  
4 Kingston. Department recommended approval with a condition and  
5 contingency as did the committee. And I will make a motion for  
6 those applications.

7 Second.

8

9 GARY KALKUT: Questions? All in favor?

10

11 [Aye]

12 Opposed? Abstain? Motion carries.

13

14 PETER ROBINSON: Three new LHCSAs affiliated with  
15 assisted living programs. Application 162203 Western New York  
16 Care Services LLC d/b/a Western New York Care services with an  
17 interest by Ms. Baumgartner in Erie County. 171385 Homecare for  
18 Generations LLC d/b/a Generations Homecare in Rockland County.  
19 And 172286, Magnolia Homecare Services LLC, d/b/a Magnolia  
20 Homecare Services in Rockland County. These were recommended for  
21 approval by the ... approval and contingent approval as notated in  
22 the staff reports by the Department, as well as the committee,  
23 and I so move.

24 [Second.]

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GARY KALKUT: Why don't we do the first three?

PETER ROBINSON: We can go on these three. So did we do that yet? And I so move.

GARY KALKUT: Before we go to a vote, 162303 is the first application...

PETER ROBINSON: Yes, with an interest by Ms. Baumgartner. So those three I moved.

GARY KALKUT: Correction of the number.

PETER ROBINSON: Oh, thank you. 162303. I apologize.

GARY KALKUT: So those three applications are in front of us. Second, Dr. Gutierrez. Questions? Let's move to a vote. All in favor?

[Aye]

Opposed? Abstain? Motion carries.

1           PETER ROBINSON:           Thank you. So I'm going to ask Ms.  
2 Baumgartner to leave the room for the next two applications.  
3 161033, 2600 Niagara Falls Boulevard AL Operating Company LLC,  
4 d/b/a Elderwood Homecare at Wheatfield in Niagara County; and  
5 162292 this is 571 Main Street Operating Company LLC, d/b/a  
6 Elderwood Homecare at Williamsville. In Erie County. The  
7 Department is recommending approval and contingent approval as  
8 indicated in the staff reports, as did the committee, and I so  
9 move.  
10 Second.

11

12           GARY KALKUT:           Questions: All in favor?

13

14 [Aye]

15           Opposed? Abstain? Motion carries.

16

17           PETER ROBINSON:           I'm now calling up two applications  
18 that we did not reach conclusion on at the committee I think in  
19 two cycles, and these relate to True North. So let me just call  
20 these applications up for a straight vote. This is application  
21 172364E, True North Four DC LLC in Queens County. This is to  
22 establish True North Four DC LLC as the new operator of Atlas  
23 Park Dialysis and Jamaica Hillside Dialysis both currently  
24 operated by Knickerbocker Dialysis Inc. And Application 172411E,

1 True North Five DC LLC, in Kings County. Also establishing True  
2 North Five DC LLC as the new operator of a 24 station chronic  
3 renal dialysis center located at 730 64<sup>th</sup> Street in Brooklyn,  
4 currently operated by Knickerbocker Dialysis Inc.

5 OK. So, the Department recommends for both of these  
6 applications, approval with conditions and contingencies. The  
7 committee at it's meetings did not produce a result that  
8 resulted in a recommendation. So I am going to move the  
9 Department's recommendation and make a motion to do so.

10

11 GARY KALKUT: So the motion is seconded?

12 Any questions? Ms. Rautenberg.

13

14 ELLEN RAUTENBERG: Can I ask staff to just brief me on...  
15 what is the motivation of the two parties to be in this  
16 arrangement?

17

18 CHARLIE ABEL: To speak on motivation I think one would  
19 have to speak with the applicants directly. But in general I  
20 think it's an interest from the Northwell system as well as the  
21 individual doctors who are proposing to enter this, and operate  
22 with the DaVita subsidiary these dialysis facilities. They are  
23 currently operated by Knickerbocker dialysis which is a DaVita  
24 affiliate and the Northwell entity as well as two different

1 groups of physicians seek to co-operate this facility with  
2 DaVita. You note that in combination the Northwell interest as  
3 well as the individual physicians interests are more than 50  
4 percent of the operation as proposed.

5

6 TRACY RALEIGH: This is Tracy Raleigh. I'll just add quickly  
7 to that, the applicant at the EPRC did state that it was in the  
8 effort of coordination of care in terms of end stage renal  
9 patients seeking services within the hospital, also at the  
10 consultation at the physician office, and this was an effort to  
11 bring those services together. Better coordinate care.

12

13 GARY KALKUT: Any other questions? WE do have a second. Do  
14 you have a question Dr. Gutierrez?

15

16 ANGEL GUTIERREZ: Or a comment, if you will. I'm glad  
17 that I can continue to learn, and I learned not long ago that  
18 what I thought would be an alternative for me as a member of the  
19 committee to give a limited life approval. Apparently it's not  
20 feasible because that is limited only to certain limitations  
21 that we can see this, specifically surgical ambulatory care  
22 centers. Am I correct on that? So we don't have an option to  
23 limit the application to time of a year or two or three. This  
24 is either approval or not approval.

1

2           GARY KALKUT:    I think that's correct and what we want is a  
3 decision on this if we can reach one. On this proposal.

4

5           ANGEL GUTIERREZ:    That's what I understand.

6

7           CHARLIE ABEL:    So just a point of clarification; it's been  
8 customary for, and basically at the request of the PHHPC for new  
9 ambulatory surgery centers to receive a limited life so that  
10 they can demonstrate to the satisfaction of the Department and  
11 the PHHPC, care to the Medicaid and charity care population, but  
12 there's no reason why the PHHPC can't fix a limited life on  
13 anything it so chooses. It just in the past practice, that's  
14 been the predominant use of a limited life.

15

16           GARY KALKUT:    Could you say it for the record? You're  
17 nodding... We could... Dr. Bennett.

18

19           JOHN BENNETT:    Question for Dr. Gutierrez; if we were able  
20 to put a limited life on it, what would be the purpose of that  
21 and what would we be looking for?

22

23           ANGEL GUTIERREZ:    I have spent some time of looking at  
24 the third member of the application, specifically DaVita and

1 what's available by a simple Google search on the web is not  
2 supportive considering the application in total, there is reason  
3 for me to be concerned about character and competence.  
4 Character specifically. And because of that I would be more  
5 comfortable given a limited life. If that is not possible, then  
6 I will have to count on the health department to keep it's eyes  
7 on it. So the things that make DaVita noted, even in many,  
8 public forums available to any people that wants to watch  
9 television at night is something that merits, in my estimation,  
10 close scrutiny. So I will be in favor of giving a limited  
11 approval, and come back to the council subject to review by the  
12 Health Department to make sure that that part of the triad  
13 applying is behaving according to our expectations for  
14 character.

15

16 GARY KALKUT: Dr. Bennett, did you have a follow up for  
17 that?

18

19 (No.)

20 Dr. Brown...

21

22 HOWARD BERLINER: So, Dr. Gutierrez...

23

24 GARY KALKUT: Howard, Dr. Brown was before...

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LAWRENCE BROWN: So I just want to be clear that because I heard Dr. Gutierrez raise the question do we have authority and I heard Mr. Abel respond, but I saw counsel not. So I just want to be clear on the record that we do have that authority because I share, I must confess, some of the concerns that my colleague has.

GARY KALKUT: Dr. Brown, the council has the authority to impose that condition.

HOWARD BERLINER: Dr. Gutierrez, assuming a limited life, at the end of the limited life, what does that mean? Because this is already a going operation? Right? So, would you just...

ANGEL GUTIERREZ: Well, we are basically, and forgive me if I am not using the proper verbage here, this is a change in ownership, am I correct? From two owners to three owners and the distribution is 45, 45, and 10. The physicians have an ownership of 10.

GARY KALKUT: The current application is a single, the current circumstance is single owner with DaVita as the parent.

1           PETER ROBINSON:        I think that the question here is right  
2 now DaVita is 100 percent owner of these entities under the CON  
3 application Northwell and the physicians become partial owners  
4 of this. Absent an affirmative action by this CON, DaVita moves  
5 forward and continues to operate this as it currently does. So  
6 it's no change. That's the consequence of no action or a no  
7 vote.

8  
9           LAWRENCE BROWN:        I guess I needed a follow up, because  
10 the reason why my understanding about the concerns was that the  
11 relationship with the new parties, the physicians, would they be  
12 strong enough to be able to avoid the circumstances under which  
13 there were concerns about DaVita? So the point is, even though  
14 we vote No that DaVita would continue, we just want to make sure  
15 that going forward that it's actually better, and to be able to  
16 do that there needs to be some kind of feedback to say that the  
17 things for which we were concerned about are not going to likely  
18 to continue.

19  
20          GARY KALKUT:        Understood. I would just raise an issue  
21 that some other members have raised. What is better? And what  
22 are we expecting if we imposed a limited life? And I also say  
23 that this proposal has gone through two cycles now without a  
24 recommendation and without a vote on the proposal here, and I

1 think if we want to move this forward, a consideration of the  
2 recommendation and voting up and down on that seems to be a  
3 direct way to reply to this application. Unless there are clear  
4 outcomes that we're looking for in a three-year life, I question  
5 what we're actually doing as Dr. Bennett suggests by imposing  
6 that condition. Mr. Lawrence.

7

8 HARVEY LAWRENCE: I think if nothing else what we're  
9 doing is sending a message that there's an area that we have  
10 some concerns about and if that's all, I think that's a pretty  
11 powerful thing to do.

12

13 GARY KALKUT: And I would submit that disapproval, because  
14 this is an up or down vote, sends that same message.

15

16 HARVEY LAWRENCE: I think if we have the ability to move  
17 with Dr. Gutierrez, the amendment that's on the floor here,  
18 that's probably a better outcome, and it sends a positive  
19 message, and at the same time sends a strong message that  
20 there's an area of concern.

21

22 GARY KALKUT: Again, I'd ask what outcome we're looking  
23 for in the three year reassessment of this? Dr. Martin.

24

1           GLENN MARTIN: Personally my primary concern, as I think  
2 has been amply discussed, character and competence of one of the  
3 members, the proposed members. The question is this; if we did  
4 nothing and just gave a change of CON, if their character didn't  
5 improve, didn't stabilize, in fact got worse, would that... what  
6 would occur? Would this committee ever hear about it? I assume  
7 the state would hear about it? What would happen? So I guess  
8 I'm trying to understand is a three year life and we'd look at  
9 character and competence again as well as routine quality  
10 whatever. Are we accomplishing anything different than what's  
11 normally going on during routine surveillance and report that?  
12 I just don't know the answer.

13

14           CHARLIE ABEL: Actually, ...

15

16           DAN SHEPPARD: And what I say, this is agnostic to whether  
17 it's a good or a bad idea to establish limited life for this.  
18 This is ... this feels a little random. When we did limited life,  
19 the requirements around limited life for ambulatory surgery  
20 centers, we came up with a ruleset, they went through the  
21 establishment process, they were assigned a limited life, and  
22 then they're valuated against that ruleset. So we report back  
23 to the committee and that was deliberate of us to come up with  
24 that ruleset. We went through it in a public fashion, and it

1 was implemented and we've reported on it and modified it over  
2 time. But this is a matter of process. So that's, so, if you  
3 take that model, and want to apply limited life to some other  
4 type of licensure, again, agnostic to... I'm not speaking to  
5 whether it's a good or a bad idea, then the process that this  
6 body should go through is determining what those metrics are  
7 that a particular type of provider will be held to life, and  
8 then what, after whatever the limited life is, we would evaluate  
9 them against. If that's character and competence, there are  
10 current character and competence standards that are in  
11 regulation. How would we then modify those character and  
12 competence standards to apply them to this situation? More a  
13 situation... so again, procedural point is the wrong word because  
14 it's not a part of the metric point, it's just, these are... I  
15 mean, I appreciate that there's concern about this applicant or  
16 at least the one member of the application. And again, there's  
17 potentially very valid concerns. But if we're going to then  
18 operationalize those concerns into some type of limited life  
19 with some future review, that's gotta go through a whole  
20 different public deliberative process before we just start  
21 saying, ok, this is limited life and not sure how we're going to  
22 evaluate character and competence, but we're going to determine,  
23 somehow the Department's going to determine whether this  
24 applicant in a couple of years is in sufficient character and

1 competence. Is that sufficient character and competence based  
2 on the current standards by which they were established in the  
3 first place? Is it a different set of standards? Again, I'm  
4 just, I in now way mean to diminish the concerns or the  
5 discussion that have happened on this application. I just, it's  
6 just, it is a very slippery slope for you as a body to start  
7 simply assigning limited life and with direction of the  
8 department will measure it somehow and report back, without the  
9 deliberative process that we go through to determine what those  
10 standards would be. And then whether it's guidelines or regs and  
11 put them in place.

12

13 GARY KALKUT: And I think an important point, and also one  
14 that could be applied to subsequent applications which we will  
15 see from time to time, Dr. Brown.

16

17 LAWRENCE BROWN: These points are well received and well  
18 appreciated. This council has the authority to make judgement  
19 based on information that is provided by the Department. It  
20 doesn't mean that the council members have to concur with the  
21 data that is provided by the Department. In fact, we've seen  
22 example of that just this week. So with all due respect, I do  
23 appreciate that and some of the cases, some of the criteria are  
24 not as bright as others, in which case that leaves it to the

1 judgment of the council members to apply what they believe is  
2 appropriate given the type of nuance. So I do hear what my  
3 colleagues are sharing and I do understand that there's probably  
4 very little bit that we do here that's a slam dunk. There's  
5 always going to be some question about the merits of it, so  
6 we're having a conversation about quite frankly, there clearly  
7 seems to be differences among council members to the extent to  
8 which they are comfortable with just an up and down vote without  
9 unlimited licensure, limited licensure rather.

10

11 GARY KALKUT: Ms. Carver Cheney.

12

13 KATHLEEN CARVER-CHENEY: Kathleen Carver-Cheney. Member. I  
14 don't see the point in having a limited life in this  
15 circumstance will DaVita will stay in if we disapprove this  
16 application. It's not like DaVita is asking to come in to these  
17 dialysis centers. That would be a whole different circumstance.  
18 They're in there. Northwell is coming in and would hopefully  
19 add to the quality. So, I would not agree to that.

20

21 GARY KALKUT: Excuse me Dr. Brown, Dr. Martin.

22

23 GLENN MARTIN: So as much as I appreciated Mr. Sheppard's  
24 musings of the ability of the council to function, and actually,

1 I don't quibble with most of it but I do disagree with a fair  
2 amount, but that's not the point. I was just trying to get a  
3 question of fact. Which hasn't been answered yet. Which is, I  
4 would still like to know if character, ongoing surveillance of  
5 the Department for character and competence from this point on  
6 would basically be what? And when would we ever hear if there  
7 were significant... sort of like your credit report. If there is  
8 a significant change to the character and competence of the  
9 particulars, how would we know about it? What would be the  
10 threshold in general? Or even for quality because that's, I  
11 think, the issue we're raising, at least personally. If I know  
12 that there's good surveillance going on we would hear about  
13 problems, beyond that which we're already aware of, I might be  
14 ok. If I don't hear a process, then even though this would be a  
15 precedent, this might not be a bad solution. So I just need  
16 factually what's going on.

17

18 GARY KALKUT: Let me make one comment and then we'll go to  
19 Dr. Zucker's report. I think what Mr. Sheppard was talking  
20 about was boundaries and established by this group, how we're  
21 going to assess. Character and competence, DaVita is a national  
22 company. Dr. Gutierrez mentioned going on to Google. You can  
23 see things across the country. Does that character and  
24 competency have an impact on this proposal or are we going to

1 limit it to this operation in Brooklyn and Queens? I think it's  
2 a very difficult thing to do and to do appropriately. So,  
3 again, I think there is an opportunity with an up or down vote  
4 on the Department's recommendation to approve or disapprove. If  
5 we do not reach a conclusion, this motion and application would  
6 be tabled. And then I'd ask the Department to go back and look  
7 at the underlying reasons there is such disagreement. We've  
8 spent two cycles, hours on this proposal, and we've had the same  
9 discussions. I think we need more information and we need a,  
10 and whether it's about limited life or what the underlying  
11 issues are that cause such conflict in this proposal for our  
12 council, would be the result of an up and down vote without an  
13 approval or disapproval. And that's what's in front of us now.  
14 So with that, I would suspend this discussion for Dr. Zucker's  
15 report. Thank you for coming.

16

17 HOWARD ZUCKER: Thank you very much. Good morning. It's a  
18 pleasure to be here again and to give you an update on what's  
19 happening in the Department. As always it has been an extremely  
20 busy few months. As I'll go through a handful of different  
21 things. As you've likely heard, we've recently declared that  
22 flu no longer is prevalent in New York State. So what that  
23 means is that the healthcare workers in the State who are not  
24 vaccinated against influenza are no longer required to wear

1 masks in the areas where patients are typically present. In  
2 response to this year's serious flu season, Governor Cuomo  
3 called on the health department to take very aggressive actions  
4 to increase the vaccination rates. So some of the actions that  
5 we took was an executive order that suspended the section of  
6 state education law that limits the authority of pharmacists to  
7 administer immunizations to anyone under the age of 18. So that  
8 allowed vaccines to be administered to anyone from age two on  
9 up. It also authorized enhanced reimbursement for counties  
10 statewide to further expand their flu vaccination efforts at the  
11 local level, and we encourage pharmacies to enroll in the New  
12 York State vaccines for children's program, which provides  
13 vaccines to children and individuals regardless of their ability  
14 to pay.

15 As we often do, we have quickly gone from flu season right  
16 into the tick season in New York. So again at the direction of  
17 the Governor we recently launched a Lyme and tick-borne disease  
18 control plan. The efforts will focus on tick population control  
19 methods, increasing public awareness and access to available  
20 data and we've created a working group to participate in Lyme  
21 disease summit in the coming weeks. Tick control methods will  
22 include the application of an eco-friendly tick control  
23 treatment on the park lands in the Hudson Valley, in the Capital  
24 Region, the Southern Tier, where the public is at the highest

1 risk of exposure and Lyme disease. Additionally the State will  
2 expand the use of a forposted tickicide [sic] at deer treatment  
3 feeding stations that help to control tick spread by the white-  
4 tailed deer. So while the deer feed on the corn at the station,  
5 there are these treated roller brushes with insecticide that go  
6 against the animals neck, the head and ears where many of the  
7 adult ticks tend to feed. We're also developing a campaign  
8 focused on disseminating information about tick borne diseases  
9 and prevention, specifically targeting the high risk groups such  
10 as hunters and hikers. This issue of ticks is something which  
11 has been paramount in the years past and we're working hard on  
12 it again this year. We're also actively pursuing an exciting  
13 innovative private research partnership to develop a better  
14 diagnostic test that will ultimately lead to more effective  
15 treatments. And finally we have posted current and retrospective  
16 tick collection and testing results to our health data New York  
17 website which is opening up the data to the public so that the  
18 public can get as much information as they need. This  
19 information was previously shared just with local health  
20 departments and state park managers to aid in their education  
21 and prevention campaigns, and we want more transparency. Given  
22 the considerable interest in this information from providers  
23 from researchers and advocates, the Department has obviously  
24 made this information available to the public.

1 Speaking of expanding data that is available to the public,  
2 as you may have seen, we recently launched the New York State  
3 health connector. This is a great event the other day that we  
4 had. A web-based application that allows quick access to a wide  
5 range of health information such as the cost of various medical  
6 procedures, the frequency of those procedures that are performed  
7 at hospitals, and this empowers consumers to make more informed  
8 healthcare decisions. It's powered by the All Payer database.  
9 This new website which also features healthcare services, it  
10 looks at utilization data and it's a tremendous resource for  
11 policy makers, for researchers who are interested in identifying  
12 the needs and the resources in the communities throughout the  
13 state as well. So this is a great step forward, and I encourage  
14 everyone to look at the website about this. Another new and  
15 exciting technology breakthrough at the department is the launch  
16 of eWIC. So this is an electronic benefit transfer card which  
17 eliminates paper checks and provides a more convenient way for  
18 families on the Woman, Infants, and Childrens program to shop  
19 for WIC foods. eWIC is currently in the pilot launch phase, has  
20 been implemented in the capital region and we expect to have the  
21 technology introduced statewide by this time next year. I was  
22 there at the first launch and I will tell you it was really  
23 quite remarkable. The person who used this went through the line  
24 literally within minutes and she had said it took her sometimes

1 15 to 20 minutes to get through the line. So this is an  
2 incredible move forward. How it works; eWIC, it works like a  
3 debit card. It allows shopping with WIC benefits more discreet.  
4 It will allow WIC vendors to be reimbursed faster. The new eWIC  
5 technology allows families to roll over any unused benefits from  
6 a shopping trip towards future use. And in addition to eWIC,  
7 the Department has launched a new mobile application called WIC  
8 TO GO to make shopping for WIC foods easier. So WIC TO GO  
9 allows users to scan the barcode on a product to see if it's WIC  
10 eligible. Users can also check their account balance. They can  
11 view their upcoming WIC appointments, and they can located WIC  
12 vendors and clinics. This is just a wonderful thing for people  
13 in New York State. We've also wrapped up another successful  
14 open enrollment period for the New York State of Health, the  
15 state's official health plan marketplace. This was our fifth  
16 open enrollment period and we have had more than 4.3 million New  
17 Yorkers enrolled in the plan between November 1, 2017 and  
18 January 31, 2018. Want to be a significant take-away from this  
19 year's enrollment period was the combined qualified health plan  
20 and essential plan enrollment which increased to nearly a  
21 million people. A reflected increase of about 84,000 between  
22 2017 and 2018. Of course the marketplace programs enrollment  
23 increased by nearly 700,000 in the past year, and New York has  
24 seen a significant corresponding reduction in the number of

1 uninsured from 10 percent in 2013 when the marketplace opened to  
2 below 5 percent in 2017. And that's according to the data from  
3 the CDC. So I'm also happy to announce that our Medicaid  
4 redesign efforts also reached a significant milestone recently.  
5 We excelled in our first federal Medicaid performance review.  
6 The review focused on four key statewide performance measures.  
7 Statewide metrics performance, success of statewide projects,  
8 total Medicaid spending, and managed care plan expenditures. So  
9 as part of the program established in 2014, New York was  
10 required to submit a statewide report card to CMS for detailing  
11 performance. So I'm thrilled that we continue to exceed not only  
12 our own goals, but federal standards in making Medicaid more  
13 efficient and accountable.

14 And last month we also convened our first meeting of the  
15 New York State Pain Management steering committee. And so the  
16 purpose of this committee is to work with clinicians and other  
17 stakeholders to make recommendations on pain management issues  
18 while taking into consideration the CDC guidelines for  
19 prescribing opioids for chronic pain. So obviously a big issue.  
20 I look forward to participating in these discussions and  
21 updating you on our progress as we move forward on this to  
22 address what is truly a concerning issue.

23 We also had big news out of the Governor's office yesterday  
24 announcing more than \$43 million will be awarded to support

1 cancer prevention and early detection programs statewide over  
2 the next five years. And the programs receiving these funds  
3 participating the cancer services program which aims to reduce  
4 disparities in breast cancer, cervical, colorectal cancer  
5 incidences and mortality through free cancer screening for low  
6 income populations. And as well as the cancer prevention in  
7 action program which is tasked with engaging the community  
8 stakeholders to reinforce health behaviors and reduce cancer  
9 risks. So we're making headway in all different areas. We  
10 recognize there's a lot of challenges on this. We've... the  
11 Governor's charged us to move forward on addressing the issues  
12 of cancer and to make sure that New York is tackling it on the  
13 small fronts. This important funding is sure to have a direct  
14 impact on New Yorker's health . And finally while it  
15 is comfortable day, it's a late spring day here in New York, we  
16 can't lose sight of the fact that the summer is truly around the  
17 corner and heat wave will surely happen at some point. So we  
18 know that exposure to heat waves are extreme heat events can be  
19 harmful to health and we know that our friends and our neighbors  
20 with preexisting conditions, which children, small children, are  
21 most vulnerable during these conditions. I think about this,  
22 and we were talking about this the other day that sometimes  
23 people who are on obviously fixed income or they don't have  
24 resources, they may not turn on the air conditioner when it gets

1 really hot and the next thing you know they get really hot, and  
2 if they're elderly leads to some of the challenges that can  
3 occur. So I think it's important for us always to check on our  
4 neighbors. What's concerning to me is that the Department of  
5 Health's research indicates that in the past decade alone the  
6 average summer temperature has risen about one to two degrees in  
7 most areas of New York State. And the number of days with  
8 maximum temperatures above 95 has been increasing, putting New  
9 Yorkers at much higher risk of heat related illnesses. So I  
10 encourage everyone to work with their communities regarding  
11 this, address the extreme weather if and when it happens this  
12 summer. We also offer the New York State home energy assistance  
13 cooling benefit, assistance program and maintain an interactive  
14 map of the public cooling centers across the state that are  
15 available in case there is a heat wave. So there's a lot of  
16 information on the web. There's a lot of information that you  
17 can get from the Department and always feel free to call us if  
18 there's something you think is a concern for your community and  
19 we will address it. So that really gives, concludes my update  
20 at this point. There'll be more next time I speak with you, but  
21 I'm happy to answer any questions.

22

23 GARY KALKUT: Thank you. Questions for the Commissioner?

24 Ms. Rautenberg.

1

2 ELLEN RAUTENBERG: Will the state's portion of the Fidelis  
3 and teen arrangement directly benefit the Department?

4

5 HOWARD ZUCKER: So, we're looking at that. That's still a  
6 process in a way, and so I can't comment yet about that, but  
7 there's a lot of team members addressing that.

8

9 HOWARD BERLINER: Commissioner, on the tick issue, how  
10 specific will the Department's advice be to the public? Is it  
11 just county? Or kind of specific areas? Or things like that.

12

13 HOWARD ZUCKER: We're going to have a meeting about this and  
14 we're going to be pretty aggressive on all fronts. Obviously  
15 we're up on the counties on a regular basis, so, they're at the  
16 front line there in the community and a lot of people turn to  
17 those counties. We have excellent county commissions, but also  
18 from the state level we will be out there on an aggressive  
19 front.

20

21 HOWARD BERLINER: I guess I mean if you just say there's  
22 tick activity in Delaware County, that's kind of a big place.  
23 So it doesn't really ...

24

1           HOWARD ZUCKER: We'll get even more aggressive. More, we'll  
2 identify this data even better than that. This is a big issue. I  
3 mean, there's so many people talking about tick borne illness  
4 and last year we were talking about it a lot as well.

5

6           GARY KALKUT: Other questions? Dr. Martin.

7

8           GLENN MARTIN: I was trying to get on the website but I'm  
9 having trouble. Well, no, because I was curious about the tick  
10 information because I had read that the insecticide that can be  
11 sprayed on clothing actually is much more effective than I  
12 thought it was and lasts a lot longer and came as something of a  
13 complete surprise to me. So I assume my level of ignorance is a  
14 good marker for the general level of ignorance in the city at  
15 least. So I just wanted to make sure that that was mentioned  
16 because sometimes, it seems to be overlooked in previous years.

17

18           HOWARD ZUCKER: And we're going to look at all of these.  
19 We'll sit down and talk about this when we all get together  
20 about this. The team in our department from the environmental  
21 health department, our Wadsworth Lab, Downstate, ok, what's the  
22 best way to get messaging out there? How do we target  
23 messaging? How do we target specific regions? How do we make  
24 sure that people can be aware of what's the best way to prevent.

1

2           GLENN MARTIN: And then if I could just follow up on one  
3 thing; so Legionnaires is a chronic problem. Somebody sent me,  
4 may have been city, sent out the general warning this time of  
5 year, etc. So I was just wondering is there any predictive  
6 ability about whether or not there should be a good year or bad  
7 year? And do we have any feedback yet on the regs that we had  
8 passed previously, it's effectiveness, or lack thereof? Or do we  
9 have any data?

10

11           HOWARD ZUCKER: So we do have, there's a lot of monitoring  
12 being done as a result of the regs there, and people have to  
13 adhere to that, and we have our teams inspecting and looking at  
14 issues. So that's one area. Regarding how significant this  
15 year is, it's very hard to predict because you really don't know  
16 from a community base, I mean people get Legionnaires and it  
17 happens on a regular basis, but on a community level, we can't  
18 predict what will happen. Sometimes what the environmental  
19 people have told me, the right weather conditions, the right  
20 level of humidity, overcast, the winds, the next thing you know  
21 you have a problem, there's a potential source there. So we  
22 can't predict at this point, but the best thing we can do is try  
23 to prevent it and to make sure that the, whether it's cooling

1 towers or whatever areas, there's any water that can contribute  
2 to this is monitored and evaluated and tested.

3

4 GARY KALKUT: Thanks. I'd also like to make a comment on  
5 what you had said about DSRIP is actually a real achievement for  
6 the state and for the PPSs across the state, and there was risk  
7 involved in that because if we didn't meet the federal standards  
8 that could've been a cut or would've been a cut by five percent  
9 to our payments for DSRIP which would have a significant effect,  
10 and there are standards over the next two years, four and five,  
11 where there are cuts that would be taken if we don't meet the  
12 standard. But it looks like we are on a very good trajectory of  
13 the quality standards of DSRIP and that's great.

14 Anyone else? Commissioner, thank you.

15 Alright. I suspended the discussion we were having and that  
16 was on the True North Applications and the point I made right  
17 before that suspension was about the implications of a vote on  
18 the Department's recommendations to approve which would, if we  
19 do not reach, have a majority either for approval or  
20 disapproval, would mean that this motion which has gone through  
21 these two cycles would be tabled and we'd ask the Department to  
22 look into the underlying reasons and establish those and perhaps  
23 some standards about how we evaluate these applications going

1 forward. So, I would make a motion unless there are any other  
2 questions.

3       Alright. The motion... yes.

4

5       PETER ROBINSON:       The motion was to approve the  
6 Department's recommendation, because there was no recommendation  
7 out of the committee, and Dr. Gutierrez seconded it.

8

9       GARY KALKUT:       And that would be for both of those  
10 applications. Is that a question or a high sign?

11

12       ANGEL GUTIERREZ:       I sense that we're about to close this  
13 discussion.

14       So to clarify, my concerns as I said before, deal with  
15 character, not character and competence. I'm not questioning  
16 the ability of the organization, specifically DaVita to do  
17 dialysis. But I have concern about the fact, as I said, I  
18 Googled it and what I find is quite negative. Nothing from  
19 DaVita that I found said, no, this is not correct. This is why  
20 we do this. And the issues had to do with billings that were  
21 inappropriate and relationships with pharmaceutical companies  
22 that make me, as a physician, question their ability to clearly  
23 know what is the best medicine for the patient versus the best  
24 medicine for the pocket of the corporation. In addition, those

1 of you who are colleagues of mine know that the cure for  
2 dialysis is transplant. And they do not make transplantation a  
3 part of their protocol for the patients. We as a council have,  
4 in my view, failed to put forward a strong promotion of  
5 transplantation. You want to stop dialysis, get transplants. The  
6 last time I sat at this chair I questioned the applicants at the  
7 table. There were three physicians at that end and two  
8 administrative people in the middle. And I asked the physician  
9 what was their role, how did they see their role as dictating  
10 the formulary used by the patients. The answer was that they  
11 would have a role. I'm not sure about the quantitative strength  
12 of that role when you're dealing with a corporation as strong as  
13 DaVita. I further asked what role the physicians and the  
14 hospital organization would have on auditing the billings by  
15 DaVita, and the same soft answer was obtained. As a physician I  
16 am concerned about the patients. I would hate to see a  
17 hesitation or any problems with the continuation of the services  
18 that are now provided and I don't want that interfered with.  
19 What Mr. Lawrence said is true; by our discussing this here  
20 we're raising the awareness of everybody that this needs to be  
21 watched very closely and keep the reality from flying under the  
22 radar of regulatory agencies. I am satisfied that I am achieving  
23 that, and I'm done with what I wanted to say.

24

1 GARY KALKUT: Thank you. What I'm proposing... I know... what  
2 I'm proposing is if we do not go one way or the other, bringing  
3 this issue to the Department, having a gathering information on  
4 the underlying issues and bringing it back to the committee.  
5 Not to close off the discussion. Ms. Soto.

6

7 NILDA SOTO: And this may be one of the fact finders. My  
8 question is a point of clarification. Dr. Gutierrez said that it  
9 appears possibly there's no protocol in terms of working the  
10 patient into kidney transplant. Is that a usual practice at  
11 other dialysis centers? Is that protocol?

12

13 GARY KALKUT: I'm not sure of that answer. I think Dr.  
14 Gutierrez is correct. Transplant is the definitive treatment  
15 for... well it's a cure for dialysis. It's not a cure for the  
16 overall patient. But how that works in different dialysis  
17 centers and what the referral rate, the listing rates are, I'm  
18 just not aware. Legionella I can answer, but renal disease I  
19 have a tougher time with.

20 I'd like to call this vote on the approval of this  
21 application and I'll ask people and I'll take a role call  
22 because I think the number is important. All in favor... thank  
23 you that's what I meant. All in favor? Role call.

24 Dr. Gutierrez

1 Aye  
2 Getting tripped up on the role call.  
3 Ms. Baumgartner  
4 Aye  
5 Dr. Bennett  
6 Boy, am I confused. No.  
7 Dr. Berliner  
8 No  
9 Dr. Brown  
10 No  
11 Ms. Carver-Cheney  
12 Yes  
13 Dr. Gutierrez  
14 Aye  
15 Dr. Kalkut  
16 Aye  
17 Mr. Lawrence  
18 NO  
19 Dr. Martin  
20 In the absence of an answer to the question I rose the answer is  
21 no. The vote is No.  
22 Ms. Rautenberg  
23 No  
24 Mr. Robinson

1 Yes

2 Ms. Soto

3 No

4 Dr. Torres

5 No

6 Dr. Yang

7 (no)

8

9 GARY KALKUT: Motion fails. 5-9. And failure to approve or  
10 disapprove the application results in the tabling of this  
11 application. We're not going to resolve it today, and again, we  
12 would ask the Department to try to identify the underlying  
13 issues. Pardon me?

14

15 HOWARD BERLINER: This thing just got voted down.

16

17 PETER ROBINSON: The motion to approve failed.

18

19 GARY KALKUT: The motion to approve failed.

20

21 PETER ROBINSON: We didn't vote it down. We didn't vote  
22 it...

23

1           HOWARD BERLINER:       May I make another motion?  I move that  
2 we disapprove this application.  These two applications.

3

4           GARY KALKUT:     Do I have a second for that?

5

6     Second.

7           OK.  Alright let's do it again.  Role call

8

9     Ms. Baumgartner

10    No

11           GARY KALKUT:     You understand you're voting not to  
12 disapprove.

13

14    Dr. Bennett

15    Aye

16    Dr. Berliner

17    Yes

18    Dr. Brown

19    Yes

20    Ms. Carver Cheney

21    No

22    Dr. Gutierrez

23    No

24    Dr. Kalkut

1 No

2 Mr. Lawrence

3 Yes

4 Dr. Martin

5 No

6 Ms. Rautenberg

7 Yes

8 Mr. Robinson

9 No

10 Ms. Soto

11 Yes.

12 Dr. Torres

13 No

14 Dr. Yang

15 (?)

16

17 GARY KALKUT: Motion to disapprove fails as did the

18 approval motion. This motion is now tabled.

19

20 PETER ROBINSON: It is not. You need 13 votes in order

21 to be able to get a motion for approval or disapproval done.

22 Yeah, that's exactly right.

23

1           GARY KALKUT:    We're not in limbo because, the application  
2 is in limbo. But we will have, bring this back to the committee  
3 after the Department has taken, weighs in on some of these  
4 underlying issues. And what I'd really like to do is proceed  
5 with that and move past this. Thank you.

6

7           PETER ROBINSON:        So, Dr. Kalkut, that concludes the  
8 report of the Establishment and Project Review Committee. Thank  
9 you.

10

11          GARY KALKUT:    Thank you. Alright. I'd like to turn to the  
12 report of Brad Hutton in Albany. Thank you.

13

14          BRAD HUTTON:    Thanks everyone. Pleased to be here today to  
15 provide you an update on some important projects that are  
16 underway in the Office of Public Health. Going to touch on some  
17 initiatives related to maternal mortality. New laboratory  
18 building for the Wadsworth Center. Our efforts to ensure that  
19 the Department is reaccredited by the Public Health  
20 Accreditation Board in 2019. And then also in Dr. Boufford's  
21 absence I'm going to report today on a recent joint meeting for  
22 the public health committee and the ad-hoc committee to lead the  
23 prevention agenda.

1 First with maternal mortality at the end of April, Governor  
2 Cuomo announced a series of initiatives aimed at addressing a  
3 high rate of maternal mortality in New York State especially  
4 among Black women and other women of color. We're reported  
5 these data to you before and we certainly want to acknowledge  
6 the Governor's recent announcements build on and support the  
7 efforts that the council has made in the last several years to  
8 focus attention on this issue. I had the opportunity to talk  
9 about these kinds of challenging public health issues in this  
10 forum has been really important to our efforts. So the main  
11 components of the new initiative include establishing a task  
12 force on maternal mortality and desperate racial outcomes.  
13 Taskforce will provide expert advice on improving maternal  
14 outcomes, addressing racial and economic disparities, and  
15 reducing the frequency of maternal mortality and morbidity in  
16 New York State. The taskforce will be comprised of OB-GYNs,  
17 hospital representatives, secretary to the Governor and chair to  
18 the New York State council to women and girls, Melissa DeRosa,  
19 Lieutenant Governor Kathy (Hopewell,) New York City public  
20 advocate Leticia James, as well as appointees from the  
21 legislature. Taskforce will be chaired by Dr. Zucker, Sasha  
22 James Canterelli who is the president of the New York  
23 Association of Mid Wives, Dr. Danielle (Acarena) President of  
24 SUNY Upstate, and Dr. Winnie Wilcox from New York City Health

1 and Hospitals. We're finalizing the taskforce membership now and  
2 expect to announce it soon.

3       Second component is establishing maternal mortality review  
4 board. At the recommendation of the Governor's council on women  
5 and girls, the Governor has directed us to establish this board  
6 composed of professionals who serve and/or are representative of  
7 women and mothers across the state, work in collaboration with  
8 ACOG and the City of New York to review each maternal death in  
9 New York. We're finalizing the membership of the board and the  
10 participating clinicians and expect to have the first meeting of  
11 the board before the fall.

12       Third, to host the best practice summit with hospitals and  
13 OBGYNs. We'll be launching a summit with the Greater New York  
14 Hospital Association HANYS, ACOG, and other stakeholders to  
15 discuss the issue of maternal mortality and morbidity including  
16 racial disparities. Summit will address statistics, best  
17 practices, community awareness, medical school curricula,  
18 graduate medical education, and practicing physician training  
19 with the goal of implementing immediate measures and identifying  
20 future action items to improve care and management. Coordinating  
21 organizations of finalizing details and other organizations will  
22 be invited soon.

23       Third, pilot the expansion of Medicaid coverage for doula.  
24 DOH will pilot the expansion of Medicaid coverage for doula

1 which are non-medical birth coaches to assist a woman before,  
2 during, and after childbirth if needed. Certified doulas have  
3 been shown to increase positive health outcomes including  
4 reducing birth complications for the mother and the baby. Our  
5 office of health insurance programs is engaging a diverse  
6 stakeholder group for input into design of the pilot and expects  
7 to release details in the pilot by the end of June.

8       Next support a centering pregnancy demonstration. New York  
9 will increase support for a program similar to doulas included  
10 in the Governor's State of the State. The first 1000 days of  
11 life initiative. It's known as centering pregnancy. Programs  
12 designed to enhance pregnancy outcomes through a combination of  
13 prenatal education and social support and has been associated  
14 with reduced incidence of preterm birth and low birth rate, as  
15 well as lower incidence of gestational diabetes and post natal  
16 depression, higher breastfeeding rates and better interpregnancy  
17 spacing. Centering pregnancy also has been shown to narrow the  
18 disparity and preterm birth rates between black women and white  
19 women. Centering instituted working with OHIP on the design of  
20 this pilot and there is a diverse planning group that is  
21 finalizing the details. We'll also be requiring continuing  
22 medical education calling on the state board of medicine to  
23 require appropriate practitioners to participate and continuing  
24 medical education on maternal mortality and disparate racial

1 outcomes. We'll be working with medical schools including  
2 SUNY's four medical schools, to build materials into their  
3 curriculum, their graduate medical education, and training for  
4 practicing physicians. Our request to the state board of  
5 medicine is being drafted. We'll also expand our long standing  
6 New York State perinatal quality collaborative. This is a  
7 collaboration with hospitals across New York to review best  
8 practices to address most recently hemorrhaging and implementing  
9 new clinical guidelines to reduce maternal mortality. Already  
10 over 70 hospitals have been engaged voluntarily in this effort.  
11 Also Commissioner Zucker is launching some listening sessions  
12 partnered with community activists to visiting high risk areas  
13 across the state, listening to local stakeholders including  
14 pregnant women. Sessions will explore the barriers that women  
15 face that make it difficult to obtain routine prenatal care as  
16 well as discuss the strategies to increase awareness of the  
17 signs and symptoms of preeclampsia and other causes of maternal  
18 mortality and morbidity. Listening sessions will take place over  
19 the summer and into the early fall with five to six happening in  
20 various regions across the state.

21 I'm moving on to some brief comments about our new  
22 Wadsworth Lab. Funds to build the new Wadsworth Center were  
23 approved as part of the 2018-19 state budget. \$600 million  
24 this year in addition to last year's \$150 million. The lab will

1 be built in the capital district, but the exact location is  
2 still being finalized. Site decision is being based on multiple  
3 factors including the results of a study currently being  
4 performed by a local design and engineering firm that's about  
5 technical and feasibility features of the three potential sites.  
6 This is really exciting news and the result of a lot of  
7 different folks who have worked hard on this initiative.  
8 Department of Health has really been unified and unwavering in  
9 it's support of Wadsworth. We've also thanked folks at the  
10 executive chamber, division of budget, and DASNY, as well as  
11 ESD. Finally reaccreditation by the Public Health Accreditation  
12 Board. As some of you might remember DOH was accredited by the  
13 Public Health Accreditation Board in 2014 for five years. We  
14 were the first large state health department to achieve this  
15 recognition. Several months ago we kicked off our effort to be  
16 ready for reaccreditation in 2019. Reaccreditation builds upon  
17 accreditation by moving beyond merely showcasing capacity to  
18 demonstrating impact that we have. It requires us to develop  
19 narratives that describe our department wide capabilities  
20 related to 12 essential service areas with increased emphasis on  
21 themes and (FABs) updated standards including health equity,  
22 collaboration, and partnership, community mobilization, systems  
23 level action, and continuous quality improvement. As part of the  
24 effort, we'll need to demonstrate that the public health

1 governing entity in our case PHHPC, is informed and engaged with  
2 the health department. Staff are working with council staff to  
3 describe how we'll inform you about our activities, programs,  
4 and public health challenges, and how we'll work with you to  
5 make informed decisions concerning health departments direction  
6 and public health policy.

7       And finally as I mentioned I wanted to share with you a  
8 brief report on the recent meeting of the ad-hoc committee to  
9 lead the prevention agenda. As you know we're in the process of  
10 updating the prevention agenda for the next six years under the  
11 direction of the ad-hoc committee. We met last month to  
12 continue this process. In February we reviewed data on the  
13 health status and proposed priorities, our focus areas and  
14 goals, and then we went out and collected feedback from  
15 stakeholders about those proposals. We had over 200 individuals  
16 and organizations respond to an online survey. members of the  
17 ad-hoc committee conducted 20 or more in-person meetings to  
18 collect additional feedback. Because we're updating the  
19 prevention agenda with the focus on health across all policies.  
20 Dr. Zucker also solicited feedback from several of our other  
21 sister state agencies including ag and markets, and DEC and  
22 others. Majority of respondents felt that our priorities, focus  
23 areas, and goals address issues of concern to their community  
24 and their organizations, and we got additional feedback and

1 suggestions for each of the five priority areas that we'll be  
2 considering as we move forward. Those five revised priority  
3 areas are prevent chronic disease, promote a healthy and safe  
4 environment, promote healthy women, infants, and children,  
5 prevent infectious diseases, promote wellbeing and prevent  
6 mental and substance use disorders. We did get a lot of  
7 feedback on our effort to make healthy aging a cross-cutting  
8 principle of the updated plan. At least one organization wanted  
9 us to establish it as a sixth priority area, but the sense of  
10 many is that it would be best to ensure that each priority  
11 identifies interventions that support healthy aging including  
12 the older population.

13 Our next steps are that the Department of Health will elad  
14 efforts to develop priority area-specific plans with measurable  
15 objectives, evidence-based interventions, and information on how  
16 the priorities supports healthy aging and addresses another  
17 cross-cutting area, the social determinants of health. We'll  
18 have these draft plans done by Labor Day and plan to come back  
19 to all of you in the fall for review and approval so that the  
20 next plan can be launched on time for January 2019.

21 With that I'll stop and see if anyone has any questions.

22

23 GARY KALKUT: Thank you Mr. Hutton. Questions? Dr.  
24 Berliner.

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HOWARD BERLINER: I have a question about the role of the doula in the maternal mortality issue. My recollection, and I may be wrong about this from the reports of the public health committee were that the vast majority of the deaths were due to hypertension, obesity, a variety of medical factors. And my understanding, and this may also be wrong, is that the doula is usually just present at the birth and maybe somewhat after. So isn't really the need for something to happen between a women finding out she's pregnant, and then before the birth? Someone to work with on whatever it is that can help control hypertension and obesity and things like that? So I'm just kind of unclear what the role of the doula would be, unless it's a real expansion.

BRAD HUTTON: Well, it's correct that upon review of maternal deaths, you're right in observing that the leading causes are things like hemorrhage and hypertension. When we look at the evidence, the research that's been done that's looked at doulas, and first they are involved before, during and after childbirth, there's definitely evidence that there are improved health outcomes, a range of health outcomes for mom and baby when they're involved.

1 HARVEY LAWRENCE: This to respond to the question, our  
2 experience with doulas is that they are somewhat health coaches  
3 throughout the entire process. Not just during the delivery.  
4

5 GARY KALKUT: Anyone else? Alright. Thank you. Mr.  
6 Hutton, thank you. I'd like to turn to the report of the Office  
7 of Quality and Patient Safety. Dr. Friedrich who is the chief  
8 medical office, and Dr. Alicando, the medical director.  
9

10 MARCUS FRIEDRICH: Thank you Mr. Chairman. My name is  
11 Marcus Friedrich from the Department of Health, and I want to  
12 talk to you today about stoke care here in New York. In 2017 we  
13 were invited to the committee on Public Health and the Health  
14 Planning Committee which had a joint session here in New York to  
15 present on the New York State stroke designation program and we  
16 were asked to come back with some of the data, but also some of  
17 the approaches that we are currently thinking through in the  
18 Department to update the stroke designation program in New York  
19 State. I will lead for five minutes through the background, and  
20 then Dr. Alicando will take over and go a little bit more into  
21 details. This is like really very successful program. We have  
22 currently 120 hospitals designated as New York State stroke  
23 centers in New York. They undergo, they have to submit an  
24 application to the New York State Department of Health which we

1 then evaluate and then designate the center, stroke center.  
2 This is again, I want to make that very clear, voluntary  
3 program. Not every hospital has to get stroke center  
4 designation in New York. And the designation is limited to this,  
5 what we call primary stroke center here in New York. And EMS  
6 then uses this information, the designation from New York to  
7 then determine to which hospitals the stroke patients are being  
8 transported and so far the data shows that over 90 percent of  
9 the stroke care in New York is happening in these New York State  
10 stroke designated centers, and that we are actually very  
11 successful. We moved from a really, in the middle of the nation  
12 spot to number two when you measure it on mortality. According  
13 to the CDC. And here is also some data that actually cements  
14 this idea of if you go to a non-designated center your mortality  
15 is about four percent higher than if you get your care in the  
16 stroke designated center. There are transfer mechanisms  
17 available. If you as a patient walk into the hospital and you  
18 feel to have a stroke, you will then be transferred to the  
19 primary stroke center, but all the ambulances are actually by  
20 passing the non-designated centers and going directly to the  
21 stroke centers. But there are certain challenges, like with all  
22 programs in the state. One of them is that everything evolves  
23 like clinical guidelines evolve, and this program has not been  
24 updated since the beginning in 2004. There is really... we don't

1 have any regulation if you believe it or not. Cardiac and other  
2 disease processes are in regulation and cemented. In 2004 when  
3 this was a pilot and then as a voluntary program, the  
4 Commissioner at that time made the determination, actually not  
5 putting any regulation forward. So, we actually at the DOH have  
6 no guide in working through that program. We are also not  
7 recognizing higher levels of care. And this is being since 2005  
8 there are evidence-based guidelines out that next to these  
9 primary stroke centers you should have higher levels of care  
10 there called comprehensive stroke centers. These are centers  
11 that have neurosurgical back up and they are also available to  
12 do endovascular procedures for the patient. And they are proven  
13 to be very important, also for the care of certain stroke  
14 patients, mostly for what we call large vessel occlusions. These  
15 are like massive strokes. Again, it's a voluntary program. We  
16 don't, as the state, have the authority to be the only entity to  
17 designate, and that lead to hospitals actually going beyond the  
18 New York State designation and going to these accreditation  
19 agencies and getting their own accreditation besides what we are  
20 doing here in New York State. And there might be, the process  
21 might be insufficient. Meaning that out of the 120 hospitals  
22 that are stroke centers in the last 13 years, not one hospital  
23 has lost their stroke center designation. The state Department  
24 of Health does not have the manpower to do these regular check

1 ups. Also we are running that program with a very core team.  
2 And therefore these are like 10 hospitals what we call  
3 comprehensive stroke centers. This is this higher level of  
4 care. Again, New York State currently does not recognize that  
5 accreditation and we looked actually at data and seeing how many  
6 hospitals are already providing these enhanced procedures. We  
7 call them endovascular procedures. You can imagine, similar  
8 when you have a heart attack and there is a stent put in. And  
9 these are interventionalists who are actually going in with tiny  
10 wires into your brain and actually dissolving or taking the clot  
11 out. And currently out of the 120 hospitals, 37 hospitals are  
12 already providing these advanced services without any  
13 recognition from the state. And EMS and other stakeholders are  
14 really already advancing their thinking about stroke care here  
15 in New York and we feel from the Department of Health that we  
16 have to update our current approach and not only recognizing  
17 these primary stroke centers but thinking about other levels of  
18 care as well. This is a graph about these current stroke  
19 designation centers in black. The hospitals that are actually  
20 doing these endovascular procedures are these yellow stars that  
21 you can see in. and if you see this red triangles, these are  
22 already these high level outside the New York State stroke  
23 designation program, they already received a designation from  
24 outside, I would call them outside agencies such as the joint

1 commission DNV or other outside agencies to be these higher  
2 level of centers. And just see that stroke care is important in  
3 New York and we have to make sure that from the Department way  
4 of thinking to provide the right framework for hospitals to  
5 function in these capacities going forward.

6       These are like the statements, the challenges that we are  
7 having right now. We would like to put regulations forward to  
8 think about this framework that we would also from the  
9 Department point of view, try to get out of this process of  
10 accrediting these hospitals by ourselves. We have certain  
11 expertise, but we are certainly probably not good and set up for  
12 being an accrediting agencies and there are organizations out  
13 there that are doing this job much better than we can with the  
14 appropriate manpower and I just name, again, the joint  
15 commission, American Heart, and then there's the DNV and then  
16 there are two smaller organizations who are actually recognizing  
17 centers on a national. And the idea, and Dr. Alicando will go  
18 more into detail to have these applicants here in New York or  
19 accredit these centers for New York State. The other thing is  
20 that we are also very important, our emphasis at lease in the  
21 Office of Quality and Patient Safety is also on data. On data  
22 for the stroke patients and making sure that every patient  
23 really receives the right care at the right time at the right  
24 spot and with these interventions. We also think about the

1 operationalization of transfer processes for suspected stroke.  
2 The Department feels that we should not inject ourself. We have  
3 a very well-functioning EMS services, but that we could also  
4 provide some framework on how to make sure that in every area of  
5 the state there is enough support for these transfer services  
6 and also stroke care. And again, the data is very important  
7 piece that we would like to continue even if these outside  
8 agencies would accredit these hospitals, that we would use,  
9 again, the data that we are currently having on the stroke  
10 patient to make sure that we have a good oversight of what's  
11 going on in New York State.

12       So for the past couple of months we are going around the  
13 state and talking to several stakeholders. As you can imagine,  
14 the hospital associations have a great interest in that. They  
15 are all in support of putting in the regulations and revamping  
16 the New York State stroke designation program. We have a  
17 physician-led stroke advisory group that meets on a regular  
18 basis and we are going through certain baseline criteria of how  
19 this could look like. Rural hospitals, especially in the upper  
20 tier and norther parts of the state, we are going on a listening  
21 tour providing them with a similar rational behind what we are  
22 putting forth today and really partnering with one of the  
23 hospital associations to bring this message to the hospital and  
24 really ask what is lacking and how can we improve the process.

1 And then of course, EMS and then the CMAC which is the New York  
2 State committee on EMS that helps us with thinking through these  
3 options and of course the American heart association also.

4 So I will turn it over to Dr. Alicando to go a little bit  
5 more into detail about the process about the proposal that we  
6 are thinking here at the Department.

7  
8 JEAN ALICANDO: Thank you Marcus. So we appreciate the  
9 opportunity to update you on what we're thinking in going  
10 forward in trying to address some of the challenges and  
11 limitations that we've seen in our stroke program both from  
12 listening to the stakeholders that we've heard from around the  
13 state as well as the stroke advisory group that we spoke about.  
14 And keep in mind that these interventions are really time  
15 critical, so there's a short window to implement both  
16 thrombolysis that primary stroke centers implement, but also the  
17 advanced technology for endovascular clot retrieval really is  
18 time dependent as well, so it's important that the patient gets  
19 to the right place in a timely fashion and those are the things  
20 we were thinking about in developing this proposal.

21 Currently as Dr. Friedrich mentioned it's a voluntary  
22 proposal for hospitals and we would continue that. We're not  
23 saying that every hospital needs to be a stroke center. But it  
24 would be in regulation so that we have oversight capability and

1 more ability to oversee the entire system. New York State would  
2 set criteria for stroke center certification that the accrediting  
3 organizations would then use to go out and certify the programs.  
4 And those criteria are being worked on currently with our stroke  
5 advisory group. They're a variety of clinicians who provide  
6 stroke care as well as stroke coordinators at the hospitals to  
7 help us work through what's most appropriate as we develop this  
8 proposal. A key requirement that was put forward by most  
9 stakeholders and that the Department feels strongly about is  
10 that we continue to have access to the comprehensive data that  
11 we get now from the primary centers, but we would get that from  
12 all levels of centers as well as measurement of time intervals  
13 in transfer arrangements so we can make sure the system is  
14 functioning appropriately to get patients the time critical care  
15 they need. We would require that stroke centers participate in  
16 quality initiatives around stroke care. There's currently the  
17 Coverdale Program which is a quality improvement collaborative  
18 that about half of the hospitals participate in. we would  
19 require that hospitals participate in some form of quality  
20 improvement activity, not necessarily that one but have one in  
21 place to move forward. We would establish a process for  
22 withdrawing designation that we currently do not have codified,  
23 and recognize a transition period which was critical to our  
24 stakeholders for existing stroke centers, particularly those

1 that have sought certification at higher levels already and have  
2 that certification as well as those designated by New York State  
3 who would now need to be accredited, go through an accrediting  
4 agency for certification. So we built in a transition period.

5 So the process as we envision it that the regulation would  
6 outline would be that the DOH would approve the accrediting  
7 organizations that would be permitted or approved to function in  
8 the state to certify the stroke centers. Those approved  
9 organizations would then certify the programs that the hospital  
10 by reviewing the applications and doing onsite reviews for all  
11 the different levels. And then the New York State Department of  
12 Health would still designate, ultimately have the ultimate say  
13 in designation based on the recommendation from the accrediting  
14 organizations. We're not looking to duplicate anything, but we  
15 do want to have that ability to review ultimately what the  
16 organizations recommend.

17 Currently there are four accrediting organizations that  
18 certify stroke programs that we're aware of. Nationally, the  
19 joint commission, the joint, American Heart Association program,  
20 DNV which is an international program, operates internationally,  
21 its actually HFAP and the CIHQ. Those are two smaller  
22 organizations but they do conduct these certifications  
23 nationally. And we envision that they would apply to New York  
24 State for a time limited approval that would be subject to

1 reevaluation. To certify these programs in New York State we  
2 would review their applications that would include criteria such  
3 as staff that conducts reviews, their experience, things of that  
4 nature that we're developing currently with the stroke advisory  
5 group. The designation process would have to have built in  
6 redesignation reviews and most of these organizations in a two  
7 or three year timeframe do revisit the programs to ensure that  
8 they're continuing to provide quality stroke care.

9       Currently the three levels that we're considering and I  
10 think last time we spoke with the council we hadn't included the  
11 thrombectomy capable stroke centers, but as you saw from the map  
12 that if you could see it, that Dr. Friedrich had up, there are  
13 only 10 comprehensive centers, and they tend to be clustered in  
14 New York City and then larger urban areas up north. Thrombectomy  
15 is really limited to zero to six hours after stroke symptoms  
16 begin. In some cases it can be extended in certain eligible  
17 patients. So the time frames for transport to an appropriate  
18 center in areas that don't have these clusters of comprehensive  
19 centers could be excessive. So thrombectomy capable centers  
20 are the mid-tier. Right now we look at primary stroke centers  
21 who can administer thrombolysis to patients who are eligible.  
22 Thrombectomy capable centers can retrieve the clot, but don't  
23 have necessarily neurosurgical capabilities for clipping  
24 aneurisms or inserting coils for aneurisms in the face of sub-

1 hemorrhage, for example, and comprehensive stroke centers can do  
2 all of the above. So they also have the neurosurgical  
3 capability.

4 Data collection criteria that we would require of  
5 accrediting organizations is that we would be able to have  
6 access to all the required data and measures that we're  
7 developing with our advisory group and that facilities would be  
8 able to submit data just once. We don't want to duplicate  
9 effort for hospitals, so we would have one platform that data  
10 were submitted that we would have access to and that all  
11 hospitals with any level would provide the data so that we can  
12 look at timely treatment but also how the system is functioning  
13 with transfers and things of that nature. And again, the data  
14 requirements we actually have a subgroup looking specifically of  
15 the stroke advisory group at what data would best give us a  
16 picture of what's happening in the system. The timeframe for  
17 stroke centers to transition is a key issue from hospitals that  
18 we've heard going around the state. Currently we've been  
19 proposing that they have two years to initiate certification  
20 with an accrediting organization. So that would mean having an  
21 agreement with an organization. We have discussed having  
22 consultative visit first for those that are designated by New  
23 York State so they would know what the additional requirements  
24 would be and be able to be prepared for that. And then following

1 the agreement phase, they would have an additional year to  
2 complete the certification process. This timeframe also aligns  
3 with the current accrediting organizations timeframe so that  
4 those hospitals that are currently certified already by an  
5 outside organization would have their recertification time  
6 period to recertify. But we do stipulate that existing stroke  
7 centers that haven't initiated the process in two years from  
8 when the regulations are approved would then lose their  
9 designation until they achieve that outside certification. With  
10 that I think we'll open up for questions. Unless you have  
11 anything to add.

12

13 HOWARD BERLINER: Thank you for the presentations. I  
14 have a number of questions and I've probably forgotten most of  
15 them as you've gone on. But two that I recall. One, the issue  
16 is still north of the Thruway as our colleague Dr. Ruge calls  
17 it, and I don't think I heard anything that actually deals with  
18 that issue. The second is that data that you showed about the  
19 increase in mortality was quite compelling, but it's also five  
20 years old. So do we have anything more recent? Let's start with  
21 those two.

22

23 JEAN ALICANDO: I can speak to the first one and a little  
24 bit to the second one. The first one, the north country is

1 really difficult. We did have one of our listening tours up  
2 there in that region and in the western region to try to get  
3 input from them on what they would need. We worked with Dr.  
4 Greg Young as well who has been in those areas extensively, he  
5 works in those areas. So there may be hospitals that do not  
6 achieve certification, but there are other mechanisms by which  
7 they could participate in appropriate stroke care that we would  
8 be promoting amongst those hospitals which would include  
9 telestroke capability which is happening up there and things of  
10 that nature. There's a lower level of certification called  
11 acute stroke ready where there's a little bit of a difference in  
12 requirements for inpatient unit, things like that. It's  
13 something we've discussed. I actually was out on Long Island  
14 yesterday where, eastern Long Island, way out on the end, we  
15 thought that might be something they might be considering.  
16 There really hasn't been a lot of interest in that. They talk  
17 more about telestroke and affiliating with another facility and  
18 these affiliations with other centers and transfer agreements  
19 would be key.

20 To the second point, we're in the process of reevaluating  
21 the data for mortality for those designated and not designated,  
22 but I don't have those data yet. We can provide that in the  
23 future.

24

1           MARCUS FRIEDRICH:    The other thing that I just want to add  
2 is that, Howard, I mentioned before that we want to build a  
3 framework, because right now there's only one level center  
4 approved. So it's hard to build actually, a structure around if  
5 you just approve one level of centers. So if you build a  
6 framework like we are proposing with a comprehensive  
7 thrombectomy capably, we hope that the region by the power of  
8 patient care taking this into account and then building a  
9 structure around. So you have multiple primary centers, you have  
10 a couple of these thrombectomy capable centers, and then one or  
11 two of these comprehensive centers, and building, that is one  
12 thing that is currently also not being recognized but having  
13 transfer agreements between those hospitals and making sure that  
14 the structure works for the good of the patient, because time as  
15 in cardiac care, is of essence also in stroke care.

16

17           DR. TORRES:        There was reference made to ambulance. What  
18 was that point? The ambulance that the stroke victim would go  
19 straight to a stroke designated hospital and bypass any non-  
20 stroke hospital?

21

22           MARCUS FRIEDRICH:   Yes, that is currently the policy in  
23 this region. That is of course like the whole purpose that the  
24 New York State Department recognized these entities as primary

1 stroke center. EMS has a list of primary stroke centers. So if  
2 they pick up a patient with a stroke they would bypass a normal  
3 hospital and bring them directly to the primary stroke center.  
4 In the future, there is talk that the EMS providers could be  
5 more specific triaging. If there is a major stroke, they would  
6 bring it probably to a higher level center, and if they feel  
7 that this is what we call like a minor stroke that this could  
8 probably be cared for in these, I wouldn't call them lower  
9 level, but primary care stroke centers throughout the state.

10

11 JEAN ALICANDO: I just wanted to make a brief comment. This  
12 is current process where the state bureau of EMS has agreed with  
13 the CMAC and (SEMSCO) to a triage screen that the EMS agencies  
14 do in the field currently to identify patients with suspected  
15 stroke, they use the Cincinnati Scale and then they would direct  
16 as time allows, there's a maximum time transport where they  
17 wouldn't bypass but, and then would go directly to a primary  
18 center. Some regions are piloting a severity stratification in  
19 addition to a stroke screen to try to identify these large  
20 vessel occlusions, New York City being one that is looking to  
21 pilot it, but absent a state recognition of thrombectomy capable  
22 for those large vessel occlusions or the comprehensive centers  
23 it's difficult for them to even implement those pilot programs  
24 that have been approved by the bureau of EMS. So we hope this

1 framework will facilitate those pilots. There's not a great  
2 tool right now for stratification but they're looking to test  
3 one.

4  
5 JOHN BENNETT: This is a comment really. This is a  
6 tremendously well thought out and exciting plan. So I really  
7 want to commend you. I think the idea of recognizing centers at  
8 different levels is very, very important as I saw clinically for  
9 a long time. And I think the other thing that I think is  
10 particularly powerful is your decision to outsource some of the  
11 accreditation to some bodies which I'm sure will be cost  
12 effective for the state and will allow you to adapt over time  
13 much more quickly than you might otherwise be able to. I think  
14 this is great. Thank you.

15  
16 GARY KALKUT: I'd second Dr. Bennett's comments. I think  
17 it's great to improve the capabilities. I just want some  
18 clarification. So in two years or two years from when this plan  
19 starts, New York State, the designation of a stroke center will  
20 be done in collaboration with an external body like the joint  
21 commission, and will have three levels of accreditation? Or just  
22 the comprehensive accreditation level?

23

1           MARCUS FRIEDRICH:    It will be three levels or even there's  
2 a fourth level, it's called the acute stroke-ready level which  
3 is kind of even below the primary stroke center. We would like  
4 to write the regulations to give the Department the leeway of  
5 deciding what levels we put forth, and therefore, but you're  
6 right, in two years after these regulations passed that the  
7 hospitals can then pick which one is the right fit for the  
8 hospitals.

9

10           GARY KALKUT:    And then the framework you mentioned  
11 connects those different levels to try to do the best by a  
12 patient needs what you're saying including risk stratification  
13 in the field and things like that.

14           I just want to mention, and I thought Dr. Bennett was going  
15 to say something about it, comprehensive stroke center  
16 designation requires a lot of resources and is quite expensive.  
17 For the joint commission you certainly need a call, schedule for  
18 interventional radiology that has two people available at all  
19 times too. So you need a call schedule of at least five and  
20 probably more like 10 people involved. There's also tremendous  
21 data and reporting requirements for comprehensive stroke center  
22 designation and you certainly want to get some of that coming  
23 back to the department. And it goes on; neurosurgery, neuro  
24 intensive care, etc. How will that be supported I guess is the

1 question, and do you anticipate there'll be additional  
2 comprehensive centers designated given your plan here.

3

4       MARCUS FRIEDRICH:   Again, good question. I don't know for  
5 certain but I know that there are one or two comprehensive  
6 stroke center application in the pipeline with external agencies  
7 right now, and it is expensive. But I feel that compared to the  
8 level of expertise that you know, only certain centers have that  
9 level of expertise and we've got to make sure that we identify  
10 those patients or centers and making sure that the patient with  
11 a higher severity receive the care from those centers. Cost is  
12 an issue. I just want to be very upfront. This is one of the  
13 major issues that we're confronted, largely like the northern  
14 tier of the state, mostly like smaller hospitals that are  
15 currently primary care centers, primary stroke centers, and that  
16 they are worried about these ongoing, every two year recognition  
17 cost from these agencies, and we are working around that. There  
18 is currently from the department no funds available for that,  
19 but I can envision where we could use the market power of the  
20 state to talk with these agencies and maybe have a two tiered  
21 system where they urban centers being charged probably a little  
22 bit more than the rural hospitals. In addition I think that,  
23 you know, every hospital is certainly free to get their  
24 recognition at certain levels. And we just hope, I mean we're

1 working through... we started already discussions if there's from  
2 other sources of funding especially for transition period, if  
3 there could be some relief for some of the hospitals.  
4

5 GARY KALKUT: Particularly with the geography you showed  
6 and the disparities there. Mr. Lawrence.  
7

8 HARVEY LAWRENCE: I guess I'm getting an education here  
9 because I know absolutely nothing about it. So thank you. The  
10 question though is, am I to understand that these designations  
11 are all on a voluntary basis? And if so, then how do you balance  
12 need against clustering maybe all of these centers happening to  
13 show up in certain neighborhoods and certain areas and other  
14 areas you don't have them? And so from a planning perspective  
15 and the need perspective, how do you balance to ensure that all  
16 of the different communities across the state are served  
17 equitably?  
18

19 MARCUS FREIDRICH: I think it's a very good argument and I  
20 don't feel that the - I'm just speaking of myself - that the  
21 state should certainly build a structure around stroke care, but  
22 we should enable the structure to happen in a nondisruptive  
23 manner. Meaning that we would cover all the areas where there's  
24 stroke care in New York. We, I feel that right now we have such

1 an excellent stroke care that I hope that this program that we  
2 are proposing right now would not diminish that care, that we  
3 are making sure that disparate services are provided to all  
4 populations in all areas right now. If there is a need in the  
5 future to step in as the Department and look at these where they  
6 are wild areas or big areas where there is not adequate care I  
7 feel that then there could be probably steps taken to encourage  
8 and help with expertise from the Department.

9

10 JEAN ALICANDO: I think supporting those hospitals in  
11 underserved areas going forward is something that is going to be  
12 important, and we haven't worked out exactly to do that yet but  
13 I think we have that in our concept of how this would work. I  
14 think the transfer agreements which we're trying to strengthen  
15 and monitor through measurement with upper level centers or even  
16 primary centers for those rural hospitals that don't have  
17 capability of becoming certified centers is something else that  
18 we're encouraging and facilitating with the hospitals.

19

20 JOHN BENNETT: Mr. Lawrence made me think about another  
21 question sort of related to that. In light of our need to reduce  
22 disparities across the state, whether they be geographic or  
23 socio-economic, has your data shown any differences from a

1 geographic perspective in terms of outcomes? Or any other  
2 features? Or have you not had the ability?

3

4       MARCUS FRIEDRICH:    At the beginning we started looking in  
5 cardiac data for disparities and outcomes in different regions  
6 of the state and this was really, you know, has not been  
7 researched very well, but on the cardiac side our cardiac  
8 program at the New York State Department of Health just released  
9 a report which clearly combines STEMI and end STEMI care in  
10 different regions and how there are differences in care and we  
11 are using a similar methodology to start looking at stroke care  
12 as well and seeing if we can identify areas where there's  
13 different care provided to different populations at a different  
14 level.

15

16       ANGEL GUTIERREZ:     As always, the armed forces have been  
17 the pioneer in showing how to take care of acute problems  
18 remotely. But we cannot go there yet. We can use it as a model.  
19 I would like to caution us, the members of the council to raise  
20 expectations that this is going to be available in remote areas.  
21 I cannot see how you can possibly cover because of the distances  
22 involved. A stroke up in the middle of the norther Adirondacks  
23 versus a stroke in Albany or New York or Rochester or Buffalo.

24       Not yet.

1

2 GARY KALKUT: Thanks. Dr. Soto.

3

4 NILDA SOTO: Along those lines and I believe one of you  
5 to mention the (COGNY) and doctors across New York so that  
6 funding which is provided by the state, goes to the facility as  
7 a way to subsidize a physician's salary. A lot of it from the  
8 past was for loan forgiveness as an added... so the person had  
9 this salary and they said if you sign up with us and they had  
10 increments for every year that you signed up. I agree. You  
11 know, the incentive, the manpower, whether you're going to meet  
12 10, 12 people in a team at whatever point they can come in and  
13 address issues, I mean, once you've identified the program, one  
14 you've identified these other criteria, the protocols, how are  
15 you going to man it?

16

17 GARY KALKUT: Dr. Berliner, did you have a question?

18

19 HOWARD BERLINER: I do. Are you aware of any differences  
20 in the standard for getting accreditation from the different  
21 voluntary agencies that you put up on the board?

22

23 JEAN ALICANDO: We actually extracted all the requirements  
24 for the different level of centers across the four agencies, and

1 we've been going through them with our advisory group. We have a  
2 neuro interventional group, a data group of experts in those  
3 areas and we're looking to establish a commonality across them  
4 for what we would expect for the different levels of centers so  
5 that everybody is looking at the same criteria.

6

7       HOWARD BERLINER:       Because I think the idea of having all  
8 of the voluntary places have to accept what New York State  
9 decides are the correct standards makes perfect sense. But my  
10 worry is that if you've got the state and then four or five  
11 agencies, you know, a hospital can put anything it wants up on  
12 it's wall. You know, and I'm not sure anyone, you know, who's  
13 not on the committee - not our committee but the doctors  
14 committee is going to know, you know, what's the difference  
15 between a joint commission versus a DNV, and if it says that,  
16 what does it mean for me? And... some way of just letting to  
17 public to understand the differences.

18

19       JEAN ALICANDO: No, I agree. That's foremost in our minds. I  
20 think currently people are calling themselves designated,  
21 hospitals are saying they're designated centers. They may or  
22 may not, that they can do thrombectomy but we don't know if it's  
23 24/7 or what the expertise is. So, I think this is an effort to  
24 level so that there will be one standard criteria set from New

1 York. And they're all based on American Stroke Association  
2 guidelines, so they're all pretty similar. But we're going to  
3 set some baseline for everyone. Standard.

4

5 GARY KALKUT: Thank you. Other questions? It's a great  
6 initiative. Technology, transportation, capability and trying  
7 to make that optimize care. Great. Thank you for.

8 Alright. I think that concludes the business of the Public  
9 Health Council, and I'd like to adjourn the meeting. Thank you  
10 all.

11

12 [end]

18-04 Amendment of Parts 402, 403, 700, 763, 765, 766, 793, 794 and 1001 of Title 10 NYCRR  
(Criminal History Record Checks and Advanced Home Health Aides)

To Be Distributed Under Separate Cover

Pursuant to the authority vested in the Public Health and Health Planning Council, subject to the approval of the Commissioner of Health, by section 2803 of the Public Health Law, sections 405.7 and 751.9 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) are hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register:

Paragraph (2) of subdivision (b) of section 405.7 of Title 10 is amended to read as follows:

(2) treatment without discrimination as to race, color, religion, sex, gender identity, national origin, disability, sexual orientation, age, or source of payment;

Subdivision (c) of section 405.7 of Title 10 is amended to read as follows:

(c) Patients' Bill of Rights. For purposes of subdivision (a) of this section, the hospital shall utilize the following Patients' Bill of Rights:

#### Patients' Bill of Rights

As a patient in a hospital in New York State, you have the right, consistent with law, to:

(1) Understand and use these rights. If for any reason you do not understand or you need help, the hospital must provide assistance, including an interpreter.

(2) Receive treatment without discrimination as to race, color, religion, sex, gender identity, national origin, disability, sexual orientation, age, or source of payment.

(3) Receive considerate and respectful care in a clean and safe environment free of unnecessary restraints.

(4) Receive emergency care if you need it.

(5) Be informed of the name and position of the doctor who will be in charge of your care in the hospital.

(6) Know the names, positions, and functions of any hospital staff involved in your care and refuse their treatment, examination or observation.

(7) A no smoking room.

(8) Receive complete information about your diagnosis, treatment and prognosis.

(9) Receive all the information that you need to give informed consent for any proposed procedure or treatment. This information shall include the possible risks and benefits of the procedure or treatment.

(10) Receive all the information you need to give informed consent for an order not to resuscitate. You also have the right to designate an individual to give this consent for you if you are too ill to do so. If you would like additional information, please ask for a copy of the pamphlet "Do Not Resuscitate Orders - A Guide for Patients and Families."

(11) Refuse treatment and be told what effect this may have on your health.

(12) Refuse to take part in research. In deciding whether or not to participate, you have the right to a full explanation.

(13) Privacy while in the hospital and confidentiality of all information and records regarding your care.

(14) Participate in all decisions about your treatment and discharge from the hospital. The hospital must provide you with a written discharge plan and written description of how you can appeal your discharge.

(15) Identify a caregiver who will be included in your discharge planning and sharing of post-discharge care information or instruction.

(16) Review your medical record without charge and obtain a copy of your medical record for which the hospital can charge a reasonable fee. You cannot be denied a copy solely because you cannot afford to pay.

[(16)] (17) Receive an itemized bill and explanation of all charges.

(18) View a list of the hospital's standard charges for items and services and the health plans the hospital participates with.

(19) Challenge an unexpected bill through the Independent Dispute Resolution process.

[(17)] (20) Complain without fear of reprisals about the care and services you are receiving and to have the hospital respond to you and if you request it, a written response. If you are not satisfied with the hospital's response, you can complain to the New York State Health Department. The hospital must provide you with the Health Department telephone number.

[(18)] (21) Authorize those family members and other adults who will be given priority to visit consistent with your ability to receive visitors.

[(19)] (22) Make known your wishes in regard to anatomical gifts. [You] Persons sixteen years of age or older may document [your wishes in your] their consent to donate their organs, eyes and/or tissues, upon their death, by enrolling in the NYS Donate Life Registry or by documenting their authorization for organ and/or tissue donation in writing in a number of ways (such as health care proxy, will, donor card, or other signed paper). The health care proxy [or on a donor card,] is available from the hospital.

Subdivision (a) of section 751.9 is amended to read as follows:

(a) receive service(s) without regard to age, race, color, sexual orientation, religion, marital status, sex, gender identity, national origin or sponsor;

Subdivision (q) of section 751.9 is amended to read as follows:

(q) make known your wishes in regard to anatomical gifts. [You] Persons sixteen years of age or older may document [your wishes in your] their consent to donate their organs, eyes and/or tissues, upon their death, by enrolling in the NYS Donate Life Registry or by documenting their authorization for organ and/or tissue donation in writing in a number of ways (such as health care proxy, will, donor card, or other signed paper). The health care proxy [or on a donor card] is available from the center.

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

Public Health Law (PHL) § 2803 authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health (Commissioner), to implement the purposes and provisions of PHL Article 28 and to establish minimum standards governing the operation of health care facilities. Under PHL § 2803(1)(g), the Commissioner shall require that every general hospital adopt and make public an identical statement of the rights and responsibilities of patients.

### **Legislative Objectives:**

The statement of rights of patients under PHL § 2803(1)(g) is intended to include the right to receive treatment without discrimination based on characteristics defined by Article 15 of New York Executive Law (the Human Rights Law), as well as other rights afforded to patients by statute. These include the right to have a caregiver involved in discharge planning, the right to receive information regarding the hospital's standard charges, the right to challenge unexpected bills through an independent dispute resolution process, and the right to make known a patient's wishes with regard to consenting to organ donation in the hospital setting.

### **Current Requirements:**

General hospitals are required by § 405.7 of Title 10 of the New York Compilation of Codes, Rules and Regulations of New York (NYCRR) to provide treatment without discrimination as to race, color, religion, sex, national origin, disability, sexual orientation, age, or source of payment and to adopt and make public a Patients' Bill of Rights that informs

patients of the right to receive treatment absent from such discrimination.

The Caregiver Advise, Record and Enable (CARE) Act, enacted as PHL Article 29-CCCC, gives hospital patients the right to have a caregiver involved in discharge planning. The Surprise Bill Law (Part H of Chapter 60 of the Laws of 2014) enacted PHL § 24 to give hospital patients the right to receive information regarding the hospital's standard charges and enacted Article 6 of the Financial Services Law to give them the right to challenge unexpected bills through an independent dispute resolution process.

PHL § 2803(1)(g) requires hospitals to inform patients of their right to make anatomical gifts and the means by which the patient may make such a donation. PHL §§ 4301, 4303, and 4310 include various ways that an individual who is 16 years of age or older may consent to organ donation, including through enrollment in the New York State Donate Life Registry.

### **Needs and Benefits:**

The New York State Division of Human Rights implements the Human Rights Law and establishes regulations thereunder. Part 466 of Title 9 of the NYCRR contains the general regulations of the Division of Human Rights. The statement of rights of patients under PHL § 2803(1)(g) includes the right to receive treatment without discrimination based on characteristics defined by the Human Rights Law and the regulations of the Division of Human Rights. On January 20, 2016, the Division of Human Rights adopted a regulation adding 9 NYCRR § 466.13. Section 466.13 clarifies that discrimination on the basis of gender identity is sex discrimination and further defines "gender identity" as:

having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth.

The proposed amendments to 10 NYCRR §§ 405.7 and 751.9 with respect to gender identity will conform the Patient's Bill of Rights to New York's Human Rights Law.

Under the CARE Act, hospital patients have the right to have a caregiver involved in discharge planning. Under the Surprise Bill Law, hospital patients have the right to receive information regarding the hospital's standard charges and to challenge unexpected bills through an independent dispute resolution process. This proposed regulatory amendment conforms the Patient's Bill of Rights to these statutory requirements.

PHL § 2803(1)(g) requires hospitals to inform patients of his or her right to make anatomical gifts and the means by which the patient may make such a donation. PHL §§ 4301, 4303, and 4310 provide for the right of an individual who is 16 years of age or older to document their consent to make an anatomical gift by a variety of mechanisms in New York State (*i.e.*, the New York State Donate Life Registry, health care proxy, wills, donor cards or a signed paper). This proposal updates the Patients' Bill of Rights to clarify that patients not only have the right to express their wish or intent to donate their organs, but have the right to consent to donation and to document such consent through various mechanisms including enrollment in the NYS Donate Life Registry.

**COSTS:**

**Costs to Private Regulated Parties:**

This amendment is a clarification of rights that patients already have in New York State. Health care facilities will incur minimal costs in order to change the Patients' Bill of Rights made available to patients. Hospitals and D&TCs may also need to update training materials for staff.

**Costs to Local Government:**

This proposal will not impact local governments unless they operate a general hospital or D&TC, in which case the impact would be the same as outlined above for private parties.

**Costs to the Department of Health:**

The proposed regulatory changes will not result in any additional operational costs to the Department of Health.

**Costs to Other State Agencies:**

The proposed regulatory changes will not result in any additional costs to other state agencies.

**Local Government Mandate:**

The proposed regulations do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

**Paperwork:**

General hospitals and D&TCs are already required to make the Patients' Bill of Rights available to patients. Therefore, the proposed regulations should not significantly increase their paperwork.

**Duplication:**

There are no relevant State regulations which duplicate, overlap or conflict with the proposed regulations.

**Alternatives:**

The alternative would be to take no action, which would result in a lack of consistency between the Human Rights Law and the Patients' Bill of Rights. Similarly, the Patient's Bill of Rights would be inconsistent with the PHL provisions related to the CARE Act, the Surprise Bill Law, and organ donation.

**Federal Standards:**

The proposed regulations do not duplicate or conflict with any federal regulations.

**Compliance Schedule:**

The regulations will be effective upon publication of a Notice of Adoption in the New York State Register.

**Contact Person:** Katherine Ceroalo  
New York State Department of Health  
Bureau of Program Counsel, Regulatory Affairs Unit  
Corning Tower Building, Room 2438  
Empire State Plaza  
Albany, New York 12237  
(518) 473-7488  
(518) 473-2019 (FAX)  
[REGSQNA@health.ny.gov](mailto:REGSQNA@health.ny.gov)

## **REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS**

### **Effect of Rule:**

The proposed regulation will apply to all general hospitals and diagnostic and treatment centers (D&TCs) in New York State. This proposal will not impact local governments or small business unless they operate a general hospital or D&TC. In such case, the flexibility afforded by the regulations is expected to minimize any costs of compliance as described below.

### **Compliance Requirements:**

These regulations will require general hospitals and D&TCs to change their patients' bill of rights.

### **Professional Services:**

General hospitals and D&TCs are already required to make the Patients' Bill of Rights available to patients.

### **Compliance Costs:**

Compliance costs are minimal, as they only require editing and reprinting the Patients' Bill of Rights.

### **Economic and Technological Feasibility:**

This proposal is economically and technically feasible.

**Minimizing Adverse Impact:**

The anticipated impact of the proposal is minimal. General hospitals and D&TCs are already required to make the Patients' Bill of Rights available to patients.

**Small Business and Local Government Participation:**

Organizations that include as members general hospitals and D&TCs were consulted on the proposed regulations. Additionally, the proposed regulation will have a 60-day public comment period.

**Cure Period:**

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on a party subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one is not included. As this proposed regulation does not create a new penalty or sanction, no cure period is necessary.

## RURAL AREA FLEXIBILITY ANALYSIS

### Types and Estimated Numbers of Rural Areas:

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

Approximately 17% of small health care facilities are located in rural areas.

|                     |                     |                      |
|---------------------|---------------------|----------------------|
| .Allegany County    | .Greene County      | .Schoharie County    |
| .Cattaraugus County | .Hamilton County    | .Schuyler County     |
| .Cayuga County      | .Herkimer County    | .Seneca County       |
| .Chautauqua County  | .Jefferson County   | .St. Lawrence County |
| .Chemung County     | .Lewis County       | .Steuben County      |
| .Chenango County    | .Livingston County  | .Sullivan County     |
| .Clinton County     | .Madison County     | .Tioga County        |
| .Columbia County    | .Montgomery County  | .Tompkins County     |
| .Cortland County    | .Ontario County     | .Ulster County       |
| .Delaware County    | .Orleans County     | .Warren County       |
| .Essex County       | .Oswego County      | .Washington County   |
| .Franklin County    | .Otsego County      | .Wayne County        |
| .Fulton County      | .Putnam County      | .Wyoming County      |
| .Genesee County     | .Rensselaer County  | .Yates County        |
|                     | .Schenectady County |                      |

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

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

There are 47 general hospitals, approximately 90 diagnostic and treatment centers (D&TCs), 159 nursing homes, and 92 certified home health agencies in rural areas.

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

The proposed regulation is applicable to those general hospitals located in rural areas and is expected to impose minimal costs upon hospitals, which are already required to make the Patient's Bill of Rights available to patients. Because the proposed regulatory requirements can be incorporated into existing processes, they are not expected to increase the administrative burden on these entities.

**Costs:**

Hospitals are already required to make the Patients' Bill of Rights available to patients. The cost of the small wording change to the Patients' Bill of Rights will be insubstantial.

**Minimizing Adverse Impact:**

The impact is minimal.

**Rural Area Participation:**

Organizations that include as members general hospitals and D&TCs located in rural areas were consulted on the proposed regulations.

## **STATEMENT IN LIEU OF JOB IMPACT STATEMENT**

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. No adverse impact on jobs and employment opportunities is expected as a result of these proposed regulations.



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]

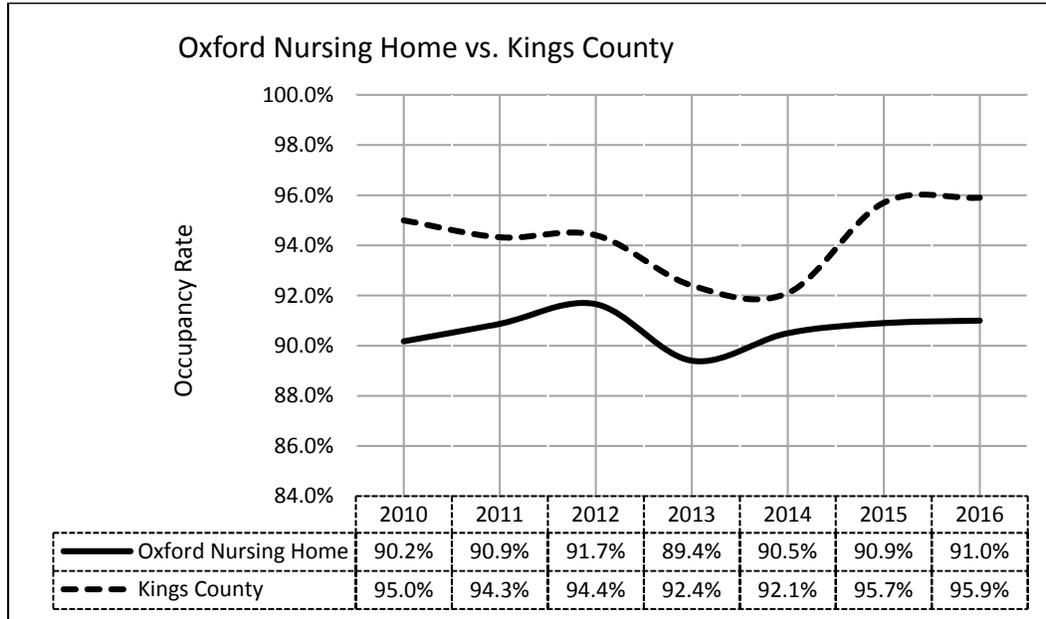
Council Action Date

**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 # 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 # 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       |
| <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        |
| Net Operating Income     | <u>\$6,474,908</u>  | <u>\$3,381,769</u> | <u>\$3,363,007</u> |
| Utilization (Procedures) | 12,448              | 9,588              | 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2<sup>nd</sup> day of August 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to request for indefinite life status for CON #111076, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

172395 E

Queens Endoscopy ASC, LLC

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]

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



**Project # 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

| Provider Name                                      | Ownership Since | Overall | Health Inspection | Quality Measure | Staffing           | NYS Quintile |
|--|-----------------|---------|-------------------|-----------------|--------------------|--------------|
| Autumn View Health Care Facility LLC               | 05/2017         | *****   | ****              | *****           | ****               | 1            |
| Brookhaven Rehab and Health Care Center LLC        | 05/2017         | ****    | ***               | *****           | Data Not Available | 1            |
| Garden Gate Health Care Facility                   | 05/2017         | *****   | ****              | *****           | ****               | 1            |
| Harris Hill Nursing Facility LLC                   | 05/2017         | *****   | ****              | *****           | ****               | 1            |
| North Gate Health Care Facility                    | 05/2017         | *****   | ***               | *****           | ****               | 1            |
| Seneca Health Care Center                          | 05/2017         | *****   | ***               | *****           | ****               | 1            |
| Chautauqua Nursing and Rehabilitation Center       | 01/2015         | ****    | ***               | *****           | **                 | 3            |
| Golden Hill Nursing and Rehabilitation Center      | 10/2012         | *****   | ****              | *****           | **                 | 2            |
| Susquehanna Nursing and Rehab Center LLC           | 06/2008         | **      | *                 | *****           | **                 | 4            |
| The Hamptons Center for Rehabilitation and Nursing | 06/2008         | ****    | ***               | *****           | ***                | 5            |
| Bishop Rehabilitation and Nursing Center           | 12/2017         | *       | *                 | ***             | Data Not Available | 5            |

### MI

|                                 |         |     |     |       |   |     |
|---------------------------------|---------|-----|-----|-------|---|-----|
| Autumn Woods Residential Health | 05/2017 | *** | *** | ***** | * | 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2<sup>nd</sup> day of August 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 100% interest from two current members to one new sole member limited liability company with two individual members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

181112 E

FACILITY/APPLICANT:

Clinton Square Operations, LLC d/b/a Bishop  
Rehabilitation and Nursing Center

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]

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



Project # 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:

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

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

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><br>Liebel Rubin 45.1%<br>Golda Klein 9.9%<br>Estate of Abraham Klein 45.0%<br>100.0% | <u>Proposed Stock Ownership</u><br>*Liebel Rubin 45%<br>Golda Klein 55%<br>100%<br>*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

| Provider Name                                   | Ownership Since | Overall | Health Inspection | Quality Measure | Staffing           | NYS Quintile |
|---|-----------------|---------|-------------------|-----------------|--------------------|--------------|
| Park Terrace Care Center                        | 09/2016         | ***     | **                | *****           | Data Not Available | 3            |
| Queens Nassau Rehabilitation and Nursing Center | 09/2016         | *****   | ****              | *****           | ***                | 3            |
| Northern Manhattan Rehab and Nursing Center     | 01/2018         | ***     | ***               | *****           | *                  | 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. |

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of section 2801-a of the Public Health Law, on this 7<sup>th</sup> day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby approves the following application to establish transfer of 45.10% ownership interest from the estate of one (1) withdrawing member to one (1) existing member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

181144 E

FACILITY/APPLICANT:

Park Terrace Care Center

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]



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 19<sup>th</sup> 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:

| <u>Current Ownership</u>  |               |               |
|---------------------------|---------------|---------------|
| <u>Stockholders</u>       | <u>Shares</u> | <u>%</u>      |
| Abraham N. Klein (Estate) | 80.2          | 40.1%         |
| Liebel Rubin              | 100.0         | 50.0%         |
| Golda Rivka Klein         | <u>19.8</u>   | <u>9.9%</u>   |
| <b>Total</b>              | <b>200</b>    | <b>100.0%</b> |

| <u>Proposed Ownership</u> |               |             |
|---------------------------|---------------|-------------|
| <u>Stockholders</u>       | <u>Shares</u> | <u>%</u>    |
| Liebel Rubin              | 100           | 50%         |
| Golda Rivka Klein         | <u>100</u>    | <u>50%</u>  |
| <b>Total</b>              | <b>200</b>    | <b>100%</b> |

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>*<i>Managing Member</i></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% | * <i>Managing Member</i> |  |  |
| <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%   | * <i>Managing Member</i> |          |                     |          |              |       |               |     |             |      |             |     |                         |       |                          |  |  |

### 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

| Provider Name                                   | Ownership Since | Overall | Health Inspection | Quality Measure | Staffing           | NYS Quintile |
|---|-----------------|---------|-------------------|-----------------|--------------------|--------------|
| Park Terrace Care Center                        | 09/2016         | ***     | **                | *****           | Data Not Available | 3            |
| Queens Nassau Rehabilitation and Nursing Center | 09/2016         | *****   | ****              | *****           | ***                | 3            |
| Northern Manhattan Rehab and Nursing Center     | 01/2018         | ***     | ***               | *****           | *                  | 2            |

The subject facility is included because the applicant already has an 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 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:                  | 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 |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of section 2801-a of the Public Health Law, on this 7<sup>th</sup> day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby approves the following application to establish transfer of 40.10% ownership interest from one (1) withdrawing shareholder to one (1) of the remaining shareholders, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

181165 E

FACILITY/APPLICANT:

Queens Nassau Rehabilitation and  
Nursing Center

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]



## 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

---

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):

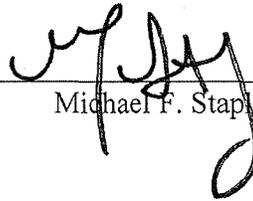
- (a) To approve the statement of mission and philosophy adopted by the Corporation and to require that the Corporation operate in conformance with its mission and philosophy;
- (b) To elect and remove, with or without cause, the President of the Corporation;
- (c) To amend or repeal the Certificate 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.



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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

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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. :  
-----

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,

*Rosa M. ...*  
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. V. 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. Finell      Frank A. Christian

Geo. Williams      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 M. ...*  
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

CERTIFICATE OF CHANGE OF TIME OF ANNUAL MEETING

OF

FREDERICK FERRIS THOMPSON HOSPITAL

Pursuant to Section 30 of the Membership Corporation Law:

We, the undersigned, being respectively the President and the Secretary of the Frederick Ferris Thompson Hospital do hereby certify as follows:

- 1) The name of the corporation is Frederick Ferris Thompson Hospital.
- 2) The certificate of incorporation of said corporation was filed in the office of the Secretary of State of the State of New York on the 7th day of March, 1903, and was filed in the office of the County Clerk of Ontario County on the 11th day of March, 1903.
- 3) The time originally fixed for holding the annual meeting of members of the corporation was the first Thursday of each November.
- 4) The time for holding the annual meeting of members was changed from the first Thursday in each November to the second Friday of October of each year by certificate dated the 5th day of August, 1907, recorded in the office of the County Clerk of Ontario County on the 9th day of August, 1907.
- 5) Henceforth the annual meeting of members shall be held on a date within ninety days after the end of each fiscal year said date to be determined by the Board of Directors.

IN WITNESS WHEREOF we have made and subscribed this certificate in duplicate this 27th day of October, 1949.

Frank H. Hamlin (L.S.)  
President

Alfred W. Armstrong (L.S.)  
Secretary

STATE OF NEW YORK )  
                                  ) SS:  
COUNTY OF ONTARIO )

On this 27th day of October, 1949, before me the subscriber, personally appeared Frank H. Hamlin and Alfred W. Armstrong to me personally known and known to me to be the same persons described in and who executed the within instrument and they severally acknowledged to me that they executed the same as such persons aforesaid.

John B. Tyler  
Notary Public - Ont. Co. No 975

527-47 Commission expires 3/30/50

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 100  
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 \$ NONE

FILING FEE \$ 25

*Thomas J. Herron*

Secretary of State

By *[Signature]*

F. F. Thompson Hospital  
Canandaigua, New York.

5219-785

***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;

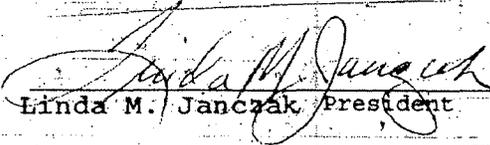
(j) To approve any corporate reorganization of the Corporation and the establishment, merger, consolidation, reorganization or dissolution of any organizational relationship of the Corporation, including but not limited to subsidiary corporations, partnerships or joint ventures of the Corporation; and

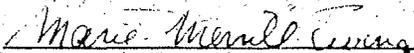
(k) To approve the strategic plan of the Corporation, provided that such right of approval shall not permit the Member(s) to exercise any governance authority of the Corporation that may become subject to regulation by the New York State Department of Health under applicable regulations unless the Member(s) 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 2<sup>nd</sup> day of August 2018, approves the filing of the Restated Certificate of Incorporation of The Frederick Ferris Thompson Hospital dated May, 2018



## 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

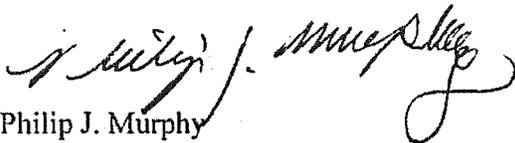
Dear Ms. Leonard:

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     |

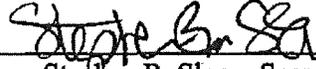
4. The assets of the Corporation shall be used to pay creditors and to satisfy the liabilities of the Corporation to Excellus Health Plan, Inc. Excellus Health Plan, Inc. shall forgive any debt that cannot be paid from the assets of the Corporation after all other creditors are paid in full.

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

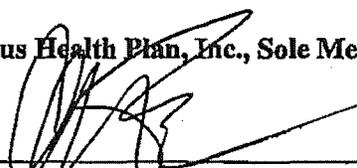
RESOLVED, that the sole member and Board of Directors of the Corporation do hereby adopt the Plan of Dissolution attached to this Joint Unanimous Written Consent; and it is further

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:**

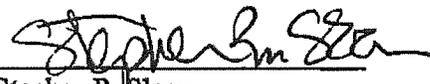
Date: 4/30/2018

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.

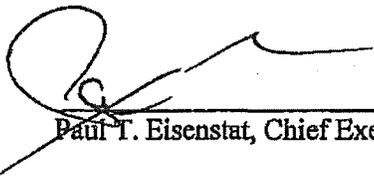
10. Approval of the New York State Public Health and Health Planning Council is attached as Exhibit "E".

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,

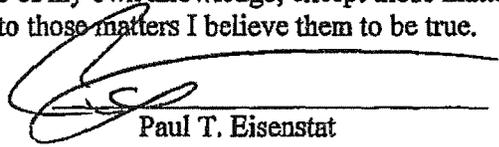
2018 by:

  
\_\_\_\_\_  
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.

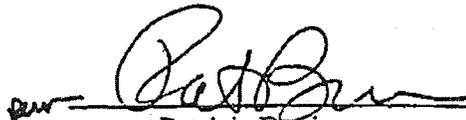
THIRTEENTH. ~~TWELFTH~~. No part of the activities of the corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation; nor shall it in any manner or to

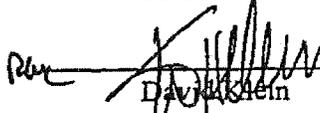
any extent participate in any political campaign on behalf of any candidate for public office or engage in any activities that are unlawful under applicable federal, state or local law.

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



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

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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.

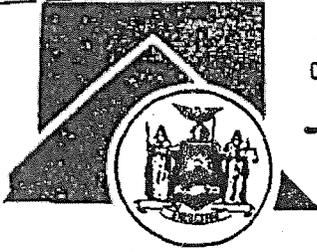
Very truly yours,

Nancy E. Schoep  
Associate Attorney  
Office of General Counsel  
Albany Office

NES: slb



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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.

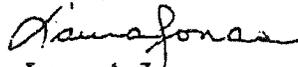
The original certificate of incorporation was subject to Public Health Council approval because its purposes included the establishment of one or more facilities subject to Article 28 of the Public Health Law. Genesee Valley Group Health Association is retaining its

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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

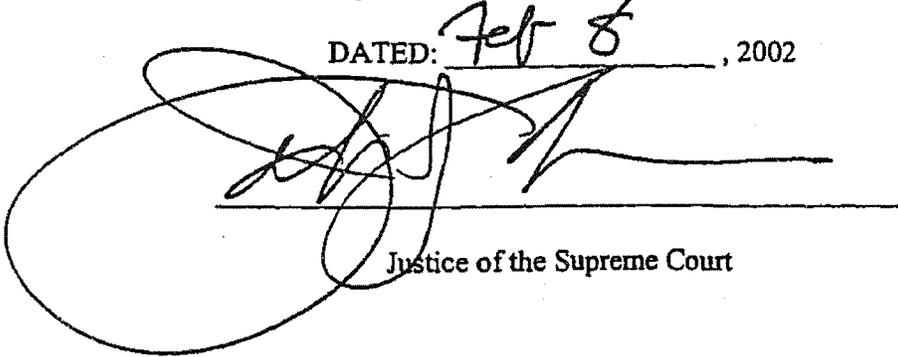
APPROVAL

of a

Justice of the Supreme Court

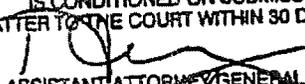
I, Honorable John J. Ark, a Justice of the Supreme Court of the Seventh  
Judicial District of New York, do hereby approve the foregoing Restated Certificate of  
Incorporation of Genesee Valley Group Health Association pursuant to Section 805 of the Not-  
for-Profit Corporation Law and consent that 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

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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.

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(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:

le

| <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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 2nd day of August 2018, approves the filing of the Certificate of Dissolution of Genesee Valley Group Health Association, dated April 30, 2018.



## 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.)

---

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



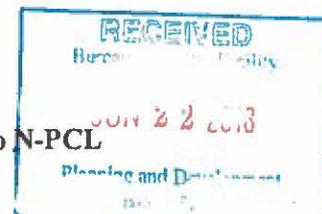
June 21, 2018

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

---

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

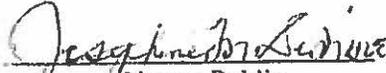
STATE OF NEW YORK    )  
COUNTY OF KINGS    ) ss:

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  
  
12-16-11  
DATE

**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:

A  
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.

Andrew J. Sheffer  
Secretary

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.

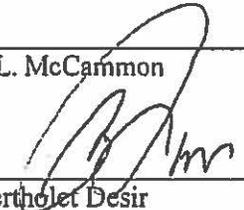
Dated: \_\_\_\_\_

\_\_\_\_\_  
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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 2nd day of August 2018, approves the filing of the Certificate of Dissolution of Ruby Weston Manor, dated June 21, 2018.



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:**

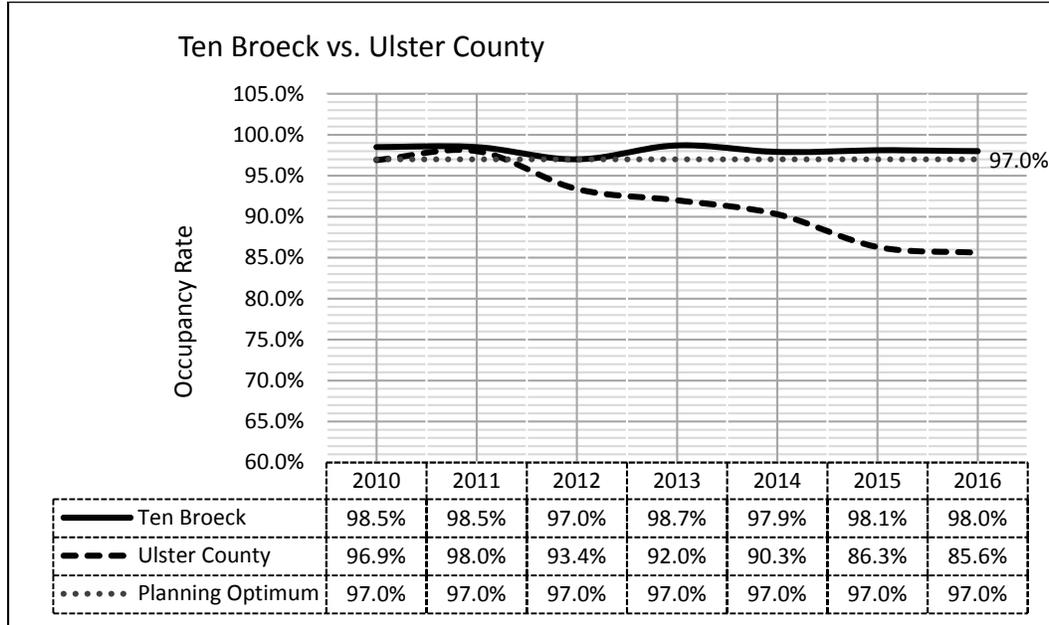
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

**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>* <i>Managing Members</i> |

### 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 Dermarite 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                                  | Ownership Since | Overall | Health Inspection | Quality Measures | Staffing | NYS Quintile |
|--|-----------------|---------|-------------------|------------------|----------|--------------|
| Dumont Center for Rehabilitation and Nursing   | 07/2010         | *****   | ****              | *****            | **       | 5            |
| Bellhaven Center for Rehab & Nursing Care      | 03/2010         | ***     | **                | *****            | ***      | 3            |
| St James Rehab & Health Care Center            | 08/2012         | **      | ***               | *****            | *        | 1            |
| The Grand Pavilion for R&N at Rockville Centre | 08/2012         | **      | **                | *****            | *        | 4            |
| Westhampton Care Center                        | 01/2018         | ****    | ***               | *****            | **       | 5            |

### MO

|   |         |    |    |      |    |     |
|---|---------|----|----|------|----|-----|
| Big Bend Woods Healthcare Center                  | 01/2016 | *  | *  | **** | ** | N/A |
| Abbey Woods Center for Rehabilitation and Healing | 04/2017 | ** | ** | **   | ** | N/A |

### OH

|                                     |         |       |      |       |     |     |
|-------------------------------------|---------|-------|------|-------|-----|-----|
| Washington Square Healthcare Center | 01/2014 | ***** | **** | ***** | *** | N/A |
|-------------------------------------|---------|-------|------|-------|-----|-----|

### PA

|                                       |         |    |   |       |    |     |
|---------------------------------------|---------|----|---|-------|----|-----|
| Greenery Center for Rehab and Nursing | 06/2016 | ** | * | ***** | ** | 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:

|                           | <u>Current Year (2016)</u> |                     | <u>Year One</u> |                     |
|---------------------------|----------------------------|---------------------|-----------------|---------------------|
|                           | <u>Per Diem</u>            | <u>Total</u>        | <u>Per Diem</u> | <u>Total</u>        |
| <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     |                            | <u>\$141,772</u>    |                 | <u>\$0</u>          |
| 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                      | <u>\$24,240</u>     | \$169.62        | <u>\$46,745</u>     |
| 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  |

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2<sup>nd</sup> day of August 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Kingston NH Operation LLC d/b/a Ten Broeck Center for Rehabilitation & Healing as the new operator of Ten Broeck Commons, a 258 bed residential health care facility, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

172313 E

FACILITY/APPLICANT:

Kingston NH Operation LLC d/b/a Ten Broeck  
Center for Rehabilitation & Healing

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]

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



Project # 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%              |
| <br>  |                |                 |
| <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

|                       | Existing   | Proposed   |
|-----------------------|--|--|
| 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<br><u>Members</u><br>Jeffrey Sicklick 2%<br>Light Operational Holdings Associates, LLC 98%<br>Kenneth Rozenberg (95%)<br>Beth Rozenberg (5%) | Schnur Operations Associates, LLC<br><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. Lantzitsky 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

| Provider Name                                      | Ownership Since | Overall | Health Inspection | Quality Measure | Staffing | NYS Quintile |
|--|-----------------|---------|-------------------|-----------------|----------|--------------|
| Fulton Center for Rehabilitation and Healthcare    | 04/2012         | *       | *                 | ****            | ***      | 3            |
| Richmond Center for Rehab and Specialty HC         | 04/2012         | **      | *                 | ****            | ****     | 3            |
| Corning Center for Rehabilitation and Healthcare   | 06/2013         | **      | *                 | ***             | ****     | 5            |
| Ontario Center for Rehabilitation and Healthcare   | 11/2014         | *       | *                 | ***             | ***      | 5            |
| Schenectady Center for Rehabilitation and Nursing  | 09/2017         | ****    | ***               | *****           | ***      | 4            |
| Slate Valley Center for Rehabilitation and Nursing | 09/2017         | ***     | ***               | ****            | ***      | 5            |
| Troy Center for Rehabilitation and Nursing         | 09/2017         | ****    | ***               | ****            | ****     | 4            |
| Onondaga Center for Rehabilitation and Nursing     | 09/2017         | **      | *                 | ****            | ****     | 5            |
| New Paltz Center for Rehabilitation and Nursing    | 09/2017         | ****    | ***               | ***             | ****     | 1            |
| Glens Falls Center for Rehabilitation and Nursing  | 09/2017         | ***     | **                | *****           | ***      | 3            |
| Carthage Center for Rehabilitation and Nursing     | 09/2017         | ***     | **                | *****           | ***      | 2            |
| Steuben Center for Rehabilitation and Healthcare   | 07/2014         | **      | **                | ***             | ***      | 4            |
| Warren Center for Rehabilitation and Nursing       | 01/2016         | ***     | **                | ***             | ****     | 5            |
| Brooklyn Ctr for Rehab and Residential Hlth Care   | 06/2008         | ****    | ****              | ****            | **       | 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.**

|                             |
|-----------------------------|
| <h2>Financial Analysis</h2> |
|-----------------------------|

**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  |
| Purchased Percent     | 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.**

## 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

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2<sup>nd</sup> day of August 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer of 2% ownership interest from one (1) withdrawing member to one (1) new member and the transfer of 33% ownership interest from one (1) existing member to five (5) new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

181046 E

Martine Center for Rehabilitation and Nursing

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]

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



**Project # 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:

| <u>Current</u>   |     |
|--|-----|
| St. Regis Nursing Home & Health Related Facility, Inc. |     |
| <u>Shareholders</u>                                    |     |
| Estate of Henry Dobies                                 | 40% |
| Estate of Haig Bogosian                                | 40% |
| John Bogosian  | 20% |

| <u>Proposed</u>      |        |
|----------------------|--------|
| MARNC Operating, LLC |        |
| <u>Members</u>       |        |
| Batia Zagelbaum      | 40.00% |
| Esther Barth         | 37.50% |
| Chaya Zagelbaum      | 15.00% |
| Yoel Zagelbaum       | 3.75%  |
| Yechiel Zagelbaum    | 3.75%  |

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:**

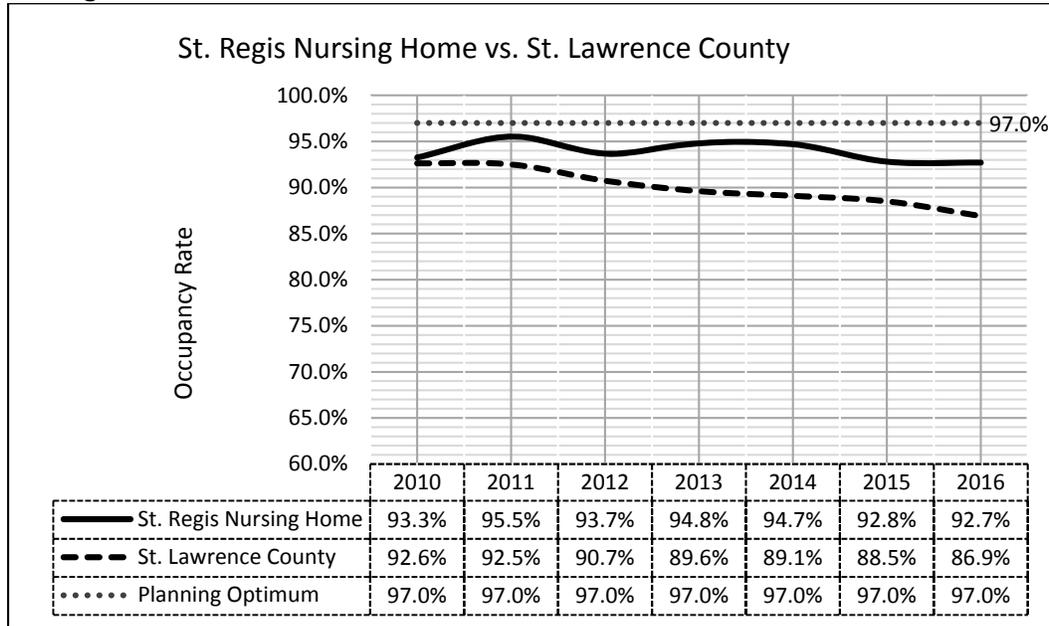
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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 |
| Orchard Manor Rehabilitation & Nursing Center     | 03/2017 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                                   | Ownership Since | Overall | Health Inspection | Quality Measures | Staffing | NYS Quintile |
|---|-----------------|---------|-------------------|------------------|----------|--------------|
| Highland Rehabilitation and Nursing Center      | 02/2013         | **      | **                | *****            | *        | 2            |
| Utica Rehabilitation & Nursing Center           | 02/2015         | **      | *                 | *****            | ***      | 5            |
| Tarrytown Hall Care Center                      | 04/2008         | ****    | ****              | *****            | *        | 4            |
| Norwich Rehabilitation & Nursing Center         | 01/2011         | *       | *                 | ****             | **       | 4            |
| Alpine Rehabilitation and Nursing Center        | 07/2009         | **      | **                | ***              | ***      | 4            |
| Orchard Manor Rehabilitation and Nursing Center | 03/2017         | *       | *                 | ****             | *        | 5            |

#### MA

|   |         |      |    |       |      |     |
|---|---------|------|----|-------|------|-----|
| Cambridge Rehabilitation & Nursing Center | 09/2010 | **** | ** | ***** | **** | N/A |
| Medford Rehabilitation and Nursing Center | 04/2012 | *    | *  | ****  | ***  | 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.**

|                           |
|---------------------------|
| <b>Financial Analysis</b> |
|---------------------------|

**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  | <u>\$13,735,000</u> |

**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 |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2<sup>nd</sup> day of August 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish MARNC Operating, LLC as the new operator of the 160-bed residential health care facility located at 89 Grove Street, Massena currently operated as St. Regis Nursing Home, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

181182 E

MARNC Operating LLC d/b/a Massena  
Rehabilitation & Nursing Center

APPROVAL CONTINGENT UPON:

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

The DOH reserves the right to require continued reporting beyond the two-year period.

[RNR]

4. Submission 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]

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



**Project # 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) |        |
|--------------------------|---------------|--------|---------------|--------|
| Manhattan surgery Center | Projected     | Actual | Projected     | Actual |
| 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 | Actual |       |       |       | Projections |
|--------------------|-------------|--------|-------|-------|-------|-------------|
|                    | #101134     | 2014   | 2015  | 2016  | 2017  | 181152      |
| 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      |
| Total Revenues |                     | \$13,482,882 |                   | \$13,752,497 |

|                 |                 |                  |                 |                    |
|-----------------|-----------------|------------------|-----------------|--------------------|
| <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.**

|                    |
|--------------------|
| <b>Attachments</b> |
|--------------------|

|                  |   |
|------------------|---|
| 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.  |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of section 2801-a of the Public Health Law, on this 7<sup>th</sup> day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby approves the following application to request for indefinite life status for CON #101134, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

181152 E

FACILITY/APPLICANT:

Roosevelt Surgery Center, LLC  
d/b/a Manhattan Surgery Center



**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 a photocopy of the amended Restated Certificate of Incorporation for the Mount Sinai Hospitals Group, Inc., acceptable to the Department. (CSL)
2. 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)
3. Submission of a photocopy of the executed Restated Certificate of Incorporation of South Nassau Communities Hospital, acceptable to the Department. (CSL)
4. 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 Medical 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. |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2<sup>nd</sup> day of August 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Mount Sinai Hospitals Group, Inc. and disestablish South Nassau University Health System, Inc. as the active parent/co-operator of South Nassau Communities Hospital and its certified home health agency and long term home health program, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

181251 E

South Nassau Communities Hospital

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the amended Restated Certificate of Incorporation for the Mount Sinai Hospitals Group, Inc., acceptable to the Department. (CSL)
2. 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)
3. Submission of a photocopy of the executed Restated Certificate of Incorporation of South Nassau Communities Hospital, acceptable to the Department. (CSL)
4. 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]

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



**Project # 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                                |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 2nd day of August 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application for a change of indirect ownership of two (2) certified home health care agencies currently operated by Willcare and Litson, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

181084 E

Willcare

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 CONDITIONED UPON:

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

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



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:**

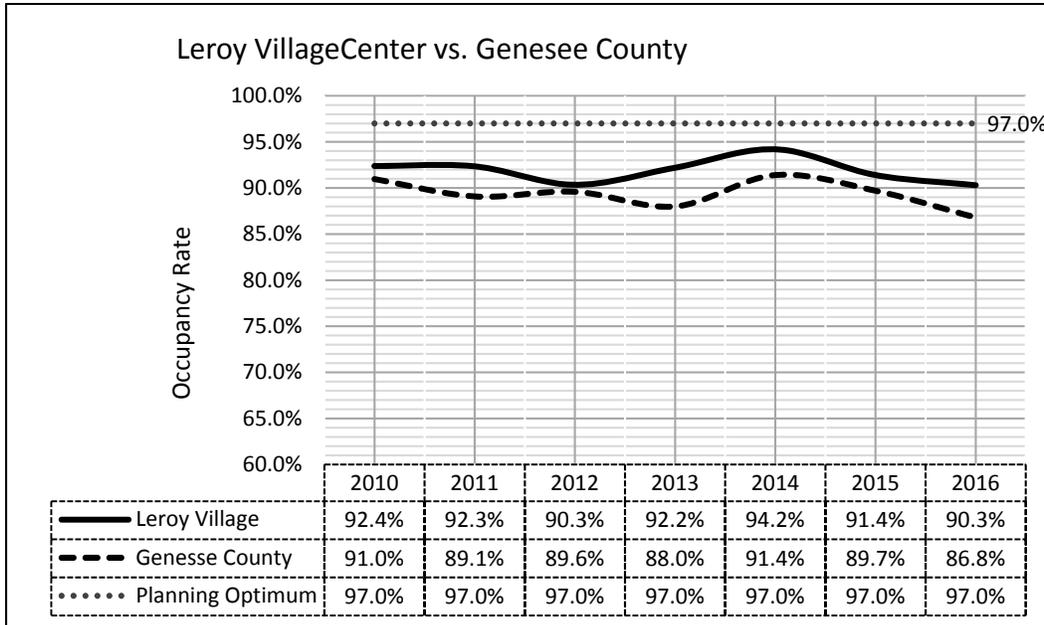
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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><u>Members</u><br>*Jonathan Bleier 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>                   |                    |
| Premier Cadbury of Cherry Hill                    | 07/2016 to present |
| Includes an Adult Home on same campus             |                    |
| <u>Connecticut Nursing Homes</u>                  |                    |
| Fairview Health of Greenwich                      | 10/2012 to 02/2018 |
| Fairview Health of Southport                      | 10/2012 to 02/2018 |
| <u>Florida Nursing Home</u>                       |                    |
| Fort Meyers Rehabilitation and Nursing Center     | 01/2016 to present |
| Manatee Springs Rehabilitation and Nursing Center | 04/2017 to present |
| <u>Minnesota Nursing Homes</u>                    |                    |
| Angels Care Center                                | 01/2013 to 01/2015 |
| Crystal Care Center                               | 01/2013 to 01/2015 |
| <u>NYS Ambulatory Service</u>                     |                    |
| Citywide Mobile Response (EMS)                    | 04/2005 to present |
| <u>NYS Adult Home</u>                             |                    |
| 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                                   | Ownership Since | Overall | Health Inspection | Quality Measures | Staffing | NYS Quintile |
|---|-----------------|---------|-------------------|------------------|----------|--------------|
| Highfield Gardens Care Center of Great Neck     | 09/2010         | **      | **                | *****            | *        | 2            |
| Westchester Center for Rehabilitation & Nursing | 05/2013         | **      | **                | *****            | *        | 3            |
| Greene Meadows Nursing & Rehabilitation Center  | 12/2015         | *       | *                 | ****             | ***      | 5            |
| Pine Haven Home                                 | 07/2016         | **      | *                 | *****            | ***      | 4            |
| Premier Genesee Center for Nursing and Rehab    | 01/2017         | **      | *                 | *****            | ***      | 2            |

**PA**

|   |         |     |     |       |     |     |
|---|---------|-----|-----|-------|-----|-----|
| Sunnyview Nursing and Rehabilitation Center           | 05/2014 | *** | *** | ****  | **  | N/A |
| Deer Meadows Rehabilitation Center                    | 12/2014 | *** | **  | ***** | *** | N/A |
| Rosewood Rehabilitation & Nursing Center              | 09/2015 | **  | **  | ***   | **  | N/A |
| Meadow View Nursing Center                            | 01/2016 | **  | **  | ***   | **  | N/A |
| Wyomissing Health and Rehabilitation Center           | 05/2016 | *** | *** | ****  | **  | N/A |
| Premier Armstrong Rehabilitation and Nursing Facility | 07/2017 | *** | *** | ****  | *** | N/A |

**MA**

|  |         |       |      |       |                    |     |
|--|---------|-------|------|-------|--------------------|-----|
| Brigham Health and Rehabilitation Center LLC       | 06/2016 | ***   | ***  | ***   | Data Not Available | N/A |
| Country Gardens Skilled Nrsng & Rehabilitation Ctr | 06/2016 | ***** | **** | ***** | ****               | N/A |
| Crawford Skilled Nursing and Rehabilitation Center | 06/2016 | *     | *    | **    | ***                | N/A |
| Blue Hills Health and Rehabilitation Center LLC    | 06/2016 | ***   | ***  | ****  | *****              | N/A |
| Franklin Health and Rehabilitation Center LLC      | 06/2016 | *     | *    | ***   | *                  | N/A |
| Kathleen Daniel Nursing and Rehabilitation         | 06/2016 | **    | *    | **    | ****               | N/A |
| Charlwell House                                    | 06/2016 | ****  | ***  | ***   | ****               | N/A |
| Kimwell Nursing and Rehabilitation                 | 06/2016 | ****  | ***  | ***** | **                 | N/A |

**FL**

|   |         |      |      |       |                    |     |
|---|---------|------|------|-------|--------------------|-----|
| Fort Myers Rehabilitation and Nursing Center      | 01/2016 | **** | **** | ****  | ****               | N/A |
| Manatee Springs Rehabilitation and Nursing Center | 04/2017 | **   | *    | ***** | Data Not Available | N/A |

**NH**

|  |         |   |   |      |     |     |
|--|---------|---|---|------|-----|-----|
| Hanover Terrace Health & Rehabilitation Center | 06/2016 | * | * | **** | *** | N/A |
|--|---------|---|---|------|-----|-----|

**NJ**

|                                |         |    |   |      |      |     |
|--------------------------------|---------|----|---|------|------|-----|
| Premier Cadbury Of Cherry Hill | 07/2016 | ** | * | **** | **** | 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 RHC. 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   |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of August 2018, having considered any advice offered by the Regional Health Systems Agency, the Public Health and Health Planning Council, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to disapprove the application referenced below to establish Leroy Operating LLC as the new operator of the 140-bed residential health care facility located at 10 Munson Street, Leroy currently operated as Leroy Village Green Residential Health Care Facility; and be it further

RESOLVED, that the Public Health and Health Planning Council hereby directs that the Executive Secretary to the Public Health and Health Planning Council serve notice upon the applicants or their attorneys that the Council is considering disapproving the following application for establishment, as proposed, and that disapproval shall become final unless the applicants request a hearing, in writing, of the Executive Secretary concerning such proposed disapproval within 20 days of receipt of this Council's notification:

NUMBER

APPLICANT/FACILITY

172198 E

Leroy Operating LLC, d/b/a Leroy Village  
Green Nursing and Rehabilitation Center

**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

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 2nd day of August 2018, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER:

FACILITY:

161026 E

Foundation for the Elderly Inc  
d/b/a Atlantis Home Care

APPROVAL CONDITIONAL UPON:

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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 2nd day of August 2018, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER:

FACILITY:

172165 E

Utica LHCSA, LLC d/b/a Oneida Home Care

APPROVAL CONTINGENT UPON:

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

APPROVAL CONDITIONAL UPON

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

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

**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)

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 2nd day of August 2018, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER:

FACILITY:

181393 E

Community Care Companions, Inc. d/b/a Interim  
Healthcare of New York

APPROVAL CONTINGENT UPON:

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)

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